TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

Key: **A**—Amendment of an existing section.
R—Repeal of an existing section.
T—Transfer of an existing section.
Re—Reenactment of a section.
N—Addition of a new section.
Rn—Renumbering of a new section.
X—Nullification of a previous action of the Legislature.
*—Becomes effective at a future time.

Note: If the entry does not show a session law chapter number, the action was performed by the reviser in the course of revision.

F. S. Sec. No.	Key	Session Law Ch. No.
11.075	A	79-400
11.12	A	79-2
11.13	A	79-215
	A	79-224
11.148	A	79-190
11.149	A	79-164
11.2421	A	79-281
11.2422	A	79-281
11.2424	A	79-281
11.2425	A	79-281
11.246	A	79-28
11.44	A	79-190
11.45	A	79-183
11.60	A	79-400
11.6105(1)	T fm 476.264	
11.6105(2)(a)	N	79-116
11.6105(2)(b)	N	79-194
11.6105(2)(c)	N	79-200
11.6105(2)(d)	N	79-202
11.6105(2)(e)	N	79-211
11.6105(2)(f)	N	79-225
11.6105(2)(g)	N	79-226
11.6105(2)(h)	N	79-227
11.6105(2)(i)	N	79-228
11.6105(2)(j)	N	79-229
11.6105(2)(k)	N	79-230
11.6105(2)(l)	N	79-231
11.6105(2)(m)	N	79-238
11.6105(2)(n)	N	79-239
11.6105(2)(o)	N	79-243
11.6105(2)(p)	N	79-272
11.6105(2)(q)	N	79-273
11.6105(2)(r)	N	79-275
11.6105(2)(s)	N	79-302
11.6105(2)(t)	N	79-330
11.6105(2)(u)	N	79-347
11.6105(2)(v)	N	79-407
11.6105(3)	N	79-240
11.6115(1)(a)	N	79-152
11.6115(1)(b)	N	79-261
11.6115(2)	N	79-320
11.6115(3)	N	79-285
13.201	T to 23.161	
13.211	A	79-400
	T to 23.162	
13.221	T to 23.163	
13.231	A	79-190
	T to 23.164	
13.241	A	79-400
	T to 23.165	
13.251	T to 23.166	
13.261	A	79-400
	T to 23.167	
13.9964	T to 14.25(1)	
13.9965	T to 14.25(2)	79-190
13.9966	A	79-190
	T to 14.25(3)	
13.9967	T to 14.25(4)	
13.998	A	79-261
	T to 450.50	
13.9981	A	79-190
	A	79-261
	T to 450.51	
13.9982	A	79-7
	A	79-261
	T to 450.52	
13.9984	R	79-261
13.9985	A	79-190
	R	79-261
13.9986	R	79-261
13.9987	R	79-261
13.9988	A	79-7
	A	79-261
	T to 450.53	
13.9989	A	79-261
	T to 450.55	
13.9990	N	79-261
	Rn as 450.54	
14.057	A	79-190
14.058	A	79-190
14.071	A	79-8
14.201	N	79-190
	Rn fm 14.25(1)	
14.202	N	79-190
	Rn fm 14.25(2)	
14.22	A	79-195
14.23	A	79-190
14.25(1)	N	79-190
	Rn as 14.201	
	T fm 13.9964	
14.25(2)	N	79-190
	Rn as 14.202	
	A	79-190
	T fm 13.9965	
14.25(3)	A	79-190
	T fm 13.9966	
14.25(4)	T fm 13.9967	
14.26	N	79-190
15.0336	N	79-278
	Rn fm 15.040	
15.040	N	79-278
	Rn as 15.0336	
15.043	N	79-196
15.092	N	79-344
16.01	A	79-159
16.016	T fm 455.07	79-36
16.53	N	79-301
17.03	A	79-95
17.075	A	79-400
18.101	A	79-190
18.11	A	79-164
	A	79-262
	A	79-400
20.04	A	79-3
	A	79-190
20.06	A	79-36
20.10	A	79-164
20.13	A	79-361
20.15	A	79-222
20.16	A	79-190
20.17	A	79-7
	*A	79-40
	A	79-308
20.17(5)(1)	T to 20.171(4)(1)	
20.171	A	79-7
	A	79-40
	A	79-46
	A	79-190
	A	79-261
20.171(4)(1)	T fm 20.17(5)(1)	
20.18	A	79-7
	A	79-10
	A	79-65
	A	79-164
	A	79-190
	A	79-261
20.19	A	79-10
	A	79-26
	A	79-190
	A	79-265
	A	79-287
20.21	A	79-10
20.23	A	79-10
20.24	A	79-10
	A	79-190
	A	79-324
20.25	A	79-255
20.261	A	79-10
20.28	A	79-10
20.29	A	79-10
20.30	A	79-36
20.30(Cont.)	A	79-164
	A	79-239
	A	79-243
20.30(5)	N	79-36
	Rn fm 455.0115(2),(3)	
20.30(7)-(9)	N	79-36
20.31	A	79-190
20.315	A	79-7
	A	79-190
23.0112	A	79-190
23.0113	A	79-190
23.0114	A	79-190
23.0115	A	79-190
23.012	A	79-190
23.014	A	79-190
23.015	A	79-190
23.016	A	79-190
23.0161	A	79-190
23.017	A	79-190
23.019	A	79-190
23.0191	A	79-190
23.022	A	79-190
23.029	A	79-190
23.055	A	79-260
23.122	A	79-8
23.123	A	79-8
23.127	A	79-40
23.137	A	79-190
23.140	A	79-19
23.145	A	79-101
23.146	A	79-101
	A	79-164
23.147	A	79-101
23.147(3)-(8)	A	79-101
	T to 23.148	
23.148	N	79-101
	Rn as 23.1491	
	A	79-101
	T fm 23.147(3)-(8)	
23.149	R	79-101
23.1491	N	79-101
	Rn fm 23.148	
23.151	A	79-190
23.152	A	79-3
	A	79-8
	A	79-129
	A	79-190
23.154	A	79-190
23.161	T fm 13.201	
23.162	T fm 13.211	
23.163	T fm 13.221	
23.164	T fm 13.231	
23.165	T fm 13.241	
23.166	T fm 13.251	
23.167	T fm 13.261	
25.073	A	79-377
25.382	N	79-190
26.011	A	79-164
26.031	A	79-413
27.25	A	79-344
27.255	A	79-8
27.33	A	79-190
27.34	A	79-344
27.36	A	79-400
27.37	A	79-400
27.52	A	79-164
27.55	A	79-190
27.56	A	79-400
27.562	A	79-400
28.24	A	79-266
	A	79-400
28.2401	A	79-400
30.09	A	79-246
	A	79-400

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
30.17	A	79-396
30.231	A	79-396
30.232	R	79-396
30.31	A	79-8
30.49	A	79-190
34.021	A	79-411
34.022	A	79-413
34.041	A	79-400
35.01	A	79-413
35.02	A	79-413
35.03	A	79-413
35.04	A	79-413
35.042	A	79-413
35.043	N	79-413
35.05	A	79-413
35.06	A	79-312
	A	79-368
	A	79-413
39.01	A	79-164
	A	79-203
39.03	A	79-164
39.031	A	79-8
	A	79-164
39.09	A	79-3
39.11	A	79-164
39.111	A	79-3
39.12	A	79-3
	A	79-164
39.41	A	79-164
39.411	A	79-164
40.01	*A	79-235
40.013	*A&T fm 40.07	79-235
40.015	*A	79-235
40.02	*A	79-235
40.03	*R	79-235
40.04	*R	79-235
40.05	*R	79-235
40.06	*R	79-235
40.061	*R	79-235
40.07	*A&T to 40.013	79-235
40.08	*R	79-235
40.09	*R	79-235
40.10	*R	79-235
40.101	*R	79-235
40.11	*R	79-235
40.13	*R	79-235
40.20	*R	79-235
40.22	*R	79-235
40.221	*N	79-235
40.225	*A&T fm 40.371	79-235
40.23	*A	79-235
40.231	*A	79-235
40.235	*N	79-235
40.24	*A	79-235
40.25	*R	79-235
40.27	*R	79-235
40.271	*A	79-235
40.28	*R	79-235
40.29	*A	79-235
40.30	*A	79-235
40.31	*A	79-235
40.32	*A	79-235
40.33	*A	79-235
40.34	*A	79-235
40.35	*A	79-235
40.36	*R	79-235
40.371	*A&T to 40.225	79-235
40.39	*R	79-235
40.40	*R	79-235
40.42	*R	79-235
40.43	*R	79-235
43.41	A	79-99
48.021	A	79-396
48.031	A	79-396
48.081	A	79-396
48.151	A	79-164
48.195	N	79-396
55.01	A	79-387
55.03	A	79-396
56.08	R	79-396
56.23	A	79-396
56.275	N	79-396
57.091	A	79-164
61.13	A	79-164
61.1304	A	79-400
61.1306	A	79-400
61.191	A	79-164
63.172	A	79-369
68.065	N	79-345
69.021	A	79-400
73.071	A	79-400
75.05	A	79-183
78.065	A	79-396
83.49	A	79-400
83.770	A	79-400
83.776	A	79-400
83.780	A	79-164
83.784	A	79-400
83.801	N	79-404
83.802	N	79-404
83.802(2)	N	79-404
	Rn fm 83.808	
83.803	N	79-404
83.804	N	79-404
83.805	N	79-404
83.806	N	79-404
83.807	N	79-404
83.808	N	79-404
	Rn as 83.802(2)	
85.031	A	79-244
88.011	A	79-383
88.012	N	79-383
88.021	A	79-383
88.031	A	79-383
88.051	A	79-383
88.061	A	79-383
88.065	N	79-383
88.071	R	79-383
88.081	A	79-383
88.091	A	79-383
88.101	A	79-383
88.105	N	79-383
88.111	A	79-383
88.121	A	79-383
88.131	A	79-383
88.141	A	79-383
88.151	A	79-383
88.161	A	79-383
88.171	A	79-383
88.181	A	79-383
88.191	A	79-383
88.193	N	79-383
88.201	R	79-383
88.211	A	79-383
88.221	A	79-383
88.231	A	79-383
88.235	N	79-383
88.241	A	79-383
88.251	A	79-383
88.255	N	79-383
88.261	A	79-383
88.271	A	79-383
88.281	A	79-383
88.291	A	79-383
88.295	N	79-383
88.297	N	79-383
88.311	A	79-383
88.345	N	79-383
88.351	A	79-383
88.361	R	79-383
88.371	A	79-383
95.241	R	79-146
97.021	A	79-157
	A	79-400
97.061	A	79-366
97.063	A	79-400
97.102	A	79-365
98.081	A	79-365
98.212	A	79-400
98.251	A	79-365
99.012	A	79-391
99.021	A	79-365
	A	79-400
99.092	A	79-400
99.095	A	79-400
100.041	A	79-164
100.111	A	79-400
100.371	N	79-365
101.031	A	79-400
101.051	A	79-366
101.141	A	79-400
101.151	A	79-400
101.161	A	79-365
101.21	A	79-400
101.22	A	79-400
101.27	A	79-400
101.47	A	79-400
101.5609	A	79-400
101.5612	A	79-400
101.62	A	79-400
101.64	A	79-365
101.68	A	79-400
101.73	A	79-400
102.012	A	79-400
102.061	A	79-400
102.071	A	79-400
102.131	A	79-400
102.141	A	79-400
102.166	A	79-400
102.168	A	79-400
103.071	A	79-190
103.091(1),(4)	Re	79-164
103.121	A	79-400
104.061	A	79-400
104.071	A	79-400
104.29	A	79-400
104.31	A	79-190
105.031	A	79-365
	A	79-400
105.041	A	79-400
106.011	A	79-157
	A	79-365
	A	79-378
106.021	A	79-378
	A	79-400
106.03	A	79-365
106.04	A	79-400
106.06	A	79-378
106.07	A	79-365
	A	79-378
	A	79-400
106.07(1)(a)	Re	79-164
106.08	A	79-365
	A	79-378
106.11	A	79-365
106.125	N	79-365
106.14	A	79-400
106.141	A	79-378
	A	79-400
106.142	A	79-365
106.15	A	79-400
106.19	A	79-400
106.22	A	79-365
106.24	A	79-400
106.26	A	79-400
106.29	A	79-400
110.022	A	79-8
	R	79-190
110.041	R	79-190
110.042	R	79-190
110.051	A	79-8
	R	79-190
110.055	R	79-190
110.061	R	79-190
110.0611	R	79-190
110.071	R	79-190
110.081	R	79-190
110.092	R	79-190
110.101	R	79-190
110.105	N	79-190
110.107	N	79-190
110.109	N	79-190
	Rn fm 110.115	
110.110	N	79-190
	Rn as 110.123	
110.111	R	79-190
110.112	N	79-190
	Rn fm 110.120	
110.113	N	79-190
	Rn fm 110.145	
110.114	N	79-190
	Rn fm 110.150	
110.115	N	79-190
	Rn as 110.109	
	N	79-190
	Rn fm 110.155	
110.116	N	79-190
	Rn fm 110.160	
110.117	N	79-190
	Rn fm 110.130	
110.118	N	79-190
	Rn fm 110.140	
110.120	N	79-190
	Rn as 110.112	
110.121	N	79-306
	Rn fm 112.202	
110.122	N	79-190

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
110.122(Cont.)	Rn fm 110.135	
110.123	N	79-190
	Rn fm 110.110	
110.124	N	79-190
	Rn fm 110.255	
110.125	N	79-190
	Rn fm 110.170	
110.126	N	79-190
	Rn fm 110.175	
110.127	N	79-190
	Rn fm 110.180	
110.129	N	79-190
	Rn fm 110.165	
110.130	N	79-190
	Rn as 110.117	
110.135	N	79-190
	Rn as 110.122	
110.140	N	79-190
	Rn as 110.118	
110.145	N	79-190
	Rn as 110.113	
110.147	N	79-190
	Rn as 112.24	
110.150	N	79-190
	Rn as 110.114	
110.155	N	79-190
	Rn as 110.115	
110.160	N	79-190
	Rn as 110.116	
110.165	N	79-190
	Rn as 110.129	
110.170	N	79-190
	Rn as 110.125	
110.175	N	79-190
	Rn as 110.126	
110.180	N	79-190
	Rn as 110.127	
110.201	N	79-190
110.203	N	79-190
110.205	N	79-190
110.207	N	79-190
	Rn fm 110.210	
110.209	N	79-190
	Rn fm 110.215	
110.210	N	79-190
	Rn as 110.207	
110.211	N	79-190
	Rn fm 110.220	
110.213	N	79-190
	Rn fm 110.225	
110.215	N	79-190
	Rn as 110.209	
	N	79-190
	Rn fm 110.235	
110.217	N	79-190
	Rn fm 110.230	
110.219	N	79-190
	Rn fm 110.240	
110.220	N	79-190
	Rn as 110.211	
110.221	N	79-190
	Rn fm 110.242	
110.223	N	79-190
	Rn fm 110.245	
110.225	N	79-190
	Rn as 110.213	
	N	79-190
	Rn fm 110.248	
110.227	N	79-190
	Rn fm 110.250	
110.230	N	79-190
	Rn as 110.217	
110.233	N	79-190
	Rn fm 110.260	
110.235	N	79-190
	Rn as 110.215	
110.240	N	79-190
	Rn as 110.219	
110.242	N	79-190
	Rn as 110.221	
110.245	N	79-190
	Rn as 110.223	
110.248	N	79-190
	Rn as 110.225	
110.250	N	79-190
	Rn as 110.227	
110.255	N	79-190
	Rn as 110.124	
110.260	N	79-190

F. S. Sec. No.	Key	Session Law Ch. No.
110.260(Cont.)	Rn as 110.233	
110.301	N	79-190
110.305	N	79-190
110.309	N	79-190
	Rn fm 110.310	
110.310	N	79-190
	Rn as 110.309	
110.501	T fm 112.901	79-190
110.502	A&T fm 112.902	79-190
110.503	T fm 112.903	79-190
110.504	T fm 112.904	79-190
110.505	T fm 112.905	79-190
111.06	R	79-139
111.07	A	79-139
111.071	N	79-139
111.072	N	79-139
111.08	R	79-139
112.021	A	79-190
112.031	R	79-190
112.041	R	79-190
112.044	A	79-7
	A	79-190
112.045	A	79-164
	R	79-190
	A	79-400
112.051	R	79-190
112.055	R	79-190
112.061	A	79-190
	A	79-205
	A	79-303
	A	79-412
112.075	A	79-40
	R	79-190
112.08	A	79-40
	A	79-337
	A	79-400
112.0801	A	79-88
112.13	A	79-40
112.171	A	79-190
112.19	A	79-40
112.191	A	79-40
112.193	N	79-335
112.20	R	79-190
112.202	N	79-306
	Rn as 110.121	
112.216	R	79-190
112.24	N	79-190
	Rn fm 110.147	
112.3145	A	79-40
112.362	A	79-377
112.61	A	79-183
112.625	N	79-183
112.63	A	79-183
112.64	A	79-183
112.65	A	79-183
112.656	N	79-183
112.658	N	79-183
112.66	A	79-183
112.665	N	79-183
112.901	T to 110.501	79-190
112.902	A&T to 110.502	79-190
112.903	T to 110.503	79-190
112.904	T to 110.504	79-190
112.905	T to 110.505	79-190
114.04	A	79-400
114.05	A	79-8
116.161	A	79-3
119.011	A	79-187
119.011(3)(c)	N	79-187
	Rn fm 119.07(3)	
119.07	A	79-187
119.07(3)	N	79-187
	Rn as 119.011(3)(c)	
119.072	N	79-187
120.52	A	79-20
	A	79-40
	A	79-299
120.53	A	79-299
120.54	A	79-3
	A	79-299
	A	79-400
120.55	A	79-299
120.565	A	79-299
120.57	A	79-7
120.60	A	79-142
	A	79-299
120.63	A	79-190
	A	79-400

F. S. Sec. No.	Key	Session Law Ch. No.
120.63(3)	T to 120.633	79-299
120.633	T fm 120.63(3)	79-299
120.65	A	79-190
121.011	A	79-164
	A	79-377
121.021	A	79-40
121.051	A	79-375
	A	79-377
121.052	A	79-164
	A	79-375
	A	79-377
121.061	A	79-190
121.081	A	79-377
121.091	A	79-375
121.125	A	79-40
121.135	A	79-183
122.03	A	79-40
122.07	A	79-164
122.34	A	79-40
123.03	A	79-40
123.09	R	79-163
123.20	R	79-163
125.01	A	79-87
125.0103	A	79-400
125.0104	A	79-359
	A	79-400
125.0105	Re	79-164
125.011	A	79-291
125.012	A	79-291
125.0166	R	79-396
125.31	A	79-119
	A	79-262
125.563	A	79-65
125.69	A	79-379
129.02	A	79-400
136.02	A	79-309
136.07	A	79-309
136.08	A	79-309
145.021	A	79-190
145.09	A	79-327
145.19	N	79-327
153.95	A	79-190
154.03	A	79-400
159.26	A	79-101
159.27	A	79-101
159.70	N	79-101
	Rn as 159.701	
159.701	N	79-101
	Rn fm 159.70	
159.702	N	79-101
	Rn fm 159.71	
159.703	N	79-101
	Rn fm 159.72	
159.704	N	79-101
	Rn fm 159.73	
159.705	N	79-101
	Rn fm 159.74	
159.706	N	79-101
	Rn fm 159.75	
159.707	N	79-101
	Rn fm 159.76	
159.708	N	79-101
	Rn fm 159.77	
159.709	N	79-101
	Rn fm 159.78	
159.7095	N	79-101
	Rn fm 159.79	
159.71	N	79-101
	Rn as 159.702	
159.72	N	79-101
	Rn as 159.703	
159.73	N	79-101
	Rn as 159.704	
159.74	N	79-101
	Rn as 159.705	
159.75	N	79-101
	Rn as 159.706	
159.76	N	79-101
	Rn as 159.707	
159.77	N	79-101
	Rn as 159.708	
159.78	N	79-101
	Rn as 159.709	
159.79	N	79-101
	Rn as 159.7095	
161.0415	N	79-161
161.053	A	79-164
161.141	A	79-233
161.161	A	79-233

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
161.181	A	79-233
161.191	A	79-233
161.211	A	79-233
163.01	A	79-24
	A	79-31
	A	79-40
163.03	A	79-190
163.3164	A	79-190
163.3204	A	79-65
163.357	A	79-400
163.367	A	79-400
163.385	A	79-400
163.387	A	79-400
163.400	A	79-400
163.612	A	79-164
163.704	A	79-400
163.7055	A	79-190
163.708	A	79-400
165.091	A	79-183
165.201	N	79-183
	Rn as 189.001	
165.202	N	79-183
	Rn as 189.002	
165.203	N	79-183
	Rn as 189.003	
165.210	N	79-183
	Rn as 189.004	
165.211	N	79-183
	Rn as 189.005	
165.211(4)-(7)	N	79-183
	Rn as 189.006	
165.212	N	79-183
	Rn as 189.007	
165.214	N	79-183
	Rn as 189.008	
165.215	N	79-183
	Rn as 189.009	
166.043	N	79-400
166.251	Re	79-164
166.261	A	79-119
	A	79-262
170.01	A	79-164
175.021	A	79-380
175.032	A	79-380
	A	79-388
175.041	A	79-380
	A	79-388
175.311	A	79-380
175.333	N	79-380
175.351	A	79-380
177.011	A	79-164
177.081	A	79-86
177.101	A	79-86
177.503	A	79-400
177.507	A	79-400
185.02	A	79-380
	A	79-388
185.03	A	79-380
	A	79-388
185.34	A	79-40
189.001	N	79-183
	Rn fm 165.201	
189.002	N	79-183
	Rn fm 165.202	
189.003	N	79-183
	Rn fm 165.203	
189.004	N	79-183
	Rn fm 165.210	
189.005	N	79-183
	Rn fm 165.211	
189.006	N	79-183
	Rn fm 165.211(4)-(7)	
189.007	N	79-183
	Rn fm 165.212	
189.008	N	79-183
	Rn fm 165.214	
189.009	N	79-183
	Rn fm 165.215	
192.001	A	79-334
192.032	A	79-334
192.032(4)	A&T fm 196.0011	79-334
192.091	*A	79-332
193.011	A	79-334
193.052	A	79-334
193.062	A	79-334
193.072	A	79-334
193.074	N	79-334
193.085	A	79-334
193.441	N	79-334
193.621	A	79-65
194.042	R	79-334
195.027	A	79-334
195.073	A	79-334
195.087	A	79-190
	A	79-334
196.0011	A&T to 192.032(4)	79-334
	A	79-400
196.002	*N	79-332
196.011	A	79-164
	A	79-334
196.031	*A	79-332
196.032	A	79-400
196.032(5)	*N	79-332
	Rn as 196.033	
196.033	*N	79-332
	Rn fm 196.032(5)	
196.041	A	79-164
196.121	*A	79-332
196.141	*A	79-332
196.1975	A	79-400
196.1976	A	79-400
196.32	A	79-190
197.0121	N	79-334
	Rn as 197.014	
197.013	N	79-334
	Rn fm 197.016(5)	
197.014	N	79-334
	Rn fm 197.0121	
197.016(5)	N	79-334
	Rn as 197.013	
197.0164	A	79-334
197.0165	A	79-334
197.0166	A	79-334
197.0167	A	79-334
197.111	A	79-164
197.271	A	79-334
197.281	A	79-334
197.291	A	79-334
197.341	R	79-164
197.361	A	79-400
198.09	A	79-252
198.35	A	79-34
199.025	R	79-164
199.052	A	79-350
199.062	A	79-33
200.011	A	79-400
200.132	A	79-164
201.02	A	79-350
201.021	R	79-350
201.08	A	79-222
	A	79-350
	A	79-400
201.09	A	79-350
201.15	A	79-350
201.21	A	79-350
201.23	A	79-350
	A	79-400
201.24	N	79-350
205.171	A	79-400
205.193	N	79-120
	Rn fm 320.8286	
205.195	N	79-228
	Rn fm 474.218	
205.196	N	79-226
205.197	N	79-273
205.198	N	79-243
205.199	N	79-243
210.01	A	79-11
210.02	A	79-11
210.04	A	79-11
	A	79-317
210.05	A	79-11
	A	79-317
210.06	A	79-11
210.07	A	79-11
	A	79-317
210.08	A	79-11
210.09	A	79-11
210.11	A	79-11
210.12	A	79-11
210.14	A	79-11
210.18	A	79-11
210.19	A	79-11
210.20	A	79-11
211.02	A	79-255
211.17	A	79-164
211.31	A	79-255
211.33	A	79-400
212.02	A	79-339
	A	79-359
212.03	A	79-359
212.031	A	79-400
212.04	A	79-359
212.08	A	79-164
	A	79-339
	A	79-400
212.15	A	79-359
213.05	A	79-9
	A	79-164
214.21	A	79-251
214.23	A	79-9
214.71	A	79-164
	A	79-326
215.19	A	79-7
	R	79-14
215.195	A	79-190
215.22	A	79-36
	A	79-40
215.25	A	79-190
215.32	A	79-190
215.321	A	79-164
215.37	A	79-36
	A	79-190
215.422	A	79-106
215.425	A	79-190
215.44	A	79-190
215.47	A	79-262
215.48	A	79-164
215.515	A	79-400
216.011	A	79-190
216.023	A	79-190
216.031	A	79-222
216.051	A	79-190
216.111	A	79-190
216.141	A	79-400
216.181	A	79-190
216.212	A	79-190
216.241	A	79-190
216.271	A	79-190
216.311	A	79-190
	A	79-222
216.345	A	79-190
216.359	A	79-190
218.26(5)	N	79-119
	Rn as 286.043	
218.31	A	79-183
218.32	A	79-164
	A	79-183
218.345	A	79-119
	A	79-262
218.37	N	79-183
218.38	N	79-183
218.50	N	79-183
218.501	N	79-183
218.502	N	79-183
218.503	N	79-183
218.504	N	79-183
219.075	A	79-262
220.03	A	79-35
220.222	A	79-326
220.25	N	79-250
220.66	R	79-164
222.06	*R	79-396
222.15	A	79-7
222.20	N	79-363
228.051	*A	79-288
228.071	A	79-242
	A	79-385
228.091	A	79-164
228.092	A	79-177
228.195	A	79-354
229.053	A	79-222
229.085	A	79-112
229.512	A	79-222
229.514	A	79-190
229.551	A	79-222
229.565	A	79-288
229.595	N	79-311
	Rn as 231.086	
	N	79-385
	Rn as 231.086	
229.8055	A	79-261
229.808	A	79-164
	A	79-177
229.85	N	79-288

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
230.173	N	79-213
	N	79-385
230.23	A	79-150
	A	79-151
	A	79-184
	A	79-256
	A	79-385
230.2311	A	79-74
	A	79-213
	A	79-288
	A	79-385
230.2312	N	79-288
230.234	A	79-139
	A	79-385
230.33	A	79-256
230.655	N	79-182
230.66	A	79-7
	A	79-164
	A	79-261
230.741	T to 248.054	79-222
	Rn as 240.303	
230.751	R	79-222
230.752	R	79-222
230.753	A&T to 248.061	79-222
	Rn as 240.313	
230.7535	A&T to 248.063	79-222
	Rn as 240.317	
230.754	A	79-140
	A	79-150
	A	79-286
	A&T to 248.064	79-222
	Rn as 240.319	
230.755	A&T to 248.066	79-222
	Rn as 240.325	
	A	79-286
230.756	T to 248.067	79-222
	Rn as 240.327	
230.7565	T to 248.068	79-222
	Rn as 240.329	
230.7566	T to 248.069	79-222
	Rn as 240.331	
230.757	T to 248.071	79-222
	Rn as 240.333	
230.759	T to 248.072	79-222
	Rn as 240.335	
230.7591	T to 248.073	79-222
	Rn as 240.337	
230.7592	N	79-109
	Rn as 240.343	
230.760	T to 248.074	79-222
	Rn as 240.339	
230.7601	A&T to 248.075	79-222
	Rn as 240.341	
230.761	A	79-182
	T to 248.076	79-222
	Rn as 240.345	
230.762	T to 248.077	79-222
	Rn as 240.347	
230.763	A&T to 248.078	79-222
	Rn as 240.349	
230.764	T to 248.079	79-222
	Rn as 240.351	
230.765	T to 248.081	79-222
	Rn as 240.353	
230.7651	A&T to 248.083	79-222
	Rn as 240.355	
230.7661	T to 248.082	79-222
	Rn as 240.357	
230.767	A	79-190
	A&T to 248.084	79-222
	Rn as 240.359	
230.768	T to 248.085	79-222
	Rn as 240.363	
230.7681	T to 248.086	79-222
	Rn as 240.323	
230.7685	T to 248.087	79-222
	Rn as 240.365	
230.7686	R	79-222
230.769	T to 248.089	79-222
	Rn as 240.361	
230.7695	T to 248.091	79-222
	Rn as 240.367	
230.771	A&T to 248.092	79-222
	Rn as 240.369	
230.772	T to 248.093	79-222
	Rn as 240.371	
230.773	T to 248.094	79-222
	Rn as 240.373	
230.774	T to 248.095	79-222
230.774(Cont.)	Rn as 240.375	
230.775	T to 248.096	79-222
	Rn as 240.377	
230.776	A&T to 248.097	79-222
	Rn as 240.379	
231.02	A	79-12
231.06	A	79-338
231.07	A	79-163
231.086	N	79-311
	Rn fm 229.595	
	N	79-385
	Rn fm 229.595	
231.17	A	79-222
231.40	A	79-109
	A	79-385
231.41	A	79-109
231.43	A	79-109
231.49	A	79-40
231.57	A	79-385
231.609	A	79-222
232.01	*A	79-288
232.03	*A	79-288
232.031	*R	79-288
232.032	*A	79-288
232.04	*A	79-288
232.06	*A	79-288
232.07	A	79-7
232.09	*A	79-288
232.13	A	79-12
232.17	A	79-7
232.246	A	79-20
	A	79-74
	A	79-213
232.2481	N	79-213
232.27	A	79-282
232.43	A	79-94
233.057	A	79-288
233.0671	A	79-222
233.16	A	79-400
233.255	A	79-65
	A	79-190
235.018	A	79-400
235.055	A	79-400
235.19	A	79-400
235.26	A	79-71
	A	79-400
235.31	A	79-400
235.32	A	79-14
235.40	A	79-190
235.41	A	79-190
235.42	A	79-190
235.4235	A	79-400
235.435	A	79-164
	A	79-385
236.013	A	79-184
	A	79-213
	A	79-288
	A	79-385
236.022	A	79-190
236.023	N	79-373
236.081	A	79-164
	A	79-190
	A	79-213
	A	79-222
236.0811	A	79-222
236.0815	N	79-74
	N	79-213
236.25	A	79-332
236.602	A	79-184
237.211	A	79-385
237.34	A	79-288
238.01	A	79-3
238.06	A	79-40
238.072	N	79-169
238.09	A	79-164
239.01	A	78-629
	R	79-222
239.011	T to 248.0131	79-222
	Rn as 240.521	
239.012	T to 248.0132	79-222
	Rn as 240.523	
239.013	T to 248.0133	79-222
	Rn as 240.525	
239.014	T to 248.0134	79-222
	Rn as 240.527	
239.03	R	79-222
239.04	T to 248.135	79-222
	Rn as 240.135	
239.05	R	79-222
239.06	R	79-222
239.07	R	79-222
239.08	R	79-222
239.25	R	79-222
239.26	R	79-222
239.27	R	79-222
239.28	R	79-222
239.34	T to 248.10	79-222
	Rn as 240.403	
239.35	R	79-222
239.371	T to 248.101	79-222
	Rn as 240.405	
239.38	T to 248.102	79-222
	Rn as 240.407	
239.41	R	79-222
239.42	R	79-222
239.43	R	79-222
239.44	R	79-222
239.441	R	79-222
239.451	R	79-222
239.461	T to 248.1025	79-222
	Rn as 240.409	
239.47	A&T to 248.103	79-222
	Rn as 240.411	
239.49	R	79-222
239.50	R	79-222
239.51	R	79-222
239.52	R	79-222
239.53	A&T to 248.045	79-222
	Rn as 240.263	
239.54	A&T to 248.046	79-222
	Rn as 240.264	
239.55	T to 248.047	79-222
	Rn as 240.265	
239.56	A&T to 248.048	79-222
	Rn as 240.266	
	A	79-400
239.57	T to 248.049	79-222
	Rn as 240.267	
239.58	A	79-8
	A&T to 248.051	79-222
	Rn as 240.268	
	A	79-400
239.581	T to 248.136	79-222
	Rn as 240.132	
239.582	T to 248.137	79-222
	Rn as 240.133	
	A	79-319
239.59	R	79-222
239.60	R	79-222
239.61	R	79-222
239.62	R	79-222
239.63	R	79-222
239.64	R	79-222
239.65	A&T to 248.138	79-222
	Rn as 240.293	
239.66	T to 248.104	79-222
	Rn as 240.413	
239.665	A&T to 248.139	79-222
	Rn as 240.289	
239.67	T to 248.105	79-222
	Rn as 240.415	
239.671	A&T to 248.106	79-222
	Rn as 240.417	
239.672	T to 248.107	79-222
	Rn as 240.419	
239.68	T to 248.108	79-222
	Rn as 240.421	
239.681	T to 248.109	79-222
	Rn as 240.423	
239.682	T to 248.110	79-222
	Rn as 240.425	
239.683	T to 248.111	79-222
	Rn as 240.427	
239.684	A&T to 248.112	79-222
	Rn as 240.429	
239.685	A&T to 248.113	79-222
	Rn as 240.431	
	A	79-400
239.686	T to 248.114	79-222
	Rn as 240.433	
	A	79-400
239.687	T to 248.115	79-222
	Rn as 240.435	
239.69	T to 248.116	79-222
	Rn as 240.437	
239.70	T to 248.117	79-222
	Rn as 240.439	
239.705	A&T to 248.118	79-222

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
239.705(Cont.)	Rn as 240.441	
239.71	A&T to 248.119	79-222
	Rn as 240.443	
239.715	T to 248.121	79-222
	Rn as 240.445	
239.72	A&T to 248.122	79-222
	Rn as 240.447	
239.725	T to 248.123	79-222
	Rn as 240.449	
239.73	T to 248.124	79-222
	Rn as 240.451	
239.735	A&T to 248.125	79-222
	Rn as 240.453	
239.74	A&T to 248.126	79-222
	Rn as 240.455	
239.745	A&T to 248.127	79-222
	Rn as 240.457	
239.75	T to 248.128	79-222
	Rn as 240.459	
239.755	A&T to 248.129	79-222
	Rn as 240.461	
239.76	A&T to 248.131	79-222
	Rn as 240.463	
239.77	A&T to 248.037	79-222
	Rn as 240.237	
239.78	A&T to 248.038	79-222
	Rn as 240.253	
239.79	R	79-222
239.795	A&T to 248.141	79-222
	Rn as 240.529	
239.80	T to 248.132	79-222
	Rn as 240.465	
240.001	R	79-222
240.011	A	79-128
	A&T to 248.019	79-222
	Rn as 240.207	
240.021	R	79-222
240.031	A	79-164
	A&T to 248.133	79-222
	Rn as 240.203	
240.042	A	79-65
	A	79-164
	R	79-222
240.042(2)(r)	N	79-150
	Rn as 240.2111	
240.0421	A&T to 248.154	79-222
	Rn as 240.297	
240.043	R	79-222
240.044	R	79-222
240.0445	R	79-222
240.045	R	79-222
240.046	R	79-222
240.047	R	79-222
240.052	A	79-182
	R	79-222
240.062	R	79-222
240.073	R	79-222
240.082	A	79-190
	T to 248.0247	79-222
	Rn as 240.277	
240.095	A	79-190
	T to 248.0249	79-222
	Rn as 240.281	
240.0951	R	79-222
240.0952	N	79-197
	Rn as 240.531	
240.096	R	79-222
240.103	A&T to 248.035	79-222
	Rn as 240.291	
	A	79-400
240.105	N	79-222
	Rn fm 248.011	
240.111	R	79-222
240.115	N	79-222
	Rn fm 248.098	
240.125	N	79-222
	Rn fm 248.0981	
240.132	Rn fm 248.136	
240.133	Rn fm 248.137	
240.135	Rn fm 248.135	
240.141	A&T to 248.153	79-222
	Rn as 240.295	
240.161	T to 248.0235	79-222
	Rn as 240.217	
240.171	T to 248.024	79-222
	Rn as 240.219	
240.181	T to 248.031	79-222
	Rn as 240.223	
240.182	T to 248.032	79-222

F. S. Sec. No.	Key	Session Law Ch. No.
240.182(Cont.)	Rn as 240.299	
240.191	A	79-190
	A&T to 248.022	79-222
	Rn as 240.213	
	A	79-400
240.2011	N	79-222
	Rn fm 248.013	
240.203	Rn fm 248.133	
240.205	N	79-222
	Rn fm 248.018	
240.207	Rn fm 248.019	
240.209	N	79-222
	Rn fm 248.021	
240.2111	N	79-150
	Rn fm 240.042(2)(r)	
240.213	Rn fm 248.022	
240.215	Rn fm 248.023	
240.217	Rn fm 248.0235	
240.219	Rn fm 248.024	
240.221	A&T to 248.023	79-222
	Rn as 240.215	
240.223	Rn fm 248.031	
240.225	N	79-222
	Rn fm 248.025	
240.227	N	79-222
	Rn fm 248.026	
240.229	N	79-222
	Rn fm 248.034	
240.231	N	79-222
	Rn fm 248.027	
240.233	N	79-222
	Rn fm 248.028	
240.235	N	79-222
	Rn fm 248.029	
240.237	Rn fm 248.037	
240.239	Rn fm 248.039	
240.241	Rn fm 248.041	
240.243	Rn fm 248.042	
240.245	Rn fm 248.043	
240.247	Rn fm 248.044	
240.253	Rn fm 248.038	
240.257	N	79-222
240.261	N	79-222
	Rn fm 248.036	
240.263	Rn fm 248.045	
240.264	Rn fm 248.046	
240.265	Rn fm 248.047	
240.266	Rn fm 248.048	
240.267	Rn fm 248.049	
240.268	Rn fm 248.051	
240.271	N	79-222
	Rn fm 248.052	
240.273	N	79-222
	Rn fm 248.134	
240.277	Rn fm 248.0247	
240.279	Rn fm 248.0245	
240.281	Rn fm 248.0249	
240.283	N	79-222
	Rn fm 248.0255	
240.285	N	79-222
	Rn fm 248.0257	
240.287	N	79-222
	Rn fm 248.033	
240.289	Rn fm 248.139	
240.291	Rn fm 248.035	
240.293	Rn fm 248.138	
240.295	Rn fm 248.153	
240.297	Rn fm 248.154	
240.299	Rn fm 248.032	
240.301	N	79-222
	Rn fm 248.053	
240.303	Rn fm 248.054	
240.305	N	79-222
	Rn fm 248.055	
240.307	N	79-222
	Rn fm 248.056	
240.309	N	79-222
	Rn fm 248.057	
240.311	N	79-222
	Rn fm 248.058	
240.313	Rn fm 248.061	
240.315	N	79-222
	Rn fm 248.062	
240.317	Rn fm 248.063	
240.319	Rn fm 248.064	
240.321	N	79-222
	Rn fm 248.065	
240.323	Rn fm 248.086	

F. S. Sec. No.	Key	Session Law Ch. No.
240.325	Rn fm 248.066	
240.327	Rn fm 248.067	
240.329	Rn fm 248.068	
240.331	Rn fm 248.069	
240.333	Rn fm 248.071	
240.335	Rn fm 248.072	
240.337	Rn fm 248.073	
240.339	Rn fm 248.074	
240.341	Rn fm 248.075	
240.343	N	79-109
	Rn fm 230.7592	
240.345	Rn fm 248.076	
240.347	Rn fm 248.077	
240.349	Rn fm 248.078	
240.351	Rn fm 248.079	
240.353	Rn fm 248.081	
240.355	Rn fm 248.083	
240.357	Rn fm 248.082	
240.359	Rn fm 248.084	
240.361	Rn fm 248.089	
240.363	Rn fm 248.085	
240.365	Rn fm 248.087	
240.367	Rn fm 248.091	
240.369	Rn fm 248.092	
240.371	Rn fm 248.093	
240.373	Rn fm 248.094	
240.375	Rn fm 248.095	
240.377	Rn fm 248.096	
240.379	Rn fm 248.097	
240.401	N	79-222
	Rn fm 248.099	
240.403	Rn fm 248.10	
240.405	Rn fm 248.101	
240.407	Rn fm 248.102	
240.409	Rn fm 248.1025	
240.411	Rn fm 248.103	
240.413	Rn fm 248.104	
240.415	Rn fm 248.105	
240.417	Rn fm 248.106	
240.419	Rn fm 248.107	
240.421	Rn fm 248.108	
240.423	Rn fm 248.109	
240.425	Rn fm 248.110	
240.427	Rn fm 248.111	
240.429	Rn fm 248.112	
240.431	Rn fm 248.113	
240.433	Rn fm 248.114	
240.435	Rn fm 248.115	
240.437	Rn fm 248.116	
240.439	Rn fm 248.117	
240.441	Rn fm 248.118	
240.443	Rn fm 248.119	
240.445	Rn fm 248.121	
240.447	Rn fm 248.122	
240.449	Rn fm 248.123	
240.451	Rn fm 248.124	
240.453	Rn fm 248.125	
240.455	Rn fm 248.126	
240.457	Rn fm 248.127	
240.459	Rn fm 248.128	
240.461	Rn fm 248.129	
240.463	Rn fm 248.131	
240.465	Rn fm 248.132	
240.501	Rn fm 248.144	
240.503	Rn fm 248.145	
240.505	Rn fm 248.146	
240.507	Rn fm 248.147	
240.509	Rn fm 248.148	
240.511	Rn fm 248.149	
240.513	Rn fm 248.151	
240.515	Rn fm 248.143	
240.517	Rn fm 248.142	
240.519	Rn fm 248.152	
240.521	Rn fm 248.0131	
240.523	Rn fm 248.0132	
240.525	Rn fm 248.0133	
240.527	Rn fm 248.0134	
240.529	Rn fm 248.141	
240.531	N	79-197
	Rn fm 240.0952	
241.08	R	79-222
241.091	R	79-222
241.096	R	79-222
	R	79-248
241.097	R	79-222
	R	79-248
241.10	T to 248.142	79-222
	Rn as 240.517	
241.12	R	79-222

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
241.121	R	79-222
241.13	A&T to 248.143	79-222
	Rn as 240.515	
241.18	T to 248.144	79-222
	Rn as 240.501	
241.19	T to 248.145	79-222
	Rn as 240.503	
241.193	T to 248.146	79-222
	Rn as 240.505	
241.195	A	79-190
	T to 248.147	79-222
	Rn as 240.507	
241.21	T to 248.148	79-222
	Rn as 240.509	
241.22	T to 248.149	79-222
	Rn as 240.511	
241.231	R	79-222
241.24	R	79-222
241.26	R	79-222
241.28	R	79-222
241.281	R	79-222
241.36	R	79-222
241.361	A	79-164
	R	79-222
241.362	R	79-222
241.365	R	79-222
	A	79-264
241.401	R	79-222
241.42	R	79-222
241.44	R	79-222
241.441	R	79-222
241.45	R	79-222
241.461	A	79-164
	R	79-222
241.471	A&T to 248.151	79-222
	Rn as 240.513	
	A	79-248
241.475	R	79-222
241.476	R	79-222
241.477	R	79-222
241.478	A&T to 248.039	79-222
	Rn as 240.239	
241.479	R	79-222
241.48	R	79-222
241.49	R	79-222
241.491	R	79-222
241.60	R	79-222
241.621	A&T to 248.041	79-222
	Rn as 240.241	
241.63	A	79-190
	T to 248.0245	79-222
	Rn as 240.279	
241.68	R	79-222
241.69	R	79-222
241.691	R	79-222
241.692	R	79-222
241.693	R	79-222
241.694	R	79-222
241.695	R	79-222
241.71	R	79-222
241.72	R	79-222
241.73	A&T to 248.042	79-222
	Rn as 240.243	
241.731	A&T to 248.043	79-222
	Rn as 240.245	
241.735	A&T to 248.044	79-222
	Rn as 240.247	
241.74	T to 248.152	79-222
	Rn as 240.519	
241.751	R	79-222
241.753	R	79-222
241.755	A	79-164
	R	79-222
241.757	R	79-222
243.141	A	79-222
243.151	A	79-216
	A	79-222
245.13	A	79-12
246.011	A	79-385
246.011(5)	N	79-385
	Rn as 246.041(1)(k)	
246.021	A	79-385
246.041(1)(k)	N	79-385
	Rn fm 246.011(5)	
246.091	A	79-385
246.095	A	79-385
246.101	A	79-400
246.203	A	79-164
246.207	A	79-400
246.213	A	79-48
246.215	A	79-48
246.217	A	79-48
246.220	A	79-48
246.223	A	79-48
248.011	N	79-222
	Rn as 240.105	
248.013	N	79-222
	Rn as 240.2011	
248.0131	T fm 239.011	79-222
	Rn as 240.521	
248.0132	T fm 239.012	79-222
	Rn as 240.523	
248.0133	T fm 239.013	79-222
	Rn as 240.525	
248.0134	T fm 239.014	79-222
	Rn as 240.527	
248.018	N	79-222
	Rn as 240.205	
248.019	A&T fm 240.011	79-222
	Rn as 240.207	
248.021	N	79-222
	Rn as 240.209	
248.022	A&T fm 240.191	79-222
	Rn as 240.213	
248.023	A&T fm 240.221	79-222
	Rn as 240.215	
248.0235	T fm 240.161	79-222
	Rn as 240.217	
248.024	T fm 240.171	79-222
	Rn as 240.219	
248.0245	T fm 241.63	79-222
	Rn as 240.279	
248.0247	T fm 240.082	79-222
	Rn as 240.277	
248.0249	T fm 240.095	79-222
	Rn as 240.281	
248.025	N	79-222
	Rn as 240.225	
248.0255	N	79-222
	Rn as 240.283	
248.0257	N	79-222
	Rn as 240.285	
248.026	N	79-222
	Rn as 240.227	
248.027	N	79-222
	Rn as 240.231	
248.028	N	79-222
	Rn as 240.233	
248.029	N	79-222
	Rn as 240.235	
248.031	T fm 240.181	79-222
	Rn as 240.223	
248.032	T fm 240.182	79-222
	Rn as 240.299	
248.033	N	79-222
	Rn as 240.287	
248.034	N	79-222
	Rn as 240.229	
248.035	A&T fm 240.103	79-222
	Rn as 240.291	
248.036	N	79-222
	Rn as 240.261	
248.037	A&T fm 239.77	79-222
	Rn as 240.237	
248.038	A&T fm 239.78	79-222
	Rn as 240.253	
248.039	A&T fm 241.478	79-222
	Rn as 240.239	
248.041	A&T fm 241.621	79-222
	Rn as 240.241	
248.042	A&T fm 241.73	79-222
	Rn as 240.243	
248.043	A&T fm 241.731	79-222
	Rn as 240.245	
248.044	A&T fm 241.735	79-222
	Rn as 240.247	
248.045	A&T fm 239.53	79-222
	Rn as 240.263	
248.046	A&T fm 239.54	79-222
	Rn as 240.264	
248.047	T fm 239.55	79-222
	Rn as 240.265	
248.048	A&T fm 239.56	79-222
	Rn as 240.266	
248.049	T fm 239.57	79-222
	Rn as 240.267	
248.051	A&T fm 239.58	79-222
248.051(Cont.)	Rn as 240.268	
248.052	N	79-222
	Rn as 240.271	
248.053	N	79-222
	Rn as 240.301	
248.054	T fm 230.741	79-222
	Rn as 240.303	
248.055	N	79-222
	Rn as 240.305	
248.056	N	79-222
	Rn as 240.307	
248.057	N	79-222
	Rn as 240.309	
248.058	N	79-222
	Rn as 240.311	
248.061	A&T fm 230.753	79-222
	Rn as 240.313	
248.062	N	79-222
	Rn as 240.315	
248.063	A&T fm 230.7535	79-222
	Rn as 240.317	
248.064	A&T fm 230.754	79-222
	Rn as 240.319	
248.065	N	79-222
	Rn as 240.321	
248.066	A&T fm 230.755	79-222
	Rn as 240.325	
248.067	T fm 230.756	79-222
	Rn as 240.327	
248.068	T fm 230.7565	79-222
	Rn as 240.329	
248.069	T fm 230.7566	79-222
	Rn as 240.331	
248.071	T fm 230.757	79-222
	Rn as 240.333	
248.072	T fm 230.759	79-222
	Rn as 240.335	
248.073	T fm 230.7591	79-222
	Rn as 240.337	
248.074	T fm 230.760	79-222
	Rn as 240.339	
248.075	A&T fm 230.7601	79-222
	Rn as 240.341	
248.076	T fm 230.761	79-222
	Rn as 240.345	
248.077	T fm 230.762	79-222
	Rn as 240.347	
248.078	A&T fm 230.763	79-222
	Rn as 240.349	
248.079	T fm 230.764	79-222
	Rn as 240.351	
248.081	T fm 230.765	79-222
	Rn as 240.353	
248.082	T fm 230.7661	79-222
	Rn as 240.357	
248.083	A&T fm 230.7651	79-222
	Rn as 240.355	
248.084	A&T fm 230.767	79-222
	Rn as 240.359	
248.085	T fm 230.768	79-222
	Rn as 240.363	
248.086	T fm 230.7681	79-222
	Rn as 240.323	
248.087	T fm 230.7685	79-222
	Rn as 240.365	
248.089	T fm 230.769	79-222
	Rn as 240.361	
248.091	T fm 230.7695	79-222
	Rn as 240.367	
248.092	A&T fm 230.771	79-222
	Rn as 240.369	
248.093	T fm 230.772	79-222
	Rn as 240.371	
248.094	T fm 230.773	79-222
	Rn as 240.373	
248.095	T fm 230.774	79-222
	Rn as 240.375	
248.096	T fm 230.775	79-222
	Rn as 240.377	
248.097	A&T fm 230.776	79-222
	Rn as 240.379	
248.098	N	79-222
	Rn as 240.115	
248.0981	N	79-222
	Rn as 240.125	
248.099	N	79-222
	Rn as 240.401	
248.10	T fm 239.34	79-222
	Rn as 240.403	

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
248.101	T fm 239.371	79-222
	Rn as 240.405	
248.102	T fm 239.38	79-222
	Rn as 240.407	
248.1025	T fm 239.461	79-222
	Rn as 240.409	
248.103	A&T fm 239.47	79-222
	Rn as 240.411	
248.104	T fm 239.66	79-222
	Rn as 240.413	
248.105	T fm 239.67	79-222
	Rn as 240.415	
248.106	A&T fm 239.671	79-222
	Rn as 240.417	
248.107	T fm 239.672	79-222
	Rn as 240.419	
248.108	T fm 239.68	79-222
	Rn as 240.421	
248.109	T fm 239.681	79-222
	Rn as 240.423	
248.110	T fm 239.682	79-222
	Rn as 240.425	
248.111	T fm 239.683	79-222
	Rn as 240.427	
248.112	A&T fm 239.684	79-222
	Rn as 240.429	
248.113	A&T fm 239.685	79-222
	Rn as 240.431	
248.114	T fm 239.686	79-222
	Rn as 240.433	
248.115	T fm 239.687	79-222
	Rn as 240.435	
248.116	T fm 239.69	79-222
	Rn as 240.437	
248.117	T fm 239.70	79-222
	Rn as 240.439	
248.118	A&T fm 239.705	79-222
	Rn as 240.441	
248.119	A&T fm 239.71	79-222
	Rn as 240.443	
248.121	T fm 239.715	79-222
	Rn as 240.445	
248.122	A&T fm 239.72	79-222
	Rn as 240.447	
248.123	T fm 239.725	79-222
	Rn as 240.449	
248.124	T fm 239.73	79-222
	Rn as 240.451	
248.125	A&T fm 239.735	79-222
	Rn as 240.453	
248.126	A&T fm 239.74	79-222
	Rn as 240.455	
248.127	A&T fm 239.745	79-222
	Rn as 240.457	
248.128	T fm 239.75	79-222
	Rn as 240.459	
248.129	A&T fm 239.755	79-222
	Rn as 240.461	
248.131	A&T fm 239.76	79-222
	Rn as 240.463	
248.132	T fm 239.80	79-222
	Rn as 240.465	
248.133	A&T fm 240.031	79-222
	Rn as 240.203	
248.134	N	79-222
	Rn as 240.273	
248.135	T fm 239.04	79-222
	Rn as 240.135	
248.136	T fm 239.581	79-222
	Rn as 240.132	
248.137	T fm 239.582	79-222
	Rn as 240.133	
248.138	A&T fm 239.65	79-222
	Rn as 240.293	
248.139	A&T fm 239.665	79-222
	Rn as 240.289	
248.141	A&T fm 239.795	79-222
	Rn as 240.529	
248.142	T fm 241.10	79-222
	Rn as 240.517	
248.143	A&T fm 241.13	79-222
	Rn as 240.515	
248.144	T fm 241.18	79-222
	Rn as 240.501	
248.145	T fm 241.19	79-222
	Rn as 240.503	
248.146	T fm 241.193	79-222
	Rn as 240.505	
248.147	T fm 241.195	79-222
248.147(Cont.)	Rn as 240.507	
248.148	T fm 241.21	79-222
	Rn as 240.509	
248.149	T fm 241.22	79-222
	Rn as 240.511	
248.151	A&T fm 241.471	79-222
	Rn as 240.513	
248.152	T fm 241.74	79-222
	Rn as 240.519	
248.153	A&T fm 240.141	79-222
	Rn as 240.295	
248.154	A&T fm 240.0421	79-222
	Rn as 240.297	
250.10	A	79-400
250.34	A	79-40
252.36	A	79-12
253.001	N	79-255
253.002	N	79-255
253.015	R	79-65
253.02	A	79-65
253.023	N	79-255
253.025	N	79-255
253.03	A	79-255
253.031	A	79-65
253.111	A	79-83
253.1252	N	79-161
253.74	A	79-65
253.76	A	79-65
253.781	*N	79-167
253.782	*N	79-167
253.783	*N	79-167
253.784	*N	79-167
253.785	*N	79-167
255.043	N	79-188
255.257	A	79-190
255.28	A	79-255
258.001	T fm 592.02	
258.004	T fm 592.06	
258.007	T fm 592.07	
258.011	T fm 592.071	
258.014	T fm 592.072	
258.017	T fm 592.073	
258.021	T fm 592.074	
258.024	T fm 592.075	
258.027	T fm 592.08	
258.031	T fm 592.09	
258.034	T fm 592.11	
258.037	T fm 592.12	
258.041	T fm 592.121	
258.081	N	79-322
	Rn fm 592.13	
258.083	T fm 592.17	
258.165	A	78-628
	A	79-65
258.23	A	79-255
258.30	A	79-400
258.392	N	79-115
259.03	A	79-255
259.035	N	79-255
259.04	A	79-255
259.04(3)	N	79-73
	Rn as 259.045	
259.045	N	79-73
	Rn fm 259.04(3)	
260.011	N	79-110
260.012	N	79-110
260.013	N	79-110
260.014	N	79-110
260.015	N	79-110
260.016	N	79-110
260.017	N	79-110
260.018	N	79-110
265.13	R	79-322
265.135	N	79-322
265.136	N	79-322
	Rn fm 265.145	
265.137	N	79-322
	Rn fm 265.155	
265.138	N	79-322
	Rn fm 265.165	
265.14	R	79-322
265.145	N	79-322
	Rn as 265.136	
265.15	R	79-322
265.151	R	79-322
265.155	N	79-322
	Rn as 265.137	
265.165	N	79-322
	Rn as 265.138	
265.26	A	79-29
265.30	A	79-223
270.22	A	79-65
270.23	A	79-65
272.05	A	79-190
272.12	A	79-214
272.124	A	79-255
273.055	A	79-190
274.12	N	79-183
283.03	A	79-135
283.08	A	79-135
283.10	A	79-135
283.102	N	79-135
283.23	A	79-313
283.26	A	79-222
284.01	A	79-136
284.30	A	79-40
	A	79-139
284.31	A	79-40
	A	79-139
284.33	A	79-139
284.34	A	79-136
284.36	A	79-40
284.38	A	79-139
284.43	N	79-352
	Rn as 284.50	
284.50	N	79-352
	Rn fm 284.43	
285.19	N	79-421
286.021	A	79-65
286.031	A	79-65
286.043	N	79-119
	Rn fm 218.26(5)	
286.26	A	79-170
	A	79-400
286.28	T fm 455.06	79-36
287.042	A	79-92
287.062	A	79-92
287.084	A	79-400
287.102	A	79-135
287.29	A	79-8
287.38	A	79-8
288.075	A	79-395
288.24	A	79-164
288.34	A	79-400
288.39	A	79-400
288.40	R	79-192
288.41	R	79-192
288.42	R	79-192
288.501	N	79-147
	Rn fm 403.901	
288.502	N	79-147
	Rn fm 403.902	
288.503	N	79-147
	Rn fm 403.903	
288.504	N	79-147
	Rn fm 403.904	
288.505	N	79-147
	Rn fm 403.905	
288.506	N	79-147
	Rn fm 403.906	
288.507	N	79-147
	Rn fm 403.907	
288.508	N	79-147
	Rn fm 403.908	
288.509	N	79-147
	Rn fm 403.909	
288.51	N	79-147
	Rn fm 403.910	
288.511	N	79-147
	Rn fm 403.911	
288.512	N	79-147
	Rn fm 403.912	
288.513	N	79-147
	Rn fm 403.913	
288.514	N	79-147
	Rn fm 403.914	
288.515	N	79-147
	Rn fm 403.915	
288.516	N	79-147
	Rn fm 403.916	
288.517	N	79-147
	Rn fm 403.917	
288.518	N	79-147
	Rn fm 403.918	
289.031	A	79-400
290.30	*A	79-348
290.31	*A	79-348
290.32	*A	79-348

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
292.11	A	79-400
292.12	A	79-400
295.11	A	79-190
295.12	A	79-190
295.14	A	79-164
298.01	A	79-5
	A	79-65
298.02	A	79-5
	A	79-65
298.03	A	79-65
298.07	A	79-5
	A	79-65
298.09	A	79-65
298.11	A	79-5
	A	79-65
298.12	A	79-5
298.13	A	79-5
298.15	A	79-65
298.16	A	79-65
298.17	A	79-5
298.20	A	79-5
298.23	A	79-5
298.24	A	79-5
298.25	A	79-5
298.26	A	79-65
298.27	A	79-5
298.30	A	79-5
298.32	A	79-5
298.33	A	79-5
298.34	A	79-65
298.35	A	79-5
298.36	A	79-5
298.401	A	79-5
	A	79-164
298.41	A	79-5
298.467	A	79-5
298.52	A	79-5
298.55	A	79-5
298.57	A	79-5
298.59	A	79-5
298.62	A	79-5
298.63	A	79-5
298.65	A	79-5
298.66	A	79-5
298.70	A	79-5
298.71	A	79-5
298.72	A	79-5
298.73	A	79-5
298.76	A	79-5
298.77	A	79-5
298.79	R	79-164
310.171	A	79-9
315.05	A	79-401
316.006	A	79-246
316.0746	*N	79-376
	Rn as 316.0747	
316.0747	*N	79-376
	Rn fm 316.0746	
316.193	A	79-408
316.1945	A	79-403
316.1955	*A	79-82
	A	79-400
316.1956	*A	79-82
316.1964	*A	79-82
316.1967	A	79-403
316.221	A	79-97
316.272	A	79-65
316.293	A	79-65
316.302	A	79-254
316.515	A	79-99
316.530	A	79-400
316.535	A	79-276
316.545	A	79-390
316.625	R	79-97
316.640	A	79-246
316.660	A	79-246
318.12	A	79-27
318.14	A	79-27
318.141	A	79-8
	*A	79-82
318.18	A	79-27
318.22	A	79-164
319.22	*A	79-333
319.23	A	79-32
	A	79-399
319.23(9)	N	79-399
	Rn as 319.323	
319.25	A	79-344
319.30	A	79-32
319.30(Cont.)	A	79-56
319.31	A	79-359
319.32	A	79-399
319.323	N	79-399
	Rn fm 319.23(9)	
320.01	A	79-400
320.02	A	79-32
320.06	A	79-3
320.06(2)	Re	79-164
320.07	A	79-27
	A	79-79
320.08	A	79-400
320.0806	*R	79-82
	A	79-400
320.084	A	79-208
320.0842	*A	79-82
	A	79-208
320.0843	*A	79-82
	A	79-164
320.0844	*N	79-82
	Rn as 320.0848	
320.0848	*N	79-82
	Rn fm 320.0844	
320.10	A	79-79
320.13	A	79-400
320.35	R	79-97
320.60	A	79-400
320.824	A	79-164
320.8286	N	79-120
	Rn as 205.193	
321.07	A	79-335
321.19	A	79-40
321.20	A	79-40
321.221	A	79-40
322.031	A	79-117
322.125	A	79-64
322.16	A	79-3
322.20	A	79-99
322.25	A	79-99
323.03	A	79-400
323.05	A	79-152
323.05(4)	Re	79-164
323.06	A	79-400
323.22	A	79-400
323.29	A	79-400
323.31	A	79-163
324.011	A	79-400
324.021	A	79-400
324.061(1)	Re	79-164
324.071	Re	79-164
324.072	A	79-207
325.11	A	79-324
325.13	A	79-324
325.14	A	79-47
	A	79-324
325.141	A	79-32
	R	79-324
325.19	A	79-324
325.19(7)	Re	79-164
325.195	N	79-324
325.20	A	79-324
325.22	A	79-324
325.24	A	79-324
325.25	A	79-324
325.26	A	79-324
325.27	A	79-324
325.272	A	79-324
334.01	A	79-164
334.023	T to 341.101	
334.03	A	79-357
	A	79-400
334.2105	A	79-190
334.215	N	79-219
335.02	A	79-400
335.04	A	79-400
335.17	A	79-65
336.03	A	79-400
336.59(2)	Re	79-164
336.63	A	79-400
337.25	A	79-400
339.08	A	79-190
339.089	A	79-357
339.301	A	79-30
340.35	A	79-190
341.101	T fm 334.023	
349.03	A	79-409
350.0614	A	79-190
350.28	A	79-6
350.78	A	79-190
350.79	A	79-164
350.80	*N	79-236
	Rn fm 361.09	
351.02	R	79-25
352.22	A&T to 358.11	79-191
352.23	A&T to 358.12	79-191
352.24	A&T to 358.13	79-191
358.11	A&T fm 352.22	79-191
358.12	A&T fm 352.23	79-191
358.13	A&T fm 352.24	79-191
361.08	*N	79-236
361.09	N	79-236
	Rn as 350.80	
364.05	A	79-400
365.16	A	79-270
367.111	A	79-49
367.141	A	79-164
370.01	A	79-164
370.02	A	79-65
	A	79-164
370.021	A	79-65
370.0211	T to 380.19	
370.08	A	79-263
370.082	A	79-162
370.0821	A	79-328
370.101	A	79-164
370.12	A	79-164
370.15	A	79-263
370.151	A	79-65
370.153	A	79-164
370.157	A	79-168
370.16	A	79-65
	A	79-111
371.021	A	79-334
371.141	A	79-65
371.63	A	79-334
371.64	A	79-334
371.65	A	79-164
	A	79-307
	A	79-334
	A	79-364
371.66	A	79-334
371.76	A	79-359
372.071	A	79-217
372.072(3)(c)	Re	79-164
372.073	N	79-217
	Rn fm 372.085	
372.085	N	79-217
	Rn as 372.073	
372.57	A	79-107
	A	79-164
	A	79-400
372.57(20)	N	79-285
	Rn as 372.5712	
372.5712	N	79-285
	Rn fm 372.57(20)	
372.5714	N	79-285
372.573	A	79-372
372.575	R	79-199
372.72	A	79-217
372.921	A	79-164
372.99	A	79-400
372.9905	A	79-400
373.012	A	79-65
373.016	A	79-65
373.019	A	79-65
373.026	A	79-65
373.029	A	79-65
373.033	A	79-65
	A	79-164
373.036	A	79-190
373.039	A	79-65
373.0693	A	79-50
373.107	N	79-161
373.117	N	79-160
373.129	A	79-65
373.196	A	79-65
373.1962	A	79-5
373.203	A	79-65
373.206	A	79-65
373.209	A	79-65
	A	79-400
373.230	N	79-161
	Rn as 373.232	
373.232	N	79-161
	Rn fm 373.230	
373.244	N	79-160
373.308	N	79-160
373.310	N	79-161

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
373.310(Cont.)	Rn as 373.314	
373.314	N	79-161
	Rn fm 373.310	
373.342	N	79-160
373.406	A	79-65
373.417	N	79-161
373.423	A	79-65
373.439	A	79-65
373.498	A	79-65
373.563	A	79-400
373.603	A	79-65
374.001	*N	79-167
374.002	N	79-167
374.011	*R	79-167
374.021	*R	79-167
374.031	*R	79-167
374.041	*R	79-167
374.051	*R	79-167
374.061	*R	79-167
374.071	*R	79-167
374.081	*R	79-167
374.091	*R	79-167
374.101	*R	79-167
374.111	*R	79-167
374.122	*R	79-167
374.132	*R	79-167
374.141	*R	79-167
374.151	*R	79-167
374.161	*R	79-167
374.171	*R	79-167
374.181	*R	79-167
374.3001	*N	79-167
374.301	*R	79-167
374.311	*R	79-167
374.321	*R	79-167
374.331	*R	79-167
374.341	*R	79-167
374.351	*R	79-167
374.361	*R	79-167
374.371	*R	79-167
374.391	*R	79-167
374.401	*R	79-167
374.411	*R	79-167
374.421	*R	79-167
374.431	*R	79-167
374.441	*R	79-167
374.451	*R	79-167
374.461	*R	79-167
374.471	*R	79-167
374.481	*R	79-167
374.491	*R	79-167
374.501	*R	79-167
374.511	*R	79-167
374.521	*R	79-167
374.75	A	79-65
374.76	A	79-65
374.78	A	79-65
374.79	A	79-65
374.81	A	79-65
374.82	A	79-65
374.83	A	79-65
374.84	A	79-65
374.88	A	79-65
374.93	A	79-65
375.031	A	79-255
375.314	A	79-164
376.051	A	79-65
376.10	A	79-65
377.05	R	79-164
377.07	A	79-65
377.075	A	79-65
377.10	A	79-65
377.19	A	79-65
377.24	A	79-65
377.242	A	79-65
377.243	A	79-65
377.244	A	79-65
377.33(3)	Re	79-164
377.602	A	79-190
377.603	A	79-190
377.608	A	79-190
377.701	A	79-190
377.703	A	79-190
378.011	A	79-190
379.03	A	79-3
380.031	A	79-73
380.045	N	79-73
380.05	A	79-73
380.055	A	79-164
380.0551	N	79-73
380.0552	N	79-73
380.06	A	79-400
380.11	A	79-190
380.19	T fm 370.0211	
381.272	A	79-45
381.361	R	79-320
381.371	R	79-320
381.3712	N	79-320
381.381	R	79-320
381.411	A	79-12
381.493	A	79-186
	A	79-400
381.494	A	79-186
381.494(1)	Re	79-164
381.495	A	79-186
381.502	R	79-164
382.16	A	79-400
382.17	A	79-400
382.195	N	79-302
	Rn as 390.002	
382.215	N	79-17
383.14	A	79-26
383.16	A	79-351
383.19	A	79-351
	A	79-400
384.04	A	79-12
388.271	A	79-190
388.43	N	79-283
390.001	N	79-302
	Rn fm 458.505	
390.002	N	79-302
	Rn fm 382.195	
390.025	N	79-302
	Rn fm 458.506	
393.063	A	79-148
	A	79-400
393.064(2)	Re	79-164
393.067	A	79-400
393.11	A	79-400
393.13	A	79-12
	A	79-320
393.15	A	79-321
393.16	N	79-172
393.20	N	79-367
394.453	A	79-298
394.455	A	79-298
394.457	A	79-298
394.459	A	79-3
	A	79-298
	A	79-320
394.460	A	79-298
394.461	A	79-298
394.463	A	79-298
394.465	A	79-298
394.467	A	79-298
	A	79-336
394.469	A	79-298
394.471	A	79-298
394.473	A	79-298
394.475	A	79-298
394.477	A	79-298
394.4781	A	79-400
394.69	A	79-400
394.851	A	79-3
	T to 394.905	79-336
394.86	T to 394.906	79-336
	A	79-400
394.901	N	79-336
394.902	A&T fm 918.15	79-336
	XT fm 918.15	
394.903	A&T fm 925.10	79-336
	XT fm 925.10	
394.904	N	79-336
	Rn as 918.15(4)	
394.905	T fm 394.851	79-336
394.906	T fm 394.86	79-336
395.035	N	79-105
	Rn as 395.0653	
395.045	A	79-400
395.0653	N	79-105
	Rn fm 395.035	
395.176	N	79-106
395.20	A	79-198
395.501	N	79-106
395.502	N	79-106
395.503	N	79-106
395.504	N	79-106
395.505	N	79-106
395.507	N	79-106
395.508	N	79-106
395.509	N	79-106
395.511	N	79-106
395.512	N	79-106
395.513	N	79-106
395.514	N	79-106
397.031	A	79-12
397.12	A	79-3
399.05	A	79-164
	A	79-342
399.06	A	79-164
	A	79-342
400.022	A	79-268
400.062	A	79-268
400.063	N	79-268
400.071	A	79-268
400.111	A	79-268
400.121	A	79-268
400.162	A	79-268
400.176	N	79-106
400.19	A	79-190
400.23	A	79-268
400.407	A	79-12
400.444	A	79-152
400.563	A	79-152
400.601	N	79-186
400.602	N	79-186
400.603	N	79-186
400.604	N	79-186
400.605	N	79-186
400.606	N	79-186
400.607	N	79-186
400.608	N	79-186
400.609	N	79-186
400.610	N	79-186
400.611	N	79-186
400.612	N	79-186
400.613	N	79-186
400.614	N	79-186
400.615	N	79-186
401.21	A	79-280
401.22	R	79-280
401.23	A	79-280
401.24	A	79-280
401.25	A	79-280
401.26	A	79-280
401.31	A	79-280
401.33	A	79-280
401.35	A	79-280
401.355	N	79-280
401.36	A	79-164
401.38	A	79-280
401.40	A	79-280
401.46	A	79-280
402.07	A	79-3
402.17	A	79-190
	A	79-269
402.18	A	79-269
402.181	A	79-3
402.22	A	79-184
402.32	A	79-288
402.36	A	79-209
403.031	A	79-65
403.061	A	79-65
	A	79-130
	A	79-164
	A	79-400
403.0615	A	79-130
403.085	A	79-65
403.086	A	79-65
403.0875	N	79-161
403.088	A	79-164
403.101	A	79-400
403.182	A	79-65
403.1822	A	79-65
403.1834	A	79-65
403.1835	A	79-65
403.281	A	79-65
403.414	A	79-65
403.415	A	79-65
	A	79-164
403.4152	R	79-164
403.503	A	79-76
403.504	A	79-190
403.506	A	79-76
403.507	A	79-190
403.508	A	79-190
403.511	A	79-65

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
403.703	A	79-65
403.706	A	79-118
403.7072	N	79-161
403.714	A	79-65
403.813	A	79-65
403.8135	N	79-161
403.851	A	79-400
403.853	A	79-358
403.8535	N	79-161
403.855	A	79-400
403.859	A	79-400
403.861	A	79-400
403.862	A	79-400
403.863	A	79-400
403.864	A	79-164
403.901	N	79-147
	Rn as 288.501	
403.902	N	79-147
	Rn as 288.502	
403.903	N	79-147
	Rn as 288.503	
403.904	N	79-147
	Rn as 288.504	
403.905	N	79-147
	Rn as 288.505	
403.906	N	79-147
	Rn as 288.506	
403.907	N	79-147
	Rn as 288.507	
403.908	N	79-147
	Rn as 288.508	
403.909	N	79-147
	Rn as 288.509	
403.910	N	79-147
	Rn as 288.51	
403.911	N	79-147
	Rn as 288.511	
403.912	N	79-147
	Rn as 288.512	
403.913	N	79-147
	Rn as 288.513	
403.914	N	79-147
	Rn as 288.514	
403.915	N	79-147
	Rn as 288.515	
403.916	N	79-147
	Rn as 288.516	
403.917	N	79-147
	Rn as 288.517	
403.918	N	79-147
	Rn as 288.518	
406.02	A	79-8
409.085	A	79-190
409.145	A	79-164
409.165	A	79-164
409.185	A	79-173
409.255	A	79-7
	A	79-40
409.266	A	79-232
	A	79-382
409.2671	A	79-190
	A	79-257
409.345	A	79-164
	A	79-382
409.352	N	79-302
409.504	A	79-62
409.506	A	79-62
409.602	A	79-402
409.603	A	79-402
409.605	A	79-402
409.606	A	79-402
409.607	A	79-402
410.021	A	79-164
410.031	A	79-164
410.032	A	79-164
410.033	A	79-164
410.034	A	79-400
410.10	A	79-164
410.102	A	79-164
410.103	A	79-164
410.105	A	79-400
410.107	A	79-400
410.108	A	79-400
410.109	A	79-400
413.012	A	79-400
413.013	A	79-400
413.031	A	79-12
	A	79-400
413.051	A	79-370
413.051(Cont.)	A	79-400
413.069	A	79-400
413.08	A	79-400
413.20	A	79-164
413.23	A	79-164
413.26	A	79-190
413.27	A	79-190
413.29	A	79-164
413.31	A	79-164
413.32	A	79-164
413.36	A	79-164
418.21	A	79-258
420.101	A	79-9
	A	79-176
420.111	A	79-9
	A	79-176
420.123	A	79-176
420.20	A	79-176
420.201	A	79-176
420.202	A	79-176
420.203	A	79-176
420.204	A	79-176
420.205	A	79-176
420.207	A	79-176
420.211	A	79-176
420.40	N	79-220
420.401	N	79-220
420.402	N	79-220
420.403	N	79-220
420.404	N	79-220
420.405	N	79-220
420.406	N	79-220
420.407	N	79-220
420.408	N	79-220
420.409	N	79-220
420.410	N	79-220
	Rn as 420.411	
420.411	N	79-220
	Rn fm 420.410	
	N	79-220
	Rn as 420.412	
420.412	N	79-220
	Rn fm 420.411	
420.413	N	79-220
420.421	N	79-259
420.422	N	79-259
420.423	N	79-259
420.424	N	79-259
420.425	N	79-259
420.426	N	79-259
420.427	N	79-259
420.428	N	79-259
420.429	N	79-259
424.10	A	79-9
425.09	A	79-51
427.011	N	79-180
427.012	N	79-180
427.013	N	79-180
427.014	N	79-180
427.015	N	79-180
427.016	N	79-180
427.017	N	79-180
427.018	N	79-180
440.01	A	79-40
	XR	79-40
	XR	79-312
440.02	A	79-7
	A	79-40
	XR	79-40
	XR	79-312
440.021	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.03	XR	79-40
	XR	79-312
440.04	XR	79-40
	XR	79-312
440.05	XR	79-40
	XR	79-312
440.06	A	79-40
	XR	79-40
	XR	79-312
440.075	XR	79-40
	XR	79-312
440.09	XR	79-40
	XR	79-312
440.10	A	79-40
	XR	79-40
440.10(Cont.)	XR	79-312
440.11	A	79-40
	XR	79-40
	XR	79-312
440.12	A	79-40
	XR	79-40
	XR	79-312
440.13	A	79-7
	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.14	A	79-40
	XR	79-40
	XR	79-312
440.15	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.151	A	79-40
	XR	79-40
	XR	79-312
440.152	XR	79-40
	XR	79-312
440.16	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.17	A	79-40
	XR	79-40
	XR	79-312
440.185	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.19	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.20	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
	A	79-400
440.205	N	79-40
440.21	XR	79-40
	XR	79-312
440.22	XR	79-40
	XR	79-312
440.23	XR	79-40
	XR	79-312
440.24	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.25	A	79-7
	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
	A	79-400
440.26	A	79-40
	XR	79-40
	XR	79-312
440.27	XR	79-40
	XR	79-312
440.271	N	79-312
440.28	A	79-40
	XR	79-40
	XR	79-312
440.29	A	79-40
	XR	79-40
	XR	79-312
440.30	A	79-40
	XR	79-40
	XR	79-312
440.31	A	79-40
	XR	79-40
	XR	79-312
440.32	A	79-40
	XR	79-40
	XR	79-312
440.33	A	79-40
	XR	79-40
	XR	79-312
440.34	A	79-40
	XR	79-40
	A	79-312
	XR	79-312

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
440.35	XR	79-40
	XR	79-312
440.37	A	79-40
	XR	79-40
	A	79-164
	XR	79-312
440.38	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.39	A	79-40
	XR	79-40
	XR	79-312
440.40	XR	79-40
	XR	79-312
440.41	A	79-40
	XR	79-40
	XR	79-312
440.42	A	79-40
	XR	79-40
	XR	79-312
440.43	XR	79-40
	XR	79-312
440.44	A	79-7
	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.442	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.45	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.46	XR	79-40
	XR	79-312
440.47	A	79-40
	XR	79-40
	XR	79-312
440.48	A	79-7
	XR	79-40
	XR	79-312
440.49	A	79-40
	XR	79-40
	XR	79-312
440.50	A	79-40
	XR	79-40
	XR	79-312
440.51	A	79-40
	XR	79-40
	XR	79-312
440.52	A	79-40
	XR	79-40
	XR	79-312
440.53	XR	79-40
	XR	79-312
440.54	A	79-40
	XR	79-40
	XR	79-312
440.55	XR	79-40
	XR	79-312
440.56	A	79-40
	XR	79-40
	A	79-312
	XR	79-312
440.57	A	79-40
	XR	79-40
	XR	79-312
440.58	A	79-40
	XR	79-40
	XR	79-312
440.59	A	79-7
	A	79-40
	XR	79-40
	XR	79-312
440.60	N	79-40
	N	79-312
443.03	A	79-7
	A	79-400
443.04	A	79-293
	A	79-400
443.06	Re	79-7
	A	79-40
	A	79-293
	A	79-308
	A	79-400
443.07	A	79-7
443.07(Cont.)	A	79-308
	A	79-400
443.08	A	79-293
	A	79-308
	A	79-355
	A	79-400
443.09	A	79-164
	A	79-308
443.10	A	79-164
443.11	A	79-7
443.12	A	79-7
	A	79-40
	A	79-308
443.13	A	79-7
443.14	A	79-190
443.15	A	79-7
	A	79-40
443.16	A	79-7
	A	79-400
443.22	A	79-308
446.011	A	79-7
	A	79-397
446.021	A	79-7
	A	79-397
446.031	A	79-7
	A	79-397
446.041	A	79-7
	A	79-397
446.051	A	79-397
446.052	A	79-397
446.071	A	79-397
446.075	A	79-7
	A	79-397
446.092	N	79-397
446.101	A	79-7
	A	79-397
	A	79-400
447.02	A	79-7
	A	79-89
	A	79-400
447.04	A	79-7
447.06	A	79-7
447.12	A	79-7
447.16	A	79-7
447.203	A	79-100
	*A	79-222
447.205	A	79-7
	A	79-85
	A	79-400
447.207	A	79-85
	A	79-400
447.301	A	79-400
447.305	A	79-89
447.307	A	79-100
447.307(5)	N	79-100
	Rn as 447.308	
447.308	N	79-100
	Rn fm 447.307(5)	
447.403	A	79-400
447.503	A	79-295
447.5035	N	79-295
447.504	A	79-295
447.507	A	79-295
447.601	A	79-164
447.603	A	79-164
448.09	A	79-400
449.04	A	79-7
450.061	A	79-7
450.181	A	79-190
450.191	A	79-190
450.271	A	79-7
450.28	A	79-7
450.41	A	79-7
450.50	A	79-261
	T fm 13.998	
450.51	A	79-261
	T fm 13.9981	
450.52	A	79-261
	T fm 13.9982	
450.53	A	79-261
	T fm 13.9988	
450.54	N	79-261
	Rn fm 13.9990	
450.55	A	79-261
	T fm 13.9989	
455.001	A	79-36
	T to 455.201	
	A	79-164
455.002	N	79-36
455.002(Cont.)	Rn as 455.203	
455.002	N	79-36
(5),(6)	Rn as 455.211	
455.004	A	79-36
	T to 455.205	
455.007	A	79-36
	T to 455.217(1), 455.221, 455.223	
455.008	N	79-36
	Rn as 455.213	
455.01	A&T to 455.201	79-36
	XT to 455.201	
	A	79-164
455.011	R	79-36
455.0113	N	79-36
	Rn as 455.219	
455.0114	N	79-36
(1),(2)	Rn as 455.217(2),(3)	
(3)	Rn as 455.229	
455.0115	N	79-36
	Rn as 455.207	
455.0115	N	79-36
(2),(3)	Rn as 20.30(5)	
455.012	A&T to 455.202	79-36
	Rn as 455.10	
455.013	A	79-36
	T to 455.225	
455.014	R	79-36
455.016	A&T to 455.203	79-36
	Rn as 455.11	
	A	79-400
455.017	N	79-36
	Rn as 455.227	
455.02	T to 455.204	79-36
	XT to 455.204	
455.021	N	79-36
	Rn as 455.215	
455.022	N	79-36
	Rn as 455.231	
455.023	N	79-36
	Rn as 455.209	
455.03	R	79-36
455.04	R	79-36
455.05	R	79-36
455.06	T to 286.28	79-36
455.07	T to 16.016	79-36
455.08	R	79-36
455.09	R	79-36
455.10	Rn fm 455.202	
455.11	Rn fm 455.203	
455.201	A	79-36
	T fm 455.001	
	A&T fm 455.01	79-36
	XT fm 455.01	
455.202	A&T fm 455.012	79-36
	Rn as 455.10	
455.203	N	79-36
	Rn fm 455.002	
	A&T fm 455.016	79-36
	Rn as 455.11	
455.204	T fm 455.02	79-36
	XT fm 455.02	
455.205	A	79-36
	T fm 455.004	
455.207	N	79-36
	Rn fm 455.0115	
455.209	N	79-36
	Rn fm 455.023	
455.211	N	79-36
	Rn fm 455.002(5),(6)	
455.213	N	79-36
	Rn fm 455.008	
455.215	N	79-36
	Rn fm 455.021	
455.217(1)	A	79-36
	T fm 455.007	
455.217	N	79-36
(2),(3)	Rn fm 455.0114(1),(2)	
455.219	N	79-36
	Rn fm 455.0113	
455.221	A	79-36
	T fm 455.007	
455.223	A	79-36
	T fm 455.007	
455.225	A	79-36
	T fm 455.013	

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
455.227	N	79-36
	Rn fm 455.017	
455.229	N	79-36
	Rn fm 455.0114(3)	
455.231	N	79-36
	Rn fm 455.022	
455.241	N	79-302
	Rn fm 458.501	
455.242	N	79-302
	Rn fm 458.502	
457.011	R	79-165
457.021	R	79-165
457.031	R	79-165
457.041	R	79-165
457.051	R	79-165
457.061	R	79-165
457.071	R	79-165
457.081	R	79-165
457.10	R	79-165
457.11	R	79-165
457.12	R	79-165
457.13	R	79-165
457.14	R	79-165
457.15	R	79-165
457.16	R	79-165
458.001	R	79-302
458.0015	N	79-302
	Rn as 458.301	
458.002	R	79-302
458.0025	N	79-302
	Rn as 458.305	
458.003	N	79-302
	Rn as 458.303	
458.004	N	79-302
	Rn as 458.307	
458.005	N	79-302
	Rn as 458.311	
458.0055	N	79-302
	Rn as 458.315	
458.006	N	79-302
	Rn as 458.313	
458.0065	N	79-302
	Rn as 458.317	
458.007	N	79-302
	Rn as 458.331	
458.008	N	79-302
	Rn as 458.329	
458.009	N	79-302
	Rn as 458.337	
458.01	R	79-302
458.011	N	79-302
	Rn as 458.339	
458.012	N	79-302
	Rn as 458.341	
458.0125	N	79-302
	Rn as 458.343	
458.013	N	79-302
	Rn as 458.327	
458.014	N	79-302
	Rn as 458.319	
458.015	N	79-302
	Rn as 458.321	
458.0155	N	79-302
	Rn as 458.309	
458.016	N	79-302
	Rn as 458.345	
458.017	N	79-302
	Rn as 458.347	
458.02	R	79-302
458.03	R	79-302
458.04	R	79-302
458.041	R	79-302
458.05	R	79-302
458.051	R	79-302
458.055	R	79-302
458.056	R	79-302
458.057	R	79-302
458.06	R	79-302
458.08	R	79-302
458.09	R	79-302
458.10	R	79-302
458.11	R	79-302
458.1201	R	79-302
458.121	R	79-302
458.122	R	79-302
458.13	R	79-302
458.131	R	79-302
	A	79-400
458.135	R	79-302
458.14	R	79-302
458.15	R	79-302
458.16	R	79-302
458.17	R	79-302
458.21	R	79-302
458.215	R	79-302
458.22	A	79-12
	R	79-302
458.225	R	79-302
458.227	R	79-302
458.23	R	79-302
458.24	R	79-302
	A	79-400
458.25	R	79-302
458.26	N	79-198
	Rn as 458.323	
458.301	N	79-302
	Rn fm 458.0015	
458.303	N	79-302
	Rn fm 458.003	
458.305	N	79-302
	Rn fm 458.0025	
458.307	N	79-302
	Rn fm 458.004	
458.309	N	79-302
	Rn fm 458.0155	
458.311	N	79-302
	Rn fm 458.005	
458.313	N	79-302
	Rn fm 458.006	
458.315	N	79-302
	Rn fm 458.0055	
458.317	N	79-302
	Rn fm 458.0065	
458.319	N	79-302
	Rn fm 458.014	
458.321	N	79-302
	Rn fm 458.015	
458.323	N	79-198
	Rn fm 458.26	
458.325	N	79-302
	Rn fm 458.507	
458.327	N	79-302
	Rn fm 458.013	
458.329	N	79-302
	Rn fm 458.008	
458.331	N	79-302
	Rn fm 458.007	
458.333	N	79-302
	Rn fm 458.508	
458.335	N	79-302
	Rn fm 458.509	
458.337	N	79-302
	Rn fm 458.009	
458.339	N	79-302
	Rn fm 458.011	
458.341	N	79-302
	Rn fm 458.012	
458.343	N	79-302
	Rn fm 458.0125	
458.345	N	79-302
	Rn fm 458.016	
458.347	N	79-302
	Rn fm 458.017	
458.349	N	79-302
458.501	N	79-302
	Rn as 455.241	
458.502	N	79-302
	Rn as 455.242	
458.503	N	79-302
	Rn as 743.064	
458.504	N	79-302
	Rn as 743.065	
458.505	N	79-302
	Rn as 390.001	
458.506	N	79-302
	Rn as 390.025	
458.507	N	79-302
	Rn as 458.325	
458.508	N	79-302
	Rn as 458.333, 459.0153	
458.509	N	79-302
	Rn as 458.335, 459.0154	
459.001	N	79-230
459.002	N	79-230
	Rn as 459.003	
459.002(Cont.)	N	79-230
	Rn fm 459.003	
459.003	N	79-230
	Rn as 459.002	
	N	79-230
	Rn fm 459.002	
459.004	N	79-230
459.005	N	79-230
	Rn as 459.006	
	N	79-230
	Rn fm 459.0165	
459.006	N	79-230
	Rn as 459.007	
	N	79-230
	Rn fm 459.005	
459.007	N	79-230
	Rn as 459.011	
	N	79-230
	Rn fm 459.006	
459.008	N	79-230
	Rn as 459.015	
	N	79-230
	Rn fm 459.015	
459.009	N	79-230
	Rn as 459.014	
	N	79-230
	Rn fm 459.016	
459.01	R	79-230
459.011	N	79-230
	Rn as 459.016	
	N	79-230
	Rn fm 459.007	
459.012	N	79-230
	Rn as 459.017	
	N	79-198
	Rn fm 459.26	
459.013	N	79-230
	Rn as 459.018	
	N	79-230
	Rn fm 459.014	
459.0135	N	79-230
	Rn as 459.019	
459.014	N	79-230
	Rn as 459.013	
	N	79-230
	Rn fm 459.009	
459.015	N	79-230
	Rn as 459.008	
	N	79-230
	Rn fm 459.008	
459.0153	N	79-302
	Rn fm 458.508	
459.0154	N	79-302
	Rn fm 458.509	
459.016	N	79-230
	Rn as 459.009	
	N	79-230
	Rn fm 459.011	
459.0165	N	79-230
	Rn as 459.005	
459.017	N	79-230
	Rn as 459.021	
	N	79-230
	Rn fm 459.012	
459.018	N	79-230
	Rn as 459.022	
	N	79-230
	Rn fm 459.013	
459.019	N	79-230
	Rn fm 459.0135	
459.02	R	79-230
459.021	N	79-230
	Rn fm 459.017	
459.022	N	79-230
	Rn fm 459.018	
459.024	N	79-230
459.03	R	79-230
459.031	R	79-230
	N	79-400
459.05	R	79-230
459.051	R	79-230
459.06	R	79-230
459.07	R	79-230
459.08	R	79-230
459.081	R	79-230
459.09	R	79-230
459.10	R	79-230
459.11	R	79-230
459.111	R	79-230

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
459.12	R	79-230
459.13	R	79-230
459.14	R	79-230
459.15	R	79-230
459.16	R	79-230
459.161	R	79-230
459.18	R	79-230
459.19	R	79-230
459.191	R	79-230
459.20	R	79-230
459.21	R	79-230
459.221	R	79-230
459.225	R	79-230
	A	79-400
459.23	R	79-230
459.24	R	79-230
	N	79-400
459.25	R	79-230
459.26	N	79-198
	Rn as 459.012	
460.001	N	79-211
	Rn as 460.401	
	R	79-211
460.002	N	79-211
	Rn as 460.402	
460.003	N	79-211
	Rn as 460.403	
460.004	N	79-211
	Rn as 460.404	
460.005	N	79-211
	Rn as 460.406	
460.007	N	79-211
	Rn as 460.407	
460.0071	N	79-211
	Rn as 460.408	
460.008	N	79-211
	Rn as 460.409	
460.009	N	79-211
	Rn as 460.413	
460.01	R	79-211
460.011	N	79-211
	Rn as 460.412	
460.012	N	79-211
	Rn as 460.405	
460.013	N	79-211
	Rn as 460.411	
460.014	N	79-211
	Rn as 460.414	
460.02	R	79-211
460.03	R	79-211
460.031	R	79-211
460.04	R	79-211
460.06	R	79-211
460.07	R	79-211
460.071	R	79-211
460.072	R	79-211
460.073	R	79-211
460.08	R	79-211
460.09	R	79-211
460.11	R	79-211
460.12	R	79-211
460.13	R	79-211
460.133	R	79-211
460.136	R	79-211
460.137	R	79-211
460.138	R	79-211
460.139	R	79-211
460.14	R	79-211
460.141	R	79-211
460.15	R	79-211
460.165	R	79-211
460.175	R	79-211
460.19	R	79-211
460.20	R	79-211
460.21	R	79-211
460.211	R	79-211
460.22	R	79-211
460.23	R	79-211
460.235	N	79-198
	Rn as 460.41	
460.24	R	79-211
460.25	R	79-211
460.26	R	79-211
460.261	R	79-211
460.262	R	79-211
460.263	R	79-211
	N	79-400
460.27	R	79-211
460.29	R	79-211
460.30	R	79-211
460.31	R	79-211
460.32	R	79-211
460.33	R	79-211
460.34	R	79-211
460.35	R	79-211
460.36	R	79-211
460.37	R	79-211
460.38	R	79-211
460.39	R	79-211
460.40	R	79-211
460.401	N	79-211
	Rn fm 460.001	
460.402	N	79-211
	Rn fm 460.002	
460.403	N	79-211
	Rn fm 460.003	
460.404	N	79-211
	Rn fm 460.004	
460.405	N	79-211
	Rn fm 460.012	
460.406	N	79-211
	Rn fm 460.005	
460.407	N	79-211
	Rn fm 460.007	
460.408	N	79-211
	Rn fm 460.0071	
460.409	N	79-211
	Rn fm 460.008	
460.41	N	79-198
	Rn fm 460.235	
460.411	N	79-211
	Rn fm 460.013	
460.412	N	79-211
	Rn fm 460.011	
460.413	N	79-211
	Rn fm 460.009	
460.414	N	79-211
	Rn fm 460.014	
460.415	N	79-211
461.001	N	79-229
461.002	N	79-229
461.003	N	79-229
461.004	N	79-229
461.005	N	79-229
	Rn as 461.006	
	N	79-229
	Rn fm 461.012	
461.006	N	79-229
	Rn fm 461.005	
461.007	N	79-229
461.008	N	79-229
461.009	N	79-229
	Rn as 461.013	
	N	79-198
	Rn fm 461.23	
461.01	R	79-229
461.012	N	79-229
	Rn as 461.005	
	N	79-229
	Rn fm 461.013	
461.013	N	79-229
	Rn as 461.012	
	N	79-229
	Rn fm 461.009	
461.015	N	79-229
461.02	R	79-229
461.03	R	79-229
461.04	R	79-229
461.05	R	79-229
461.06	R	79-229
461.07	R	79-229
461.08	R	79-229
	A	79-400
461.10	R	79-229
461.11	R	79-229
461.12	R	79-229
461.13	R	79-229
461.14	R	79-229
461.15	R	79-229
461.16	R	79-229
461.17	R	79-229
461.18	R	79-229
461.19	R	79-229
461.20	R	79-229
461.23	N	79-198
	Rn as 461.009	
463.001	N	79-194
463.002	N	79-194
463.003	N	79-194
463.003(6)	N	79-194
	Rn as 463.004	
463.004	N	79-194
	Rn as 463.006	
	N	79-194
	Rn fm 463.003(6)	
463.004(4)	N	79-194
	Rn as 463.011	
463.005	N	79-194
	Rn fm 463.011	
463.006	N	79-194
	Rn as 463.007	
	N	79-194
	Rn fm 463.004	
463.007	N	79-194
	Rn as 463.008	
	N	79-194
	Rn fm 463.006	
463.008	N	79-194
	Rn as 463.016	
	N	79-194
	Rn fm 463.007	
463.009	N	79-194
	Rn fm 463.016	
463.01	R	79-194
463.011	N	79-194
	Rn as 463.005	
	N	79-194
	Rn fm 463.004(4)	
463.012	N	79-194
	Rn as 463.014	
	N	79-194
	Rn fm 463.015	
463.013	N	79-194
	Rn as 463.015	
	N	79-194
	Rn fm 463.014	
463.014	N	79-194
	Rn as 463.013	
	N	79-194
	Rn fm 463.012	
463.015	N	79-194
	Rn as 463.012	
	N	79-194
	Rn fm 463.013	
463.016	N	79-194
	Rn as 463.009	
	N	79-194
	Rn fm 463.008	
463.017	N	79-194
463.018	N	79-194
463.019	N	79-194
463.02	R	79-194
463.03	R	79-194
463.04	R	79-194
463.05	R	79-194
463.06	R	79-194
463.07	R	79-194
463.08	R	79-194
463.09	R	79-194
463.10	R	79-194
463.11	R	79-194
463.12	R	79-194
463.125	R	79-194
463.13	R	79-194
463.14	R	79-194
463.15	R	79-194
463.16	R	79-194
463.17	R	79-194
463.18	R	79-194
463.19	R	79-194
463.20	R	79-194
463.201	R	79-194
463.21	R	79-194
463.22	R	79-194
463.23	R	79-194
463.24	R	79-194
463.25	R	79-194
463.26	R	79-194
463.27	R	79-194
464.001	N	79-225
464.002	N	79-225
464.003	N	79-225
464.004	N	79-225
464.005	N	79-225
464.006	N	79-225
	Rn as 464.008	
	N	79-225

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
464.006(Cont.)	Rn fm 464.014	
464.007	N	79-225
	Rn as 464.009	
	N	79-225
	Rn fm 464.015	
464.008	N	79-225
	Rn as 464.015	
	N	79-225
	Rn fm 464.006	
464.009	N	79-225
	Rn as 464.012	
	N	79-225
	Rn fm 464.007	
464.011	R	79-225
464.0115	N	79-225
	Rn as 464.013	
464.012	N	79-225
	Rn as 464.014	
	N	79-225
	Rn fm 464.009	
464.0125	N	79-225
	Rn as 464.018	
464.013	N	79-225
	Rn as 464.017	
	N	79-225
	Rn fm 464.0115	
464.014	N	79-225
	Rn as 464.006	
	N	79-225
	Rn fm 464.012	
464.015	N	79-225
	Rn as 464.007	
	N	79-225
	Rn fm 464.008	
464.016	N	79-225
464.017	N	79-225
	Rn as 464.022	
	N	79-225
	Rn fm 464.013	
464.018	N	79-225
	Rn as 464.019	
	N	79-225
	Rn fm 464.0125	
464.019	N	79-225
	Rn fm 464.018	
464.021	R	79-225
464.022	N	79-225
	Rn fm 464.017	
464.023	N	79-225
464.031	R	79-225
464.041	R	79-225
464.051	R	79-225
464.061	R	79-225
464.071	R	79-225
464.081	R	79-225
464.091	R	79-225
464.105	R	79-225
464.106	R	79-225
464.111	R	79-225
464.121	R	79-225
464.122	R	79-225
464.131	R	79-225
464.151	R	79-225
464.152	R	79-225
464.171	R	79-225
464.18	R	79-225
464.19	R	79-225
464.21	R	79-225
464.22	R	79-225
464.24	R	79-225
464.25	R	79-225
465.001	N	79-226
465.002	N	79-226
465.002(2),(3)	N	79-226
	Rn as 465.027	
465.003	N	79-226
465.004	N	79-226
465.005	N	79-226
	Rn as 465.007	
	N	79-226
	Rn fm 465.015	
465.006	N	79-226
	Rn fm 465.016	
465.007	N	79-226
	Rn fm 465.005	
465.008	N	79-226
	Rn as 465.013	
	N	79-226
	Rn fm 465.009	

F. S. Sec. No.	Key	Session Law Ch. No.
465.009	N	79-226
	Rn as 465.008	
	N	79-226
	Rn fm 465.010	
465.010	N	79-226
	Rn as 465.009	
465.011	R	79-226
465.012	N	79-226
465.013	N	79-226
	Rn as 465.016	
	N	79-226
	Rn fm 465.008	
465.014	N	79-226
	Rn as 465.017	
	N	79-226
	Rn fm 465.027	
465.015	N	79-226
	Rn as 465.005	
	N	79-226
	Rn fm 465.017	
465.016	N	79-226
	Rn as 465.006	
	N	79-226
	Rn fm 465.013	
465.017	N	79-226
	Rn as 465.015	
	N	79-226
	Rn fm 465.014	
465.018	N	79-226
465.019	N	79-226
465.021	R	79-226
465.022	N	79-226
465.023	N	79-226
465.024	N	79-226
465.025	N	79-226
465.026	N	79-226
465.027	N	79-226
	Rn as 465.014	
	N	79-226
	Rn fm 465.002(2),(3)	
465.028	N	79-226
465.031	R	79-226
465.041	R	79-226
465.051	R	79-226
465.061	R	79-226
465.071	R	79-226
465.072	R	79-226
465.081	R	79-226
465.091	R	79-226
465.101	A	79-57
	R	79-226
465.102	R	79-226
465.111	R	79-226
465.121	R	79-226
465.131	A	79-8
	R	79-226
465.14	R	79-226
465.15	R	79-226
465.16	R	79-226
465.171	R	79-226
465.18	R	79-226
465.185	N	79-106
465.19	R	79-226
465.20	R	79-226
465.21	R	79-226
465.22	R	79-226
465.23	R	79-226
465.24	R	79-226
465.30	R	79-226
465.305	R	79-226
465.31	R	79-226
466.001	N	79-330
466.002	N	79-330
	Rn as 466.003	
	N	79-330
	Rn fm 466.003	
466.003	N	79-330
	Rn as 466.002	
	N	79-330
	Rn fm 466.002	
466.0395	N	79-330
466.004	N	79-330
466.004 (1)(a),(b)	N	79-330
	Rn fm 466.005	
466.005	N	79-330
	Rn as 466.004(1)(a),(b)	
466.006	N	79-330

F. S. Sec. No.	Key	Session Law Ch. No.
466.007	N	79-330
466.009	N	79-330
466.01	R	79-330
466.010	N	79-330
	Rn as 466.014	
466.011	N	79-330
466.012	N	79-330
	Rn as 466.016	
466.013	N	79-330
466.014	N	79-330
	Rn as 466.015	
	N	79-330
	Rn fm 466.010	
466.0145	N	79-330
	Rn as 466.019	
466.015	N	79-330
	Rn as 466.026	
	N	79-330
	Rn fm 466.014	
466.016	N	79-330
	Rn as 466.029	
	N	79-330
	Rn fm 466.012	
466.017	N	79-330
	Rn as 466.028	
	N	79-330
	Rn fm 466.021	
466.0175	N	79-330
	Rn as 466.027	
466.018	N	79-330
466.019	N	79-330
	Rn as 466.021	
	N	79-330
	Rn fm 466.0145	
466.02	R	79-330
466.021	N	79-330
	Rn as 466.017	
	N	79-330
	Rn fm 466.019	
466.022	N	79-330
	Rn as 466.025	
466.023	N	79-330
466.024	N	79-330
466.025	N	79-330
	Rn fm 466.022	
466.026	N	79-330
	Rn fm 466.015	
466.027	N	79-330
	Rn fm 466.0175	
466.028	N	79-330
	Rn fm 466.017	
466.029	N	79-330
	Rn fm 466.016	
466.03	R	79-330
466.031	N	79-330
466.032	N	79-330
466.033	N	79-330
	Rn as 466.034	
	N	79-330
	Rn fm 466.034	
466.034	N	79-330
	Rn as 466.033	
	N	79-330
	Rn fm 466.033	
466.035	N	79-330
466.036	N	79-330
466.037	N	79-330
466.038	N	79-330
466.039	N	79-330
466.04	R	79-330
466.05	R	79-330
466.06	R	79-330
466.07	R	79-330
466.08	R	79-330
466.09	A	79-164
	R	79-330
466.10	R	79-330
466.11	R	79-330
466.12	R	79-330
466.13	R	79-330
466.14	R	79-330
466.14(4)	Re	79-164
466.15	R	79-330
466.16	R	79-330
466.17	R	79-330
466.18	R	79-330
466.19	R	79-330
466.20	R	79-330
466.22	R	79-330

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
466.23	R	79-330
466.24	R	79-330
466.25	R	79-330
466.26	R	79-330
466.261	R	79-330
466.27	R	79-330
466.28	R	79-330
466.29	R	79-330
466.30	R	79-330
466.31	R	79-330
466.33	R	79-330
466.331	R	79-330
466.34	R	79-330
466.35	R	79-330
466.36	R	79-330
466.37	R	79-330
	A	79-400
466.38	R	79-330
466.39	R	79-330
466.40	R	79-330
466.41	R	79-330
466.42	R	79-330
466.43	R	79-330
466.44	R	79-330
466.45	R	79-330
466.46	R	79-330
466.47	R	79-330
466.48	R	79-330
466.50	R	79-330
466.51	R	79-330
466.52	R	79-330
466.521	R	79-330
466.53	R	79-330
466.54	R	79-330
466.55	R	79-330
466.56	R	79-330
466.57	R	79-330
466.58	R	79-330
466.59	R	79-330
467.01	R	79-273
467.02	R	79-273
467.03	R	79-273
467.04	R	79-273
467.06	R	79-273
467.07	R	79-273
467.08	R	79-273
467.09	R	79-273
467.10	R	79-273
467.11	R	79-273
467.12	R	79-273
467.13	R	79-273
467.14	R	79-273
467.15	R	79-273
467.16	R	79-273
467.17	R	79-273
467.18	R	79-273
467.19	R	79-273
468.101	R	79-200
468.102	R	79-200
468.103	R	79-200
468.104	R	79-200
468.1045	R	79-200
468.105	R	79-200
468.106	R	79-200
	A	79-400
468.107	R	79-200
468.108	R	79-200
468.109	R	79-200
468.110	R	79-200
468.111	R	79-200
468.112	R	79-200
	A	79-400
468.113	R	79-200
468.114	R	79-200
468.1279	Re	79-164
468.151	A	79-4
468.152	A	79-4
468.160	A	79-4
468.163	R	79-227
468.1635	N	79-227
468.164	R	79-227
468.1645	N	79-227
	Rn as 468.1655	
	N	79-227
	Rn fm 468.1765	
468.165	R	79-227
468.1655	N	79-227
	Rn as 468.1665	
	N	79-227

F. S. Sec. No.	Key	Session Law Ch. No.
468.1655(Cont.)	Rn fm 468.1645	
468.166	R	79-227
468.1665	N	79-227
	Rn as 468.1675	
	N	79-227
	Rn fm 468.1655	
468.167	R	79-227
468.1675	N	79-227
	Rn as 468.1685	
	N	79-227
	Rn fm 468.1665	
468.168	R	79-227
468.1685	N	79-227
	Rn as 468.1695	
	N	79-227
	Rn fm 468.1675	
468.169	R	79-227
468.1695	N	79-227
	Rn fm 468.1685	
468.170	R	79-227
468.1705	N	79-227
468.171	R	79-227
468.1715	N	79-227
468.172	R	79-227
468.1725	N	79-227
468.173	R	79-227
468.1735	N	79-227
	Rn as 468.1745	
	N	79-227
	Rn fm 468.1755	
468.174	R	79-227
468.1745	N	79-227
	Rn as 468.1755	
	N	79-227
	Rn fm 468.1735	
468.175	R	79-227
468.1755	N	79-227
	Rn as 468.1735	
	N	79-227
	Rn fm 468.1745	
468.176	R	79-227
468.1765	N	79-227
	Rn as 468.1645	
	N	79-227
	Rn fm 468.1775	
468.1775	N	79-227
	Rn as 468.1765	
	N	79-227
	Rn fm 468.1785	
468.178	R	79-227
468.1785	N	79-227
	Rn as 468.1775	
468.180	R	79-272
468.181	R	79-272
468.182	R	79-272
468.183	R	79-272
468.1831	R	79-272
468.184	R	79-272
468.185	R	79-272
468.186	R	79-272
468.187	A	79-164
	R	79-272
468.188	R	79-272
468.189	R	79-272
468.190	R	79-272
468.191	R	79-272
468.192	R	79-272
468.193	R	79-272
468.194	R	79-272
468.308	A	79-80
470.001	N	79-231
470.002	N	79-231
470.002(2)	N	79-231
	Rn as 470.039	
470.003	N	79-231
470.004	N	79-231
470.005	N	79-231
470.006	N	79-231
470.007	N	79-231
470.008	N	79-231
470.009	N	79-231
470.01	R	79-231
470.010	N	79-231
	Rn as 470.012	
470.0101	N	79-231
	Rn as 470.014	
470.011	N	79-231
470.012	N	79-231
	Rn as 470.013	

F. S. Sec. No.	Key	Session Law Ch. No.
470.012(Cont.)	N	79-231
	Rn fm 470.010	
470.013	N	79-231
	Rn as 470.015	
	N	79-231
	Rn fm 470.012	
470.014	N	79-231
	Rn as 470.016	
	N	79-231
	Rn fm 470.0101	
470.015	N	79-231
	Rn as 470.017	
	N	79-231
	Rn fm 470.013	
470.016	N	79-231
	Rn as 470.018	
	N	79-231
	Rn fm 470.014	
470.017	N	79-231
	Rn as 470.019	
	N	79-231
	Rn fm 470.015	
470.018	N	79-231
	Rn as 470.021	
	N	79-231
	Rn fm 470.016	
470.019	N	79-231
	Rn as 470.022	
	N	79-231
	Rn fm 470.017	
470.02	R	79-231
470.021	N	79-231
	Rn as 470.023	
	N	79-231
	Rn fm 470.018	
470.022	N	79-231
	Rn as 470.024	
	N	79-231
	Rn fm 470.019	
470.023	N	79-231
	Rn as 470.025	
	N	79-231
	Rn fm 470.021	
470.024	N	79-231
	Rn as 470.031	
	N	79-231
	Rn fm 470.022	
470.025	N	79-231
	Rn as 470.036	
	N	79-231
	Rn fm 470.023	
470.026	N	79-231
	Rn as 470.033	
	N	79-231
	Rn fm 470.040	
470.027	N	79-231
	Rn as 470.034	
	N	79-231
	Rn fm 470.034	
470.028	N	79-231
	Rn as 470.035	
	N	79-231
	Rn fm 470.035	
470.029	N	79-231
	Rn as 470.038	
	N	79-231
	Rn fm 470.033	
470.03	R	79-231
470.031	N	79-231
	Rn as 470.037	
	N	79-231
	Rn fm 470.024	
470.032	N	79-231
470.033	N	79-231
	Rn as 470.029	
	N	79-231
	Rn fm 470.026	
470.034	N	79-231
	Rn as 470.027	
	N	79-231
	Rn fm 470.027	
470.035	N	79-231
	Rn as 470.028	
	N	79-231
	Rn fm 470.028	
470.036	N	79-231
	Rn fm 470.025	
470.037	N	79-231
	Rn fm 470.031	

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
470.038	N	79-231
	Rn fm 470.029	
470.039	N	79-231
	Rn fm 470.002(2)	
470.0395	N	79-231
470.04	R	79-231
470.040	N	79-231
	Rn as 470.026	
470.05	R	79-231
470.06	R	79-231
470.07	R	79-231
470.08	R	79-231
470.09	R	79-231
470.10	R	79-231
470.11	R	79-231
470.111	R	79-231
470.112	R	79-231
470.113	R	79-231
470.114	R	79-231
470.12	R	79-231
470.13	R	79-231
470.14	R	79-231
470.15	R	79-231
470.16	R	79-231
470.17	R	79-231
470.18	R	79-231
470.19	R	79-231
470.20	R	79-231
470.21	R	79-231
470.22	R	79-231
470.23	R	79-231
470.235	R	79-231
470.24	R	79-231
470.26	R	79-231
470.28	R	79-231
470.29	R	79-231
470.30	R	79-231
470.31	R	79-231
470.32	R	79-231
470.34	R	79-231
470.35	R	79-231
471.001	N	79-243
471.003	N	79-243
471.005	N	79-243
471.007	N	79-243
471.009	N	79-243
471.01	R	79-243
471.011	N	79-243
471.013	N	79-243
471.015	N	79-243
471.017	N	79-243
471.019	N	79-243
471.02	R	79-243
471.021	N	79-243
471.023	N	79-243
471.025	N	79-243
471.027	N	79-243
471.03	R	79-243
471.031	N	79-243
471.033	N	79-243
471.035	N	79-243
471.037	N	79-243
471.039	N	79-243
471.04	R	79-243
471.05	R	79-243
471.06	R	79-243
471.061	R	79-243
471.07	R	79-243
471.08	R	79-243
471.09	R	79-243
471.10	R	79-243
471.11	R	79-243
471.12	R	79-243
471.13	R	79-243
471.14	R	79-243
471.15	R	79-243
471.16	R	79-243
471.17	R	79-243
471.18	R	79-243
471.19	R	79-243
471.20	R	79-243
471.21	R	79-243
471.22	R	79-243
471.23	R	79-243
471.24	R	79-243
471.25	R	79-243
471.26	R	79-243
471.27	R	79-243
471.29	R	79-243
471.30	R	79-243
471.31	R	79-243
471.32	R	79-243
471.33	R	79-243
471.34	R	79-243
471.35	R	79-243
471.37	R	79-243
471.38	R	79-243
471.39	R	79-243
471.40	R	79-243
471.41	R	79-243
471.42	R	79-243
471.43	R	79-243
471.44	R	79-243
472.001	N	79-243
472.003	N	79-243
472.005	N	79-243
472.007	N	79-243
472.009	N	79-243
472.01	R	79-243
472.011	N	79-243
472.013	N	79-243
472.015	N	79-243
472.017	N	79-243
472.019	N	79-243
472.02	R	79-243
472.021	N	79-243
472.023	N	79-243
472.025	N	79-243
472.027	N	79-243
472.029	N	79-243
472.03	R	79-243
472.031	N	79-243
472.033	N	79-243
472.035	N	79-243
472.037	N	79-243
472.039	N	79-243
472.04	R	79-243
472.05	R	79-243
472.06	R	79-243
472.07	R	79-243
472.08	R	79-243
472.09	R	79-243
472.10	R	79-243
472.11	R	79-243
472.12	R	79-243
472.13	R	79-243
472.14	R	79-243
473.011	R	79-202
473.021	R	79-202
473.03	R	79-202
473.04	R	79-202
473.05	R	79-202
473.06	R	79-202
473.07	A	79-164
	R	79-202
473.08	R	79-202
473.09	R	79-202
473.10	R	79-202
473.111	R	79-202
473.121	R	79-202
473.131	R	79-202
473.141	R	79-202
473.151	R	79-202
473.161	R	79-202
473.171	R	79-202
473.181	R	79-202
473.191	R	79-202
473.201	R	79-202
473.21	R	79-202
473.22	R	79-202
473.231	R	79-202
473.241	R	79-202
473.251	R	79-202
473.261	R	79-202
473.271	R	79-202
473.281	R	79-202
473.291	R	79-202
473.30	R	79-202
473.301	N	79-202
473.302	N	79-202
473.303	N	79-202
473.304	N	79-202
473.305	N	79-202
473.306	N	79-202
473.307	N	79-202
473.308	N	79-202
473.309	N	79-202
473.31	R	79-202
473.3101	N	79-202
473.311	N	79-202
473.312	N	79-202
473.313	N	79-202
473.314	N	79-202
473.315	N	79-202
473.316	N	79-202
473.317	N	79-202
473.318	N	79-202
473.319	N	79-202
473.321	N	79-202
473.322	N	79-202
473.323	N	79-202
473.324	N	79-202
473.325	N	79-202
474.011	R	79-228
474.021	R	79-228
474.031	R	79-228
474.041	R	79-228
474.051	R	79-228
474.061	R	79-228
474.071	R	79-228
474.081	R	79-228
474.091	R	79-228
474.101	R	79-228
474.111	R	79-228
474.121	R	79-228
474.131	R	79-228
474.14	R	79-228
474.141	R	79-228
474.15	R	79-228
474.16	R	79-228
474.17	R	79-228
474.18	R	79-228
474.19	R	79-228
474.20	R	79-228
474.201	N	79-228
474.202	N	79-228
474.203	N	79-228
474.204	N	79-228
474.205	N	79-228
474.206	N	79-228
474.207	N	79-228
474.209	N	79-228
474.21	R	79-228
474.211	N	79-228
474.212	N	79-228
474.213	N	79-228
474.214	N	79-228
474.215	N	79-228
474.216	N	79-228
	Rn as 474.217	
	N	79-228
	Rn fm 474.217	
474.217	N	79-228
	Rn as 474.216	
	N	79-228
	Rn fm 474.216	
474.218	N	79-228
	Rn as 205.195	
	N	79-228
	Rn fm 474.221	
474.219	N	79-228
	Rn as 705.19	
	N	79-228
474.22	R	79-228
474.221	N	79-228
	Rn as 474.218	
474.23	R	79-228
474.24	R	79-228
474.25	R	79-228
474.26	R	79-228
474.27	R	79-228
474.28	R	79-228
474.29	R	79-228
474.30	R	79-228
474.31	R	79-228
474.32	R	79-228
474.34	R	79-228
474.35	R	79-228
474.37	R	79-228
474.38	R	79-228
474.39	R	79-228
474.40	R	79-228
474.41	R	79-228
474.42	R	79-228
474.43	R	79-228
474.44	R	79-228
474.45	R	79-228

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
474.46	R	79-228
474.47	R	79-228
474.48	R	79-228
474.49	R	79-228
	A	79-400
475.001	N	79-239
475.01	A	79-239
	XR	79-239
475.011	N	79-239
475.02	A	79-239
	XR	79-239
475.03	A	79-239
	XR	79-239
475.04	A	79-239
	XR	79-239
475.05	A	79-239
	XR	79-239
475.06	R	79-239
475.07	R	79-239
475.08	R	79-239
475.09	R	79-239
475.10	A	79-239
	XR	79-239
475.11	R	79-239
475.12	R	79-239
475.125	N	79-239
475.13	R	79-239
475.131	R	79-239
475.14	R	79-239
475.15	A	79-239
	XR	79-239
475.16	R	79-239
475.17	A	79-239
	XR	79-239
	A	79-400
475.175	N	79-239
475.18	R	79-239
475.181	N	79-239
475.182	N	79-239
475.183	N	79-239
475.19	R	79-239
475.20	R	79-239
475.21	R	79-239
475.22	A	79-239
	XR	79-239
475.23	A	79-239
	XR	79-239
475.24	A	79-239
	XR	79-239
475.25	A	79-239
	XR	79-239
475.26	R	79-239
475.28	A	79-239
	XR	79-239
475.29	R	79-239
475.31	A	79-239
	XR	79-239
475.32	R	79-239
475.34	R	79-239
475.37	A	79-239
	XR	79-239
475.38	A	79-239
	XR	79-239
475.39	R	79-239
475.40	R	79-239
475.41	A	79-239
	XR	79-239
475.42	A	79-239
	XR	79-239
475.421	A&T fm 475.47	79-239
	XR	79-239
475.43	A	79-239
	XR	79-239
475.451	A	79-164
	A	79-239
	XR	79-239
475.4511	A	79-239
	XR	79-239
475.452	A	79-239
475.453	A	79-239
	XR	79-239
475.454	N	79-239
475.455	N	79-239
475.47	A&T to 475.421	79-239
	XR	79-239
475.48	R	79-239
475.481	R	79-239
475.482	A	79-239
	XR	79-239
475.483	A	79-239
	XR	79-239
475.4835	A	79-239
475.484	A	79-239
	XR	79-239
475.485	A	79-239
	XR	79-239
475.486	A	79-239
	XR	79-239
476.01	R	79-165
476.02	R	79-165
476.03	R	79-165
476.031	R	79-165
476.04	R	79-165
476.05	R	79-165
476.06	R	79-165
476.061	R	79-165
476.065	R	79-165
476.07	R	79-165
476.071	R	79-165
476.072	R	79-165
476.08	R	79-165
476.09	R	79-165
476.10	R	79-165
476.11	R	79-165
476.12	R	79-165
476.13	R	79-165
476.14	R	79-165
476.16	R	79-165
476.17	R	79-165
476.174(2)	Re	79-164
476.18	R	79-165
476.19	R	79-165
476.20	R	79-165
476.204	Re	79-164
476.21	R	79-165
476.22	R	79-165
476.221	R	79-165
476.222	R	79-165
476.23	R	79-165
476.24	R	79-165
476.25	R	79-165
476.254	Re	79-164
476.26	R	79-165
476.264	T to 11.6105(1)	
476.27	R	79-165
476.28	R	79-165
476.29	R	79-165
476.30	R	79-165
476.31	R	79-165
476.32	R	79-165
476.34	R	79-165
477.035	*N	79-201
477.038	A	79-164
478.011	XR	79-347
	T to 478.341	79-347
	Rn as 498.001	
478.015	XR	79-347
	A&T to 478.342	79-347
	Rn as 498.003	
478.021	XR	79-347
	A&T to 478.343	79-347
	Rn as 498.005	
478.041	XR	79-347
	A&T to 478.344	79-347
	Rn as 498.007	
478.052	XR	79-347
	A&T to 478.359	79-347
	Rn as 498.039	
478.061	XR	79-347
	A&T to 478.345	79-347
	Rn as 498.009	
478.081	XR	79-347
	A&T to 478.346	79-347
	Rn as 498.011	
478.091	XR	79-347
	A&T to 478.347	79-347
	Rn as 498.013	
478.121	A	79-65
	XR	79-347
	A&T to 478.355	79-347
	Rn as 498.027,498.033	
478.131	XR	79-347
	A&T to 478.349	79-347
	Rn as 498.017	
478.141	XR	79-347
	A&T to 478.031	79-347
	Rn as 498.031	
478.151	XR	79-347
	A&T to 478.363	79-347
	Rn as 498.047	
478.161	XR	79-347
	A&T to 478.364	79-347
	Rn as 498.049	
478.171	XR	79-347
	A&T to 478.365	79-347
	Rn as 498.051, 498.053,498.055	
478.191	XR	79-347
	A&T to 478.368	79-347
	Rn as 498.061	
478.211	XR	79-347
	A&T to 478.367	79-347
	Rn as 498.059	
478.221	XR	79-347
	A&T to 478.353	79-347
	Rn as 498.025	
478.23	XR	79-347
	A&T to 478.352	79-347
	Rn as 498.023	
478.24	XR	79-347
	A&T to 478.358	79-347
	Rn as 498.037	
478.25	XR	79-347
	A&T to 478.354	79-347
	Rn as 498.029	
478.26	XR	79-347
	A&T to 478.361	79-347
	Rn as 498.043	
478.27	XR	79-347
	A&T to 478.351	79-347
	Rn as 498.021	
478.28	R	79-347
478.29	XR	79-347
	A&T to 478.366	79-347
	Rn as 498.057	
478.30	R	79-347
478.31	XR	79-347
	A&T to 478.362	79-347
	Rn as 498.045	
478.33	XR	79-347
	A&T to 478.360	79-347
	Rn as 498.041	
478.34	A	79-4
	XR	79-347
	A&T to 478.348	79-347
	Rn as 498.015	
478.341	A&T fm 478.011	79-347
	Rn as 498.001	
478.342	A&T fm 478.015	79-347
	Rn as 498.003	
478.343	A&T fm 478.021	79-347
	Rn as 498.005	
478.344	A&T fm 478.041	79-347
	Rn as 498.007	
478.345	A&T fm 478.061	79-347
	Rn as 498.009	
478.346	A&T fm 478.081	79-347
	Rn as 498.011	
478.347	A&T fm 478.091	79-347
	Rn as 498.013	
478.348	A&T fm 478.34	79-347
	Rn as 498.015	
478.349	A&T fm 478.131	79-347
	Rn as 498.017	
478.35	N	79-347
	Rn as 498.019	
478.351	A&T fm 478.27	79-347
	Rn as 498.021	
478.352	A&T fm 478.23	79-347
	Rn as 498.023	
478.353	A&T fm 478.221	79-347
	Rn as 498.025	
478.354	A&T fm 478.25	79-347
	Rn as 498.029	
478.355	A&T fm 478.121	79-347
(1),(9),(10)	Rn as 498.027	
(2)-(8)	Rn as 498.033	
478.356	A&T fm 478.141	79-347
	Rn as 498.031	
478.357	N	79-347
	Rn as 498.035	
478.358	A&T fm 478.24	79-347
	Rn as 498.037	
478.359	A&T fm 478.052	79-347
	Rn as 498.039	
478.360	A&T fm 478.33	79-347

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
478.360(Cont.)	Rn as 498.041	
478.361	A&T fm 478.26	79-347
	Rn as 498.043	
478.362	A&T fm 478.31	79-347
	Rn as 498.045	
478.363	A&T fm 478.151	79-347
	Rn as 498.047	
478.364	A&T fm 478.161	79-347
	Rn as 498.049	
478.365	A&T fm 478.171	79-347
(1),(2)	Rn as 498.051	
(3),(4)	Rn as 498.053	
(5)	Rn as 498.055	
478.366	A&T fm 478.29	79-347
	Rn as 498.057	
478.367	A&T fm 478.211	79-347
	Rn as 498.059	
478.368	A&T fm 478.191	79-347
	Rn as 498.061	
478.369	N	79-347
	Rn as 498.063	
479.02	A	79-164
480.011	R	79-13
488.012	R	79-13
480.013	R	79-13
480.014	R	79-13
480.015	R	79-13
480.016	R	79-13
480.017	R	79-13
480.018	R	79-13
480.019	R	79-13
480.0195	R	79-13
480.021	R	79-13
480.022	R	79-13
480.023	R	79-13
480.024	R	79-13
480.025	R	79-13
480.026	R	79-13
480.027	R	79-13
480.028	R	79-13
480.029	R	79-13
481.011	R	79-407
481.021	R	79-407
481.031	R	79-407
481.041	R	79-407
481.051	R	79-407
481.061	R	79-407
481.071	R	79-407
481.081	R	79-407
481.091	R	79-407
481.101	R	79-407
481.111	R	79-407
481.121	R	79-407
481.131	R	79-407
481.151	R	79-407
481.201	N	79-273
481.203	N	79-273
481.205	N	79-273
481.207	N	79-273
481.209	N	79-273
481.211	N	79-273
481.213	N	79-273
481.215	N	79-273
481.217	N	79-273
481.219	N	79-273
481.221	N	79-273
481.223	N	79-273
481.225	N	79-273
481.227	N	79-273
481.229	N	79-273
481.231	N	79-273
481.233	N	79-273
481.301	N	79-407
481.303	N	79-407
481.305	N	79-407
481.307	N	79-407
481.309	N	79-407
481.311	N	79-407
481.313	N	79-407
481.315	N	79-407
481.317	N	79-407
481.319	N	79-407
481.321	N	79-407
481.323	N	79-407
481.325	N	79-407
481.327	N	79-407
481.329	N	79-407
481.331	N	79-407
483.041	A	79-12
483.041(Cont.)	A	79-164
483.051	A	79-164
483.245	N	79-106
483.285	A	79-400
483.291	A	79-400
484.001	N	79-275
484.002	N	79-275
484.0025	N	79-275
	Rn as 484.018	
484.003	N	79-275
484.003(4)	N	79-275
	Rn as 484.004	
484.004	N	79-275
	Rn as 484.007	
	N	79-275
	Rn fm 484.003(4)	
484.005	N	79-275
	Rn fm 484.013	
484.006	N	79-275
	Rn fm 484.014	
484.007	N	79-275
	Rn as 484.008	
	N	79-275
	Rn fm 484.004	
484.008	N	79-275
	Rn as 484.009	
	N	79-275
	Rn fm 484.007	
484.009	N	79-275
	Rn fm 484.008	
484.01	R	79-275
484.011	N	79-275
	Rn as 484.014	
	N	79-275
	Rn fm 484.017	
484.012	N	79-275
	Rn as 484.015	
	N	79-275
	Rn fm 484.016	
484.013	N	79-275
	Rn as 484.005	
	N	79-275
	Rn fm 484.015	
484.014	N	79-275
	Rn as 484.006	
	N	79-275
	Rn fm 484.011	
484.015	N	79-275
	Rn as 484.013	
	N	79-275
	Rn fm 484.012	
484.016	N	79-275
	Rn as 484.012	
	N	79-275
	Rn fm 484.018	
484.017	N	79-275
	Rn as 484.011	
	N	79-275
	Rn fm 484.019	
484.018	N	79-275
	Rn as 484.016	
	N	79-275
	Rn fm 484.0025	
484.019	N	79-275
	Rn as 484.017	
484.019	N	79-275
484.02	R	79-275
484.03	R	79-275
484.04	R	79-275
484.05	R	79-275
484.06	R	79-275
484.07	R	79-275
484.08	R	79-275
484.09	R	79-275
484.10	R	79-275
484.105	R	79-275
484.11	R	79-275
486.011	*R	79-116
486.021	A	79-116
	*R	79-116
486.031	*R	79-116
486.041	*R	79-116
486.051	*R	79-116
486.052	*R	79-116
486.061	*R	79-116
486.071	*R	79-116
486.072	*R	79-116
486.081	*R	79-116
486.091	*R	79-116
486.101	*R	79-116
486.102	*R	79-116
486.103	*R	79-116
486.104	*R	79-116
486.105	*R	79-116
486.106	*R	79-116
486.107	*R	79-116
486.121	*R	79-116
486.141	*R	79-116
486.151	*R	79-116
486.161	*R	79-116
486.171	*R	79-116
486.172	*R	79-116
487.021	A	79-210
487.031	A	79-65
	A	79-164
	A	79-210
487.041	A	79-210
487.042	A	79-210
487.061	A	79-65
487.071	A	79-210
487.081	A	79-210
487.101	A	79-210
487.152	A	79-210
487.153	A	79-210
487.155	A	79-210
487.156	A	79-210
487.157	A	79-210
487.158	A	79-210
487.161	A	79-210
489.01	R	79-165
489.02	R	79-165
489.03	R	79-165
489.04	R	79-165
489.05	R	79-165
489.06	R	79-165
489.061	R	79-165
489.07	R	79-165
489.08	R	79-165
489.09	R	79-165
489.10	R	79-165
489.101	N	79-200
489.103	N	79-200
489.105	N	79-200
489.107	N	79-200
489.109	N	79-200
489.11	R	79-165
489.111	N	79-200
489.113	N	79-200
489.115	N	79-200
489.117	N	79-200
489.119	N	79-200
489.121	N	79-200
489.123	N	79-200
489.125	N	79-200
489.127	N	79-200
489.129	N	79-200
489.131	N	79-200
489.501	N	79-272
489.503	N	79-272
489.505	N	79-272
489.507	N	79-272
489.509	N	79-272
489.511	N	79-272
489.513	N	79-272
489.515	N	79-272
489.517	N	79-272
489.519	N	79-272
489.521	N	79-272
489.523	N	79-272
489.525	N	79-272
489.527	N	79-272
489.531	N	79-272
489.533	N	79-272
489.535	N	79-272
489.537	N	79-272
491.01	R	79-165
491.02	R	79-165
491.03	R	79-165
491.04	R	79-165
491.05	R	79-165
491.06	R	79-165
491.08	R	79-165
491.09	R	79-165
491.10	R	79-165
491.11	R	79-165
491.12	R	79-165
491.13	R	79-165
491.14	R	79-165

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
491.15	R	79-165
491.16	R	79-165
491.17	R	79-165
491.18	R	79-165
491.19	R	79-165
493.24	R	79-164
493.27	R	79-164
493.55	R	79-164
494.04	A	79-8
	A	79-164
494.044	A	79-296
	A	79-400
494.08	A	79-296
	A	79-400
494.081	A	79-296
	A	79-400
496.03	A	79-164
496.04	A	79-277
496.105	A	79-164
498.001	Rn fm 478.341	
498.003	Rn fm 478.342	
498.005	Rn fm 478.343	
498.007	Rn fm 478.344	
498.009	Rn fm 478.345	
498.011	Rn fm 478.346	
498.013	Rn fm 478.347	
498.015	Rn fm 478.348	
498.017	Rn fm 478.349	
498.019	N	79-347
	Rn fm 478.35	
498.021	Rn fm 478.351	
498.023	Rn fm 478.352	
498.025	Rn fm 478.353	
498.027	Rn fm 478.355(1), (9),(10)	
498.029	Rn fm 478.354	
498.031	Rn fm 478.356	
498.033	Rn fm 478.355(2)-(8)	
498.035	N	79-347
	Rn fm 478.357	
498.037	Rn fm 478.358	
498.039	Rn fm 478.359	
498.041	Rn fm 478.360	
498.043	Rn fm 478.361	
498.045	Rn fm 478.362	
498.047	Rn fm 478.363	
498.049	Rn fm 478.364	
498.051	Rn fm 478.365(1),(2)	
498.053	Rn fm 478.365(3),(4)	
498.055	Rn fm 478.365(5)	
498.057	Rn fm 478.366	
498.059	Rn fm 478.367	
498.061	Rn fm 478.368	
498.063	N	79-347
	Rn fm 478.369	
500.1515	N	79-57
500.1518	N	79-346
500.152	A	79-393
500.16	A	79-57
500.341	A	79-57
500.341(7)	N	79-57
	Rn as 500.465	
500.46	A	79-8
500.465	N	79-57
	Rn fm 500.341(7)	
501.138	A	79-400
501.203	A	79-386
501.205	A	79-386
501.207	A	79-386
501.208	A	79-386
501.210	A	79-386
	T to 501.2105	
501.2101	N	79-386
501.2105	A	79-386
	T fm 501.210	
501.212	A	79-386
501.90	A	79-181
502.061	A	79-39
503.011	A	79-38
503.061	R	79-38
504.011	*N	79-121
504.012	*N	79-121
504.013	*N	79-121
504.014	*N	79-121
509.013	A	79-240
509.013(Cont.)	XR	79-240
509.032	A	79-240
	XR	79-240
509.034	N	79-240
509.072	A	79-240
	XR	79-240
509.091	A	79-240
	XR	79-240
509.092	A	79-240
	XR	79-240
509.101	A	79-240
	XR	79-240
509.111	A	79-240
	XR	79-240
509.131	R	79-240
509.141	A	79-240
	XR	79-240
509.142	A	79-240
	XR	79-240
509.151	A	79-240
	XR	79-240
509.161	A	79-240
	XR	79-240
509.162	A	79-240
	XR	79-240
509.171	R	79-240
509.181	R	79-240
509.191	A	79-240
	XR	79-240
509.201	A	79-240
	XR	79-240
509.211	A	79-240
	XR	79-240
509.2111	R	79-240
509.212	R	79-240
509.221	A	79-240
	XR	79-240
509.241	A	79-240
	XR	79-240
509.242	A	79-240
	XR	79-240
509.251	A	79-240
	XR	79-240
509.261	A	79-240
	XR	79-240
509.271	A	79-240
	XR	79-240
509.281	A	79-240
	XR	79-240
509.291	A	79-240
	XR	79-240
509.292	A	79-240
	XR	79-240
509.301	R	79-240
509.302	XR	79-240
509.303	A	79-240
	XR	79-240
509.4005	N	79-240
	Rn fm 509.401(4)	
509.401	A	79-240
	XR	79-240
509.401(4)	N	79-240
	Rn as 509.4005	
509.402	A	79-240
	XR	79-240
509.403	A	79-240
	XR	79-240
509.404	A	79-240
	XR	79-240
	A	79-400
509.405	A	79-240
	XR	79-240
509.406	A	79-240
	XR	79-240
509.407	A	79-240
	XR	79-240
509.408	A	79-240
	XR	79-240
509.409	A	79-240
	XR	79-240
509.410	A	79-240
	XR	79-240
	A	79-400
509.411	A	79-240
	XR	79-240
509.412	A	79-240
	XR	79-240
509.413	XR	79-240
509.414	XR	79-240
509.415	XR	79-240
509.416	XR	79-240
509.417	XR	79-240
514.01	R	79-165
514.08	R	79-165
516.02	A	79-274
516.03	A	79-164
516.031	A	79-274
516.035	N	79-59
516.07(1)	Re	79-164
516.09	A	79-340
516.18	A	79-274
516.21	A	79-274
516.22(2)	Re	79-164
517.021	A	79-164
	A	79-381
517.03	A	79-381
517.041	R	79-381
517.051	A	79-381
517.061	A	79-381
517.07	A	79-381
517.081	A	79-164
	A	79-381
517.12	A	79-8
	A	79-164
	A	79-381
517.131	A	79-381
517.211	A	79-381
517.241	A	79-381
517.311	A	79-381
517.35	R	79-381
517.351	R	79-381
	A	79-400
517.353	R	79-381
517.355	R	79-381
	A	79-400
517.357	R	79-381
517.359	R	79-381
	A	79-400
517.361	R	79-381
517.363	R	79-381
520.03	A	79-164
520.07	A	79-400
520.08	A	79-274
520.32	A	79-114
	A	79-164
520.34	A	79-274
	A	79-400
520.52	A	79-164
520.65	A	79-164
520.73	A	79-40
520.90	A	79-40
526.111	A	79-163
531.55	N	79-316
534.081	A	79-323
534.49	A	79-18
535.11	A	79-400
537.01	R	79-165
537.02	R	79-165
537.03	R	79-165
537.04	R	79-165
537.05	R	79-165
537.06	R	79-165
537.07	R	79-165
537.08	R	79-165
537.09	R	79-165
537.10	R	79-165
537.12	R	79-165
540.11	A	79-400
542.12	A	79-43
542.13	A	79-400
550.011	A	79-4
550.025	A	79-4
550.03	A	79-4
550.035	R	79-164
550.055	A	79-4
550.062	R	79-164
550.063	R	79-164
550.064	R	79-164
550.07	A	79-4
550.08	A	79-4
550.081	A	79-300
550.082	A	79-4
550.083	A	79-4
550.084	A	79-4
	T to 550.0841	
550.0841	T fm 550.084	
550.09	A	79-300
550.091	A	79-300

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
550.091(Cont.)	*R	79-300
550.12	A	79-300
550.161	A	79-300
550.181	A	79-4
	A	79-400
550.261	A	79-300
550.262	A	79-300
550.29	A	79-4
550.291	A	79-4
550.32	A	79-4
550.33	A	79-4
550.37	A	79-4
	A	79-300
550.39	A	79-4
550.41	A	79-4
550.42	A	79-300
550.43	A	79-4
550.45	A	79-4
550.48	A	79-164
550.49	A	79-300
	*R	79-300
550.4901	A	79-300
	*R	79-300
550.4902	A	79-300
	*R	79-300
550.4903	A	79-300
	*R	79-300
550.4904	A	79-300
	*R	79-300
550.4905	A	79-300
	*R	79-300
550.4906	A	79-300
	*R	79-300
550.4907	A	79-300
	*R	79-300
550.4908	A	79-300
	*R	79-300
551.031	A	79-4
551.071	A	79-300
	*R	79-300
551.12	A	79-4
551.15	A	79-4
552.092	A	79-8
	A	79-174
552.22	A	79-400
553.11	A	79-12
553.19	A	79-7
	A	79-40
553.35	A	79-152
553.36	A	79-152
553.37	A	79-152
553.38	A	79-152
553.39	A	79-152
553.40	A	79-152
553.41	A	79-152
553.42	A	79-152
553.73	A	79-400
553.77	A	79-152
553.89	A	78-626
	A	79-400
553.903	A	78-625
553.904	A	78-625
	A	79-267
553.905	A	78-625
	A	79-267
553.906	A	78-625
	A	79-267
555.01	A	79-400
555.08	A	79-400
559.80	N	79-374
559.801	N	79-374
559.803	N	79-374
559.805	N	79-374
559.807	N	79-374
559.809	N	79-374
559.811	N	79-374
559.813	N	79-374
559.815	N	79-374
561.01	A	79-4
561.051	A	79-11
561.11	A	79-11
561.14	A	79-163
561.19	A	79-4
561.221	A	79-54
561.25	A	79-349
561.29	A	79-4
	A	79-11
561.42	A	79-4
561.65	A	79-11
561.66	N	79-405
562.025	N	79-70
562.11	A	79-11
562.12	A	79-11
562.132	R	79-40
562.14	A	79-11
562.20	A	79-11
562.24	A	79-11
562.27	A	79-11
562.34	A	79-11
562.37	A	79-11
562.38	A	79-11
562.39	A	79-164
562.41	A	79-11
562.44	A	79-4
564.02	A	79-305
564.03	A	79-11
564.035	A	79-11
564.06	A	79-304
565.05	*A	79-143
565.10	*A	79-143
568.10	A	79-11
568.14	A	79-11
570.071	A	79-3
570.15	A	79-371
570.281	T to 570.542	79-37
570.282	T to 570.543	79-37
570.283	T to 570.544	79-37
570.284	T to 570.545	79-37
570.30	A	79-400
570.32	A	79-127
570.33	A	79-127
570.36	A	79-122
570.40	A	79-122
570.46	A	79-122
570.50	A	79-122
570.53	A	79-122
570.54	A	79-122
570.542	T fm 570.281	79-37
570.543	T fm 570.282	79-37
570.544	T fm 570.283	79-37
570.545	T fm 570.284	79-37
570.548	N	79-37
570.549	N	79-37
576.011	A	79-204
576.055	N	79-204
576.061	A	79-204
580.031	A	79-66
580.071	A	79-66
580.081	A	79-66
580.091	A	79-66
580.101	A	79-66
580.111	A	79-66
580.112	A	79-66
580.121	A	79-66
580.131	A	79-66
580.141	A	79-66
581.011	A	79-158
581.031	A	79-158
581.083	A	79-158
581.091	A	79-158
581.101	A	79-158
581.111	A	79-158
581.131	A	79-158
581.142	A	79-158
581.152	R	79-158
581.161	A	79-158
581.181	A	79-158
581.185	A	79-164
581.188	N	79-238
581.211	A	79-158
585.155	A	79-102
588.13	A	79-400
589.07	A	79-255
590.02	A	79-91
	A	79-190
	A	79-400
592.02	T to 258.001	
592.06	T to 258.004	
592.07	T to 258.007	
592.071	T to 258.001	
592.072	T to 258.014	
592.073	T to 258.017	
592.074	T to 258.021	
592.075	T to 258.024	
592.08	T to 258.027	
592.09	T to 258.031	
592.11	T to 258.034	
592.12	T to 258.037	
592.121	T to 258.041	
592.13	R	79-322
	N	79-322
	Rn as 258.081	
592.17	T to 258.083	
601.04	A	79-84
601.10	A	79-137
	A	79-155
601.158	A	79-125
601.67	A	79-126
601.731	A	79-23
601.9909(2)	Re	79-164
601.9914	A	79-400
604.15	A	79-238
	XR	79-238
604.151	N	79-238
604.16	XR	79-238
604.17	A	79-238
	XR	79-238
604.18	A	79-238
	XR	79-238
604.19	A	79-238
	XR	79-238
604.20	A	79-238
	XR	79-238
604.21	A	79-238
	XR	79-238
604.211	A	79-238
	XR	79-238
604.22	A	79-238
	XR	79-238
604.23	XR	79-238
604.24	R	79-238
604.25	XR	79-238
604.27	XR	79-238
604.28	XR	79-238
604.29	XR	79-238
604.30	XR	79-238
607.034	A	79-384
607.037	A	79-384
607.224	A	79-400
607.324	A	79-384
607.357	A	79-384
615.18	A	79-9
616.265	A	79-11
617.532	A	79-164
618.221	A	79-9
	A	79-400
619.04	A	79-9
620.07	A	79-279
620.27	A	79-164
621.05	A	79-9
621.07	A	79-9
623.12	A	79-153
624.311	A	79-52
624.408	A	79-72
624.435	A	79-40
624.509	*A	79-247
624.602	A	79-40
624.603	A	79-40
624.605	A	79-40
	A	79-156
624.609	A	79-40
625.091	A	79-40
625.121	A	79-356
625.305	A	79-245
626.221	A	79-40
626.241	A	79-40
626.321	A	79-156
626.740	A	79-400
626.741	A	79-40
626.869	A	79-40
626.916	A	79-40
626.9541	A	79-289
626.9551	A	79-289
	A	79-400
626.9705	A	79-171
626.989	A	79-81
	A	79-400
627.021	A	79-40
627.062	A	79-40
627.072	A	79-40
627.091	A	79-40
627.092	A	79-40
627.093	N	79-40
627.096	N	79-40
627.101	A	79-40
627.141	A	79-40
627.151	A	79-40

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
627.191	A	79-40
627.211	A	79-40
627.215	N	79-40
627.281	A	79-40
627.291	A	79-40
627.311	A	79-40
	A	79-394
	A	79-400
627.314	A	79-40
627.351	A	79-164
	A	79-185
627.476	A	79-356
627.573	A	79-179
627.574	N	79-179
627.575	N	79-179
627.601	A	79-40
627.6111	A	79-175
627.622	A	79-40
627.623	A	79-40
627.624	A	79-40
627.663	A	79-67
627.669	*N	79-392
627.702	A	79-237
627.727	A	79-40
	A	79-241
627.7286	A	79-389
627.736	A	79-40
	A	79-400
627.736(1)	Re	79-164
627.7372	A	79-40
627.7375	A&T to 817.234	79-81
	A	79-400
627.7378	N	79-241
627.7841	N	79-15
627.786	A	79-16
627.826	A	79-164
628.431	A	79-9
629.071	A	79-40
629.401	N	79-394
631.262	A	79-9
631.397	A	79-400
631.54	A	79-55
631.55	A	79-40
631.57	A	79-40
631.61	A	79-40
631.711	N	79-189
631.712	N	79-189
631.713	N	79-189
631.714	N	79-189
631.715	N	79-189
631.716	N	79-189
631.717	N	79-189
631.718	N	79-189
631.719	N	79-189
631.721	N	79-189
631.722	N	79-189
631.723	N	79-189
631.724	N	79-189
631.725	N	79-189
631.726	N	79-189
631.727	N	79-189
631.728	N	79-189
631.729	N	79-189
631.731	N	79-189
631.732	N	79-189
631.733	N	79-189
631.734	N	79-189
631.735	N	79-189
633.081	A	79-352
633.44	A	79-400
633.544	R	79-165
634.313	A	79-400
634.323	A	79-400
637.141	A	79-164
637.301	A	79-164
639.07	A	79-400
639.10	A	79-164
	A	79-400
639.11	A	79-400
639.17	A	79-400
642.011	N	79-103
	Rn fm 647.01	
642.013	N	79-103
	Rn fm 647.02	
642.015	N	79-103
	Rn fm 647.03	
642.017	N	79-103
	Rn fm 647.04	
642.019	N	79-103

F. S. Sec. No.	Key	Session Law Ch. No.
642.019(Cont.)	Rn fm 647.05	
642.021	N	79-103
	Rn fm 647.06	
642.023	N	79-103
	Rn fm 647.07	
642.025	N	79-103
	Rn fm 647.08	
642.027	N	79-103
	Rn fm 647.09	
642.029	N	79-103
	Rn fm 647.10	
642.032	N	79-103
	Rn fm 647.11	
642.034	N	79-103
	Rn fm 647.12	
642.036	N	79-103
	Rn fm 647.13	
642.038	N	79-103
	Rn fm 647.14	
642.041	N	79-103
	Rn fm 647.15	
642.043	N	79-103
	Rn fm 647.16	
642.045	N	79-103
	Rn fm 647.17	
642.047	N	79-103
	Rn fm 647.18	
642.049	N	79-103
	Rn fm 647.19	
647.01	N	79-103
	Rn as 642.011	
647.02	N	79-103
	Rn as 642.013	
647.03	N	79-103
	Rn as 642.015	
647.04	N	79-103
	Rn as 642.017	
647.05	N	79-103
	Rn as 642.019	
647.06	N	79-103
	Rn as 642.021	
647.07	N	79-103
	Rn as 642.023	
647.08	N	79-103
	Rn as 642.025	
647.09	N	79-103
	Rn as 642.027	
647.10	N	79-103
	Rn as 642.029	
647.11	N	79-103
	Rn as 642.032	
647.12	N	79-103
	Rn as 642.034	
647.13	N	79-103
	Rn as 642.036	
647.14	N	79-103
	Rn as 642.038	
647.15	N	79-103
	Rn as 642.041	
647.16	N	79-103
	Rn as 642.043	
647.17	N	79-103
	Rn as 642.045	
647.18	N	79-103
	Rn as 642.047	
647.19	N	79-103
	Rn as 642.049	
651.011	A	79-164
651.015	A	79-400
651.026	A	79-400
651.081	A	79-400
651.085	A	79-400
651.095	A	79-400
651.121	A	79-164
656.061	A	79-9
656.17	A	79-274
657.061	A	79-400
657.14	A	79-274
658.10	A	79-400
659.02	A	79-144
659.05	A	79-9
659.11	A	79-53
659.14	A	79-144
659.15	A	79-9
659.18	A	79-274
659.181	A	79-274
659.291	A	79-400
659.292	A	79-22
659.565	N	79-144

F. S. Sec. No.	Key	Session Law Ch. No.
659.67	A	79-145
	A	79-400
665.031	A	79-144
665.271	A	79-21
665.272	N	79-21
665.381	A	79-274
665.704	A	79-144
665.710	A	79-164
665.715	A	79-144
671.105	*A	79-398
671.201	*A	79-398
672.107	*A	79-398
672.316	A	79-141
672.702	*A	79-398
674.106	A	79-164
675.116	*A	79-398
679.102	*A	79-398
679.103	*A	79-398
679.104	*A	79-398
679.105	*A	79-398
679.106	*A	79-398
679.114	*N	79-398
679.203	*A	79-398
679.204	*A	79-398
679.205	*A	79-398
679.301	*A	79-398
679.302	*A	79-398
679.304	*A	79-398
679.305	*A	79-398
679.306	*A	79-398
679.307	*A	79-398
679.308	*A	79-398
679.312	*A	79-398
679.318	*A	79-398
679.401	*A	79-398
679.402	*A	79-398
679.403	*A	79-398
679.404	*A	79-398
679.405	*A	79-398
679.406	*A	79-398
679.407	*A	79-398
679.408	*N	79-398
679.501	*A	79-398
679.502	*A	79-398
679.504	*A	79-398
679.505	*A	79-398
680.101	*A	79-398
680.104	A	79-164
680.108	*N	79-398
680.109	*N	79-398
680.110	*N	79-398
	Rn as 680.11	
680.11	*N	79-398
	Rn fm 680.110	
680.111	*N	79-398
683.011	R	79-190
687.02	A	79-274
687.03	A	79-274
	A	79-400
687.04	A	79-90
687.11	A	79-90
	R	79-274
687.12	A	79-400
687.13	N	79-138
692.01	A	79-290
705.19	N	79-228
	Rn fm 474.219	
713.31	A	79-400
713.78	A	79-206
	A	79-244
	A	79-410
715.041	N	79-249
715.05	A	79-271
715.07	A	79-206
	A	79-271
	A	79-410
717.195	A	79-400
717.30	A	79-164
718.104	A	79-314
718.111	A	79-314
718.112	A	79-314
718.114	A	79-314
718.123	A	79-400
718.124	A	79-400
718.202	A	79-314
718.203	A	79-314
718.301	A	79-314
	A	79-400
718.302	A	79-314

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
718.3025	A	79-314
718.401	A	79-166
	A	79-314
718.402	A	79-314
718.501	A	79-4
	A	79-314
718.502	A	79-314
718.503	A	79-314
718.504	A	79-314
719.104	A	79-284
719.106	A	79-284
719.109	N	79-284
	Rn as 719.112	
	A	79-400
719.110	N	79-400
719.112	N	79-284
	Rn fm 719.109	
719.202	A	79-284
719.203	A	79-284
719.301	A	79-284
719.302	A	79-284
719.401	A	79-284
719.402	A	79-284
719.501	A	79-4
	A	79-284
719.502	A	79-284
719.503	A	79-284
719.504	A	79-284
731.111	A	79-68
731.302	A	79-400
732.504	A	79-400
732.505	A	79-400
733.302	A	79-343
733.304	A	79-343
733.602	A	79-400
733.612	A	79-400
733.802	A	79-400
733.817	A	79-400
734.103	R	79-221
734.104	A	79-221
	A	79-400
735.301	A	79-400
737.3053	N	79-343
	Rn fm 737.308	
737.3055	N	79-343
	Rn fm 737.309	
737.308	N	79-343
	Rn as 737.3053	
737.309	N	79-343
	Rn as 737.3055	
738.04	A	79-400
738.05	A	79-343
738.06	A	79-400
738.07	A	79-400
738.13	A	79-343
741.01	A	79-190
	A	79-402
741.041	A	79-400
741.24	A	79-400
741.30	N	79-402
743.064	N	79-302
	Rn fm 458.503	
743.065	N	79-302
	Rn fm 458.504	
744.102	A	79-221
744.1025	N	79-221
744.301	A	79-221
744.302	R	79-221
744.309	A	79-221
744.312	A	79-221
744.331	A	79-221
744.334	A	79-221
744.337	A	79-221
744.341	A	79-221
744.387	A	79-221
744.437	A	79-221
744.441	A	79-400
744.444	A	79-400
744.447	A	79-221
744.457	A	79-221
767.03	A	79-315
767.05	N	79-315
767.07	N	79-315
768.043	A	79-400
768.05	R	79-163
768.06	R	79-163
768.28	A	79-139
	A	79-253
	A	79-400
768.40	A	79-400
768.41	A	79-400
768.50	A	79-400
768.54	A	79-178
775.089	A	79-400
775.13	A	79-3
	A	79-8
776.08	A	79-400
782.04	A	79-400
784.07	A	79-8
790.001	A	79-3
	A	79-58
790.052	A	79-8
790.06	A	79-164
790.08	A	79-8
790.164	A	79-8
790.27	N	79-58
790.28	N	79-44
794.022(3)	N	79-69
	Rn as 918.17	
800.04	A	79-400
806.01	A	79-108
806.111	A	79-108
812.012	A	79-400
812.014	A	79-124
812.015	A	79-164
812.035	A	79-400
812.037	A	79-400
812.14	A	79-163
	A	79-294
817.234	A&T fm 627.7375	79-81
817.43	A	79-164
817.45	A	79-164
817.52	A	79-164
817.562	N	79-113
823.14	N	79-61
827.045	N	79-69
	Rn as 918.17	
827.07	A	79-164
	A	79-203
827.09	A	79-287
	A	79-298
828.073	A	79-234
832.05	A	79-98
832.06	A	79-11
832.07	A	79-345
839.07	R	79-163
839.11	A	79-132
	A	79-163
839.25	A	79-163
843.01	A	79-3
	A	79-8
	A	79-149
843.02	A	79-3
	A	79-8
843.08	A	79-8
843.165	N	79-63
847.0125	A	79-96
847.06	A	79-134
849.06	A	79-11
	R	79-163
849.093	A	79-318
860.05	A	79-360
860.06	R	79-360
860.08	A	79-360
860.09	A	79-360
860.091	N	79-360
860.121	N	79-360
867.01	R	79-163
867.02	T to 877.16	
870.04	A	79-8
872.04	A	79-164
876.50	A	79-164
877.15	N	79-108
877.16	T fm 867.02	
893.02	A	79-164
	A	79-325
893.03	A	79-325
893.04	A	79-12
893.09	A	79-8
893.12	A	79-164
893.13	A	79-1
	A	79-325
893.135	N	79-1
893.14	A	79-8
901.25	A	79-40
901.33	A	79-8
903.03	A	79-3
905.01	*A	79-235
905.37	*A	79-235
914.15	N	79-60
917.011	N	79-341
917.012	N	79-341
917.012(9)	N	79-341
	Rn as 917.018	
917.014	N	79-341
917.016	N	79-341
917.018	N	79-341
	Rn fm 917.012(9)	
917.019	N	79-341
917.13	R	79-341
917.14	R	79-341
917.17	R	79-341
917.175	R	79-341
917.176	R	79-341
917.18	R	79-341
917.19	R	79-341
917.20	R	79-341
917.21	A	78-630
	R	79-341
917.215	A	79-3
	R	79-341
917.216	R	79-341
917.217	A	78-630
	R	79-341
917.218	R	79-341
917.22	R	79-341
917.225	R	79-341
917.24	R	79-341
917.25	R	79-341
917.31	R	79-341
917.32	R	79-341
918.017	R	79-164
918.11	R	79-336
918.15	A&T to 394.902 XT to 394.902	79-336
	A	79-400
918.15(4)	N	79-336
	Rn fm 394.904	
918.17	N	79-69
	Rn fm 794.022(3) and 827.045	
921.141	A	79-353
921.16	A	79-3
	A	79-42
	A	79-310
921.161	A	79-3
921.18	A	79-3
921.20	A	79-3
921.21	A	79-3
921.22	A	79-3
921.231	A	79-3
922.11	A	79-3
924.03	R	79-163
925.10	A&T to 394.903 XT to 394.903	79-336
	A	79-400
933.07	A	79-131
934.03	A	79-164
934.07	A	79-8
936.003	A	79-400
941.23	A	79-3
941.48	R	79-164
941.57	A	79-3
943.04	A	79-8
943.12	A	79-400
943.22	A	79-400
943.25	A	79-164
	A	79-190
943.36	A	79-190
943.405	A	79-164
	A	79-190
943.46	A	79-218
943.461	A	79-218
	A	79-400
943.464	A	79-400
943.465	N	79-218
944.02	A	79-3
944.023	A	79-3
944.025	A	79-3
944.026	A	79-3
944.05	A	79-3
944.06	A	79-3
944.062	A	79-164
944.063	A	79-3
944.064	A	79-3
944.071	R	79-164
944.08	A	79-3

TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

F. S. Sec. No.	Key	Session Law Ch. No.
944.09	A	79-3
944.091	A	79-3
944.10	A	79-3
944.11	A	79-3
944.13	A	79-3
944.14	A	79-3
944.15	A	79-3
944.16	A	79-3
944.17	A	79-3
944.18	A	79-3
944.19	A	79-3
944.23	A	79-3
944.24	A	79-3
	A	79-331
944.25	A	79-3
944.275	A	79-3
944.28	A	79-3
944.291	A	79-3
944.293	A	79-3
944.30	A	79-3
944.31	A	79-3
944.32	A	79-3
944.36	A	79-3
944.37	A	79-3
944.38	A	79-3
944.39	A	79-3
944.43	A	79-3
944.44	A	79-3
944.47	A	79-3
944.49	A	79-3
	A	79-40
944.50	A	79-3
944.512	A	79-3
	A	79-400
944.52	A	79-3
944.551	A	79-3
	A	79-7
944.57	A	79-3
944.585	A	79-400
944.596	N	79-75
945.01	A	79-3
945.025	A	79-3
945.031	A	79-3

F. S. Sec. No.	Key	Session Law Ch. No.
945.04	A	79-3
945.045	A	79-3
945.047	N	79-302
945.061	A	79-3
945.065	A	79-3
945.081	A	79-3
945.09	A	79-3
945.091	A	79-3
945.10	A	79-3
945.12	A	79-3
	A	79-341
945.13	A	79-3
945.14	A	79-3
945.16	A	79-3
	A	79-190
945.161	A	79-3
	A	79-164
945.17	A	79-3
945.19	A	79-3
945.20	A	79-3
945.21	A	79-3
945.215	N	79-78
945.25	A	79-3
945.26	A	79-3
945.27	A	79-3
945.30	A	79-3
947.005	A	79-3
947.01	A	79-3
947.03	A	79-42
947.04	A	79-42
947.06	A	79-42
947.095	A	79-42
947.10	A	79-3
947.13	A	79-3
947.135	A	79-3
	A	79-42
	A	79-164
947.16	A	79-3
	A	79-42
	A	79-164
	A	79-310
	A	79-341
947.165	A	79-42
	A	79-310

F. S. Sec. No.	Key	Session Law Ch. No.
947.172	A	79-3
	A	79-42
947.173	A	79-42
	A	79-164
947.174	A	79-42
	A	79-310
947.175	A	79-3
947.181	A	79-400
947.19	A	79-42
947.23	A	79-42
948.01	A	79-3
948.04	A	79-77
949.08	A	79-3
951.01	A	79-3
951.02	A	79-3
951.06	A	79-3
951.07	A	79-3
951.17	A	79-3
951.18	A	79-3
951.23	A	79-3
951.24	A	79-3
951.25	N	79-93
958.03	A	79-3
959.011	A	79-190
959.022	A	79-12
	A	79-164
959.06	A	79-12
959.10	A	79-12
959.116	A	79-3
959.185	A	79-12
959.21	A	79-12
959.24	A	79-400
959.25	A	79-12
959.28	A	79-12
960.04	A	79-297
960.06	A	79-400
960.09	A	79-400
960.13	A	79-40
	A	79-400
960.14	A	79-400
960.17	A	79-400
960.20	A	79-400
960.21	A	79-400

Official

FLORIDA STATUTES

1979

Prepared by
STATUTORY REVISION DIVISION
of the
Joint Legislative Management Committee

Published by the
STATE OF FLORIDA
TALLAHASSEE

Seventeenth Edition	1979—16,500 sets
Sixteenth Edition	1977—16,000 sets
Fifteenth Edition	1975—15,000 sets
Fourteenth Edition	1973—10,500 sets
Thirteenth Edition	1971—9000 sets
Twelfth Edition	1969—8000 sets
Eleventh Edition	1967—7000 sets
Tenth Edition	1965—6900 sets
Ninth Edition	1963—6100 sets
Eighth Edition	1961—5500 sets
Seventh Edition	1959—5250 sets
Sixth Edition	1957—5000 sets
Fifth Edition	1955—4750 sets
Fourth Edition	1953—4500 sets
Third Edition	1951—4000 sets
Second Edition	1949—3500 sets
First Edition	1941—2500 sets

TABLE OF CONTENTS

VOLUME I

VOLUME 2

VOLUME 3

VOLUME 4

EDITORIAL STAFF

Jane Reynolds Harris ..... Director
John P. Obarski ..... Administrative Manager
Lilyan D. Garrison ..... Administrative Assistant
Don Arden Boggs ..... Attorney
Wayne L. Feakes ..... Attorney
Theodore R. Gay ..... Attorney
Joanna Martin ..... Attorney
Mary Frances Brown ..... Legal Proofreader
Frieda J. Chason ..... Legal Proofreader
Elizabeth M. Cunkle ..... Secretary
Vivian J. Gould ..... Legislative Research Assistant
Karin D. Hampton ..... Editor
Sara B. Henry ..... Legal Proofreader
Madeline V. Herold ..... Legal Proofreader
Philip W. Herron ..... Legislative Research Assistant
Shirley R. Joyce ..... Terminal Operator-Editor
Jean T. LaBarbera ..... Legislative Research Assistant
Elizabeth R. Marsh ..... Legal Proofreader
Cheryl B. Miles ..... Editor
Enid H. Myers ..... Editor
Alexander Panagotacos ..... Legal Proofreader
Eleanor G. Register ..... Terminal Operator-Editor
Alice D. Schremp ..... Legal Proofreader
Evelyn J. Slusher ..... Editor
Frances V. Stoutamire ..... Legal Proofreader
Virginia B. Strickland ..... Executive Secretary
Jeanette C. Sweeney ..... Legal Proofreader
Sue Traylor ..... Terminal Operator-Editor
Jennie W. Williams ..... Legal Proofreader

THE LEGISLATURE OF THE STATE OF FLORIDA

Philip D. Lewis, *President of the Senate*
Dan I. Scarborough, *President pro tempore*
J. Hyatt Brown, *Speaker of the House of Representatives*
Richard S. Hodes, *Speaker pro tempore*

JOINT LEGISLATIVE MANAGEMENT COMMITTEE

Representative Elaine Gordon, *Chairperson*
Senator Mattox S. Hair, *Vice Chairperson*
Senator Wyon D. Childers
Senator William D. Gorman
Representative S. Curtis Kiser
Representative H. Lee Moffitt

Executive Director: Thomas L. Wade III

PREFACE

THE CONTINUOUS REVISION PROGRAM

Florida long followed the practice of publishing the entire body of general law in force after each regular biennial legislative session. With the advent of annual sessions following the adoption of the Florida Constitution as revised in 1968, this practice was necessarily altered. Thereafter, the *Florida Statutes* has been published biennially following each odd-year regular session, and a Supplement is published following each even-year regular session. The Supplement contains the full text of each section amended or added during that session, together with the catchlines of sections repealed or transferred or otherwise affected. Despite this change in practice, the principal advantage of the Florida system remains: It provides an up-to-date, authoritative statement of the general law for use by practitioners, judges, legislators, and other interested persons. The following paragraphs identify and explain the principal attributes and consequences of the Florida program that should be of interest to all who use the *Florida Statutes*.

Biennial adoption of the Florida Statutes.—A vitally important part of the continuous statutory revision program is the enactment of the biennial adoption act during each odd-year regular session. This act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425. It prospectively adopts as an official document the edition of the *Florida Statutes* to be published following that session. Perhaps more important, it adopts as the official statute law of the state those portions of that edition that are carried forward from the preceding regular edition.

As a result of the biennial adoption act, together with the standing provision of s. 11.242(5)(c) directing that the laws of a general and permanent nature enacted during the current session be meshed into the standing law and published as part of the *Florida Statutes*, each regular edition of the *Florida Statutes* contains matter having different evidential consequences: The portions carried forward from the preceding regular edition are the official law of the state and therefore constitute the best evidence of what the law is. The portions resulting from sessions occurring subsequent to the preceding odd-year regular session (i.e., the preceding even-year session, the current odd-year session, and any special sessions) are made prima facie evidence of the law in all courts of the state. Of course, during the period a provision is characterized as prima facie evidence, the enrolled act stands as the best evidence of the law as to the matter dealt with and would prevail in event of conflict.

Some consequences.—The Florida continuous statutory revision system has some significant consequences. For one, the task of the statutory researcher is greatly simplified in that he need examine only the current edition of the *Florida Statutes*, including the Supplement, if any, and the session law volumes for the period since publication of the preceding regular edition. Any law of a "general and permanent nature" enacted prior to that time which does not appear in the current edition stands repealed, both by the logic of the system and by the operation of s. 11.2422. See *National Bank of Jacksonville v. Williams*, 38 Fla. 305, 20 So. 931 (1896).

Another beneficial result of the Florida system is that the biennial adoption of the *Florida Statutes* is viewed as curing title defects that existed in the act as originally passed. See *State v. Lee*, 22 So.2d 804 (Fla. 1945). Thus, general legislation remains susceptible to attack on this ground only during the period between its original enactment and its subsequent adoption as the official law of the state two years or three years later, depending upon whether the original enactment occurred in an odd or even year.

Construction of acts enacted during the same session.—It occasionally happens that the Legislature enacts two or more bills that relate to the same provision of the *Florida Statutes*. In such cases, the editors must find the legislative intent from the best evidence available. When the provisions of two amendatory acts are not mutually inconsistent, the language is meshed and full effect is given to both acts. On the other hand, when the provisions of two amendatory statutes are in irreconcilable conflict, the editors apply the usual canons of statutory construction in determining which version to publish, inserting a note calling attention to the conflict and setting forth the alternative text pending resolution of the conflict by further legislative action. See also s. 1.04, F.S.

When an act purports to amend a section of the *Florida Statutes* which an earlier act has repealed, the course to be followed depends on whether the substance of the amendatory act makes sense standing alone. If it does not, it is omitted along with the repealed provision; if it does make sense standing alone, the amended or added portion of the amendatory act is published as a new enactment. Of course, if an act repeals a provision which an earlier act purported to amend, the amended provision is deleted.

ADDITIONAL FEATURES OF THE FLORIDA STATUTES

Arrangement of chapters and titles.—The object of any arrangement of compiled statutes is to facilitate the finding of the law. There are two methods of arrangement in general use in the United States: The "logical," or "topical," grouping of related subjects, as used in many digests; and the "alphabetical" arrangement, as used in legal encyclopedias. Florida has followed the majority of states in adopting the former of these arrangements.

The Numerical Title and Chapter Index printed in the front part of Volumes 1, 2, and 3 provides a quick reference to the chapters grouped under the logical title system. It lists groups of related subjects in a general subject field and lists in numerical order all chapters assigned. Some chapters have been divided into parts based on logical organization or related subject matter.

Numbering system.—The sections of the *Florida Statutes* are identified by decimal numbers. Having first been arranged by subject matter, the chapters of the *Florida Statutes* are each assigned a whole number which appears to the left of the decimal point in each number that identifies a section. The section within the chapter is then identified by the whole decimal number, including the digits appearing to the right of the decimal point. Thus, s. 16.01 would identify a section in chapter 16 of the *Statutes*.

The principal advantage of the decimal numbering system is its infinite flexibility. A new section can always be inserted between any two existing sections. For example, a new section to be inserted between ss. 16.12 and 16.13 could be assigned any number from 16.121 through 16.129 without using more than three digits to the right of the decimal point. This is because, in the decimal numbering system, 16.12 is the same as 16.120 and 16.13 is the same as 16.130. If the zeros are added, it can easily be seen that 16.125, for example, comes in between 16.120 and 16.130.

As a corollary to this discussion of the decimal numbering system, it should be emphasized that the number of a section has no significance other than to indicate its location. In other words, a section that is identified by a number containing four digits to the right of the decimal point is of no less dignity or importance than a section having a number with only two or three digits to the right of the decimal point.

The hierarchical arrangement of textual subdivisions is indicated by various designations. Thus, chapters are indicated by whole arabic numbers; sections, by numbers containing a decimal point; subsections, by whole arabic numbers enclosed by parentheses; paragraphs, by lowercase letters enclosed by parentheses; subparagraphs, by whole arabic numbers followed by a period; and sub-subparagraphs, by lowercase letters followed by a period. Subdivisions beyond the sub-subparagraph are not ordinarily used.

Finding the law.—There are two general methods for finding those sections of the *Florida Statutes* that deal with a particular subject matter. The choice of which to use on any particular occasion should be determined by the preference of the searcher and the degree of his familiarity with the *Statutes* and the indexing systems contained therein. One who has considerable familiarity with the body of law being searched may save some time by simply using the chapter outline which appears at the beginning of the appropriate chapter. The proper chapter can usually be located by use of either the Numerical Title and Chapter Index or the Alphabetical Index to Chapter Titles located at the front of Volumes 1, 2, and 3. One who is less familiar with the subject matter, or who is conducting a more wide-ranging search, will probably prefer to use the general index which is located in Volume 4.

History notes.—Every section is followed by a history note containing citations to the section and chapter number of the act that created the section and of each subsequent amendatory act. For an explanation of citations to early compilations, see the following segment of this Preface.

Cross-references.—Cross-references appear in the *Florida Statutes* in two forms. Whenever it might be helpful to the users of the *Statutes*, the editors insert notes immediately following the history notes containing references to related or qualifying sections.

Cross-references, both specific and general, also appear as incorporated into the text of the *Statutes* by legislative enactment, and a word of caution concerning such specific references is in order. Florida follows the rule of construction that is applied in most other jurisdictions, that a specific reference to a statute in effect incorporates the language of that statute as it existed at the time the reference was enacted, unaffected by any subsequent amendment or repeal of the incorporated statute. *Williams v. State*, 125 So. 358 (Fla. 1930); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

It is true that this rule often disappoints any popular expectation that such references are to the current text of the incorporated statute which may therefore be immediately consulted, but this is apparently unavoidable. Consequently, when users of the *Florida Statutes* encounter an internal reference to a specific statute that appears to be of critical importance to the meaning of the incorporating section, they will be well-advised to find and read the language actually incorporated.

On the other hand, the rule concerning a general reference to the body of law relating to a specified subject matter, without reference to a specific statute, is different in that a general reference is understood as including any subsequent amendment or repeal of the referenced body of law. *Williams v. State, ibid.; State ex rel. Springer v. Smith*, 189 So.2d 846 (Fla. 1966).

Table of section changes.—A table of changes to sections of the *Florida Statutes* is located at the front of Volumes 1, 2, and 3, printed on yellow paper. This table shows: (1) the sections, by number, that have been changed in any way and (2) whether the change consisted of an amendment, a repeal, a transfer, or an addition. It is a convenient device for pinpointing changes to a given segment of the general law.

Tracing table.—A table tracing all general laws enacted since 1919 into the *Florida Statutes* is located in Volume 4. The word "omitted" indicates that the act or section of an act was not of a "general and permanent nature." For the text of an omitted provision, consult the appropriate volume of the *Laws of Florida*.

Immediately following the tracing table for general laws enacted by the legislative process is a special table tracing various provisions of the Constitution of 1885, as amended, into the *Florida Statutes*. This conversion of constitutional provisions into statutory law occurred pursuant to the provisions of s. 10, Article XII of the Constitution as revised in 1968.

Table of repealed and transferred sections.—Immediately preceding the General Index in Volume 4 is a table showing repealed and transferred sections. Whenever a section is repealed or transferred to a new location in the *Statutes*, the former section number becomes inactive and will not be used again. Such numbers are then listed in this table, along with the chapter number of the session law which effected the repeal or transfer or the year in which the section number was changed in the course of revision. The entry for a transferred section also includes the new location of the section. For the text of the repealed or transferred section or the content of its history note, consult the edition of the *Statutes* prior to the repeal or transfer. The table is of primary utility to the researcher who is interested in the movement of the law as well as its current content.

Miscellaneous materials.—Section 11.242(4) authorizes the inclusion in the published edition of the *Florida Statutes*, in addition to the general laws as adopted and enacted, the Florida Constitution, and complete indexes, "such other matters, notes, data, and other material as may be deemed necessary or admissible by the joint committee for reference, convenience or interpretation." The various items published under this authority are located in Volume 4 and are identified in the table of contents at the front of each volume.

FORMER REVISIONS AND COMPILATIONS

The laws of general application of the territory of Florida and of the State of Florida have either been compiled unofficially or revised under authority of law and adopted as official statutes in the following publications: *Duval's Compilation of Territorial Laws, 1840* (compilation); *Thompson's Digest, 1847* (compilation); *Bush's Digest, 1872* (compilation); *McClellan's Digest, 1881* (compilation); *Revised Statutes* (R.S.) *1892* (revision enacted as a law); *General Statutes* (G.S.) *1906* (revision enacted as a law); *Revised General Statutes* (R.G.S.) *1920* (revision enacted as a law); *Compiled General Laws* (C.G.L.) *1927* (compilation unofficial); revision of 1940 and the beginning of the continuous revision system; adoption of the official 1940 revision in 1941 (F.S. 1941); the *Florida Statutes* of 1949 (F.S. 1949) (consolidation of 1941 statutes and supplements printed during the war years in 1943, 1945, 1947); and *Florida Statutes* of 1951, 1953, 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1969, 1971, 1973, 1975, and 1977.

THE STATUTORY REVISION DIVISION

By chapter 22012, Laws of Florida, 1943, the Legislature created a permanent statutory revision and legislative drafting and reference department under the supervision and control of the Attorney General. The principal functions of this department were to publish the general laws of the state and to maintain a bill drafting department and legislative reference library. In 1949 the Legislature established the Legislative Council and Legislative Reference Bureau as an arm of the Legislature and completely separate from the Attorney General. By chapter 67-472, Laws of Florida, the Legislature removed the Statutory Revision Department from the office of the Attorney General and established it as a part of the Legislative Reference Bureau under the supervision of the Legislative Council. By chapter 69-52, Laws of Florida, the Legislative Reference Bureau was renamed the Legislative Service Bureau, and the Statutory Revision Department became the Statutory Revision Service within the bureau and its work was made subject to the supervision of the Joint Legislative Management Committee, which replaced the Legislative Council. In 1971, by order of the Joint Legislative Management Committee, the statutory revision and indexing functions were consolidated in a new division of the Joint Legislative Management Committee, the Division of Statutory Revision and Indexing. The division was renamed the Division of Statutory Revision in 1978.

The powers, duties, and functions of the Statutory Revision Division are set out in s. 11.242. In general, they are: (1) to conduct a systematic and continuing study of the statutes and laws of the state to reduce their number and bulk; remove inconsistencies, redundancies, and unnecessary repetitions; and otherwise improve their clarity and facilitate their correct and proper interpretation; (2) to publish the *Florida Statutes*; and (3) to index various publications of the Joint Legislative Management Committee.

Section 11.242(5) defines the limits of the editorial license that is available to the Statutory Revision Division in preparing the *Florida Statutes*. Pursuant to this section, the division has broad authority over the arrangement and grammatical structure of the *Statutes*. Although the statute provides that the product of the division's work shall constitute only prima facie evidence of the law until it has subsequently been formally adopted, the Statutory Revision Division nonetheless traditionally exercises its editorial prerogatives with self-restraint. It believes its mandate to be to produce the *Statutes* in usable and literate form, but strictly within the framework of the legislative intent.

The reviser's office is a clearinghouse where lawyers, judges, legislators, and administrators may help to improve the statutory law of the state. Persons calling attention to errors, omissions, conflicts, and other defects in the law can be a material help in administering Florida's continuous revision program.

JANE REYNOLDS HARRIS, Director
Division of Statutory Revision

NUMERICAL TITLE AND CHAPTER INDEX

VOLUME 1—CHAPTERS 1-315

TITLE I

CONSTRUCTION OF STATUTES

TITLE II

STATE ORGANIZATION

TITLE III

LEGISLATIVE BRANCH—COMMISSIONS

TITLE IV

EXECUTIVE BRANCH

TITLE V

JUDICIAL BRANCH

NUMERICAL TITLE AND CHAPTER INDEX

NUMERICAL TITLE AND CHAPTER INDEX

NUMERICAL TITLE AND CHAPTER INDEX

NUMERICAL TITLE AND CHAPTER INDEX

TITLE XXVIII
PUBLIC HEALTH

TITLE XXXI

REGULATION OF PROFESSIONS AND OCCUPATIONS

NUMERICAL TITLE AND CHAPTER INDEX

Subject *Chapter*

TITLE XXXII

REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

VOLUME 3—CHAPTERS 561-960

TITLE XXXIII

ALCOHOLIC BEVERAGES

TITLE XXXIV

AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

TITLE XXXV

BUSINESS ORGANIZATIONS

TITLE XXXVI

INSURANCE

ALPHABETICAL INDEX TO CHAPTER TITLES

—A—

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

—E—

ALPHABETICAL CHAPTER INDEX

—F—

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

—N—

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

—T—

ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX

FLORIDA STATUTES
1979

Volume 2

TITLE XXIII

MOTOR VEHICLES

CHAPTER 316

STATE UNIFORM TRAFFIC CONTROL

316.001 Short title.—This chapter may be known and cited as the "Florida Uniform Traffic Control Law."

History.—s. 1, ch. 71-135.

316.002 Purpose.—It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.

History.—s. 1, ch. 71-135.

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) AUTHORIZED EMERGENCY VEHICLES.—Vehicles of the fire department (fire patrol), police vehicles and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, and the Department of Transportation as are designated or authorized by the department or the chief of police of an incorporated city or any sheriff of any of the various counties.

(2) BICYCLE.—Any device propelled by human power, or any "moped" propelled by a pedal-activated helper motor with a manufacturer's certified maximum rating of 1½ brake horsepower, upon which any person may ride, having 2 tandem wheels, either of which is 20 inches or more in diameter, and including any device generally recognized as a bicycle though equipped with 2 front or 2 rear wheels.

(3) BUS.—Any motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) BUSINESS DISTRICT.—The territory contiguous to, and including, a highway when 50 percent or more of the frontage thereon, for a distance of 300 feet or more, is occupied by buildings in use for business.

(5) CANCELLATION.—Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(6) CROSSWALK.—

(a) That part of a roadway at an intersection included within the connections of the lateral lines of

the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(7) DAYTIME.—The period from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(8) DEPARTMENT.—The Department of Highway Safety and Motor Vehicles as defined in s. 20.24. Any reference herein to Department of Transportation shall be construed as referring to the Department of Transportation, defined in s. 20.23, or the appropriate division thereof.

(9) DIRECTOR.—Director of the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles.

(10) DRIVER.—Any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

(11) EXPLOSIVE.—Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effect on contiguous objects or of destroying life or limb.

(12) FARM TRACTOR.—Any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(13) FLAMMABLE LIQUID.—Any liquid which has a flash point of 70° Fahrenheit or less, as determined by a Tagliabue or equivalent closed-cup test device.

(14) GROSS WEIGHT.—The weight of a vehicle without load plus the weight of any load thereon.

(15) HOUSE TRAILER.—

(a) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or

(b) A trailer or a semitrailer the chassis and exterior shell of which is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead, permanently or temporarily, for the advertising, sales, display, or promotion of merchandise or services or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(16) IMPLEMENT OF HUSBANDRY.—Any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(17) INTERSECTION.—

(a) The area embraced within the prolongation or connection of the lateral curblines; or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(18) LANED HIGHWAY.—A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(19) LIMITED ACCESS FACILITY.—A street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles are excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(20) LOCAL AUTHORITIES.—Includes all officers and public officials of the several counties and municipalities of this state.

(21) MOTOR VEHICLE.—Any vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, but not including any bicycle or "moped" as defined in subsection (2).

(22) MOTORCYCLE.—Any motor vehicle with a motor rated in excess of 1½ brake horsepower having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(23) MOTOR-DRIVEN CYCLES.—Every motorcycle and every motor scooter with a motor which produces not to exceed five brake horsepower, including every bicycle propelled by a helper motor rated in excess of 1½ brake horsepower.

(24) OFFICIAL TRAFFIC CONTROL SIGNAL.—Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(25) OFFICIAL TRAFFIC CONTROL DEVICES.—All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(26) OPERATOR.—Any person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(27) OWNER.—A person who holds the legal title of a vehicle, or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance

of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagor shall be deemed the owner, for the purposes of this chapter.

(28) PARK OR PARKING.—The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this chapter.

(29) PEDESTRIAN.—Any person afoot.

(30) PERSON.—Any natural person, firm, copartnership, association, or corporation.

(31) PNEUMATIC TIRE.—Any tire in which compressed air is designed to support the load.

(32) POLE TRAILER.—Any vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(33) POLICE OFFICER.—Any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations, including Florida highway patrolmen, sheriffs, deputy sheriffs, and municipal police officers.

(34) PRIVATE ROAD OR DRIVEWAY.—Any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(35) RADIOACTIVE MATERIALS.—Any materials or combination of materials which emit ionizing radiation spontaneously in which the radioactivity per gram of material, in any form, is greater than 0.002 microcuries.

(36) RAILROAD.—A carrier of persons or property upon cars operated upon stationary rails.

(37) RAILROAD SIGN OR SIGNAL.—Any sign, signal, or device erected by authority of a public body or official, or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(38) RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar.

(39) RESIDENCE DISTRICT.—The territory contiguous to, and including, a highway, not comprising a business district, when the property on such highway, for a distance of 300 feet or more, is, in the main, improved with residences or residences and buildings in use for business.

(40) REVOCATION.—Revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted by law.

(41) RIGHT-OF-WAY.—The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(42) ROAD TRACTOR.—Any motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

(43) ROADWAY.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways collectively.

(44) SADDLE MOUNT.—An arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground and only the rear wheels of the towed vehicle rest upon the ground.

(45) SAFETY ZONE.—The area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

(46) SCHOOL BUS.—Any motor vehicle that complies with the color and identification requirements of chapter 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children.

(47) SEMITRAILER.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

(48) SIDEWALK.—That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

(49) SPECIAL MOBILE EQUIPMENT.—Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(50) STAND OR STANDING.—The halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law under this chapter.

(51) STATE ROAD.—Any highway designated

as a state maintained road by the Department of Transportation.

(52) STOP.—When required, complete cessation from movement.

(53) STOP OR STOPPING.—When prohibited, any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with the directions of a law enforcement officer or traffic control sign or signal.

(54) STREET OR HIGHWAY.—The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

(55) SUSPENSION.—Temporary withdrawal of a licensee's privilege to drive a motor vehicle.

(56) THROUGH HIGHWAY.—Any highway or portion thereof on which vehicular traffic is given the right-of-way and at the entrances to which vehicular traffic from intersecting highways is required to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or yield sign, or otherwise in obedience to law.

(57) TIRE WIDTH.—Tire width is that width stated on the surface of the tire by the manufacturer of the tire, if the width stated does not exceed 2 inches more than the width of the tire contacting the surface.

(58) TRAFFIC.—Pedestrians, ridden or herded animals, and vehicles, streetcars, and other conveyances either singly or together while using any street or highway for purposes of travel.

(59) TRAILER.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.

(60) TRUCK.—Any motor vehicle designed, used, or maintained primarily for the transportation of property.

(61) TRUCK TRACTOR.—Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(62) MIGRANT FARM WORKER.—Any person employed in the planting, cultivation, or harvesting of agricultural crops who is not indigenous to, or domiciled in, the locale where so employed.

(63) MIGRANT FARM WORKER CARRIER.—Any person who transports, or who contracts or arranges for the transportation of, nine or more migrant farm workers to or from their employment by motor vehicle other than a passenger automobile or station wagon, except a migrant farm worker transporting himself or his immediate family.

(64) VEHICLE.—Any device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except bicycles or "mopeds" as defined in subsection (2) or devices used exclusively upon stationary rails or tracks.

(65) CHILD.—A child as defined in s. 39.01.

(66) COURT.—The court having jurisdiction over traffic offenses.

History.—s. 1, ch. 71-135; s. 1, ch. 72-179; s. 1, ch. 74-213; s. 1, ch. 76-286; s. 1, ch. 77-174.

316.006 Jurisdiction.—Jurisdiction to control traffic is vested as follows:

(1) STATE.—The Department of Transportation shall have all original jurisdiction over all state roads throughout this state, including those within the grounds of all state institutions and the boundaries of all dedicated state parks, and may place and maintain such traffic control devices which conform to its manual and specifications upon all such highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

(2) MUNICIPALITIES.—Chartered municipalities shall have original jurisdiction over all streets and highways located within their boundaries, except state roads, and may place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction as they shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. This subsection shall not limit those counties which have the charter powers to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities from the proper exercise of those powers by the placement and maintenance of traffic control devices which conform to the manual and specifications of the Department of Transportation on streets and highways located within municipal boundaries.

(3) COUNTIES.—Counties shall have original jurisdiction over all streets and highways located within their boundaries, except all state roads and those streets and highways specified in subsection (2), and may place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction as they shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. Notwithstanding the provisions of subsection (2), each county shall have original jurisdiction to regulate parking, by resolution of the board of county commissioners and the erection of signs conforming to the manual and specifications of the Department of Transportation, in parking areas located on property owned or leased by the county, whether or not such areas are located within the boundaries of chartered municipalities.

History.—s. 1, ch. 71-135; s. 1, ch. 71-982; s. 2, ch. 79-246.

316.007 Provisions uniform throughout state.—The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized. However, this section shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this chapter in the local court.

History.—s. 1, ch. 71-135; s. 2, ch. 71-982.

316.008 Powers of local authorities.—

(1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

(a) Regulating or prohibiting stopping, standing, or parking;

(b) Regulating traffic by means of police officers or official traffic control devices;

(c) Regulating or prohibiting processions or assemblages on the streets or highways, including all state or federal highways lying within their boundaries;

(d) Designating particular highways or roadways for use by traffic moving in one direction;

(e) Establishing speed limits for vehicles in public parks;

(f) Designating any street as a through street or designating any intersection as a stop or yield intersection;

(g) Restricting the use of streets;

(h) Regulating the operation of bicycles;

(i) Regulating or prohibiting the turning of vehicles or specified types of vehicles;

(j) Altering or establishing speed limits within the provisions of this chapter;

(k) Requiring written accident reports;

(l) Designating no-passing zones;

(m) Prohibiting or regulating the use of controlled access roadways by any class or kind of traffic;

(n) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(o) Designating hazardous railroad grade crossings in conformity to criteria promulgated by the Department of Transportation;

(p) Designating and regulating traffic on play streets;

(q) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except on a crosswalk;

(r) Regulating pedestrian crossings at unmarked crosswalks;

(s) Regulating persons upon skates, coasters, and other toy vehicles;

(t) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions.

(u) Enacting ordinances or erecting signs in the rights-of-way to control, regulate, or prohibit hitchhiking on streets or highways, including all state or federal highways lying within their boundaries.

(2) The municipality, through its duly authorized officers, shall have nonexclusive jurisdiction over the prosecution, trial, adjudication, and punishment of violations of this chapter when a violation occurs within the municipality and the person so charged is charged by a municipal police officer. The disposition of such matters in the municipality shall be in accordance with that municipality's charter. This subsection shall not limit those counties which have the charter power to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities from the proper exercise of those powers pertaining to the consolidation and unification of a traffic court system within said counties.

(3) No local authority shall erect or maintain any official traffic control device at any location so as to regulate the traffic on any state road unless approval in writing has first been obtained from the Department of Transportation.

History.—s. 1, ch. 71-135; s. 3, ch. 71-982; s. 1, ch. 76-72.

316.027 Accidents involving death or personal injuries.—

(1) The driver of any vehicle involved in an accident resulting in injury or death of any person shall immediately stop such vehicle at the scene of the accident, or as close thereto as possible, and shall forthwith return to, and in every event shall remain at the scene of, the accident until he has fulfilled the requirements of s. 316.062.

(2) Any person willfully failing to stop or to comply with the requirements of subsection (1) under such circumstances is guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for not more than 1 year or by fine of not more than $5,000 or by both such fine and imprisonment.

(3) The department shall revoke the operator's or chauffeur's license of the person so convicted.

(4) Every stop shall be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of such vehicle shall make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic. Any person failing to comply with the provisions of this subsection shall be punished as provided in s. 316.655.

History.—s. 1, ch. 71-135; s. 1, ch. 75-72; s. 5, ch. 76-31.

316.061 Accidents involving damage to vehicle or property.—

(1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, and shall forthwith return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of s. 316.062. Any person failing to stop or comply with said requirements shall, upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than 60 days or by both such fine and imprisonment.

(2) Every stop shall be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of such vehicle shall make every reasonable effort to move the vehicle or have it moved so as not to block the regular flow of traffic. Any person failing to comply with the provisions of this subsection shall be punished as provided in s. 316.655.

History.—s. 1, ch. 71-135; s. 3, ch. 74-377; s. 2, ch. 75-72; s. 9, ch. 76-31.

316.062 Duty to give information and render aid.—

(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property which is

driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving, and shall upon request and if available exhibit his license or permit to drive, to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in the accident and shall give such information and, upon request, exhibit such license or permit to any police officer at the scene of the accident or who is investigating the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

(2) In the event none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (1), and no police officer is present, the driver of any vehicle involved in such accident, after fulfilling all other requirements of s. 316.027 and subsection (1), insofar as possible on his part to be performed, shall forthwith report the accident to the nearest office of a duly authorized police authority and submit thereto the information specified in subsection (1).

History.—s. 1, ch. 71-135.

316.063 Duty upon damaging unattended vehicle or other property.—

(1) The driver of any vehicle which collides with, or is involved in an accident with, any vehicle or other property which is unattended, resulting in any damage to such other vehicle or property, shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle or other property of his name and address and the registration number of the vehicle he is driving, or shall attach securely in a conspicuous place in or on the vehicle or other property a written notice giving his name and address and the registration number of the vehicle he is driving, and shall without unnecessary delay notify the nearest office of a duly authorized police authority. Every such stop shall be made without obstructing traffic more than is necessary. If a damaged vehicle is obstructing traffic, the driver shall make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic. Any person failing to comply with the provisions of this section shall be punished as provided in s. 316.655.

(2) The law enforcement officer at the scene of an accident required to be reported in accordance with the provisions of subsection (1) or the law enforcement officer receiving a report by a driver as required by subsection (1) shall, if part or any of the property damaged is a fence or other structure used to house or contain livestock, promptly make a reasonable effort to notify the owner, occupant, or agent of this damage.

History.—s. 1, ch. 71-135; s. 3, ch. 75-72; s. 10, ch. 76-31; s. 1, ch. 77-265.

316.064 When driver unable to report.—

(1) An accident report is not required under this chapter from any person who is physically incapable of making a report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of an accident, as required in ss. 316.065 and 316.066, and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made the report not made by the driver.

(3) Whenever the driver is physically incapable of making a written report of an accident as required in this chapter, then the owner of the vehicle involved in the accident shall, within 5 days after the accident, make such report not made by the driver.

History.—s. 1, ch. 71-135.

316.065 Accidents; reports; penalties.—

(1) The driver of a vehicle involved in an accident resulting in injury to or death of any persons or property damage shall immediately by the quickest means of communication give notice of the accident to the local police department, if such accident occurs within a municipality; otherwise, to the office of the county sheriff or the nearest office or station of the Florida Highway Patrol.

(2) Every coroner or other official performing like functions, upon learning of the death of a person in his jurisdiction as the result of a traffic accident, shall immediately notify the nearest office or station of the department.

(3) Any person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by a bullet, or any other person to whom is brought for the purpose of repair a motor vehicle showing such evidence, shall make a report, or cause a report to be made, to the nearest local police station or Florida Highway Patrol office within 24 hours after the motor vehicle is received and before any repairs are made to the vehicle. The report shall contain the year, license number, make, model, and color of the vehicle and the name and address of the owner or person in possession of the vehicle.

(4) Any person who knowingly repairs a motor vehicle without having made a report as required by subsection (3) shall be punished as provided in s. 316.655. The owner and driver of a vehicle involved in an accident who makes a report thereof in accordance with subsection (1) or s. 316.066(1) shall not be liable hereunder.

History.—s. 1, ch. 71-135; s. 1, ch. 72-164; s. 1, ch. 73-25; s. 11, ch. 76-31.

316.066 Written reports of accidents.—

(1) The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or total damage to all property to an apparent extent of $100 or more shall, within 5 days after the accident, forward a written report of such accident to the department. However, when the investigating officer has made a written report of the accident, no written report need be forwarded to the department by the driver.

(2) The department may require any driver of a vehicle involved in an accident of which written report must be made as provided in this section to file supplemental written reports whenever the original report is insufficient in the opinion of the depart-

ment, and may require witnesses of accidents to render reports to the department.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which damage to property exceeds the amount of $100, or bodily injury, or death occurs, either at the time of and at the scene of the accident, or thereafter by interviewing participants or witnesses, shall, within 24 hours after completing the investigation, forward a written report of the accident to the department.

(4) All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use of the records for accident prevention purposes, except that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident, and except that the department shall disclose the final judicial disposition of the case indicating which if any of the parties were found guilty. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has, or claims to have, made such a report or upon demand of any court a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirements that such a report be made to the department.

History.—s. 1, ch. 71-135.

316.067 False reports.—Any person who gives information in oral or written reports as required in this chapter, knowing or having reason to believe that such information is false, shall be punished by a fine of not more than $500 or by imprisonment for not more than 60 days or by both such fine and imprisonment.

History.—s. 1, ch. 71-135; s. 4, ch. 74-377.

316.068 Accident report forms.—

(1) The department shall prepare and, upon request, supply to police departments, sheriffs, and other appropriate agencies or individuals forms for written accident reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The written reports shall call for sufficiently detailed information to disclose, with reference to a vehicle accident, the cause and conditions then existing and the persons and vehicles involved. Every accident report form shall call for the policy numbers of liability insurance and the names of carriers covering any vehicle involved in an accident required to be reported in writing by this chapter.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all the information required therein unless not available.

History.—s. 1, ch. 71-135; s. 2, ch. 74-201; s. 1, ch. 77-174.

316.069 Department to tabulate and analyze accident reports.—The department shall tabulate and may analyze all accident reports and shall publish, annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

History.—s. 1, ch. 71-135.

316.070 Exchange of information at scene of accident.—The law enforcement officer at the scene of an accident required to be reported in accordance with the provisions of s. 316.066 shall instruct the driver of each vehicle involved in the accident to report the following to all other parties suffering injury or property damage as an apparent result of the accident:

(1) The name and address of the owner and the driver of the vehicle.

(2) The license number of the vehicle.

(3) The name of the liability carrier for the vehicle.

History.—s. 1, ch. 74-201.

316.071 Disabled vehicles obstructing traffic.—Whenever a vehicle is disabled on any street or highway within the state or for any reason obstructs the regular flow of traffic, the driver shall move the vehicle so as not to obstruct the regular flow of traffic or, if he cannot move the vehicle alone, solicit help and move the vehicle so as not to obstruct the regular flow of traffic. Any person failing to comply with the provisions of this section shall be punished as provided in s. 316.655.

History.—s. 4, ch. 75-72; ss. 1, 33, ch. 76-31.
Note.—Former s. 316.1031.

316.072 Obedience to and effect of traffic laws.—

(1) PROVISIONS OF CHAPTER REFERRING TO VEHICLES UPON THE HIGHWAYS.—The provisions of this chapter shall apply to the operation of vehicles and bicycles and the movement of pedestrians upon all state-maintained highways, county-maintained highways, and municipal streets and alleys and wherever vehicles have the right to travel.

(2) REQUIRED OBEDIENCE TO TRAFFIC LAWS.—It is unlawful for any person to do any act forbidden, or to fail to perform any act required, in this chapter. It is unlawful for the owner, or any other person employing or otherwise directing the driver of any vehicle, to require or knowingly permit the operation of such vehicle upon a highway in any manner contrary to law.

(3) OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.—It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to fail or refuse to comply with any lawful order or direction of any police officer, or member of the fire department at the scene of a fire, who is invested by law or ordinance with authority to direct, control, or regulate traffic.

(4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER; EXCEPTIONS.—

(a) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply

to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter.

(b) Unless specifically made applicable, the provisions of this chapter, except those contained in ss. 316.192, 316.1925, and 316.193, shall not apply to persons, teams, or motor vehicles and other equipment while actually engaged in work upon the surface of a highway, but shall apply to such persons and vehicles when traveling to or from such work.

(5) AUTHORIZED EMERGENCY VEHICLES.—

(a) The driver of an authorized emergency vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to a fire alarm, but not upon returning from a fire, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle, except when otherwise directed by a police officer, may:

1. Park or stand, irrespective of the provisions of this chapter;

2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the maximum speed limits so long as he does not endanger life or property;

4. Disregard regulations governing direction or movement or turning in specified directions, so long as he does not endanger life or property.

(c) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History.—s. 1, ch. 71-135; ss. 1, 7, ch. 76-31; s. 2, ch. 77-456.
Note.—Former s. 316.051.

316.073 Applicability to animals and animal-drawn vehicles.—Every person riding an animal or driving an animal-drawn vehicle upon a roadway shall be subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.052.

316.074 Obedience to and required traffic control devices.—

(1) The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto, placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(2) No person shall drive any vehicle from a roadway to another roadway to avoid obeying the indicated traffic control indicated by such traffic control device.

(3) No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(4) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary shall be established by competent evidence.

(5) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter unless the contrary shall be established by competent evidence.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.053.

316.0745 Uniform signals and devices.—

(1) The Department of Transportation shall adopt a uniform system of traffic control devices for use on the streets and highways of the state. The uniform system shall, insofar as is practicable, conform to the system adopted by the American Association of State Highway Officials and shall be revised from time to time to include changes necessary to conform to a uniform national system or to meet local and state needs. The Department of Transportation may call upon representatives of local authorities to assist in the preparation or revision of the uniform system of traffic control devices.

(2) The Department of Transportation shall compile and publish a manual of uniform traffic control devices which defines the uniform system adopted pursuant to subsection (1), and shall compile and publish minimum specifications for traffic control signals and devices certified by it as conforming with the uniform system and shall make copies of such manual and specifications available to all counties, municipalities and other public bodies having jurisdiction of streets or highways open to the public in this state.

(3) All official traffic control signals or official traffic control devices purchased and installed in this state by any public body or official shall conform with the manual and specifications published by the Department of Transportation pursuant to subsection (2). All traffic control devices other than traffic control signals purchased prior to July 1, 1972, not conforming to said system may continue in use until January 1, 1975, after which time such devices must comply with the uniform system. All traffic control signals purchased prior to January 1, 1972 not conforming to said system may continue in use until January 1, 1980, after which time such signals must comply with the uniform system.

(4) It shall be unlawful for any public body or official to purchase, or for anyone to sell any traffic control signal or device unless it conforms with the manual and specifications published by the Department of Transportation and is certified to be of such conformance prior to sale. Any manufacturer or ven-

dor who sells any traffic control signal, guide, or directional sign or device without such certification shall be ineligible to bid or furnish traffic control devices to any public body or official for such period of time as may be established by the Department of Transportation; however, such period of time shall be for not less than 1 year from the date of notification of such ineligibility.

(5) Any system of traffic control devices controlled and operated from a remote location by electronic computers or similar devices shall meet all requirements established for the uniform system and where such systems affect the movement of traffic on state roads the design of the system shall be reviewed and approved by the Department of Transportation.

(6) The Department of Transportation is authorized, after hearing pursuant to 14 days' notice, to direct the removal of any purported traffic control device wherever located which fails to meet the requirements of this section. The public agency erecting or installing the same shall immediately remove said device or signal upon the direction of the Department of Transportation and may not, for a period of 5 years, install any replacement or new traffic control devices paid for in part or in full with revenues raised by the state unless written prior approval is received from the Department of Transportation. Any additional violation by a public body or official shall be cause for the withholding of state funds for traffic control purposes until such public body or official demonstrates to the Department of Transportation that it is complying with this section.

(7) The Department of Transportation is authorized to permit traffic control devices not in conformity with the uniform system upon showing of good cause.

History.—s. 1, ch. 71-135; s. 1, ch. 72-189; s. 1, ch. 73-310; s. 1, ch. 76-31; s. 1, ch. 77-146.
Note.—Former s. 316.131.

[1]316.0747 Sale or purchase of traffic control devices by nongovernmental entities; prohibitions.—

(1) It is unlawful for any nongovernmental entity to use any traffic control device at any place where the general public is invited, unless such device conforms to the uniform system of traffic control devices adopted by the Department of Transportation pursuant to this chapter.

(2) Any nonconforming traffic control device in use by a nongovernmental entity prior to January 1, 1980, may be used for the remainder of its useful life, after which any replacement device shall conform to the uniform system of traffic control devices adopted by the Department of Transportation.

History.—s. 1, ch. 79-376.
[1]Note.—Effective January 1, 1980.

316.075 Traffic control signal devices.—Except for automatic warning signal lights installed or to be installed at railroad crossings, whenever traffic, including municipal traffic, is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) GREEN INDICATION.—

(a) Vehicular traffic facing a circular green signal may proceed cautiously straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, as directed by the manual, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian control signal as provided in s. 316.0755, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) STEADY YELLOW INDICATION.—

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in s. 316.0755, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall start to cross the roadway.

(3) STEADY RED INDICATION.—

(a) Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown; however:

1. The driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience to a steady red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at said intersection, except that municipal and county authorities may prohibit any such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is attached to the traffic control signal device at said intersection.

2. The driver of a vehicle on a one-way street which intersects another one-way street on which traffic moves to the left shall stop in obedience to a steady red signal, but may then make a left turn into the one-way street, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that munici-

pal and county authorities may prohibit any such left turn as described, which prohibition shall be effective when a sign giving notice thereof is attached to the traffic control signal device at the intersection.

(b) Unless otherwise directed by a pedestrian control signal as provided in s. 316.0755, pedestrians facing a steady red signal shall not enter the roadway.

(4) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(5)(a) No traffic control signal device shall be used which does not exhibit a yellow or "caution" light between the green or "go" signal and the red or "stop" signal.

(b) No traffic control signal device shall display other than the color red at the top of the vertical signal, nor shall it display other than the color red at the extreme left of the horizontal signal.

History.—s. 1, ch. 71-135; s. 1, ch. 71-376; ss. 1, 15, ch. 76-31.
Note.—Former s. 316.138.

316.0755 Pedestrian control signals.—Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place, such signals shall indicate as follows:

(1) WALK.—Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the driver of any vehicle except an emergency vehicle.

(2) DON'T WALK.—No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "walk" signal may proceed to a sidewalk or safety zone while the "don't walk" signal is showing.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.132.

316.076 Flashing signals.—Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1) FLASHING RED (STOP SIGNAL).—When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) FLASHING YELLOW (CAUTION SIGNAL).—When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(3) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in ss. 316.158 and 316.159.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.133.

316.0765 Lane direction control signals.—When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane or lanes over which a green signal is shown, but shall not enter or travel in any lane or lanes over which a red signal is shown.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.134.

316.077 Display of unauthorized signs, signals or markings.—

(1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal or marking is declared to be a public nuisance and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.135.

316.0775 Interference with official traffic control devices or railroad signs or signals.—No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.136.

316.078 Detour signs to be respected.—It is unlawful to tear down or deface any detour sign or to break down or drive around any barricade erected for the purpose of closing any section of a public street or highway to traffic during the construction or repair thereof or to drive over such section of public street or highway until again thrown open to public traffic. However, such restriction shall not apply to the person in charge of the construction or repairs.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.056.

316.079 Duty to yield to highway construction workers.—Every driver of a vehicle shall yield the right-of-way to a pedestrian worker and flagman engaged in maintenance or construction work on a

highway whenever the driver is reasonably and lawfully notified of the presence of such worker by a flagman and a warning sign or device.

History.—s. 1, ch. 75-132; s. 1, ch. 76-31.
Note.—Former s. 316.0565.

316.081 Driving on right side of roadway; exceptions.—

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under paragraph (b) of subsection (1). However, this subsection shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road, or driveway.

History.—s. 1, ch. 71-135.

316.082 Passing vehicles proceeding in opposite directions.—Drivers of vehicles proceeding in opposite directions shall pass each other to the right; and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway, as nearly as possible.

History.—s. 1, ch. 71-135.

316.083 Overtaking and passing a vehicle.—The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History.—s. 1, ch. 71-135.

316.084 When overtaking on the right is permitted.—

(1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving traffic in each direction;

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History.—s. 1, ch. 71-135.

316.085 Limitations on overtaking, passing, changing lanes and changing course.—

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this chapter and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction of any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle.

(2) No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

History.—s. 1, ch. 71-135.

316.087 Further limitations on driving to left of center of roadway.—

(1) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching within 100 feet of or traversing any intersection or railroad grade crossing, except that this section shall not apply to any intersection on a state-or county-maintained highway located outside city limits unless such intersection is marked by an official Department of Transportation or county road department traffic control device indicating an intersection either by symbol or by words and such marking is placed at least 100 feet before the intersection;

(c) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

History.—s. 1, ch. 71-135.

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones, and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), no driver shall at any time drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.086.

316.088 One-way roadways and rotary traffic islands.—

(1) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at such times as shall be indicated by official traffic control devices.

(2) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at such times as shall be indicated by official traffic control devices.

(3) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History.—s. 1, ch. 71-135.

316.089 Driving on roadways laned for traffic.—Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, when in preparation for making a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic control devices.

(3) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway; and drivers of vehicles shall obey the directions of every such device.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

History.—s. 1, ch. 71-135.

316.0895 Following too closely.—

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway.

(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.092.

316.090 Driving on divided highways.—Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority.

History.—s. 1, ch. 71-135.

316.091 Limited access.—No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority.

History.—s. 1, ch. 71-135.

316.121 Vehicles approaching or entering intersections.—

(1) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(2) When two vehicles enter an intersection from different highways at the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The driver of a vehicle about to enter or cross a state-maintained road or highway from a paved or unpaved road and not subject to control by an official traffic control device shall yield the right-of-way to all vehicles approaching on the state-maintained road or highway.

(4) The driver of a vehicle about to enter or cross a paved county-or city-maintained road or highway from an unpaved road or highway and not subject to control by an official traffic control device shall yield the right-of-way to all vehicles approaching on said paved road or highway.

(5) The foregoing rules are modified at through highways and otherwise, as hereinafter stated.

History.—s. 1, ch. 71-135.

316.122 Vehicle turning left.—The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

History.—s. 1, ch. 71-135.

316.123 Vehicle entering stop or yield intersection.—

(1) The right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in s. 316.006.

(2)(a) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

(b) At a four-way stop intersection, the driver of the first vehicle to stop at the intersection shall be the first to proceed. If two or more vehicles reach the four-way stop intersection at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If such a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield the right-of-way.

History.—s. 1, ch. 71-135; s. 1, ch. 77-229.

316.1235 Vehicle approaching intersection in which traffic lights are inoperative.—The driver of a vehicle approaching an intersection in which the traffic lights are inoperative shall stop in the manner indicated in s. 316.123(2) for approaching a stop intersection. In the event that only some of the traffic lights within an intersection are inoperative, the driver of a vehicle approaching an inoperative light shall stop in the above-prescribed manner.

History.—s. 2, ch. 77-229.

316.125 Vehicle entering highway from private road or driveway or emerging from alley, driveway or building.—

(1) The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered which are so close thereto as to constitute an immediate hazard.

(2) The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon and shall yield to all

vehicles and pedestrians which are so close thereto as to constitute an immediate hazard.

History.—s. 1, ch. 71-135.

316.126 Operation of vehicles and actions of pedestrians on approach of authorized emergency vehicle.—

(1) Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by any law enforcement officer.

(2) Every pedestrian using the road right-of-way shall yield the right-of-way until the authorized emergency vehicle has passed, unless otherwise directed by any police officer.

(3) Any authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device. While en route to such emergency, the emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state.

(4) Nothing herein contained shall diminish or enlarge any rules of evidence or liability in any case involving the operation of an emergency vehicle.

(5) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History.—s. 1, ch. 71-135.

316.130 Pedestrian obedience to traffic control devices and traffic regulations.—

(1) A pedestrian shall obey the instructions of any official traffic control device specifically applicable to him unless otherwise directed by a police officer.

(2) Pedestrians shall be subject to traffic control signals at intersections as provided in s. 316.075, but at all other places pedestrians shall be accorded the privileges and be subject to the restrictions stated in this chapter.

(3) Where sidewalks are provided, no pedestrian shall, unless required by other circumstances, walk along and upon the portion of a roadway paved for vehicular traffic.

(4) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the shoulder on the left side of the roadway in relation to the pedestrian's direction of travel, facing traffic which may approach from the opposite direction.

(5) No person shall stand in the portion of a roadway paved for vehicular traffic for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(6) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(7) When traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(8) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(9) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(10) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(11) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(12) No pedestrian shall, except in a marked crosswalk, cross a roadway at any other place than by a route at right angles to the curb or by the shortest route to the opposite curb.

(13) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(14) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices, and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(15) Notwithstanding the foregoing provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

(16) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given. No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

History.—s. 1, ch. 71-135; ss. 1, 8, ch. 76-31.
Note.—Former s. 316.057.

316.1355 Driving through safety zone prohib-

ited.—No vehicle shall at any time be driven through or within a safety zone.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.113.

316.151 Required position and method of turning at intersections.—The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

History.—s. 1, ch. 71-135.

316.1515 Limitations on turning around.—The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.153.

316.152 Turning on curve or crest of grade prohibited.—No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near, the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

History.—s. 1, ch. 71-135.

316.154 Starting parked vehicle.—No person shall start a vehicle which is stopped, standing, or parked, unless and until such movement can be made with reasonable safety.

History.—s. 1, ch. 71-135.

316.155 When signal required.—

(1) No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by the movement.

(2) A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear, when there is opportunity to give such signal.

(4) The signals provided for in s. 316.156 shall be used to indicate an intention to turn and shall not, except as provided in s. 316.2397, be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

History.—s. 1, ch. 71-135; s. 16, ch. 76-31.

316.156 Signals by hand and arm or signal lamps.—

(1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (2).

(2) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle and also to any combination of vehicles.

History.—s. 1, ch. 71-135.

316.157 Method of giving hand and arm signals.—All signals herein required to be given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) LEFT TURN.—Hand and arm extended horizontally.

(2) RIGHT TURN.—Hand and arm extended upward.

(3) STOP OR DECREASE SPEED.—Hand and arm extended downward.

History.—s. 1, ch. 71-135.

316.1575 Obedience to signal indicating approach of train.—

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, he shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) A railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance, and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;

(d) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.054.

316.158 All vehicles to stop at certain railroad grade crossings.—The Department of Transportation and local authorities, in conformity to criteria promulgated by the Department of Transportation, are authorized to designate particularly dangerous highway grade crossings of railroads for the purpose of erecting traffic control devices. When such devices are erected, the driver of any vehicle, when directed to stop, shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

History.—s. 1, ch. 71-135.

316.159 Certain vehicles to stop at all railroad grade crossings.—

(1) The driver of any motor vehicle carrying passengers for hire, excluding taxicabs, of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad and, while so stopped, shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in a gear of the vehicle so that there will be no necessity for changing gears while traversing the crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) No stop need be made at any such crossing where a police officer, a traffic control signal, or a sign directs traffic to proceed. However, any school bus carrying any school child shall be required to stop unless directed to proceed by a police officer.

History.—s. 1, ch. 71-135; s. 1, ch. 78-52.

316.170 Moving heavy equipment at railroad grade crossings.—

(1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, or roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than ½ inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a station agent or other proper authority of the railroad, and a reasonable time shall be given to the railroad to provide proper protection at the crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of the railroad and while so stopped shall listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is being given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.055.

316.171 Signs at dangerous crossings.—Every railroad company operating or leasing any track intersecting a public road at grade and falling within the purview of ss. 316.158 and 316.159 shall place and maintain a suitable signboard on each side of the track or tracks on the right side of the highway not less than 10 feet from the ground and 40 inches by 50 inches, 200 feet from the crossing, which said board shall be painted with black lettering and white background with the following inscription thereon: STOP—RAILROAD CROSSING—FLORIDA LAW. For use at night the signboard shall be equipped with a suitable mirror reflector of such size, color, and description as may be approved by the Department of Transportation for use at railroad crossings, so designated that same will reflect the rays of a motor vehicle headlight. Where railroad warning signs have already been placed, or shall hereafter be placed, at any railroad crossing by the Department of Transportation, the railroad companies shall not be required to erect or maintain additional signs or reflectors at such crossings.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.137.

316.172 Traffic to stop for school bus.—

(1) Any person using, operating, or driving a motor vehicle on or over the roads or highways of this state shall, upon approaching any school bus used in transporting school pupils to or from school which is properly identified in substantial accordance with the provisions of s. 234.051, and which displays a stop signal, bring such motor vehicle to a full stop while the bus is stopped, and the motor vehicle shall not pass the school bus until the signal has been withdrawn.

(2) The driver of a vehicle upon a divided highway where the one-way roadways are separated by an intervening unpaved space of at least 5 feet or physical barrier need not stop upon meeting or passing a school bus which is on a different roadway.

(3) Every school bus shall stop as far to the right of the street as possible before discharging or loading passengers and, when possible, shall not stop where the visibility is obscured for a distance of 200 feet either way from the bus.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 89, ch. 77-104.

Note.—Former s. 316.139.

316.183 Unlawful speed.—

(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards, then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) On all streets or highways, the maximum speed limits for all vehicles shall be 30 miles per hour in business or residential districts, and 55 miles per hour at any time at all other locations. The minimum speed limit on all highways which comprise a part of the national system of interstate and defense highways and have not less than four lanes shall be 40 miles per hour.

(3) No school bus shall exceed the maximum speed limits provided in subsection (2).

(4) The driver of every vehicle shall, consistent with the requirements of subsection (1), drive at an appropriately reduced speed when:

(a) Approaching and crossing an intersection or railway grade crossing;

(b) Approaching and going around a curve;

(c) Approaching a hill crest;

(d) Traveling upon any narrow or winding roadway; and

(e) Any special hazard exists with respect to pedestrians or other traffic, or by reason of weather or highway conditions.

(5) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(6) No person shall operate any motor-driven cycle at nighttime at a speed greater than 35 miles per hour unless such motor-driven cycle is equipped with a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(7) No person shall operate a "moped," as defined in subsection 316.003(2), at a speed greater than 25 miles per hour.

History.—s. 1, ch. 71-135; s. 1, ch. 76-159; s. 3, ch. 76-218; s. 3, ch. 76-286; s. 1, ch. 77-174.

316.185 Special hazards.—The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazards exist or may exist with respect to pedestrians or other traffic or by reason of weather or other roadway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care.

History.—s. 1, ch. 71-135.

316.187 Establishment of state speed zones.—

(1) Whenever the Department of Transportation determines, upon the basis of an engineering and traffic investigation, that any speed hereinafter set forth in s. 316.183(2) or (3), is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place, or upon any part of a highway outside of a municipality or upon any state roads, connecting links or extensions thereof within a municipality, the Department of Transportation may determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at the intersection or other place or part of the highway.

(2) The Department of Transportation is authorized to set such maximum and minimum speed limits for travel over those roadways under its authority as it deems safe and advisable, not to exceed as a maximum limit 55 miles per hour, but the maximum limit shall be increased to not more than 70 m.p.h., in the event the Federal Congress approves such limits on limited access highways.

(3) Violation of the speed limits established pursuant to this section shall be punished as set forth in s. 316.655.

History.—s. 1, ch. 71-135; ss. 1, 18, ch. 76-31; s. 1, ch. 76-218; s. 1, ch. 77-174.
Note.—Former s. 316.181.

316.189 Establishment of municipal and county speed zones.—

(1) MUNICIPAL SPEED.—The maximum speed within any municipality is 30 miles per hour in the daytime or nighttime. However, a municipality may set speed zones altering such speed, both as to maximum, not to exceed 55 miles per hour, and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no changes shall be made on state highways or connecting links or extensions thereof, which shall be changed only by the Department of Transportation.

(2) SPEED ON COUNTY ROADS.—The maximum speed on any county-maintained road is:

(a) In any business or residence district, 30 miles per hour in the daytime or nighttime;

(b) On any other part of a county road not a business or residence district, as set forth in s. 316.183.

However, the board of county commissioners may set speed zones altering such speeds, both as to maximum and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no such speed zone shall permit a speed of more than 55 miles per hour.

(3) POSTING OF SPEED LIMITS.—All speed zones shall be posted with clearly legible signs. No change in speeds from 30 miles per hour or from those established in s. 316.183 shall take effect until the zone is posted by the authority changing the speed pursuant to this section and s. 316.187. All signs which limit or establish speed limits, maximum and minimum, shall be so placed and so painted as to be plainly visible and legible in daylight or in darkness when illuminated by headlights.

(4) PENALTY.—Violation of the speed limits established pursuant to this section shall be punished as set forth in s. 316.655.

History.—s. 1, ch. 71-135; ss. 1, 19, ch. 76-31; s. 2, ch. 76-218.
Note.—Former s. 316.182.

316.1895 Establishment of school speed zones, enforcement; designation.—

(1)(a) The Department of Transportation, pursuant to the authority granted under s. 316.0745, shall adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways in the state surrounding all schools, public and private.

(b) The Department of Transportation shall compile, publish, and transmit a manual containing all specifications and requirements with respect to the system of devices established pursuant to paragraph (a) to the governing body of each county and municipality in the state, and the Department of Transportation and each county and municipality in the state shall install and maintain such traffic and pedestrian control devices in conformity with such uniform system.

(2)(a) A school zone located on a state-maintained primary or secondary road shall be maintained by the Department of Transportation. However, nothing herein shall prohibit the Department of Transportation from entering into agreements with counties or municipalities whereby the local governmental entities would maintain specified school zones on state-maintained primary or secondary roads.

(b) The county shall have the responsibility to maintain a school zone located outside of any municipality and on a county road.

(c) A municipality shall have the responsibility to maintain a school zone located in a municipality.

(d) For the purposes of this section, the term "maintained" with respect to any school zone means the care and maintenance of all school zone signs, markers, traffic control devices, and pedestrian control devices.

(3)(a) A school zone maintained by a county shall be periodically inspected by the county sheriff's office or any other qualified agent to determine whether or not the school zone is being properly maintained.

(b) A school zone maintained by a municipality shall be periodically inspected by the municipal police department or any other qualified agent to determine whether or not the school zone is being properly maintained.

(4) No school zone speed limit shall be less than 15 miles per hour except by local regulation. Such speed limit shall be in force only during those times 30 minutes before and 30 minutes after the times necessary and corresponding to the periods of time when pupils are arriving at and leaving regularly scheduled school sessions.

(5) Permanent signs designating school zones and school zone speed limits shall be uniform in size and color, and shall have the times during which the restrictive speed limit is enforced clearly designated thereon. The Department of Transportation shall establish adequate standards for the signs.

(6) Portable signs designating school zones and school zone speed limits shall be uniform in size and color. Such signs shall be erected on the roadway only during those hours when pupils are arriving at and leaving regularly scheduled school sessions. The Department of Transportation shall establish adequate standards for the signs.

(7) Nothing herein shall prohibit the use of automatic traffic control devices for the control of vehicular and pedestrian traffic at school crossings in lieu of permanent or portable school zone signs. The Department of Transportation shall establish standards for automatic flashing signals.

(8) All flags, belts, apparel, and devices issued, supplied, or furnished to pupils or persons acting in the capacity of school safety patrols, special school police, or special police appointed to control and direct traffic at or near schools, when used during periods of darkness, shall be made at least in part with retroreflective materials so as to be visible at night at 300 feet to approaching motorists when viewed under lawful low-beam headlights.

(9) No person shall drive a vehicle on a roadway designated as a school zone at a speed greater than posted in the school zone in accordance with this section. Violation of the speed limits established pursuant to this section shall be punishable as provided in s. 316.655.

History.—s. 1, ch. 71-135; s. 1, ch. 73-161; s. 1, ch. 74-63; s. 1, ch. 74-366; ss. 1, 19, ch. 76-31; s. 2, ch. 76-159.
Note.—Former s. 316.184.

316.1905 Electrical, mechanical, or other speed calculating devices; power of arrest; evidence.—

(1) Whenever any peace officer engaged in the enforcement of the motor vehicle laws of this state uses an electronic, electrical, mechanical, or other device used to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device shall be of a type approved by the department and shall have been tested to determine that it is operating accurately. Tests for this purpose shall be made not less than once each 6 months, according to procedures and at regular intervals of time prescribed by the department.

(2) Any police officer, upon receiving information relayed to him from a fellow officer stationed on the ground or in the air operating such a device that a driver of a vehicle has violated the speed laws of this state, may arrest the driver for violation of said laws where reasonable and proper identification of the vehicle and the speed of same has been communicated to the arresting officer.

(3)(a) A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the motor vehicle laws of this state when such testimony is derived from the use of such an electronic, electrical, mechanical, or other device used in the calculation of speed, upon showing that the speed calculating device which was used had been tested. However, the operator of any visual average speed computer device shall first be certified as a competent operator of such device by the department.

(b) Upon the production of a certificate, signed and witnessed, showing that such device was tested within the time period specified and that such device

was working properly, a presumption is established to that effect unless the contrary shall be established by competent evidence.

(c) Any person accused pursuant to the provisions of this section shall be entitled to have the officer actually operating the device appear in court and testify upon oral or written motion.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.058.

316.191 Racing on highways.—

(1) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(2) "Drag race" is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(3) "Racing" is defined as the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(4) This section does not apply to licensed or duly authorized racetracks, drag strips or other designated areas set aside by proper authorities for such purposes.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.186.

316.192 Reckless driving.—

(1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(2) Any person convicted of reckless driving shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 90 days or by fine of not less than $25 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction, by imprisonment for not more than 6 months or by a fine of not less than $50 nor more than $1,000, or by both such fine and imprisonment.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.029.

316.1925 Careless driving.—

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

(2) Any person found guilty of careless driving shall be punished as provided in s. 316.655.

History.—s. 1, ch. 71-135; ss. 1, 6, ch. 76-31.
Note.—Former s. 316.030.

316.193 Driving while under the influence of alcoholic beverages, model glue, or controlled substances.—

(1) It is unlawful and punishable as provided in subsection (2) for any person who is under the influence of alcoholic beverages, model glue, or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Any person who is convicted of a violation of subsection (1) shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 6 months or by a fine of not less than $25 or more than $500, or by both such fine and imprisonment.

(b) For a second conviction within a period of 3 years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than $500.

(c) For a third or subsequent conviction within a period of 5 years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than $1,000.

(3) It is unlawful and punishable as provided in subsection (4) for any person with a blood alcohol level of 0.10 percent, or above, to drive or be in actual physical control of any vehicle within this state.

(4) Any person who is convicted of a violation of subsection (3) shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 90 days or by a fine of not more than $250, or by both such fine and imprisonment.

(b) For a second conviction within a period of 3 years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than $500.

(c) For a third or subsequent conviction within a period of 5 years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than $500.

(5) At the discretion of the court, any person convicted of violating subsection (1) or subsection (3) may be required to attend an alcohol education course specified by the court and may be referred to an authorized agency for alcoholism evaluation and treatment in addition to any fine imposed under this section and shall be expected to assume reasonable costs for such evaluation and treatment; however, in no case shall the authorized agency for alcoholism treatment be the same agency which conducts the alcohol evaluation and education.

History.—s. 1, ch. 71-135; s. 19, ch. 73-331; s. 1, ch. 74-384; s. 1, ch. 76-31; s. 1, ch. 79-408.
Note.—Former s. 316.028.

cf.—s. 322.264 "Habitual traffic offender" defined.
s. 322.281 Mandatory adjudication.

316.1935 Fleeing or attempting to elude a police officer.—

(1) It is unlawful for the operator of any motor vehicle upon a street or highway, having knowledge that he has been directed to stop such vehicle by a duly authorized police officer, willfully to refuse or fail to stop such vehicle in compliance with such directive or, having stopped in knowing compliance with such a directive, willfully to flee in an attempt to elude such officer, and any person violating this subsection shall, upon conviction, be punished by imprisonment in the county jail for a period not to exceed 1 year, or by fine not to exceed $1,000, or by both such fine and imprisonment.

(2) The court may revoke the operator's or chauffeur's license of any person convicted of a violation of subsection (1) for a period not to exceed 1 year.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.019.

316.194 Stopping, standing or parking outside of municipalities.—

(1) Upon any highway outside of a municipality, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave the vehicle off such part of the highway; but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicle shall be available from a distance of 200 feet in each direction upon the highway.

(2) This section shall not apply to the driver or owner of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position, or to passenger-carrying buses temporarily parked while loading or discharging passengers, where highway conditions render such parking off the paved portion of the highway hazardous or impractical.

(3)(a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this section, the officer is authorized to move the vehicle, or require the driver or other persons in charge of the vehicle to move the same, to a position off the paved or main-traveled part of the highway.

(b) Officers are hereby authorized to provide for the removal of any abandoned vehicle to the nearest garage or other place of safety, cost of such removal to be a lien against motor vehicle, when said abandoned vehicle is found unattended upon a bridge or causeway or in any tunnel, or on any public highway in the following instances:

1. Where such vehicle constitutes an obstruction of traffic;

2. Where such vehicle has been parked or stored on the public right-of-way for a period exceeding 48 hours, in other than designated parking areas, and is within 30 feet of the pavement edge; and

3. Where an operative vehicle has been parked or stored on the public right-of-way for a period exceeding 10 days, in other than designated parking areas, and is more than 30 feet from the pavement edge. However, the agency removing such vehicle shall be required to report same to the Department of Highway Safety and Motor Vehicles within 24 hours of such removal.

(c) Any vehicle moved under the provisions of this chapter which is a stolen vehicle shall not be subject to the provisions hereof unless the moving authority has reported to the Florida Highway Patrol the taking into possession of the vehicle within 24 hours of the moving of the vehicle.

History.—s. 1, ch. 71-135; s. 1, ch. 71-352; s. 1, ch. 76-31.
Note.—Former s. 316.124.

316.1945 Stopping, standing or parking prohibited in specified places.—

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

(a) Stop, stand or park a vehicle:

1. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
2. On a sidewalk;
3. Within an intersection;
4. On a crosswalk;
5. Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the Division of Road Operations of the Department of Transportation indicates a different length by signs or markings;
6. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
7. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
8. On any railroad tracks;
9. At any place where official signs prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

1. In front of a public or private driveway;
2. Within 15 feet of a fire hydrant;
3. Within 20 feet of a crosswalk at an intersection;
4. Within 30 feet upon the approach to any flashing signal, stop sign or traffic control signal located at the side of a roadway;
5. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance (when property signposted);
6. At any place where official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers:

1. Within 50 feet of the nearest rail of a railroad crossing unless the Department of Transportation establishes a different distance due to unusual circumstances;
2. At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(3) A law enforcement officer or parking enforcement specialist who discovers a vehicle parked in violation of this section or a municipal or county ordinance may:

(a) Issue a ticket form as may be used by a political subdivision or municipality to the driver; or

(b) If the vehicle is unattended, attach such ticket to the vehicle in a conspicuous place.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 2, ch. 78-52; s. 1, ch. 79-403.
Note.—Former s. 316.160.

316.195 Additional parking regulations.—

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or edge of the roadway.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or edge of the roadway, or its left wheels within 12 inches of the left-hand curb or edge of the roadway.

(3) Local authorities may, by ordinance, permit angle parking on any roadway, except that angle parking shall not be permitted on any state road unless the Department of Transportation has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.161.

316.1955 Parking spaces provided by governmental agencies for certain disabled persons.—

[1](1) Each state agency and political subdivision having jurisdiction over street parking or publicly owned and operated parking facilities shall provide a minimum number of specially designed and marked motor vehicle parking spaces for the exclusive use of those severely physically disabled individuals with permanent mobility problems which substantially impair their ability to ambulate who have been issued an exemption entitlement parking permit pursuant to s. 320.0848.

[1](2) The following minimum number of such parking spaces shall be provided:

(a) One space in the immediate vicinity of a building which houses a governmental entity or a political subdivision, including, but not limited to, state office buildings and courthouses, if no parking for the public is provided on the premises of such building;

(b) One space for each 150 metered on-street parking spaces; and

(c) For publicly maintained and operated parking facilities intended for public use and not subject to paragraph (a), 1 parking space for disabled persons for the first 20 parking spaces or fraction thereof, 1 additional parking space for disabled persons for the next 80 parking spaces or fraction thereof, 1 additional parking space for disabled persons for each 100 parking spaces or fraction thereof after the first 100 parking spaces, up to a total of 1,000 parking spaces, and 1 additional parking space for disabled persons for each 500 parking spaces or fraction thereof after the first 1,000 parking spaces. A minimum of four parking spaces for disabled persons shall be provided at physical restoration rehabilitation centers and hospitals.

(3) Such parking spaces shall be designed and located as follows:

(a) All spaces shall have accessible thereto a curb-ramp or curb-cut, when necessary to allow access to the building served, and shall be located so that users will not be compelled to wheel behind parked vehicles.

(b) Diagonal or perpendicular parking spaces shall be a minimum of 12 feet wide.

(c) Parallel parking spaces shall be located either at the beginning or end of a block or adjacent to alley entrances. Curbs adjacent to such spaces shall be of a height which will not interfere with the opening and closing of motor vehicle doors.

[1](4) Each such parking space shall be prominently outlined with paint and posted with a fixed, nonmovable sign of a color and design approved by the Department of Transportation, bearing the internationally accepted wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY."

[2](5) The state building code and each county or municipal building code shall be construed to include the provisions for parking spaces as specified herein.

[1](6) It is unlawful for any person to stop, stand, or park a vehicle within any such specially designated and marked parking space provided in accordance with this section, unless such vehicle displays a parking permit issued pursuant to s. 320.0848 and such vehicle is transporting a person eligible for the parking permit. Whenever a law enforcement officer or a parking enforcement specialist finds a vehicle in violation of this subsection, that officer shall:

(a) Have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle immediately to remove the unauthorized vehicle from the parking space. Whenever any vehicle is removed by a law enforcement officer, parking enforcement specialist, or agency to a storage lot, garage, or other safe parking space, the cost of such removal and parking shall be a lien against the vehicle.

(b) Charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 318.18(2). However, any person who is chauffeuring a disabled person shall be allowed, without need for an identification parking permit, momentary parking in any such parking space, for the purpose of loading or unloading such disabled person. No penalty shall be imposed upon the driver for such momentary parking.

History.—s. 1, ch. 75-105; s. 1, ch. 76-31; s. 2, ch. 77-83; s. 1, ch. 77-444; ss. 1, 8, ch. 79-82; s. 123, ch. 79-400.
[1]**Note.**—As amended, effective January 1, 1980.
[2]**Note.**—Repealed by s. 8, ch. 79-82, effective January 1, 1980.
Note.—Former s. 316.165.
cf.—s. 320.0842 International wheelchair symbol.

s. 553.46 Standards of accessibility for handicapped persons.

[1]316.1956 Parking spaces provided by nongovernmental entities for certain disabled persons.—

(1) Any business, firm, or other person licensed to do business with the public may provide specially designed and marked motor vehicle parking spaces for the exclusive use of physically disabled persons who have been issued parking permits pursuant to s. 320.0848. The minimum number of such parking spaces shall be as provided in s. 316.1955(2)(c).

(2) Each such parking space shall conform to the requirements of s. 316.1955(3) and shall be posted with a sign bearing the internationally accepted wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY".

(3) Any person who parks a vehicle in any parking space designated with the internationally accepted wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY" is guilty of a traffic infraction, punishable as provided in s. 318.18(2), unless such vehicle displays a parking permit issued pursuant to s. 320.0848 and such vehicle is transporting a person eligible for such parking permit. However, any person who is chauffeuring a disabled person shall be allowed, without need for an identification parking permit, momentary parking in any such parking space for the purpose of loading or unloading a disabled person. No penalty shall be imposed upon the driver for such momentary parking.

(4) Any law enforcement officer or parking enforcement specialist shall enforce the provisions of subsection (3).

History.—s. 3, ch. 77-83; s. 2, ch. 77-444; s. 2, ch. 79-82.
[1]Note.—As amended, effective January 1, 1980.

[1]316.1964 Exemption of vehicles transporting certain disabled persons from payment of parking fees and penalties.—No state agency, county, municipality, or any agency thereof, shall exact any fee for parking on the public streets or highways or in any metered parking space from the driver of a vehicle which displays a parking permit issued pursuant to s. 320.0848 or a license plate issued pursuant to s. 320.084 or s. 320.0842 if such vehicle is transporting a person eligible for such parking permit or license plate; nor shall the driver of such a vehicle transporting such a person be penalized for parking, except in clearly defined bus loading zones, fire zones, or in areas posted as "No Parking" zones.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 77-83; s. 3, ch. 79-82.
[1]Note.—As amended, effective January 1, 1980.
Note.—Former s. 316.163.

316.1965 Parking near rural mailbox during certain hours; penalties.—Whoever parks any vehicle within 30 feet of any rural mailbox upon any state highway in this state between 8 a.m. and 6 p.m. shall be punished as provided in s. 316.655.

History.—s. 1, ch. 71-135; s. 6, ch. 74-377; ss. 1, 17, ch. 76-31.
Note.—Former s. 316.164.

316.1967 Liability for payment of parking ticket violations.—

(1) The owner of a vehicle is responsible and liable for payment of any parking ticket violation unless the owner can furnish evidence that the vehicle was, at the time of the parking violation, in the care, custody, or control of another person. In such instances, the owner of the vehicle is required, within a reasonable time after notification of the parking violation, to furnish to the appropriate law enforcement authorities the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle. The owner of a vehicle is not responsible for a parking ticket violation if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) Any person issued a county or municipal parking ticket by a parking enforcement specialist or officer shall be deemed to be charged with a noncriminal violation and shall comply with the directions on the ticket. In the event that payment is not received, or a response to the ticket is not made within the time period specified thereon, the county court, or its traffic violations bureau, shall notify the registered owner of the vehicle which was cited, by certified mail, of the ticket. Upon receipt of the notification, the registered owner shall comply with the court's directive.

(3) Any person who fails to satisfy the court's directive and any person who elects to appear before a designated official to present evidence shall be deemed to have waived his right to the civil penalty provisions of the ticket. The official, after a hearing, shall make a determination as to whether a parking violation has been committed and may impose a fine not to exceed $100 plus court costs.

History.—s. 1, ch. 77-456; s. 2, ch. 79-403.

316.1974 Funeral or other processions.—

(1) As used in this chapter, "funeral procession" means four or more motor vehicles accompanying a body of a deceased person in the daytime, when each of such vehicles has its headlights lighted.

(2) Pedestrians and the operators of all vehicles, except emergency vehicles, shall yield the right-of-way to each vehicle which is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in such procession may continue to follow the lead vehicle through the intersection, notwithstanding any traffic control device or right-of-way provisions prescribed by statute or local ordinance, provided the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian upon the roadway.

(3) No person shall operate any vehicle as a part of a funeral procession without having the headlights of such vehicle lighted.

(4) No operator of a vehicle shall drive between vehicles in a funeral or other procession which are properly identified while the procession is in motion except when directed to do so by a police officer.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.162.

316.1975 Unattended motor vehicle.—No person driving or in charge of any motor vehicle except a licensed delivery truck or other delivery vehicle while making deliveries, shall permit it to stand un-

attended without first stopping the engine, locking the ignition, and removing the key. No vehicle shall be permitted to stand unattended upon any perceptible grade without stopping the engine and effectively setting the brake thereon and turning the front wheels to the curb or side of the street.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.097.

316.1985 Limitations on backing.—

(1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access facility.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.098.

316.1995 Driving upon sidewalk.—No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.110.

316.2004 Obstruction to driver's view or driving mechanism.—

(1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2)(a) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or with his control over the driving mechanism of the vehicle.

(b) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which materially obstructs, obscures, or impairs the driver's clear view of the highway or any intersecting highway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.093.

316.2005 Opening and closing vehicle doors.—No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.099.

316.2014 Riding in house trailers.—No person or persons shall occupy a house trailer while it is being moved upon a public street or highway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.101.

316.2015 Unlawful for person to ride on exterior of vehicle.—

(1) It is unlawful for any operator of a passenger vehicle to permit any person to ride on the bumper, radiator, fender, hood, top, trunk, or running board of such vehicle when operated upon any street or highway which is maintained by the state, county or municipality. However, the operator of any vehicle shall not be in violation of this section when such operator permits any person to occupy seats securely affixed to the exterior of such vehicle.

(2) No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to a person or persons riding within truck bodies in space intended for merchandise.

(3) This section shall not apply to a performer engaged in a professional exhibition or person participating in an exhibition or parade, or any such person preparing to participate in such exhibitions or parades.

(4) Any person violating the provisions of this section, upon conviction, shall be punished as provided in s. 316.655.

History.—s. 1, ch. 71-135; ss. 1, 12, ch. 76-31.
Note.—Former s. 316.100.

316.2024 Coasting prohibited.—The driver of any motor vehicle, when traveling upon a downgrade, shall not coast with the gears or transmission of such vehicle in neutral or the clutch disengaged.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.094.

316.2025 Following fire apparatus prohibited.—No driver of any vehicle other than an authorized emergency vehicle on official business shall follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.095.

316.2034 Crossing fire hose.—No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or highway, or private road or driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.096.

316.2035 Injurious substances prohibited; dragging vehicle or load; obstructing, digging, etc.—

(1) It is unlawful to place or allow to be placed upon any street or highway any tacks, wire, scrap metal, glass, crockery, or other substance which may be injurious to the feet of persons or animals or to the tires of vehicles or in any way injurious to the road.

(2) It is unlawful to allow any vehicle or contrivance or any part of same, or any load or portion of a load carried on the same, to drag upon any street or highway.

(3) It is unlawful to obstruct, dig up, or in any way disturb any street or highway. However, this subsection shall not be construed so as to hinder or prevent the installation or replacement of any utilities in accordance with the provisions of law now existing or that may hereafter be enacted.

(4) It is unlawful for any vehicle to be equipped

with any solid tires or any airless-type tire on any motor-driven vehicle when operated upon a highway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.104.

316.2044 Removal of injurious substances.—

(1) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(2) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.105.

316.2045 Obstruction of public streets, highways, etc.—

(1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway or road, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon, and any person or persons violating the provisions of this chapter, upon conviction, shall be punished as set forth in s. 316.655.

(2) The provisions of this chapter are supplementary to the provisions of any other statute of the state.

History.—s. 1, ch. 71-135; ss. 1, 13, ch. 76-31.
Note.—Former s. 316.103.

316.2051 Certain vehicles prohibited on hard-surfaced roads.—It is unlawful to operate upon any hard-surfaced road in this state any log cart, tractor, or well machine; any steel-tired vehicle other than the ordinary farm wagon or buggy; or any other vehicle or machine that is likely to damage a hard-surfaced road except to cause ordinary wear and tear on the same.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.102.

316.2055 Motor vehicles, throwing advertising materials in.—It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.106.

316.2061 Stop when traffic obstructed.—No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.107.

316.2065 Bicycle regulations.—

(1) Every person riding a bicycle upon a roadway shall be granted all of the rights and be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

(2) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(3) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(4) No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

(5) Every person operating a bicycle upon a roadway shall ride with the flow of traffic as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(6) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(7) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(8) Any person operating a bicycle shall keep at least one hand upon the handlebars.

(9) After sundown, every bicycle shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear, except that a red reflector meeting the requirements of this section may be used in lieu of the red light. All such lamps and reflectors shall be in place and in operation whenever a bicycle is operated after sundown.

(10) No parent of any minor child and no guardian of any minor ward shall authorize or knowingly permit any such minor child or ward to violate any of the provisions of this section.

(11) This section shall apply whenever a bicycle is operated upon any street, or upon any public path set aside for exclusive use of bicycles, subject to those exceptions stated herein.

(12) No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk, and when so crossing such person shall be granted all rights and shall be subject to all of the duties applicable to pedestrians.

(13) This section shall not apply upon any street while set aside as a play street authorized herein or as designated by state, county, or municipal authority.

(14) No person under 15 years of age shall operate a "moped" as defined in subsection 316.003(2).

(15) No person shall operate a "moped" as defined in s. 316.003(2) that does not conform to all applicable federal motor vehicle safety standards re-

lating to lights and safety and other equipment contained in s. 49, Code of Federal Regulations.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 2, ch. 76-286; s. 1, ch. 78-353.
Note.—Former s. 316.111.

316.207 Penalties for violation of bicycle regulations.—Any person not a juvenile, as such is defined by the laws of this state, found guilty of a violation of any provisions found in s. 316.2065 shall be punished by a civil penalty in accordance with s. 318.18 or by impounding of such person's bicycle for a period not to exceed 90 days. Upon the recommendation of a judge of a juvenile court or a competent court having jurisdiction over the person of a minor, the state, county, or municipal authority may impound such minor's bicycle for such period as the court may determine.

History.—s. 1, ch. 71-135; s. 5, ch. 74-377; ss. 1, 14, ch. 76-31.
Note.—Former s. 316.112.

316.2075 Driving upon bicycle trails and footpaths.—No person shall operate any motor vehicle or moped upon a bicycle trail or footpath established under s. 335.065, except upon a permanent or duly authorized temporary driveway.

History.—s. 1, ch. 75-79; s. 1, ch. 76-31; s. 6, ch. 78-353.
Note.—Former s. 316.1105.

316.208 Motorcycles.—Any person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.127.

316.2085 Riding on motorcycles.—

(1) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person, nor shall any other person ride on a motorcycle, unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(3) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.108.

316.209 Operating motorcycles on roadways laned for traffic.—

(1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) shall not apply to police officers in the performance of their official duties.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.109.

316.2095 Footrests and handlebars.—

(1) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(2) No person shall operate any motorcycle with handlebars more than 15 inches in height above that portion of the seat occupied by the operator.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.278.

316.211 Equipment for motorcycle riders.—

(1) No person shall operate or ride upon a motorcycle unless he is properly wearing protective headgear securely fastened upon his head which complies with standards established by the department.

(2) No person shall operate a motorcycle unless he is wearing an eye-protective device over his eyes of a type approved by the department.

(3) This section shall not apply to persons riding within an enclosed cab.

(4) The department is authorized to approve or disapprove protective headgear and eye-protective devices required herein and to issue and enforce regulations establishing standards and specifications for the approval thereof. The department shall publish lists of all protective headgear and eye-protective devices by name and type which have been approved by it.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.287.

316.215 Scope and effect of regulations.—

(1) It is a violation of this chapter for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden, or fail to perform any act required, under this chapter.

(2) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter with respect to equipment required on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles, except as herein made applicable.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.059.

316.216 Authority of department with reference to lighting devices.—

(1) The department is authorized to approve or disapprove lighting devices and to issue and enforce regulations establishing standards and specifications for the approval of such lighting devices, their installation, adjustment, and aiming, and adjustment when in use on motor vehicles. Such regulations shall correlate with standards and specifications of the society of automotive engineers applicable to such equipment.

(2) The department is required to approve or disapprove any lighting device of a type on which approval is specifically required in this chapter within a reasonable time after such device has been submitted.

(3) The department is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

(4) The department, upon approving any such lamp or device, shall issue to the applicant a certificate of approval together with any instructions determined by it.

(5) The department shall publish lists of all lamps and devices by name and type which have been approved by it.

History.—s. 1, ch. 71-135.

316.217 When lighted lamps are required.—

(1) Every vehicle operated upon a highway within this state shall display lighted lamps and illuminating devices as herein respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, under the following conditions;

(a) At any time from sunset to sunrise;

(b) During any time when, due to rain, smoke, fog, insufficient light, or unfavorable atmospheric conditions, the visibility is reduced to a degree whereby persons or vehicles are not clearly discernible at a distance of 1,000 feet ahead;

(c) Stop lights, turn signals, and other signaling devices shall be lighted as prescribed for use of such devices.

(2) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible, said provisions shall apply during the times stated in subsection (1) in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(3) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when the vehicle is without a load.

History.—s. 1, ch. 71-135; s. 4, ch. 76-218.

316.220 Headlamps on motor vehicles.—

(1) Every motor vehicle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter, and shall show a white light.

(2) Every headlamp upon every motor vehicle shall be located at a height of not more than 54 inches nor less than 24 inches to be measured as set forth in s. 316.217.

History.—s. 1, ch. 71-135.

316.221 Taillamps.—

(1) Every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two taillamps mounted on the rear, which, when lighted as required in s. 316.217, shall emit a red light plainly visible from a distance of 1,000 feet to the rear, except that passenger cars and pickup trucks manufactured or assembled prior to January 1, 1972, which were originally equipped with only one taillamp shall have at least one taillamp. On a combination of vehicles, only the taillamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one taillamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

History.—s. 1, ch. 71-135; s. 1, ch. 79-97.

316.222 Stop lamps and turn signals.—

(1) Every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps meeting the requirements of s. 316.234(1). Motor vehicles, trailers, semitrailers and pole trailers manufactured or assembled prior to January 1, 1972 shall be equipped with at least one stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in s. 316.234(1).

(2) Every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of s. 316.234(2).

(3) Passenger cars and trucks less than 80 inches in width, manufactured or assembled prior to January 1, 1972 need not be equipped with electric turn signal lamps.

History.—s. 1, ch. 71-135.

316.2225 Additional equipment required on certain vehicles.—In addition to other equipment required in this chapter, the following vehicles shall be equipped as herein stated under the conditions stated in s. 316.217.

(1) On every bus or truck, whatever its size, there shall be the following: On the rear, two reflectors,

one at each side, and one stop light.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, two clearance lamps, one at each side.

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, one stop light.

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) On the front, two clearance lamps, one at each side.

(b) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(c) On each side, two reflectors, one at or near the front and one at or near the rear.

(d) On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(5) On every pole trailer in excess of 3,000 pounds gross weight:

(a) On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

(b) On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer, and pole trailer weighing 3,000 pounds gross, or less: On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded, or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

(7) On every slow-moving vehicle or equipment, animal-drawn vehicle, or other machinery designed for use and speeds less than 25 miles per hour, including all road construction and maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flagman or a clearly visible warning sign, which normally travels or is normally used at a speed of less than 25 miles per hour and which is operated on a public highway:

(a) A triangular slow-moving vehicle emblem SMV as described in, and displayed as provided in paragraph (b). The requirement of the emblem shall be in addition to any other equipment required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any public highway of this state.

(b) The Department of Highway Safety and Motor Vehicles shall adopt such rules and regulations as are required to carry out the purpose of this section. The requirements of such rules and regulations shall incorporate the current specifications for SMV emblems of the American Society of Agricultural Engineers.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.276.

316.224 Color of clearance lamps, identification lamps, side marker lamps, backup lamps and reflectors.—

(1) Front clearance lamps, identification lamps, and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps, identification lamps, and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white, and the light emitted by a backup lamp shall be white or amber.

History.—s. 1, ch. 71-135.

316.225 Mounting of reflectors, clearance lamps and side marker lamps.—

(1) Reflectors, when required by s. 316.2225, shall be mounted at a height not less than 24 inches and not more than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches, the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

(a) The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

(b) Any required red reflector on the rear of a vehicle may be incorporated with the taillamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall, so far as is practicable, be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. When rear identification lamps are required and are mounted as high as is practicable, rear clearance lamps may be mounted at optional height, and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as nearly as practicable, the extreme width of the trailer. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

History.—s. 1, ch. 71-135; s. 24, ch. 76-31.

316.226 Visibility requirements for reflectors, clearance lamps, identification lamps and marker lamps.—

(1) Every reflector upon any vehicle referred to in s. 316.2225 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet

from the vehicle when directly in front of lawful lower beams of headlamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be measured in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 550 feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 550 feet from the side of the vehicle on which mounted.

History.—s. 1, ch. 71-135; s. 25, ch. 76-31.

316.227 Obstructed lights not required.—Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except taillamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History.—s. 1, ch. 71-135.

316.228 Lamps or flags on projecting load.—Whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in s. 316.217, two red lamps visible from a distance of at least 500 feet to the rear, two red reflectors visible at night from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least 500 feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than 4 feet beyond its rear, red flags, not less than 12 inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section.

History.—s. 1, ch. 71-135.

316.229 Lamps on parked vehicles.—

(1) Every vehicle shall be equipped with one or more lamps which, when lighted, shall display a white or amber light visible from a distance of 1,000 feet to the front of the vehicle and a red light visible from a distance of 1,000 feet to the rear of the vehicle. The location of the lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(2) Whenever a vehicle is lawfully parked upon a street or highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal persons and vehicles within a distance of 1,000 feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(3) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto outside of a municipality, whether attended or unattended, during the hours between sunset and sunrise and there is insufficient light to reveal any person or object within a distance of 1,000 feet upon such highway, the vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (1).

(4) Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

History.—s. 1, ch. 71-135.

316.2295 Lamps, reflectors and emblems on farm tractors, farm equipment and implements of husbandry.—

(1) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall be equipped with vehicular hazard-warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(2) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in s. 316.217, be equipped with lamps and reflectors as follows:

(a) At least two headlamps meeting the requirements of ss. 316.237 and 316.239.

(b) At least one red lamp visible when lighted from a distance of not less than 1,000 feet to the rear mounted as far to the left of the center of the vehicle as practicable.

(c) At least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.

(3) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in s. 316.217 be equipped with lamps and reflectors as follows:

(a) The farm tractor shall be equipped as required in subsections (1) and (2).

(b) If the towed unit or its load extends more than 4 feet to the rear of the tractor or obscures any light thereon, the unit shall be equipped on the rear with at least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.

(c) If the towed unit of such combination extends more than 4 feet to the left of the centerline of the tractor, the unit shall be equipped on the front with an amber reflector visible from all distances within 600 feet to 100 feet to the front when directly in front of lawful lower beams of headlamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.

(4) The two red reflectors required in the forego-

ing subsections shall be so positioned as to show from the rear, as nearly as practicable, the extreme width of the vehicle or combination carrying them. If all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required by subsection (3).

(5) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear except as provided in subsection (6).

(6) Every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operating at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem as follows:

(a) When the towed unit or any load thereon obscures the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem.

(b) When the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit or its load, then either or both may be equipped with the required emblem, but it shall be sufficient if either has it.

(c) The emblem required by subsections (5) and (6) shall comply with current standards and specifications of the American Society of Agricultural Engineers approved by the department.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.232.

316.231 Lamps on other vehicles and equipment.—Every vehicle, including animal-drawn vehicles and vehicles referred to in s. 316.215(3), not specifically required by the provisions of this section to be equipped with lamps or other lighting devices shall at all times specified in s. 316.217 be equipped with at least one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or, as an alternative, one lamp displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 to 100 feet to the rear when illuminated by the lawful lower beams of headlamps.

History.—s. 1, ch. 71-135; s. 26, ch. 76-31.

316.233 Spot lamps and auxiliary lamps.—

(1) SPOT LAMPS.—Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(2) FOG LAMPS.—Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in s. 316.237(1)(b).

(3) AUXILIARY PASSING LAMPS.—Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of s. 316.237 shall apply to any combination of headlamps and auxiliary passing lamps.

(4) AUXILIARY DRIVING LAMPS.—Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of s. 316.237 shall apply to any combination of headlamps and auxiliary driving lamps.

History.—s. 1, ch. 71-135.

316.234 Signal lamps and signal devices.—

(1) Any vehicle may be equipped and, when required under this chapter, shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, visible from a distance of not less than 300 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.

(2) Any vehicle may be equipped and, when required under s. 316.222(2), shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit white or amber light. The lamps showing to the rear shall be mounted on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light. Turn signal lamps on vehicles 80 inches or more in overall width shall be visible from a distance of not less than 500 feet to the front and rear in normal sunlight. Turn signal lamps on vehicles less than 80 inches wide shall be visible at a distance of not less than 300 feet to the front and rear in normal sunlight. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle.

History.—s. 1, ch. 71-135.

316.235 Additional lighting equipment.—

(1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with one or more backup lamps either separately or in combination with other lamps, but any such backup lamp

or lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle 80 inches or more in overall width, if not otherwise required by s. 316.2225, may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in this chapter.

History.—s. 1, ch. 71-135; s. 27, ch. 76-31.

316.237 Multiple beam road lighting equipment.—

(1) Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 450 feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet ahead; and on a straight level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(2) Every new motor vehicle registered in this state shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

History.—s. 1, ch. 71-135.

316.238 Use of multiple-beam road-lighting equipment.—Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in s. 316.217, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in ss. 316.237(1)(b) and 316.430(2)(b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(2) Whenever the driver of a vehicle approaches another vehicle from the rear within 300 feet, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in ss. 316.237(1)(a) and 316.430(2)(a).

History.—s. 1, ch. 71-135; s. 28, ch. 76-31.

316.2385 Requirements for use of lower beam.—The lower or passing beam shall be used at all times during the twilight hours in the morning and the twilight hours in the evening, and during fog, smoke and rain. Twilight shall mean the time between sunset and full night or between full night and sunrise.

History.—s. 1, ch. 71-135; s. 91, ch. 73-333; s. 1, ch. 76-31.
Note.—Former s. 316.236.

316.239 Single-beam road-lighting equipment.—Headlamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on other motor vehicles manufactured and sold prior to January 1, 1972, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The headlamps shall be so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall, at a distance of 25 feet ahead, project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

History.—s. 1, ch. 71-135.

316.2395 Motor vehicles; minimum headlamp requirement.—Any motor vehicle may be operated at nighttime under the conditions specified in ss. 316.237 and 316.239, when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects 100 feet ahead in lieu of lamps required in ss. 316.237 and 316.239. However, at no time when lighted lamps are required shall such motor vehicle be operated in excess of 20 miles per hour.

History.—s. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.219.

316.2396 Number of driving lamps required or permitted.—

(1) At all times specified in s. 316.217, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps, as herein required, is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of 4 of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.218.

316.2397 Certain lights prohibited; exceptions.—

(1) No person shall drive or move or cause to be

moved any vehicle or equipment upon any highway within this state with any lamp or device thereon showing or displaying a red or blue light visible from directly in front thereof except for certain vehicles hereinafter provided.

(2) It is expressly prohibited for any vehicle or equipment, except police vehicles, to show or display blue lights.

(3) Vehicles of the fire department and fire patrol, including vehicles of volunteer firemen as permitted under s. 316.2398, and ambulances as authorized under this chapter are permitted to show or display red lights. Wreckers, mosquito control fog and spray vehicles, and emergency vehicles of governmental departments or public service corporations may show or display amber lights when in actual operation or a hazard exists provided they are not used going to and from the scene of operation or hazard without specific authorization of a law enforcement officer or law enforcement agency. Further, escort vehicles will be permitted to show or display amber lights when in actual process of escorting over-dimensioned equipment, material, or buildings as authorized by law. School buses may show and display lights as provided in chapter 234.

(4) Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.

(5) All lighting equipment heretofore referred to shall meet all requirements as set forth in s. 316.241.

(6) Flashing lights are prohibited on vehicles except as a means of indicating a right or left turn, or to change lanes, or to indicate the vehicle is lawfully stopped or disabled upon the highway, or except that the lamps authorized in subsections (1), (2), (3) and (4) shall be permitted to flash.

(7) Subsection (1) shall not apply to police, fire, or authorized emergency vehicles while in performance of their necessary duties.

History.—s. 1, ch. 71-135; ss. 1, 23, ch. 76-31.
Note.—Former s. 316.223.

316.2398 Display or use of red lights; motor vehicles or volunteer firemen.—

(1) Privately owned vehicles belonging to the active firemen members of regularly organized volunteer firefighting companies or associations, while en route to the fire station for the purpose of proceeding to scenes of fires or other emergencies or while en route to scenes of fires or other emergencies in the line of duty as active firemen members of regularly organized firefighting companies or associations, may display or use red lights visible from the front and from the rear of such vehicles, subject to the following restrictions and conditions:

(a) The light may not have a light source greater than 50 candlepower for each light displayed.

(b) Two such red lights may be displayed on each end of the vehicle, and such lights shall be of the flasher or revolving type.

(c) The red lights shall consist of a lamp with a red lens, but shall not consist of an uncolored lens with a red bulb.

(d) The red lights shall not be a part of the regular headlamps, taillights, or turn signal lights displayed on such vehicles.

(e) No inscription of any kind shall appear across the face of the lenses of the red lights.

(f) The lenses of the red lights shall not be less than 3 inches or more than 8 inches in diameter.

(g) In order for an active volunteer fireman to display such red lights on his vehicle, he must first secure a written permit from the chief executive officers of the firefighting organization to use the red lights, and this permit shall be carried by him at all times while the red lights are displayed.

(2) It is unlawful for any person who is not an active fireman member of a regularly organized volunteer firefighting company or association to display on any motor vehicle owned by him, at any time, red lights as described above.

(3) It is unlawful for any active volunteer fireman to use or display red lights as provided for herein, except while en route to the fire station for the purpose of proceeding to scenes of fires or other emergencies, or while en route to scenes of fires or other emergencies, in the line of duty.

(4) Any active volunteer fireman, or any other person who violates any of the provisions of this section, is guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than $5 and no more than $25, and shall be dismissed from membership of the firefighting organization by the chief executive officers thereof.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 77-454.
Note.—Former s. 316.292.

316.240 Standards for lights on highway maintenance and service equipment.—

(1) The Department of Transportation shall adopt standards and specifications applicable to headlamps, clearance lamps, and identification and other lamps on highway maintenance and service equipment when operated on state roads and county road system of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with, and as far as possible conform with, those approved by the American Association of State Highway Officials.

(2) It is unlawful to operate any highway maintenance and service equipment on any highway as described heretofore unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History.—s. 1, ch. 71-135.

316.241 Selling or using lamps or equipment.—

(1) No person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, semitrailer, or pole trailer or use upon any such vehicle any headlamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing, which tend to change the original design or performance, unless of a type which has been submitted to the department and approved.

The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

(2) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, semitrailer, or pole trailer any lamp or device mentioned in this section which has been approved by the department unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(3) No person shall use upon any motor vehicle, trailer, semitrailer, or pole trailer any lamps mentioned in this section unless said lamps are mounted, adjusted, and aimed in accordance with instructions of the department.

History.—s. 1, ch. 71-135.

316.242 Revocation of certificate of approval on lighting devices.—

(1) When the department has reason to believe that an approved lighting device as being sold commercially does not comply with the requirements of this chapter, it may, after giving 30 days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of the approved device. After the hearing the department shall determine whether the approved device meets the requirements of this chapter. If the device does not meet the requirements of this chapter it shall give notice to the person holding the certificate of approval for such device in this state.

(2) If at the expiration of 90 days after such notice the person holding the certificate of approval for the device has failed to satisfy the department that the approved device as thereafter to be sold meets the requirements of this chapter, the department shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this chapter. The department may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if the device upon retest fails to meet the requirements of this chapter, the department may refuse to renew the certificate of approval of such device.

History.—s. 1, ch. 71-135.

316.261 Brake equipment required.—Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles, operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(1) SERVICE BRAKES; ADEQUACY.—Every such vehicle and combination of vehicles, except special mobile equipment not designed to carry persons, shall be equipped with service brakes adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(2) PARKING BRAKES; ADEQUACY.—Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free of loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brakedrums, brakeshoes and lining assemblies, brakeshoe anchors, and mechanical brakeshoe actuation mechanism normally associated with the wheel-brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(3) BRAKES ON ALL WHEELS.—Every vehicle shall be equipped with brakes acting on all wheels except:

(a) Trailers, semitrailers, or pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

1. The total weight on and including the wheels of the trailer or trailers shall not exceed 40 percent of the gross weight of the towing vehicle when connected to the trailer or trailers; and

2. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of s. 316.262.

(b) Pole trailers with a gross weight in excess of 3,000 pounds manufactured prior to January 1, 1972, need not be equipped with brakes.

(c) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of s. 316.262.

(d) Trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of s. 316.262.

(e) Special mobile equipment not designed to carry persons.

(f) "Antique cars" as defined in s. 320.08, and "horseless carriages" as defined in s. 320.086.

(4) AUTOMATIC TRAILER BRAKE APPLICATION UPON BREAKAWAY.—Every trailer, semitrailer, and pole trailer with air or vacuum-actuated brakes, every trailer and semitrailer with a gross weight in excess of 3,000 pounds, and every pole trailer with a gross weight in excess of 3,000 pounds manufactured or assembled after January 1, 1972,

shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least 15 minutes, upon breakaway from the towing vehicle.

(5) TRACTOR BRAKES PROTECTED.—Every motor vehicle manufactured or assembled after January 1, 1972, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(6) TRAILER AIR RESERVOIRS SAFEGUARDED.—Air brake systems installed on trailers manufactured or assembled after January 1, 1972, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(7) TWO MEANS OF EMERGENCY BRAKE OPERATION.—

(a) Every towing vehicle, when used to tow another vehicle equipped with air-controlled brakes, in other than driveaway or towaway operations, shall be equipped with two means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(b) Every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single-control device required by subsection (8), a second-control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system is so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(8) SINGLE CONTROL TO OPERATE ALL BRAKES.—Every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(9) RESERVOIR CAPACITY AND CHECK VALVE.—

(a) *Air brakes.*—Every bus, truck or truck-tractor with air-operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service-brake application may be made without lowering such reservoir pressure by more than 20 percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(b) *Vacuum brakes.*—Every truck with three or more axles equipped with vacuum assistor-type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service-brake application may be made without depleting the vacuum supply by more than 40 percent.

(c) *Reservoir safeguarded.*—All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(10) WARNING DEVICES.—

(a) *Air brakes.*—Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below 50 percent of the air compressor governor cutout pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(b) *Vacuum brakes.*—Every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(c) *Combination of warning devices.*—When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History.—s. 1, ch. 71-135.

316.262 Performance ability of motor vehicle brakes.—

(1) Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification;

(b) Decelerating to a stop from not more than 20 miles per hour at not less than the feet per second per second tabulated herein for its classification; and

(c) Stopping from a speed of 20 miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1 percent grade), dry, smooth, hard surface that is free from loose material.

Classification of vehicles		Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of 20 m.p.h.
A	Passenger vehicles with a seating capacity of 10 people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25
B	Single unit vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or less	43.5%	14	30
C-1	Single unit vehicles with a manufacturer's gross weight rating of more than 10,000 pounds	43.5%	14	40
C-2	Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of 3,000 pounds or less	43.5%	14	40
C-3	Buses, regardless of the number of axles, not having a manufacturer's gross weight rating	43.5%	14	40
C-4	All combinations of vehicles in drive-away-towaway operations	43.5%	14	40
D	All other vehicles and combinations of vehicles	43.5%	14	50

History.—s. 1, ch. 71-135.

316.263 Maintenance of brakes.—All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History.—s. 1, ch. 71-135.

316.267 Brakes on electric-powered vehicles.—When operated on the public streets and roads, every electric-powered vehicle with a rating of 3 to 6 horsepower shall be equipped with hydraulic brakes on the two rear wheels and at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(1) Developing a braking force that is not less than 43.5 percent of its gross weight.

(2) Decelerating to a stop from not more than 20 miles per hour at not less than 17 feet per second.

(3) Stopping from a speed of 20 miles per hour in not more than 25 feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

History.—s. 2, ch. 76-34.

316.271 Horns and warning devices.—

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn, but shall not otherwise use such horn when upon a highway.

(2) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell, except as otherwise permitted in this section.

(3) It is permissible but not required that any vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(4) Every authorized emergency vehicle shall be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type

approved by the department, but such siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

History.—s. 1, ch. 71-135.

316.272 Exhaust systems, prevention of noise.—

(1) Every motor vehicle shall at all times be equipped with an exhaust system in good working order and in constant operation, including muffler, manifold pipe, and tailpiping to prevent excessive or unusual noise. In no event shall an exhaust system allow noise at a level which exceeds a maximum decibel level to be established by regulation of the Department of Environmental Regulation as provided in s. 403.061(13) in cooperation with the Department of Highway Safety and Motor Vehicles. No person shall use a muffler cutout, bypass or similar device upon a vehicle on a highway.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History.—s. 1, ch. 71-135; s. 1, ch. 72-39; s. 1, ch. 73-89; s. 27, ch. 79-65.

316.293 Motor vehicle noise.—

(1) DEFINITIONS.—The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection, except where the context otherwise requires:

(a) "dB A" means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

(b) "Gross combination weight-rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(c) "Gross vehicle weight-rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only A-weighting and fast dynamic response need be provided.

(e) "Department" means the Department of Highway Safety and Motor Vehicles.

(2) OPERATING NOISE LIMITS.—No person shall operate or be permitted to operate a vehicle at any time or under any condition of roadway grade, load, acceleration, or deceleration in such a manner as to generate a sound level in excess of the following limit for the category of motor vehicle and applicable speed limit at a distance of 50 feet from the center of the lane of travel under measurement procedures established under subsection (3).

(a) For motorcycles other than motor-driven cycles:

	Sound level limit	
	Speed limit 35 mph or less	Speed limit over 35 mph
Before January 1, 1979	82 dB A	86 dB A
On or after January 1, 1979	78 dB A	82 dB A

(b) For any motor vehicle with a GVWR or GCWR of 10,000 pounds or more:

	Sound level limit	
	Speed limit 35 mph or less	Speed limit over 35 mph
On or after January 1, 1975	86 dB A	90 dB A

(c) For motor-driven cycles and any other motor vehicle not included in paragraph (a) or paragraph (b):

	Sound level limit	
	Speed limit 35 mph or less	Speed limit over 35 mph
Before January 1, 1979	76 dB A	82 dB A
On or after January 1, 1979	72 dB A	79 dB A

(3) MEASUREMENT PROCEDURES.—The measurement procedures for determining compliance with this section shall be established by regulation of the Department of Environmental Regulation as provided in s. 403.415(9), in cooperation with the department. Such regulations shall include the selection of measurement sites and measurement procedures and shall take into consideration accepted scientific and professional methods for the measurement of vehicular sound levels. The measurement procedures may include adjustment factors to be applied to the noise limit for measurement distances of other than 50 feet from the center of the lane of travel.

(4) APPLICABILITY.—This section applies to the total noise from a vehicle and shall not be construed as limiting or precluding the enforcement of any other provisions of this chapter relating to motor vehicle mufflers for noise control.

(5) NOISE ABATEMENT EQUIPMENT MODIFICATIONS.—

(a) No person shall modify the exhaust system of a motor vehicle or any other noise-abatement device of a motor vehicle operated or to be operated upon the highways of this state in such a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured.

(b) No person shall operate a motor vehicle upon the highways of the state with an exhaust system or noise-abatement device so modified.

(6) EXEMPT VEHICLES.—The following are exempt from the operation of this act:

(a) Emergency vehicles operating as specified in s. 316.072(5)(a).

(b) Any motor vehicle engaged in a professional or amateur sanctioned, competitive sports event for which admission or entry fee is charged, or practice or time trials for such event.

(c) Any motor vehicle engaged in a manufacturer's engineering, design, or equipment test.

(d) Construction or agricultural equipment either on a job site or traveling on the highways.

History.—s. 4, ch. 74-110; s. 32, ch. 76-31; s. 2, ch. 78-280; s. 28, ch. 79-65.

316.294 Mirrors.—Every vehicle, operated singly or when towing any other vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.273.

316.295 Windshields required to be unobstructed, fixed upright and equipped with safety glass and wipers.—

(1) Front windshields in a fixed and upright position equipped with safety glass as defined in and required by s. 320.062 are required on all motor vehicles which are driven on public highways, roads, or streets except motorcycles and implements of husbandry, and no person shall drive any motor vehicle with any sign or other nontransparent material upon the front windshield, sidewings, or side or rear windows of such vehicle, other than a certificate or other paper required to be so displayed by law.

(2)(a) No person shall operate any motor vehicle upon any public highway, road, or street, on which the front windshield is composed of, covered by, or treated with, any material which has the effect of making the windshield reflective or in any other way nontransparent.

(b) No person shall operate any motor vehicle upon any public highway, road, or street, on which the rear window is composed of, covered by, or treated with, any material which has a highly reflective or mirrored appearance and which has a total solar reflectance, when applied to automotive glass, greater than 35 percent in the visible light range.

(c) No person shall operate any motor vehicle upon any public highway, road, or street, on which the rear window is composed of, covered by, or treated with, any material which has the effect of making the rear window nontransparent unless the vehicle is equipped with side mirrors on both sides that meet the requirement of s. 316.294.

(d) No person shall operate any motor vehicle upon any public highway, road, or street, on which the sidewings and side windows on either side forward of or adjacent to the operator's seat are composed of, covered by, or treated with, any material which has the effect of making these glass areas nontransparent in any way or which has a highly reflective or mirrored appearance and a total solar reflectance, when applied to automotive glass, greater than 35 percent in the visible light range.

(e) Any person required for medical reasons to be shielded from the direct rays of the sun, and any person operating a motor vehicle belonging to such person or in which such person is a habitual passenger, shall be exempt from the provisions of paragraphs (b) and (d). Such requirement must be attested to by a physician licensed to practice in this state. Before placing any such shielding material upon any window, a person desiring the exemption shall submit an application to the Florida Highway Patrol which shall record such exemption and which, upon granting such exemption, shall distribute a sufficiently noticeable sticker which shall be adhered to each exempted window.

(3) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(4) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(5) Grove equipment, including "goats," "high-lift-goats," grove chemical supply tanks, fertilizer distributors, fruit-loading equipment, and electric-powered vehicles regulated under the provisions of s. 316.267, shall be exempt from the requirements of this section. However, such electric-powered vehicles shall have a windscreen approved by the department sufficient to give protection from wind, rain, or insects, and such windscreen shall be in place whenever the vehicle is operated on the public roads and highways.

History.—s. 1, ch. 71-135; s. 1, ch. 72-287; s. 1, ch. 75-249; ss. 1, 22, ch. 76-31; s. 1, ch. 76-34; s. 1, ch. 78-271.
Note.—Former s. 316.210.

316.296 Selling motor vehicle equipped with windows which are reflective or nontransparent; penalty.—

(1) No person shall have for sale, sell, or offer for sale any motor vehicle with windows that are in violation of the provisions of subsection 316.295(2).

(2) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 75-249; ss. 1, 34, ch. 76-31.
Note.—Former s. 316.2105.

316.297 Selling reflective or nontransparent material for motor vehicle windows; penalty.—

(1) On and after July 1, 1975, no person shall knowingly sell any material for the purpose of installation on, or as a replacement for, the windows of a motor vehicle when such installation would bring the vehicle into noncompliance with s. 316.295.

(2) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 75-249; ss. 1, 35, ch. 76-31.
Note.—Former s. 316.2106.

316.298 Motor vehicle windows; exemptions for manufacturers.—The provisions of ss. 316.295, 316.296, and 316.297 shall not apply to the manufacturer's tinting of motor vehicle windows or to certificates or other papers required to be so displayed by law; however, no motor vehicle window described in paragraph 316.295(2)(b) or paragraph 316.295(2)(c) shall have a total solar reflectance, when applied to

automotive glass, greater than 35 percent in the visible light range.

History.—s. 4, ch. 75-249; ss. 1, 36, ch. 76-31.
Note.—Former s. 316.2107.

316.299 Rough surfaced wheels prohibited.—No person shall drive, propel, operate, or cause to be driven, propelled or operated over any paved or graded public road of this state any tractor engine, tractor or other vehicle or contrivance having wheels provided with sharpened or roughened surfaces, other than roughened pneumatic rubber tires having studs designed to improve traction without materially injuring the surface of the highway, unless the rims or tires of the wheels of such tractor engines, tractors, or other vehicles or contrivances are provided with suitable filler blocks between the cleats so as to form a smooth surface. This requirement shall not apply to tractor engines, tractors, or other vehicles or contrivances if the rims or tires of their wheels are constructed in such manner as to prevent injury to such roads. This restriction shall not apply to tractor engines, tractors, and other vehicles or implements used by any county or the Department of Transportation in the construction or maintenance of roads or to farm implements weighing less than 1,000 pounds when provided with wheel surfaces of more than ½ inch in width.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.290.

316.300 Certain vehicles to carry flares or other devices.—

(1) No person shall operate any truck, bus, or truck-tractor, or any motor vehicle towing a house trailer, upon any highway outside an urban district or upon any divided highway at any time between sunset and sunrise unless there is carried in such vehicles the following equipment, except as provided in subsection (2):

(a) At least three flares, three red electric lanterns, or three portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime. No flare, fusee, electric lantern, or warning flag shall be used for the purpose of compliance with the requirements of this section unless such equipment is of a type which has been submitted to the department and approved by it. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful lower beams of headlamps, and unless it is of a type which has been submitted to the department and approved by it.

(b) At least three red-burning fusees, unless red electric lanterns or red portable emergency reflectors are carried.

(2) No person shall operate at the time and under conditions stated in subsection (1) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there is carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1), and there shall not be carried in any such vehicle any flares, fusees, or signal produced by flame.

(3) No person shall operate any vehicle described in subsections (1) or (2) upon any highway outside of an urban district or upon a divided highway at any time when lighted lamps are not required by s. 316.217 unless there is carried in such vehicle at least two red flags, not less than 12 inches square, with standards to support such flags.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.274.

316.301 Display of warning lights and devices when vehicle is stopped or disabled.—

(1) Whenever any truck, bus, truck tractor, trailer, semitrailer, or pole trailer 80 inches or more in overall width or 30 feet or more in overall length is stopped upon a roadway or adjacent shoulder, the driver shall immediately actuate vehicular hazard-warning signal lamps meeting the requirements of this chapter. Such lights need not be displayed by a vehicle parked lawfully in an urban district, or stopped lawfully to receive or discharge passengers, or stopped to avoid conflict with other traffic or to comply with the directions of a police officer or an official traffic control device, or while the devices specified in subsection (2)-(8) are in place.

(2) Whenever any vehicle of a type referred to in subsection (1) is disabled, or stopped for more than 10 minutes, upon a roadway outside of an urban district at any time when lighted lamps are required, the driver of such vehicle shall display the following warning devices except as provided in subsection (3):

(a) A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall immediately be placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place 3 liquid-burning flares (pot torches), or 3 lighted red electric lanterns, or 3 portable red emergency reflectors on the roadway in the following order:

1. One approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane;

2. One approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle; and

3. One at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph (a) of this subsection, it may be used for this purpose.

(3) Whenever any vehicle referred to in this section is disabled, or stopped for more than 10 minutes, within 500 feet of a curve, hill crest or other obstruction to view, the warning device in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than 100

feet nor more than 500 feet from the disabled vehicle.

(4) Whenever any vehicle of a type referred to in this section is disabled, or stopped for more than 10 minutes, upon any roadway of a divided highway during the time lighted lamps are required, the appropriate warning devices prescribed in subsections (2) and (5) shall be placed as follows:

(a) One at a distance of approximately 200 feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane.

(b) One at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane.

(c) One at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled, or stopped for more than 10 minutes, at any time and place mentioned in subsections (2), (3) or (4), the driver of such vehicle shall immediately display red electric lanterns or portable red emergency reflectors in the same number and manner specified therein. Flares, fusees or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(6) The warning devices described in subsections (2)-(5) need not be displayed where there is sufficient light to reveal persons and vehicles within a distance of 1,000 feet.

(7) Whenever any vehicle described in this section is disabled, or stopped for more than 10 minutes, upon a roadway outside of an urban district or upon the roadway of a divided highway at any time when lighted lamps are not required by s. 316.217, the driver of the vehicle shall display two red flags as follows:

(a) If traffic on the roadway moves in two directions, one flag shall be placed approximately 100 feet to the rear and one flag approximately 100 feet in advance of the vehicle in the center of the lane occupied by such vehicle.

(b) Upon a one-way roadway, one flag shall be placed approximately 100 feet and one flag approximately 200 feet to the rear of the vehicle in the center of the lane occupied by such vehicle.

(8) When any vehicle described in this section is stopped entirely off the roadway and on an adjacent shoulder at any time and place hereinbefore mentioned, the warning devices shall be placed, as nearly as practicable, on the shoulder near the edge of the roadway.

(9) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of this chapter applicable thereto.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.230.

316.302 Transportation of hazardous materials, explosives, flammable liquids, radioactive materials, etc.—

(1)(a) Any vehicle used for transporting any hazardous material as defined in subpart B, part 172, 49 C.F.R., shall be placarded in accordance with the rules and regulations of 49 C.F.R. s. 172.504. Any person transporting any hazardous material that has not been placarded as provided in this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any vehicle used for transporting any explosives as a cargo or part of a cargo upon the highways, roads, or streets of this state shall be marked or placarded on the front, both sides, and the rear with the word "EXPLOSIVES" in letters not less than 6 inches high, or in lieu thereof shall conspicuously display upon an erect pole a red flag, not less than 540 square inches in area with the word "EXPLOSIVES" thereon in white letters not less than 6 inches high. Any vehicle used for transporting any flammable liquids as a cargo or part of a cargo upon the highways, roads, or streets of this state shall be marked or placarded on each side and the rear with the word "GASOLINE," other name of fuel or flammable liquid carried or other applicable wording in letters of such height as required by rules and regulations made and promulgated by the Department of Insurance. Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used. Any vehicle used for transporting any radioactive material as a cargo or part of a cargo upon the highways, roads, or streets of this state but not regulated as to such transportation by federal authority shall be marked or placarded with such words and symbols of identification as may be prescribed by the regulations of the Department of Insurance. The Department of Insurance is authorized in accordance with chapter 633 to make and promulgate such additional rules and regulations governing the transportation of explosives, flammable liquids, and other dangerous articles, including radioactive materials, by vehicles upon the highways, roads, and streets as it shall deem advisable for the protection of the public, and all such rules and regulations shall have the full force and effect of law. As to radioactive materials, it shall promulgate rules and regulations no less restrictive than those imposed by federal authority for similar interstate transportation.

(2) The provisions of subsection (1) shall not be applicable to the transporting of liquefied petroleum gas. The rules and regulations applicable to the transporting of liquefied petroleum gas on the highways, roads, or streets of this state shall be only those made and promulgated by the Department of Insurance under chapter 527.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 79-254.
Note.—Former s. 316.286.
cf.—s. 381.512 Transportation of radioactive materials.

316.303 Television receivers.—

(1) No motor vehicle operated on the highways of this state shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat.

(2) This section does not prohibit the use of television-type receiving equipment used exclusively for safety or law enforcement purposes, provided such use is approved by the department.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.275.

316.304 Wearing of headsets.—No person shall operate a motor vehicle while wearing a headset, headphone, or other listening device, other than a hearing aid or instrument for the improvement of defective human hearing. However, this section shall not apply to any law enforcement officer equipped with any communication device necessary in performing his assigned duties.

History.—s. 1, ch. 73-4; s. 1, ch. 76-31.
Note.—Former s. 316.0285.

316.400 Headlamps.—

(1) Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter.

(2) Every headlamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than 54 inches nor less than 24 inches to be measured as set forth in s. 316.217(3).

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.243.

316.405 Motorcycle headlights to be turned on.—

(1) Any person who operates a motorcycle or motor-driven cycle on the public streets or highways shall, while so engaged, have the headlight or headlights of such motorcycle or motor-driven cycle turned on. Failure to comply with this section during the hours from sunrise to sunset, unless compliance is otherwise required by law, shall not be admissible as evidence of negligence in a civil action.

(2) Failure to comply with the provisions of this section shall not be deemed negligence per se in any civil action, but the violation of this section may be considered on the issue of negligence if the violation of this section is a proximate cause of an accident.

History.—ss. 1, 2, ch. 71-351; s. 1, ch. 76-31.
Note.—Former s. 316.2431.

316.410 Taillamps.—

(1) Every motorcycle and motor-driven cycle shall have at least one taillamp which shall be located at a height of not more than 72 nor less than 20 inches.

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.244.

316.415 Reflectors.—Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the taillamp or separately, at least one red reflector.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.245.

316.420 Stop lamps.—Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp meeting the requirements of s. 316.234(1).

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.246.

316.425 Lamps on parked motorcycles.—

(1) Every motorcycle must comply with the provisions of s. 316.229 regarding lamps on parked vehicles and the use thereof.

(2) Motor-driven cycles need not be equipped with parking lamps or otherwise comply with the provisions of s. 316.229.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.247.

316.430 Multiple-beam road-lighting equipment.—

(1) Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

(2) Such equipment shall:

(a) Reveal persons and vehicles at a distance of at least 300 feet ahead when the uppermost distribution of light is selected;

(b) Reveal persons and vehicles at a distance of at least 150 feet ahead when the lowermost distribution of light is selected.

On a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.248.

316.435 Lighting equipment for motor-driven cycles.—The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type, but in either event shall comply with the requirements and limitations as follows:

(1) Every such headlamp or headlamps on a motor-driven cycle shall be of sufficient intensity to reveal persons and vehicles at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour; at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour; and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps, such equipment shall comply with the requirements of s. 316.430(2).

History.—s. 1, ch. 71-135; ss. 1, 29, ch. 76-31.
Note.—Former s. 316.249.

316.440 Brake equipment required.—Every motor-driven cycle must comply with the provisions of s. 316.261, except that:

(1) Motorcycles and motor-driven cycles need not be equipped with parking brakes.

(2) The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle, need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of this chapter.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.264.

316.445 Performance ability of motorcycle brakes.—

(1) Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than 43.5 percent of its gross weight;

(b) Decelerating to a stop from not more than 20 miles per hour at not less than 14 feet per second per second; and

(c) Stopping from a speed of 20 miles per hour in not more than 30 feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1 percent grade), dry, smooth, hard surface that is free from loose material.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.265.

316.450 Brakes on motor-driven cycles.—

(1) The department is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove any such braking system on a vehicle which it finds will not comply with the performance ability standard set forth in s. 316.445 or which in its opinion is equipped with a braking system that is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(2) The department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it determines that the braking system thereon does not comply with the provisions of this section.

(3) No person shall operate on any highway any vehicle referred to in this section in the event the department has disapproved the braking system upon such vehicle.

History.—s. 1, ch. 71-135; ss. 1, 30, ch. 76-31.
Note.—Former s. 316.266.

316.455 Other equipment.—Every motorcycle and every motor-driven cycle shall comply with the requirements and limitations of s. 316.271 on horns and warning devices, s. 316.272 on mufflers and prevention of noise, and s. 316.294 on mirrors.

History.—s. 1, ch. 71-135; ss. 1, 31, ch. 76-31.
Note.—Former s. 316.277.

316.500 Exceeding weight and length; penalties.—It is a violation of this chapter for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter or otherwise in violation of this chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state. Local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.206.

316.510 Projecting loads on passenger vehicles.—No passenger type vehicle shall be operated on any highway with any load carried thereon extending beyond the fenders on the left side of the vehicle or extending more than 6 inches beyond the line of the fenders on the right side thereof.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.197.

316.515 Maximum width, height, length.—

(1) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this chapter.

(2) No vehicle shall exceed a height of 13 feet 6 inches, inclusive of load carried thereon.

(3)(a) No vehicle shall exceed a length of 40 feet extreme overall dimension, inclusive of front and rear bumpers, and load carried thereon but exclusive of detachable wind-deflection devices which have been approved by the department. Any vehicle in excess of 35 feet, except buses, shall have not less than three axles. No combination of vehicles coupled together shall consist of more than two units, and no such combination of vehicles shall exceed a total length of 55 feet, inclusive of load carried thereon but exclusive of detachable wind-deflection devices which have been approved by the department. Automobile towaway or driveaway operations, transporting new or used trucks, may use what is known to the trade as saddle mounts, provided the overall length shall not exceed 55 feet and in no instance may more than two saddle mounts be towed. Combinations of vehicles up to five in number will be authorized for the sole purpose of collecting refuse and transporting same to the dump by vehicles and combinations of vehicles provided that such vehicles or combinations of vehicles shall be covered in such manner that refuse transported therein shall not spill from the vehicles, if they otherwise comply with the provisions of this law and only use the state roads to the extent necessary to collect and dispose of refuse.

(b) Tour trains and similar operations which have been continuously conducted for 120 days prior to the date this chapter becomes law shall also be authorized hereunder, subject to the length and other restrictions imposed by law, not in conflict with the provisions of this chapter.

(4) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than 3 feet beyond the front wheels of the vehicle or the front bumper of the vehicle if it is equipped with a bumper.

(5) The length limitation imposed by this section shall not apply to fire apparatus, to vehicles operated in the daytime when transporting poles, pipes, machinery or other objects of a structural nature which cannot readily be dismembered, or to such vehicles transporting such objects operated at night by a public utility when required for emergency repair of public service facilities or properties, when operated under special permit as hereinafter provid-

ed for, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

(6) The limitations imposed by this section shall not apply to a combination of vehicles consisting of a wrecker licensed in accordance with s. 320.08(6)(c) and a disabled motor vehicle, trailer, semitrailer, or tractor-trailer combination which is under tow by the wrecker to a nearby authorized repair service.

History.—s. 1, ch. 71-135; s. 1, ch. 74-117; s. 1, ch. 76-31; s. 4, ch. 79-99.
Note.—Former s. 316.196.

316.520 Loads on vehicles.—

(1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom, except that sand may be dropped only for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(2) It is the duty of every owner and driver, severally, of any vehicle hauling, upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar aggregate or trash, garbage, or any similar material which could fall or blow from such vehicle, to prevent such materials from falling, blowing, or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover is required.

History.—s. 1, ch. 71-135; s. 1, ch. 73-174; s. 1, ch. 74-111; s. 1, ch. 76-31.
Note.—Former s. 316.198.

316.525 Requirements for vehicles hauling load.—It is the duty of every owner, licensee, and driver, severally, of any truck, trailer, semitrailer, and pole trailer to use such stanchions, standards, stays, supports or other equipment, appliances, or contrivances, together with one or more lock chains, so as to fasten the load securely to the vehicle.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.280.

316.530 Towing requirements.—

(1) When one vehicle is towing another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby, and said drawbar or other connection shall not exceed 15 feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When one vehicle is towing another vehicle and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than 12 inches square.

(2) When a vehicle is towing a trailer or semitrailer on a public road or highway by means of a trailer hitch to the rear of the vehicle, there shall be attached in addition thereto safety chains from the trailer or semitrailer to the vehicle. These safety chains shall be of sufficient strength to maintain connection of the trailer or semitrailer to the pulling vehicle under all conditions while the trailer or semitrailer is being towed by the vehicle. The provisions of this subsection shall not apply to trailers or semitrailers using a hitch known as a 5th wheel nor to farm equipment traveling less than 20 miles per hour.

(3) Whenever a motor vehicle becomes disabled upon the highways of this state and a wrecker or tow truck is required to remove it to a repair shop or other appropriate location, if the combined weights of those two vehicles and the loads thereon exceed the maximum allowable weights as established by s. 316.535, no penalty shall be assessed either vehicle or driver. However, this exception shall not apply to the load limits for bridges and culverts established by the department as provided in s. 316.555.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 76-91; s. 124, ch. 79-400.
Note.—Former s. 316.205.

316.535 Maximum weights.—

(1) The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed 20,000 pounds.

(2) For the purposes of this chapter, an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between 2 parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(3) Subject to the limit upon the weight imposed upon the highways through any one axle as set forth herein, the total weight with load imposed upon the highway by all the axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the vehicle or combination of vehicles, measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between first and last axles of vehicles or combination of vehicles.	Maximum load in pounds on all axles.
4	40,000
5	40,000
6	40,000
7	40,000
8	40,000
9	44,140
10	44,980
11	45,810
12	46,640
13	47,480
14	48,310
15	49,150
16	49,980
17	50,810
18	51,640
19	52,480
20	53,310
21	54,140
22	54,980
23	55,810
24	56,640
25	57,470
26	58,310
27	59,140
28	59,970
29	60,810

30	61,640
31	62,470
32	63,310
33	64,140
34	64,970
35	65,800
36	66,610

(4) With respect to the Interstate Highway System, in all cases in which it exceeds state law in effect on January 4, 1975, the overall gross weight on a group of two or more consecutive axles of a vehicle or combination of vehicles, including all enforcement tolerances, shall be as determined by the following formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

where W = the overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds; L = the distance in feet between the extremes of any group of two or more consecutive axles; and N = the number of axles in the group under consideration. Such overall gross weight of any vehicle or combination of vehicles may not exceed 80,000 pounds, including all enforcement tolerances.

(5) With respect to those highways not in the Interstate Highway System, in all cases in which it exceeds state law in effect on January 4, 1975, the overall gross weight on the vehicle or combination of vehicles, including all enforcement tolerances, shall be as determined by the following formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

where W = overall gross weight of the vehicle to the nearest 500 pounds, L = distance in feet between the extreme of the external axles, and N = number of axles on the vehicle. However, such overall gross weight of any vehicle or combination of vehicles may not exceed 80,000 pounds including all enforcement tolerances.

(6) The Department of Transportation shall adopt rules to implement this section. The Department of Highway Safety and Motor Vehicles shall enforce this section and the rules adopted hereunder and shall publish and distribute tables and other publications as deemed necessary to inform the public.

(7) Except as hereinafter provided, no vehicle or combination of vehicles exceeding the gross weights specified in subsections (3), (4), and (5) shall be permitted to travel on the public highways within the state.

(8) The provisions of s. 316.515 to the contrary notwithstanding, no combination of vehicles coupled together shall consist of more than three units, and no such combination of vehicles shall exceed a total length of 65 feet, inclusive of load carried thereon. The provisions of this subsection shall apply only to four-lane divided highways.

History.—s. 1, ch. 71-135; s. 1, ch. 75-47; s. 1, ch. 76-31; s. 90, ch. 77-104; s. 1, ch. 79-276.
Note.—Former s. 316.199.

316.540 Reregistration of certain motor vehicles not conforming with s. 316.535.—Any motor vehicles or combination of vehicles which conformed to the requirements of motor vehicle laws relative to weights and sizes prior to the enactment of chapter 25342, Laws of Florida, 1949, which are now registered and continue to reregister yearly for operation in this state, and due to their peculiar construction and design may not, in the opinion of the department, be made to conform to the axle spacing requirements of s. 316.535 without excessive expenses, may be continued in operation for the life of the vehicle, subject to all safety and operational requirements of law, without being made to conform to the axle spacing requirements of s. 316.535 provided that such vehicles or combination of vehicles shall be limited to a total gross load, including weight of vehicle, of 20,000 pounds per axle plus scale tolerances and shall not exceed 550 pounds per inch width tire surface. Such vehicles equipped with more than 3 axles shall not exceed a gross weight, including the weight of the vehicle and scale tolerances, of 70,000 pounds, provided such gross weight shall not exceed 20,000 pounds per axle and 550 pounds per inch width of tire surface plus scale tolerances. Such reregistration may be made only by the department and shall show that the license is a specially issued one. Dump trucks, concrete mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work or use need not be registered as required herein, but shall meet the requirements of this section as to load limits. Any vehicle violating the weight provisions of this section shall be penalized as provided in s. 316.545.

History.—s. 1, ch. 71-135; ss. 1, 20, ch. 76-31; s. 3, ch. 76-171.
Note.—Former s. 316.201.

316.545 Weight and load unlawful; inspection; penalty; review.—

(1) Any officer or agent of the Department of Highway Safety and Motor Vehicles or the Florida Public Service Commission having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales, provided such public scales are within 2 miles.

(2) Whenever an officer, upon weighing a vehicle or combination of vehicles with load, determines that the axle weight or gross weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place and remain standing until a determination can be made as to the amount of weight thereon and, if overloaded, the amount of penalty to be assessed as provided herein. However, any gross weight over and beyond 6,000 pounds beyond the maximum herein set shall be unloaded and all material so unloaded shall be cared for by the owner or

operator of the vehicle at the risk of such owner or operator. For enforcement purposes, all scaled weights of the gross or axle weight of vehicles and combinations of vehicles shall be deemed to be not closer than 10 percent to the true gross weight. However, if the driver of any vehicle can comply with the requirements of this chapter by shifting or equalizing the load on all wheels or axles and does so when requested by the proper authority, the driver shall not be held to be operating in violation of this chapter.

(3) Any person who violates the overloading provisions of this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(a) When the excess weight is 100 pounds or less than the maximum herein provided, the penalty shall be $5;

(b) Five cents per pound for each pound of weight in excess of the maximum herein provided when the excess weight exceeds 100 pounds. However, whenever the gross weight of the vehicle or combination of vehicles does not exceed the maximum allowable gross weight, the maximum fine for the first 1,000 pounds of unlawful axle weight shall be $10.

(4) Whenever any person violates the provisions of this chapter and becomes indebted to the state because of such violation in the amounts aforesaid and refuses to pay said penalty, such penalty shall become a lien upon the overloaded motor vehicle, and the same may be foreclosed by the state in a court of equity. It shall be presumed that the owner of the overloaded motor vehicle is liable for the sum. Any person, firm, or corporation claiming an interest in the seized motor vehicle may, at any time after the state's lien attaches to the motor vehicle, obtain possession of the seized vehicle by filing a good and sufficient forthcoming bond with the officer having possession of the vehicle, payable to the governor of the state in twice the amount of the state's lien, with a corporate surety duly authorized to transact business in this state as surety, conditioned to have the motor vehicle or combination of vehicles forthcoming to abide the result of any suit for the foreclosure of said lien. It shall be presumed that the owner of the overloaded motor vehicle is liable for the penalty imposed under this section. Upon the posting of such bond with the officer making the seizure, the vehicle shall be released and the bond shall be forwarded to the Department of Transportation for safekeeping. The lien of the state against the motor vehicle aforesaid shall be foreclosed in equity, and the ordinary rules of court relative to proceedings in equity shall control. If it appears that the seized vehicle has been released to the defendant upon his forthcoming bond, the state shall take judgment of foreclosure against the property itself, and judgment against the defendant and the sureties on the bond for the amount of the lien, including cost of proceedings. After the rendition of the decree, the state may, at its option, proceed to sue out execution against the defendant and his sureties for the amount recovered as aforesaid or direct the sale of the vehicle under foreclosure.

(5) Any officer collecting the penalty herein imposed shall give to the owner or driver of the overloaded vehicle an official receipt for all penalties collected. Such officers or agents of the state departments shall cooperate with the owners or drivers of motor vehicles so as not to delay unduly the vehicles. All penalties imposed and collected under this section by any state agency having jurisdiction shall be paid to the treasurer of the state, who shall credit the total amount thereof to the state transportation trust fund, which shall be used to repair and maintain the roads of this state and to enforce this chapter relating to weights of vehicles.

(6) There is hereby created a board of review, consisting of the secretary of the Department of Transportation, the chairman of the Public Service Commission, the director of the Division of Motor Vehicles, and the director of the Division of Highway Patrol, or their authorized representatives, which may review any penalty imposed upon any vehicle or person under the provisions of this chapter relating to weights imposed on the highways by the axles and wheels of motor vehicles.

(7) Any person aggrieved by the imposition of a civil penalty pursuant to this section may apply to the review board for a modification, cancellation, or revocation of the penalty, and the review board is authorized to modify, cancel, revoke, or sustain such penalty.

(8) Any agent of the Department of Highway Safety and Motor Vehicles employed for the purpose of being a weight inspector shall have the same arrest powers as are granted under s. 570.151 for roadguard inspection special officers for the purpose of enforcing the provisions of weight and load laws.

History.—s. 1, ch. 71-135; ss. 2, 3, ch. 73-57; s. 1, ch. 76-31; s. 1, ch. 79-390.
Note.—Former s. 316.200.

316.550 Operations not in conformity with law; special permits.—The Department of Transportation, with respect to highways under its jurisdiction, and local authorities, with respect to highways under their jurisdiction, may, in their discretion and upon application and good cause shown therefor that the same is not contrary to the public interest, issue special permits in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this chapter, or otherwise not in conformity with the provisions of this chapter, upon any highway under the jurisdiction of the authority issuing such permit and for the maintenance of which said authority is responsible. The permit shall describe the vehicle or vehicles and load to be operated or moved and the highways for which the permit is requested. The Department of Transportation or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit or prescribe conditions of operation of such vehicle or vehicles, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure. The Department of Transportation or such local authority is authorized to promulgate rules and regulations concerning the issuance of such permits, and to charge a fee for the issuance thereof, which rules, regulations, and fees shall have the force and effect

of law. The minimum fee for issuing any such permit shall be $5. The Department of Transportation may issue blanket permits for not more than 12 months, the fee for which shall not exceed $50. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers, and shall be open to inspection by any police officer or authorized agent of any authority granting such permit. No person shall violate any of the terms or conditions of such special permit.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.009.

316.555 Weight, load, speed limits may be lowered; condition precedent.—Anything in this chapter to the contrary notwithstanding, the Department of Transportation with respect to state roads, and local authorities with respect to highways under their jurisdiction, may prescribe, by notice hereinafter provided for, loads and weights and speed limits lower than the limits prescribed in this chapter and other laws, whenever in its or their judgment any road or part thereof or any bridge or culvert shall, by reason of its design, deterioration, rain, or other climatic or natural causes be liable to be damaged or destroyed by motor vehicles, trailers, or semitrailers, if the gross weight or speed limit thereof shall exceed the limits prescribed in said notice. The Department of Transportation or local authority may, by like notice, regulate or prohibit, in whole or in part, the operation of any specified class or size of motor vehicles, trailers, or semitrailers on any highways or specified parts thereof under its or their jurisdiction, whenever in its or their judgment, such regulation or prohibition is necessary to provide for the public safety and convenience on the highways, or parts thereof, by reason of traffic density, intensive use thereof by the traveling public, or other reasons of public safety and convenience. The notice or the substance thereof shall be posted at conspicuous places at terminals of all intermediate crossroads and road junctions with the section of highway to which the notice shall apply. After any such notice has been posted, the operation of any motor vehicle or combination contrary to its provisions shall constitute a violation of this chapter. However, no limitation shall be established by any county, municipal, or other local authorities pursuant to the provisions of this section that would interfere with or interrupt traffic as authorized hereunder over state roads, including officially established detours for such highways, including cases where such traffic passes over roads, streets or thoroughfares within the sole jurisdiction of the county, municipal or other local authorities unless such limitations and further restrictions have first been approved by the Department of Transportation. With respect to county roads, except such as are in use as state road detours, the respective county road authorities shall have full power and authority to further limit the weights of vehicles upon bridges and culverts upon such public notice as they deem sufficient, and existing laws applicable thereto shall not be affected by the terms of this chapter.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.202.

316.560 Damage to highways; liability of driver and owner.—Any person driving or moving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damages which the highway or structure may sustain as a result of any illegal operating, driving, or moving of such vehicles, object, or contrivance, whether or not such damage is a result of operating, driving, or moving any vehicle, object or contrivance weighing in excess of the maximum weights as provided in this chapter but authorized by special permit issued pursuant to s. 316.550. Whenever the driver is not the owner of the vehicle, object, or contrivance but is so operating, driving, or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in any civil action brought by the authorities in control of the highway or highway structure.

History.—s. 1, ch. 71-135; ss. 1, 21, ch. 76-31.
Note.—Former s. 316.203.

316.565 Emergency transportation, perishable food; establishment of weight loads, etc.—

(1) The Governor may declare an emergency to exist when there is a breakdown in the normal public transportation facilities necessary in moving perishable food crops grown in the state. The Department of Transportation is authorized during such emergency to establish such weight loads for hauling over the highways from the fields or packinghouses to the nearest available public transportation facility as circumstances demand. The Department of Transportation shall designate special highway routes, excluding the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the perishables.

(2) It is the intent of the Legislature in this chapter to supersede any existing laws when necessary to protect and save any perishable food crops grown in the state and give authority for agencies to provide necessary temporary assistance requested during any such emergency.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.204.

316.600 Health and sanitation hazards.—No motor vehicle, trailer or semitrailer shall be equipped with an open toilet or other device that may be a hazard from a health and sanitation standpoint.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.279.

316.605 Licensing of vehicles.—Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state, shall be licensed in the name of the owner thereof in accordance with the laws of this state unless such vehicle is not required by the laws of Florida to be licensed in this state, and shall, unless otherwise provided by statute, display the license plate or both of the license plates assigned to it by the state, one on the rear and, if two, the other on the front of the vehicle, each to be securely fastened to the vehicle outside the main body of the vehicle, in such manner as to prevent the plates from swinging, with all letters, numerals, printing, writing, and other identification

marks upon the plates clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they shall be plainly visible and legible at all times 100 feet from the rear or front. Nothing shall be placed upon the face of a Florida plate except as permitted by law or by rule or regulation of a governmental agency. No license plates other than those furnished by the state shall be used. However, if the vehicle is not required to be licensed in this state, the license plates on such vehicle issued by another state, or by a territory, possession, or district of the United States, or by a foreign country, substantially complying with the provisions hereof, shall be considered as complying with this chapter.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 78-55.
Note.—Former s. 316.284.

316.610 Safety of vehicle; inspection.—It is a violation of this chapter for any person to drive or move, or for the owner or his duly authorized representative to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

(1) Any police officer may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event the vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, and the continued operation would probably present an unduly hazardous operating condition, the officer may require the vehicle to be immediately repaired or removed from use. However, if continuous operation would not present unduly hazardous operating conditions, that is, in the case of equipment defects such as tailpipes, mufflers, windshield wipers, marginally worn tires, the officer shall give written notice to require proper repair and adjustment of same within 48 hours, excluding Sunday.

(3) It is unlawful to operate any vehicle on any of the streets or highways which is required under the laws of this state or any political subdivision thereof to be inspected, unless the vehicle has been inspected and has attached thereto, in proper position, a valid and unexpired certificate of inspection as required.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 1, ch. 78-112.
Note.—Former s. 316.285.

316.615 Inspection of school buses; physical requirements of drivers.—

(1)(a) All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than 24 pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission, shall comply with the requirements for school buses of chapter 234.

(b) For the purposes of this section the term "school" includes all public and private nursery, preelementary, elementary, secondary, and college level schools.

(2)(a) Every bus with a seating capacity of less than 24 pupils shall be equipped with the following:

1. Nonleaking exhaust system;
2. First-aid kit;
3. Fire extinguisher;
4. Unbroken safety glass on all windows;
5. Inside rear view mirror capable of giving the driver a clear view of motor vehicles approaching from the rear; and
6. Seats securely anchored.

(b) Such vehicles shall be covered by liability insurance to protect pupils being transported.

(c) Such vehicles shall transport no more passengers than they are equipped to seat.

(3)(a) No person shall operate or cause to be operated a motor vehicle covered by subsection (1) unless the operator has met the physical examination requirements of s. 234.16.

(b) All school bus drivers shall pass an annual physical examination, and have posted in the bus a certificate to drive same.

(4) All school buses and all motor vehicles covered by subsection (1) shall be inspected annually by the department, and when found satisfactory for safe operation shall display on the vehicle a current certificate of inspection.

(5) The department shall promulgate such rules and regulations as are necessary to effect the purposes of this section.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.288.
cf.—s. 234.091 School bus driver; qualifications.

316.620 Transportation of migrant farm workers.—Every carrier of migrant farm workers shall systematically inspect and maintain, or cause to be systematically maintained, all motor vehicles and their accessories subject to its control to insure that such motor vehicles and accessories are in safe and proper operating condition in accordance with the provisions of this chapter.

(1) COMPLIANCE.—Every carrier of migrant farm workers, and its officers, agents, drivers, representatives and employees directly concerned with the installation and maintenance of equipment and accessories, shall comply and be conversant with the requirements and specifications of this section, and no carrier of migrant farm workers shall operate any motor vehicle over the public highways of this state, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(2) COUPLING DEVICES; FIFTH WHEEL MOUNTING AND LOCKING.—The lower half of every fifth wheel mounted on any truck-tractor or dolly shall be securely affixed to the frame thereof by U-bolts of adequate size, securely tightened, or by other means providing at least equivalent security. Such U-bolts shall not be of welded construction. The

installation shall be such as not to cause cracking, warping, or deformation of the frames. Adequate means shall be provided positively to prevent the shifting of the lower half of a fifth wheel on the frame to which it is attached. The upper half of every fifth wheel shall be fastened to the motor vehicle with at least the security required for the securing of the lower half to a truck-tractor or dolly. Locking means shall be provided in every fifth wheel mechanism including adaptors when used, so that the upper and lower halves may not be separated without the operation of a positive manual release. A release mechanism operated by the driver from the cab shall be deemed to meet this requirement. On fifth wheels designed and constructed as to be readily separable, the fifth wheel locking devices shall apply automatically on coupling for any motor vehicle the date of manufacture of which is subsequent to December 31, 1952.

(3) TIRES.—Every motor vehicle shall be equipped with tires of adequate capacity to support its gross weight. No motor vehicle shall be operated on tires which have been worn so smooth as to expose any tread fabric or which have any other defect likely to cause failure. No vehicle shall be operated while transporting passengers while using any tire which does not have tread configurations on that part of the tire which is in contact with the road surface. No vehicle transporting passengers shall be operated with regrooved, recapped, or retreaded tires on front wheels.

(4) PASSENGER COMPARTMENT.—Every motor vehicle transporting passengers, other than a bus, shall have a passenger compartment meeting the following requirements:

(a) *Floors.*—There shall be a substantially smooth floor, without protruding obstructions more than 2 inches high, except as are necessary for securing seats or other devices to the floor, and without cracks or holes.

(b) *Sides.*—Sidewalls and ends shall be above the floor at least 60 inches high, by attachment of sideboards to the permanent body construction if necessary. Stake body construction shall be construed to comply with this requirement only if all 6-inch or larger spaces between stakes are suitably closed to prevent passengers from falling off the vehicle.

(c) *Nails, screws, splinters.*—The floor and the interior of the sides and ends of the passenger-carrying space shall be free of inwardly protruding nails, screws, splinters, or other projecting objects, likely to be injurious to passengers or their apparel.

(d) *Seats.*—A seat shall be provided for each worker transported. The seats shall be securely attached to the vehicle during the course of transportation; not less than 16 inches nor more than 19 inches above the floor; at least 13 inches deep; equipped with back rests extending to a height of at least 36 inches above the floor, with at least 24 inches of space between the back rests or between the edges of the opposite seats when face-to-face; designed to provide at least 18 inches of seat for each passenger; without cracks more than ¼-inch wide, and the back rest, if slatted, without cracks more than 2 inches wide; and the exposed surfaces, if made of wood, planed or sanded smooth and free of splinters.

(e) *Protection from the weather.*—Whenever necessary to protect the passengers from inclement weather conditions, the passenger compartment shall be equipped with a top at least 80 inches high above the floor and facilities for closing the sides and ends of the passenger-carrying compartment. Tarpaulins or other such removable devices for protection from the weather shall be secured in place.

(f) *Exit.*—Adequate means of ingress and egress to and from the passenger space shall be provided on the rear or at the right side Such means of ingress and egress shall be at least 18 inches wide. The top and the clear opening shall be at least 60 inches high, or as high as the sidewall of the passenger space if less than 60 inches. The bottom shall be at the floor of the passenger space.

(g) *Gates or doors.*—Gates or doors shall be provided to close the means of ingress and egress, and each such gate or door shall be equipped with at least one latch or other fastening device of such construction as to keep the gate or door securely closed during the course of transportation and readily operative without the use of tools.

(h) *Ladders or steps.*—Ladders or steps for the purpose of ingress or egress shall be used when necessary. The maximum vertical spacing of footholes shall not exceed 12 inches, except that the lowest step may be not more than 18 inches above the ground when the vehicle is empty.

(i) *Handholds.*—Handholds or devices for similar purpose shall be provided to permit ingress and egress without hazard to passengers.

(j) *Emergency exit.*—Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit having a gate or door, latch, and handhold as prescribed in paragraphs (g) and (i) and located on a side or rear not equipped with the exit prescribed in paragraph (f).

(k) *Communication with driver.*—Means shall be provided to enable the passengers to communicate with the driver. Such means may include telephone, speaker tubes, buzzers, pull cords, or other mechanical or electrical means.

(5) PROTECTION FROM COLD.—Every motor vehicle shall be provided with a safe means of protecting passengers from cold or undue exposure, but in no event shall heaters of the following types be used:

(a) *Exhaust heaters.*—Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into such space.

(b) *Unenclosed flame heaters.*—Any type of heater employing a flame which is not fully enclosed.

(c) *Heaters permitting fuel leakage.*—Any type of heater from the burner of which there could be spillage or leakage of fuel from the tilting or overturning of the vehicle in which it is mounted.

(d) *Heaters permitting air contamination.*—Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be con-

veyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(e) *Heaters not attached.*—Any heater not securely fastened to the vehicle.

(6) NOT APPLICABLE TO COMMON CARRIERS.—This section shall not apply to common carriers of passengers.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.289.

316.630 Juvenile traffic offenses; jurisdiction; penalties; transfer and waiver provisions.—

(1) "Juvenile traffic offense" means a violation by a child of a state law or local ordinance pertaining to the operation of a motor vehicle; however, the following offenses shall not be considered juvenile traffic offenses, but shall be considered delinquent acts for the purposes of this chapter:

(a) Fleeing or attempting to elude a law enforcement officer or failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3).

(b) Leaving the scene of a collision or an accident involving death or personal injuries or with an unattended vehicle.

(c) Driving while under the influence of alcoholic beverages, narcotic drugs, barbiturates, or other stimulants in violation of s. 316.193.

(d) Driving without a restricted operator's license if under the age of 16 years.

(e) Driving without a valid operator's license or while the license is suspended or revoked.

(2) The court having jurisdiction over traffic offenses shall have jurisdiction in the case of any juvenile who does not hold a driver's license and who is charged with a noncriminal infraction under this section. The court shall have the appropriate remedies available, as provided for in this section, if it finds that the juvenile committed the offense as charged.

(3) A juvenile traffic offense is not an act of delinquency unless the case is transferred to the circuit court as provided in subsection (5) hereof.

(4) If the court having jurisdiction over traffic offenses finds, on the admission of the child or upon the evidence, that he committed the offense charged it may make one or more of the following orders:

(a) Reprimand or counsel with the child and his parents or guardians;

(b) Suspend the child's privilege to drive under stated conditions and limitations for a period not to exceed that authorized for a like suspension of an adult's license for a like offense;

(c) Require the child to attend a traffic school conducted by public authority for a reasonable period of time; or

(d) Order the child to remit to the general fund of the local governmental body a sum not exceeding the maximum applicable to an adult for a like offense.

(5) The court having jurisdiction over traffic offenses may waive jurisdiction and transfer the case to the circuit court only if the offense is considered an act of delinquency or if the child has previously been found guilty of two or more traffic offenses within 6 months and the evidence indicates the advisability of circuit court jurisdiction.

History.—s. 2, ch. 72-179; s. 24, ch. 73-334; s. 1, ch. 74-261; s. 1, ch. 75-183; s. 1, ch. 76-31; s. 21, ch. 78-414.
Note.—Former s. 316.045.

316.635 Courts having jurisdiction over traffic offenses; powers relating to custody and detention.—The child shall not under any circumstances be placed in any police or other vehicle which at the same time contains an adult under arrest, or in a jail, police station, or other place of detention, except upon general or special order of the circuit judge. However, when the child is involved in the same offense or transaction with adults, then such child may be transported in the same vehicle with the adults so involved.

History.—s. 3, ch. 72-179; s. 24, ch. 73-334; s. 1, ch. 76-31.
Note.—Former s. 316.047.

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a) The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles has authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

(b) The Florida Public Service Commission has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

(2) COUNTIES.—

(a) The sheriff's office of each of the several counties of this state shall enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the county wherever the public has the right to travel by motor vehicle.

(b) The sheriff's office of each of the several counties of this state may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Police Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the Police Standards and Training Commission for police officers or auxiliary or part-time officers under s. 943.12.

1. A parking enforcement specialist employed by the sheriff's office of each of the several counties of this state is authorized to enforce all state and county laws, ordinances, regulations, and official signs governing parking within the unincorporated areas of the county by appropriate state or county citation and may issue such citations for parking in violation of signs erected pursuant to s. 316.006(3), at parking areas located on property owned or leased by a county, whether or not such areas are within the boundaries of a chartered municipality.

2. A parking enforcement specialist employed pursuant to this subsection shall not carry firearms or other weapons nor have arrest authority.

(3) MUNICIPALITIES.—

(a) The police department of each chartered municipality shall enforce the traffic laws of this state on all the streets and highways thereof and else-

where throughout the municipality wherever the public has the right to travel by motor vehicle. However, nothing in this chapter shall affect any law, general, special, or otherwise, in effect on January 1, 1972, relating to "hot pursuit" without the boundaries of the municipality.

(b) The police department of a chartered municipality may employ as a traffic accident investigation officer any individual who successfully completes at least 200 hours of instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Police Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the Police Standards and Training Commission, but who does not otherwise meet the uniform minimum standards established by the Police Standards and Training Commission for police officers or auxiliary police officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident is hereby authorized to issue traffic citations when, based upon personal investigation, he has reasonable and probable grounds to believe that a person involved has committed an offense under the provisions of this chapter in connection with the accident. Nothing in this paragraph shall be construed to permit the carrying of firearms or other weapons, nor shall such officers have arrest authority other than for the issuance of a traffic citation as authorized above.

(c)1. A chartered municipality or its authorized agency or instrumentality may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Police Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the Police Standards and Training Commission for police officers or auxiliary or part-time officers under s. 943.12.

2. A parking enforcement specialist employed by a chartered municipality or its authorized agency or instrumentality is authorized to enforce all state, county, and municipal laws and ordinances governing parking within the boundaries of the municipality employing the specialist, by appropriate state, county, or municipal traffic citation. Nothing in this paragraph shall be construed to permit the carrying of firearms or other weapons, nor shall such a parking enforcement specialist have arrest authority.

History.—s. 1, ch. 71-135; ss. 1, 2, ch. 73-24; s. 1, ch. 76-31; s. 1, ch. 76-270; s. 3, ch. 79-246.
Note.—Former s. 316.016.

316.645 Arrest authority of officer at scene of an accident.—A police officer who makes an investigation at the scene of a traffic accident may arrest any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter in connection with the accident.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31.
Note.—Former s. 316.017.

316.650 Traffic citations.—

(1) The department shall prepare, and supply to every traffic enforcement agency in this state, an appropriate form traffic ticket containing a notice to appear which shall be issued in prenumbered books with citations in quadruplicate and meeting the requirements of this chapter.

(2) Every traffic enforcement officer, upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town, shall deposit the original and one copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

(3) Upon the deposit of the original and one copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such traffic citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail, or by the deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(4) It is unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(5) The chief administrative officer of every traffic enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(6) The chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

(7) Every chief administrative officer shall submit on or before the first day of each month a copy of the traffic citations to the Department of Highway Safety and Motor Vehicles.

(8) Such citations shall not be admissible evidence in any trial.

History.—s. 1, ch. 71-135; s. 1, ch. 71-321; s. 1, ch. 76-31.
Note.—Former s. 316.018.

316.655 Penalties.—

(1) A violation of any of the provisions of this chapter, except criminal offenses enumerated in subsection (4), shall be deemed an infraction, as defined in s. 318.13(3).

(2) Infractions of this chapter which do not result in a hearing shall be subject to the civil penalties provided in s. 318.18.

(3) Infractions of this chapter which do result in a hearing shall be subject to a civil penalty not to exceed $500. For an infraction resulting in a hearing, a person may be required to attend a driver

improvement school in lieu of, or in addition to, the civil penalty imposed.

(4) Any person convicted of a violation of s. 316.027, s. 316.061, s. 316.067, s. 316.072, s. 316.192, s. 316.193, or s. 316.1935 shall be punished as specifically provided in such sections.

History.—s. 1, ch. 71-135; s. 2, ch. 74-377; ss. 1, 4, ch. 76-31; s. 1, ch. 77-174; s. 3, ch. 77-456.
Note.—Former s. 316.026.

316.660 Disposition of fines and forfeitures collected for violations.—Except as otherwise provided herein, all fines and forfeitures received by any county court from violations of any of the provisions of this chapter, or from violations of any ordinances adopting matter covered by this chapter, committed within a municipality shall be paid monthly to that municipality. It is the intent of the Legislature that such fines and forfeitures shall be paid monthly to that municipality in addition to any other fines and forfeitures received by a county court that are required to be paid to that municipality as otherwise provided by law. If any chartered county court having countywide jurisdiction was trying traffic offenses committed within a municipality on February 1, 1972, then in that county two-thirds of the fines and forfeitures from violations of this chapter, or from violations of any ordinances adopting matter covered by this chapter, committed within a municipality shall be paid and distributed to the municipality, and the remainder shall be paid to the county. All fines and forfeitures received by any county court as the result of citations issued pursuant to s. 316.640(2)(b)1. shall be paid to the county whether or not such citations are issued for parking violations occurring within a municipality.

History.—s. 1, ch. 72-69; s. 1, ch. 76-31; s. 4, ch. 79-246.
Note.—Former s. 316.0261.

CHAPTER 318

DISPOSITION OF TRAFFIC INFRACTIONS

318.11 Short title.—This chapter may be known and cited as the "Florida Uniform Disposition of Traffic Infractions Act."

History.—s. 1, ch. 74-377.

318.12 Purpose.—It is the legislative intent in the adoption of this chapter to decriminalize certain violations of chapter 316, the Florida Uniform Traffic Control Law; chapter 320, Motor Vehicle Licenses; chapter 325, part II, Safety Equipment Inspection of Motor Vehicles; chapter 339, Florida Transportation Code, Sixth Part; chapter 239, Universities; Scholarships, etc.; and chapter 340, Turnpike Projects, thereby facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions.

History.—s. 1, ch. 74-377; s. 1, ch. 79-27.

318.13 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) "Department" means Department of Highway Safety and Motor Vehicles, defined in s. 20.24, or the appropriate division thereof.

(2) "Suspension" means that a licensee's privilege to drive a motor vehicle is temporarily withdrawn.

(3) "Infraction" means a noncriminal violation which is not punishable by incarceration and for which there is no right to a trial by jury or a right to court appointed counsel.

(4) "Official" means any judge authorized by law to preside over a court or hearing adjudicating traffic infractions.

(5) "Officer" means any law enforcement officer charged with and acting under his authority to arrest persons suspected of, or known to be, violating statutes or ordinances regulating traffic or the operation or equipment of vehicles. "Officer" includes any individual employed by a sheriff's department or the police department of a chartered municipality who is acting as a traffic infraction enforcement officer as provided in s. 318.141.

History.—s. 1, ch. 74-377; s. 1, ch. 76-183; s. 1, ch. 77-119.

318.14 Noncriminal traffic infractions; exception; procedures.—

(1) Except as provided in s. 318.17, any person cited for a violation of chapter 316, chapter 325, part II, or s. 320.07(3), s. 320.35, s. 339.30, s. 340.23, or s. 239.55 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.

(2) Any person cited for an infraction under this section may:

(a) Post a bond, which shall be equal in amount to the applicable civil penalty established in s. 318.18; or

(b) Sign and accept a citation indicating a promise to appear.

The officer may indicate on the traffic citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty established in s. 318.18.

(3) Any person who willfully refuses to post a bond or accept and sign a summons shall be guilty of a misdemeanor of the second degree.

(4) Any person charged with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 10 days of the date of receiving the citation and, in the case of a violation of s. 320.07(3), submit proof of reregistration along with such payment; or,

(b) If he has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500 or require attendance at a driver improvement school, or both.

(6) The commission of a charged infraction at a hearing under this chapter must be proved beyond a reasonable doubt.

(7) The official having jurisdiction over the infraction shall certify to the department within 10 days after payment of the civil penalty or forfeiture of bond that the defendant has admitted to the infraction. If the charge results in a hearing, the official having jurisdiction shall certify to the department the final disposition within 10 days of the hearing.

(8) When a report of a determination or admission of an infraction is received by the department, it shall proceed to enter the proper number of points on the licensee's driving record in accordance with s. 322.27.

History.—s. 1, ch. 74-377; s. 2, ch. 79-27.

318.141 Enforcement; traffic infraction enforcement officer.—

[1](1) Any sheriff's department or police department of a chartered municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes at least 200 hours of instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Police Standards and Training Commission for police officers or auxiliary police officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for such infraction when, based upon personal investigation, he has reasonable and probable grounds to believe that an offense has been committed in violation of noncriminal traffic infractions as defined in s. 318.14.

(2) Such traffic enforcement officer shall be employed in relationship to a selective traffic enforcement program at a fixed location or as part of an accident investigation team at the scene of a vehicle accident or in other types of traffic infraction enforcement under the direct and immediate supervision of a fully qualified law enforcement officer.

(3) Nothing in this section shall be construed to permit the carrying of firearms or other weapons, nor shall traffic infraction enforcement officers have arrest authority other than the authority to issue a traffic citation as provided herein.

History.—s. 2, ch. 76-183; s. 14, ch. 79-8; s. 4, ch. 79-82.

[1]Note.—As amended by ch. 79-82, effective January 1, 1980.

318.15 Failure to comply with the civil penalty; to appear; to post bond; penalty.—If a person fails to post bond and to appear at the hearing without having paid the civil penalty, fails to attend driver improvement school if imposed, or fails to pay the civil penalty imposed, his driver's license and privilege shall be deemed suspended. The suspension shall be effective on the date the person fails to appear at the hearing as set forth above or fails to comply with the civil penalty imposed.

History.—s. 1, ch. 74-377.

318.16 Appeals; stay orders; procedures.—

(1) If a person is found to have committed an infraction by the hearing official, he may appeal that finding to the circuit court. An appeal under this subsection shall not operate to stay the reporting requirements of s. 318.14(7) or to stay appropriate action by the department upon receipt of that report.

(2) The circuit court, upon application by the appellant, may:

(a) Order a stay of any action by the department during pendency of the appeal, but not to exceed a period of 60 days. A copy of the order shall be forwarded to the department.

(b) Deny the application.

History.—s. 1, ch. 74-377.

318.17 Offenses excepted.—No provision of this chapter shall be available to persons charged with the following offenses:

(1) Fleeing or attempting to elude a police officer, in violation of s. 316.1935;

(2) Leaving the scene of an accident, in violation of ss. 316.027 and 316.061;

(3) Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, model glue, or any substance controlled under chapter 893, in violation of s. 316.193 or s. 860.01, or driving with an unlawful blood alcohol level;

(4) Reckless driving, in violation of s. 316.192;

(5) Making false accident reports, in violation of s. 316.067; or

(6) Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3).

History.—s. 1, ch. 74-377; s. 37, ch. 76-31; s. 4, ch. 77-456.

318.18 Amount of civil penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14(1), (2), and (4) shall be as follows:

(1) Five dollars for all infractions of bicycle regulations under s. 316.2065 and infractions of pedestrian regulations under s. 316.130.

(2) Fifteen dollars for all nonmoving traffic violations and for all violations of s. 320.07(3) [1]or s. 320.35.

(3) Twenty-five dollars for all moving violations not requiring a mandatory appearance.

(4) The penalty imposed under s. 316.545 shall be determined by the officer in accordance with the provisions of ss. 316.535 and 316.545.

History.—s. 1, ch. 74-377; s. 38, ch. 76-31; s. 3, ch. 79-27.

[1]Note.—The word "or" was substituted for "and" by the editors.

318.19 Infractions requiring a mandatory hearing.—Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2) and (4) available to him but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in an accident that causes the death or personal injury of another or property damage in excess of $250;

(2) Any infraction which would, if the person is convicted, result in the suspension or revocation of his driver's license or privilege under s. 322.27; or

(3) Speeding in excess of 25 miles per hour over the lawful speed limit.

History.—s. 1, ch. 74-377; s. 91, ch. 77-104.

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form shall contain language informing persons charged with infrac-

tions to which this chapter applies of the procedures available to them under this chapter. Such notification shall contain a schedule of points to be assessed against a person's driving record in accordance with s. 322.27 and a schedule of civil penalties applicable to infractions under this chapter in accordance with s. 318.18.

History.—s. 1, ch. 74-377; s. 39, ch. 76-31.

318.21 Disposition of civil penalties and forfeitures by county courts.—All civil penalties and forfeitures received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly to the municipalities and counties, respectively, in the same manner, upon the same bases, and upon the same terms and conditions that fines and forfeitures are distributed and paid to municipalities and counties under the provisions of s. 316.660.

History.—s. 1, ch. 74-377; s. 39, ch. 76-31.

318.22 Good Drivers' Incentive Fund.—

(1) There is hereby created a Florida Good Drivers' Incentive Fund, hereinafter referred to as the "fund."

(2) The fund shall be administered by the Department of Highway Safety and Motor Vehicles, hereinafter referred to as the "department," and the costs of administration shall be borne by the fund.

(3) The department shall draft a plan for the operation of the fund to implement the purposes of this section.

(4) On and after the effective date of this act:

(a) Any driver convicted of a moving traffic violation shall be assessed a civil penalty or fine of $30 in addition to the amount normally levied for such conviction. For purposes of this section the term "moving traffic violation" means an infraction of s. 316.061, s. 316.074, s. 316.075, s. 316.076, s. 316.0765, s. 316.078, s. 316.079, s. 316.081, s. 316.082, s. 316.083, s. 316.084, s. 316.085, s. 316.087, s. 316.0875, s. 316.088, s. 316.089, s. 316.0895, s. 316.090, s. 316.091, s. 316.121, s. 316.122, s. 316.123, s. 316.125, s. 316.126(1) or (3), s. 316.130, s. 316.1355, s. 316.151, s. 316.1515, s. 316.152, s. 316.154, s. 316.155, s. 316.157, s. 316.1575, s. 316.158, s. 316.159, s. 316.170, s. 316.172, s. 316.183, s. 316.185, s. 316.187, s. 316.189, s. 316.1895, s. 316.191, s. 316.192, s. 316.1925, s. 316.1974, s. 316.1985, s. 316.1995, s. 316.2015(1), s. 316.2024, s. 316.2025, s. 316.2034, s. 316.2035(2) or (4), s. 316.2051, s. 316.2061, s. 316.2075, s. 316.2085, s. 316.209, s. 316.217, s. 316.238, s. 316.2385, s. 316.405, s. 316.500, s. 316.510, s. 316.515, s. 316.520, s. 316.530, s. 316.625, or s. 339.30(1)(a), (b), (c), (d), (g), or (h).

(b) Any driver convicted of a violation of s. 316.193 shall be assessed an additional civil penalty or fine of $200 per conviction.

It is the intent of the Legislature that any civil penalty or fine normally levied be increased by the amounts specified in paragraphs (a) and (b), and such additional civil penalty or fine shall be considered a part of the total civil penalty or fine. Such additional civil penalty or fine shall be collected by the clerk of the appropriate court and remitted on a monthly basis to the department, which shall place such additional civil penalty or fine in the fund. The purpose of this section is to provide an incentive for those persons operating motor vehicles in this state to utilize the privilege of operating such motor vehicles in a safe and financially responsible fashion and at the same time to provide a disincentive to those who would abuse such privilege.

(5) Beginning July 1, 1978, and at the beginning of each fiscal year thereafter, all money in the fund after deduction of the costs of administration of the fund shall be distributed to persons who have:

(a) Been licensed to drive in Florida;

(b) Received no convictions as specified in subsection (4), or convictions arising out of a motor vehicle accident, during the preceding 12 months; and

(c)1. Purchased and maintained continuously for 12 months on a voluntary basis bodily injury liability insurance of at least $10,000 because of bodily injury to, or death of, one person in any one accident and, subject to said limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident; or

2. Established voluntarily with the department financial responsibility by one of the alternative methods set forth in s. 324.031(2), (3), or (4).

(6) The moneys collected by each county shall be returned pro rata to those persons who are residents of that county and who meet the requirements of subsection (5). In the event the warrant forwarded by the department to any such person is returned as undeliverable, such warrant shall be voided and the entitlement to the proceeds of such warrant shall cease to exist unless such person files a claim of entitlement with the department within 90 days of the date of return.

History.—s. 42, ch. 77-468; s. 64, ch. 79-164.

CHAPTER 319

TITLE CERTIFICATES

319.08 Additional personnel; funds collected; indexes.—

(1) The Department of Highway Safety and Motor Vehicles, with the approval in writing of the Governor, may employ all necessary personnel, in addition to the present officers of the law, to carry out the provisions of this chapter, and incur such additional necessary expenses in the enforcement of this chapter, as may be provided in the General Appropriations Act, and the department, together with such employees and the existing officers of the law, is required to enforce all provisions of law pertaining to registration, certification, sale and distribution of motor vehicles as set forth in chapters 319, 320, and 330, by criminal prosecution for violations thereof.

(2) All moneys received by the department under the provisions of this chapter shall be deposited in the General Revenue Fund. The department shall maintain indexes by name of owner or vendor and vendee, and of cars, by make and by manufacturer's motor number and chassis number.

History.—s. 12, ch. 9157, 1923; CGL 3984, 3985; s. 40, ch. 26869, 1951; s. 1, ch. 57-769; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.14 Sale of motor vehicles registered or used as taxicabs, for-hire vehicles, u-drive-its, long-term lease vehicles, police cars, or rebuilt vehicles, etc.—

(1) No person, firm, or corporation shall knowingly offer for sale, sell, or exchange any motor vehicle as now or as may hereafter be defined by law, which was previously licensed, registered, or used as a taxicab, u-drive-it, police car, long-term lease, for-hire, or rebuilt vehicle until the certificate of title for such motor vehicle, or its duplicate, in the event a duplicate has been issued, shall have been surrendered to the Department of Highway Safety and Motor Vehicles and until the department has stamped in a conspicuous place on such certificate of title, or its duplicate, the words: "This motor vehicle has previously been used as a 'taxicab' or 'for-hire,' " or "This motor vehicle has previously been used as a 'u-drive-it,' " or "This motor vehicle has previously been used as a 'police car,' " or "This motor vehicle has previously been used under 'long-term lease,' " or "This motor vehicle is a 'rebuilt vehicle,' " as the case may be. "Police car" is defined to mean a vehicle previously owned or leased by the state, a county, or a municipality and used in the enforcement of the law. "Long-term lease" is defined to mean under a written lease, for use without driver, to one lessee, for 12 months or longer duration. A "u-drive-it" vehicle is a vehicle which is rented or leased, without a driver, under a written agreement for less than 12 months, from time to time and to one or more persons. A "rebuilt vehicle" is defined to mean a vehicle built from salvage and for which a title has been issued.

(2) The owner of such vehicle, before offering the same for sale or exchange, shall affix, as may be prescribed by the department, a notice on the lower right-hand corner of the windshield, not less than 6 inches square, stating that said motor vehicle has been previously titled, registered, or used as a taxicab or for-hire or as a u-drive-it, or police car, or long-term lease, or rebuilt vehicle, as the case may be.

(3) Any person, firm, or corporation who, with intent to offer for sale or exchange any motor vehicle described in subsection (1), knowingly or intentionally, advertises, publishes, disseminates, circulates, or places before the public or causes the same to be done, in any newspaper, publication, or other written form, or by radio or television, any such offer for sale or exchange of such vehicle or vehicles as current model vehicles, during the time said vehicles are then current model vehicles, shall in every instance state clearly and precisely in such advertise-

ment or publication that such motor vehicle which is so advertised, has been previously titled, registered, or used as a taxicab, u-drive-it, police car, long-term leased vehicle, for-hire vehicle, or rebuilt vehicle, as the case may be as to such use. A current model vehicle is one which has been formally introduced by its manufacturer in a national announcement and continues as such until such time as the same manufacturer announces a subsequent model. Publication of any such advertisement without including such statement shall constitute a violation of this law, and the person, firm, or corporation causing such advertisement or publication to be made shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalties provided in subsection (5). Each such publication shall be deemed a separate offense and subject to such penalties.

(4) The provision of subsections (1) and (2) providing for the certificate of title to be stamped to show the use to which said vehicle has previously been used and the notice required to be affixed to the windshield stating the use to which said vehicle has previously been used shall not apply to u-drive-it or long-term leased vehicles after such vehicles have ceased to be current model vehicles as defined in this section. At any time after any u-drive-it or long-term leased vehicle shall cease to be a current model, each year after the manufacturer's national announcement and introduction of a subsequent model, the department on request of the owner of the vehicle as shown in said certificate shall issue a new corrected certificate of title and remove from the certificate the notation as to its previous use. Nothing in this subsection shall apply to taxicabs or police cars or other for-hire vehicles or rebuilt vehicles and all of the provisions of subsections (1) and (2) shall continue to apply to such motor vehicles.

(5) Any person, firm or corporation who knowingly sells or exchanges or offers to sell or exchange a motor vehicle contrary to the provisions of this section, and every officer, agent or employee of any person, firm or corporation and every person who shall authorize, direct, aid in, or consent to the sale or exchange or offer for sale or exchange a motor vehicle contrary to the provisions of this section or who violates the provisions of subsection (3) of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 20226, 1941; s. 1, ch. 28185, 1953; s. 1, ch. 29850, 1955; s. 1, ch. 57-390; s. 1, ch. 59-174; s. 1, ch. 59-452; s. 6, ch. 65-190; s. 1, ch. 69-379; ss. 24, 35, ch. 69-106; s. 187, ch. 71-136; s. 1, ch. 78-412.

319.151 Title certificate to accompany notice of lien.—The Department of Highway Safety and Motor Vehicles shall not enter any lien upon its lien records, whether it be a first lien or a subordinate lien, unless the official certificate of title issued for the vehicle is furnished with the notice of lien, so that the record of lien, whether original or subordinate, may be noted upon the face thereof.

History.—s. 9, ch. 28184, 1953; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.16 Satisfaction of lien.—Upon the payment of any such lien the debtor, or the registered owner of such motor vehicle, shall be entitled to demand and receive from the lienholder a satisfaction of such lien which shall likewise be filed in the department.

History.—s. 2, ch. 20917, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.161 Methods of proof.—Said department under precautionary rules and regulations to be promulgated by it may permit the use, in substitution of the formal satisfaction of lien, of other methods of satisfaction, such as perforation, appropriate stamp, or otherwise, as it deems reasonable and adequate.

History.—s. 10, ch. 28184, 1953; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.17 Rules and regulations; public record.—The Department of Highway Safety and Motor Vehicles shall make such rules and regulations as it deems necessary or proper for the effective administration of this law and shall prepare the forms of such notice of lien and satisfactions thereof, to be supplied, at not to exceed 50 percent more than cost to any applicant, for recording such liens or satisfactions and shall keep a permanent record of such notice of liens and satisfactions in a book in its office open to the inspection of the public at all reasonable times. The said department is hereby authorized to furnish certified copies of such notices or satisfactions for a fee of $1; which certified copies shall be admissible in evidence in all courts of this state under same conditions and to same effect as certified copies of other public records.

History.—s. 3, ch. 20917, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.18 Fees for recording.—The Department of Highway Safety and Motor Vehicles shall be entitled to a fee of $1 for the recording of each notice of lien and each satisfaction thereof, to be paid at the time of the recording thereof. All of the fees collected shall be paid into the general revenue fund.

History.—s. 4, ch. 20917, 1941; s. 41, ch. 26869, 1951; s. 6, ch. 65-190; s. 1, ch. 67-215; ss. 24, 35, ch. 69-106.

319.19 Failure to furnish satisfaction.—Should any person, firm or corporation holding such lien, which has been recorded in the Department of Highway Safety and Motor Vehicles, upon payment of such lien and on demand, fail or refuse, within 30 days after such payment and demand, to furnish the debtor or the registered owner of such motor vehicle a satisfaction thereof, then, in that event, he, it or they, shall be held liable for all costs, damages, and expenses, including reasonable attorney's fees, lawfully incurred by the debtor or the registered owner of such vehicle in any suit which may be brought in the courts of this state for the cancellation of such lien.

History.—s. 5, ch. 20917, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.20 Application of law; definitions.—The provisions of this law shall apply exclusively, except as otherwise specifically provided, to motor vehicles required to be registered and licensed under the provisions of chapter 320. For the purposes of this law the term "motor vehicle" shall also include a commercial trailer of 1 ton or more and a tractor-trailer combination and trailer-coach. For the purposes of this law, "trailer-coach" means any trailer or semi-trailer so designed and equipped as to provide living

or sleeping facilities or housing accommodations. All provisions of this chapter relating to titles and title certificates shall apply to such trailers and trailer-coaches to the same extent as to other motor vehicles whether the same be classified as subject to or exempt from tangible personal property tax and no title, lien, or other interest in such vehicles shall be valid unless evidenced in accordance with this chapter.

History.—s. 1, ch. 23658, 1947; s. 6, ch. 65-190; s. 1, ch. 65-447.

319.21 Necessity of manufacturer's statement of origin and certificate of title.—

(1) No manufacturer, distributor, dealer or other person shall sell or otherwise dispose of a new motor vehicle to a distributor, dealer or other person without delivering to such distributor, dealer or other person a manufacturer's statement of origin duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof, on forms approved by the Department of Highway Safety and Motor Vehicles; nor shall any distributor, dealer or other person purchase, acquire or bring into the state, except for temporary use and not for sale, a new motor vehicle without obtaining from the seller thereof such manufacturer's statement of origin. Such statement of origin shall be in the English language. In addition to the assignments stated herein, such manufacturer's statement of origin shall contain thereon a certification of the identification and description of the motor vehicle delivered and the name and address of the distributor, dealer or other person to whom said motor vehicle was originally sold, over the signature of an authorized official of the manufacturer who made the original delivery; provided however, that no statement of origin shall be required as to any new motor vehicle purchased from a person other than a manufacturer or a representative of a manufacturer in a state which does not require such statement of origin. Prior to the issuance of a certificate of title for any such new motor vehicle, the holder of any security interest therein may demand and receive from the owner thereof the manufacturer's statement of origin and may hold the same so long as he holds such security interest.

(2) No person hereafter shall sell or otherwise dispose of a motor vehicle without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser, or purchase or otherwise acquire or bring into the state a motor vehicle, except for temporary use, unless such person shall obtain a certificate of title for same in his, her, or its name in accordance with the provisions of this law. However, any dealer holding current dealer license plates issued by this state may, in lieu of having a certificate of title issued in the name of such dealer, reassign any existing certificate of title issued in this state or, if no certificate of title exists on such motor vehicle in this state and if the motor vehicle is not a new motor vehicle requiring a manufacturer's statement of origin under the provisions of this section, such dealer shall, over his signature, briefly note such fact of nonexistence and show the name and address of the party from whom the vehicle was obtained, on the face of the separate application for initial certificate of title which is made by the purchaser or transferee. It shall not be necessary for any licensed automobile dealer in Florida to obtain a certificate of title on any new motor vehicle which he is selling or which he acquires for sale if he obtains a manufacturer's statement of origin as provided in subsection (1) hereof, but such dealer shall attach the manufacturer's statement of origin to, and certify on the face of, the separate application for initial certificate of title which is made by the purchaser that said motor vehicle is a new motor vehicle, and shall also disclose the name and address of the manufacturer, distributor, or other person from whom he acquired said new motor vehicle. In no event shall the aforesaid manufacturer's statement of origin be issued or reissued to any distributor, dealer, or person for the purpose of updating any motor vehicle for sale. Updating means:

(a) Modifying the motor vehicle in such a manner that it resembles in appearance the current year model as defined in s. 319.14(3);

(b) Replacing the original identification number and chassis number, which replacement reflects a change in the year manufactured, or any other modification which misrepresents the actual year manufactured; or

(c) Issuing another manufacturer's statement of origin changing the model year of manufacture.

(3) Notwithstanding the provisions of other laws of this state, no motor vehicle shall be eligible for initial registration in this state on and after August 1, 1961, unless the provisions of this section have been complied with insofar as said motor vehicle is concerned.

History.—s. 2, ch. 23658, 1947; s. 1, ch. 25150, 1949; s. 1, ch. 61-296; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 77-11.

319.22 Transfer of title.—

(1) Except as provided in ss. 319.21 and 319.28, no person acquiring a motor vehicle from the owner thereof, whether such owner be a dealer or otherwise, hereafter shall acquire a marketable title in or to said motor vehicle until he, she, or it shall have had issued to him, her or it a certificate of title to said motor vehicle; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title or an assignment of such certificate for said motor vehicle for a valuable consideration. Except as otherwise provided herein, no court in any case at law or in equity shall recognize the right, title, claim or interest of any person in or to any such motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered, unless evidenced by and on a certificate of title duly issued, in accordance with the provisions of this law.

[1](2) An owner or co-owner who has made a bona fide sale or transfer of a motor vehicle and has delivered possession thereof to a purchaser shall not, by reason of any of the provisions of this law, be deemed the owner or co-owner of such vehicle so as to be subject to civil liability for the operation of such vehicle thereafter by another when such owner or co-owner has fulfilled either of the following requirements:

(a) When such owner or co-owner has made proper endorsement and delivery of the certificate of title

as provided by this law. Proper endorsement shall be:

1. When a vehicle is registered in the names of two or more persons as co-owners in the alternative by the use of the word "or," such vehicle shall be held in joint tenancy. Each co-owner shall be deemed to have granted to the other co-owner the absolute right to dispose of the title and interest in the vehicle, and the signature of any co-owner shall constitute proper endorsement. Upon the death of a co-owner, the interest of the decedent shall pass to the survivor as though title or interest in the vehicle was held in joint tenancy. This provision shall apply even if the co-owners are husband and wife.

2. When a vehicle is registered in the names of two or more persons as co-owners in the conjunctive by the use of the word "and," the signature of each co-owner or his personal representative shall be required to transfer title to the vehicle.

The department shall adopt suitable language to appear upon the certificate of title to effectuate the manner in which the interest in or title to the vehicle is held.

[2](b) When such owner has delivered to the department, or placed in the United States mail, addressed to the department, either certificate of title properly endorsed, or the following notice:

Department of Highway Safety and Motor Vehicles
Tallahassee, Florida
I have this day sold and delivered to (Name and Address of New Owner), Motor Vehicle, Certificate of Title No. ..... Make ..... Type ..... Model ..... Serial No. ..... Motor No. ..... Year Make ..... Date .....

(Former Owner)

(Address of Former Owner)

History.—s. 3, ch. 23658, 1947; s. 2, ch. 25150, 1949; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 79-333.

[1]**Note.**—As amended, effective January 1, 1980.

[2]**Note.**—Section 1, ch. 79-333, purported to amend all of subsection (2), but did not republish paragraph (b). Paragraph (b) is republished here, however, as the apparent legislative intent was not to repeal it.

319.23 Application for, and issuance of, certificate.—

(1) Application for a certificate of title shall be made upon a form to be prescribed by the Department of Highway Safety and Motor Vehicles and shall be sworn to before a notary public or other officer empowered to administer oaths; and shall be filed with said department and shall be accompanied by the fee prescribed in this law; and if a certificate of title has previously been issued for such motor vehicle in this state, shall be accompanied by said certificate of title duly assigned, or assigned and reassigned, unless otherwise provided for in this law; and if the motor vehicle for which application for a certificate of title is made is a new motor vehicle for which a manufacturer's statement of origin is required by the provisions of s. 319.21(1), the application for a certificate of title shall be accompanied by such manufacturer's statement of origin.

(2) If a certificate of title has not previously been issued for such motor vehicle in this state, the application, unless otherwise provided for in this law, shall be accompanied by a proper bill of sale or sworn statement of ownership, or a duly certified copy thereof, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which the motor vehicle was brought into this state. The application shall also be accompanied by either a sworn affidavit from the seller and purchaser verifying that the vehicle identification number shown on the affidavit is identical to the vehicle identification number shown on the motor vehicle or an appropriate motor vehicle inspection or departmental form evidencing that a physical examination has been made of the motor vehicle by the owner and by a motor vehicle inspection station inspector, a duly constituted police department in any state, or a licensed motor vehicle dealer and that the vehicle identification number shown on such form is identical with the vehicle identification number shown on the motor vehicle. Vehicle identification number verification shall not be required [1]for any new vehicle sold in this state by a licensed motor vehicle dealer, any mobile home, any trailer-type recreational vehicle, or any other trailer with a weight of less than 1 ton.

(3) Upon application for certificate of title of a vehicle previously titled or registered outside of this state, the application shall show on its face such fact and the time and place of the last issuance of certificate of title, or registration, of such vehicle outside this state, and the name and address of the governmental officer, agency, or authority making such registration, together with such further information relative to its previous registration, as may reasonably be required by said department, including the time and place of original registration, if known, and if different from such last foreign registration. The applicant shall surrender to said department all certificates, registration cards, or other evidence of foreign registration as may be in his possession or under his control.

(4) The certificate of title issued by said department for a vehicle previously registered outside this state shall give the name of the state or country in which such vehicle was last previously registered outside this state. Said department shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. Said department shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying same with the records of motor vehicles maintained by it, or otherwise as it may decide; and, if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, it shall issue a certificate of title, but not otherwise.

(5) In the case of the sale of a motor vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser, and in all other cases such certificate shall be obtained by the purchaser. In all cases of transfers of motor vehicles, the application for certificate of title, or corrected certificate, or assignment or reassignment, shall be filed within 20 days from the delivery of such motor vehicle. If the certificate of title

is lost or unavailable at the time of sale to a retail purchaser, application for duplicate title shall be made within 20 days, and application for transfer of title shall be filed within 20 days of receipt of the original or duplicate certificate of title. An applicant shall be required to pay an extra fee of $10, in addition to all other fees and penalties required by law, for failing to file such application within said specified time. Licensed dealers need not apply for certificates of title for such motor vehicles in stock or where such are acquired for stock purposes, but upon transfer of same shall either give transferee a reassignment of the certificate of title on such motor vehicle or shall make notation on the face of the application by transferee as provided in s. 319.21.

(6) The department shall in no event issue a certificate of title for any motor vehicle to any applicant until the applicant has shown that:

(a) All sales or use taxes due on the transfer of the motor vehicle are paid.

(b) A current motor vehicle registration as required by s. 320.02, except for those vehicles not required to have such registration by law, has been obtained.

(c) In those cases in which a mobile home is classified as real property and a license plate has been issued, the applicant has informed the property appraiser of the county wherein the mobile home is to be located the intended site of the mobile home.

(7) The title certificate or application for title shall contain the applicant's first name, middle initial, and last name, date of birth, sex, and license plate number or in lieu thereof an affidavit certifying that the motor vehicle to be titled shall not be operated upon the public highways of this state.

(8) The Department of Highway Safety and Motor Vehicles, upon the issuance of a certificate of title for a mobile home upon which no identification or serial number is affixed or ascertainable, may assign and require the permanent affixation upon such mobile home of an identification number. Prior to the assignment of any identification number, the department shall require satisfactory assurances that the application for a certificate of title and identification number is not being made for any unlawful purpose.

(9) The department shall use security procedures, processes, and materials in the preparation and issuance of each certificate of title to prohibit to the extent possible a person's ability to alter, counterfeit, duplicate, or modify the certificate of title.

History.—s. 4, ch. 23658, 1947; s. 3, ch. 25150, 1949; s. 1, ch. 28184, 1953; s. 2, ch. 61-296; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 72-15; s. 2, ch. 75-66; s. 1, ch. 77-102; s. 4, ch. 78-221; s. 1, ch. 78-225; s. 2, ch. 78-412; s. 1, ch. 79-32; s. 1, ch. 79-399.

[1]**Note.**—The word "for" was substituted for "of" by the editors.

319.24 Issuance in duplicate; delivery; liens and encumbrances.—

(1) The Department of Highway Safety and Motor Vehicles shall issue the certificate of title and all corrected certificates in duplicate. One copy shall be retained and filed by it.

(2) A duly authorized person shall sign the original certificate of title and all corrected certificates, and, if there are no liens or encumbrances on said motor vehicle, as shown in the department's records or as shown in the application, shall deliver said certificate to the applicant, or as directed by the applicant, or person, agent or attorney submitting such application. If there are one or more liens or encumbrances on said motor vehicle, said certificate and a form to be subsequently used by the lienholder as a satisfaction shall be delivered or mailed to the holder of the first lien as shown by the records in the department as soon as possible. If the application for certificate shows the name of a first lienholder different from the name of the first lienholder as shown by the records of said department, the certificate shall not be issued to any person until after all parties who appear to hold a lien or liens and the applicant for the certificate have been notified in writing by said department of the conflict. If the parties do not amicably clear up the conflict within 10 days from the date of the sending of such notice, then said department shall serve notice in writing by registered mail on all persons appearing to hold liens on that particular vehicle, including the applicant for the certificate, to show cause within 10 days from the date the notice is mailed why it should not issue and deliver the certificate to the lienholder whose name appears in the application as the first lienholder without showing any lien or liens as outstanding other than those appearing in the application, or which may have been filed subsequent to the filing of the application for the certificate. If any person other than the lienholder shown in the application or a party filing a subsequent lien should in answer to said notice to show cause appear in person, or by a representative, or in writing, and file a statement in writing under oath that his lien or liens on that particular vehicle is still outstanding with the amount unpaid, then the department shall not issue the certificate to anyone until after such conflict has been settled by the lien claimants involved or by a court of competent jurisdiction. If not settled amicably, the complaining party shall have 10 days to obtain a ruling, or a stay order, from a court of competent jurisdiction, and if no ruling or stay order is issued and served on said department within said 10 days, it shall issue the certificate to the original applicant showing no liens except those shown in the application and thereafter. All duplicate certificates and corrected certificates shall only show such lien or liens as were shown in said application and subsequently filed liens that may be outstanding.

(3) The certificate of title shall be retained by the first lienholder until the entire amount of such first lien is fully paid.

(4) If the owner of the motor vehicle desires to place a second or subsequent lien or encumbrance against said motor vehicle, upon written request of the owner as shown by the certificate of title, to the first lienholder by registered mail, such first lienholder shall forward the certificate to said department for such endorsement or endorsements, and said department shall return the certificate to the first lienholder after endorsing such lien on the certificate and on the duplicate. The department shall make the same notation on the memorandum certificate, if one accompanied the notice of lien, and return same to the owner. If the first lienholder should fail, neglect or refuse to forward the certificate of title to said department at the request of the owner

within 10 days from the date of such request, then said department, on the written request of the subsequent lienholder or an assignee thereof, shall demand of the first lienholder the return of said certificate for the notation of the second or subsequent lien or encumbrance.

(5) If there is a subsequent lien or encumbrance on said motor vehicle, the certificate shall be delivered to the person holding the next lien or encumbrance upon said motor vehicle and be retained by such person until the entire amount of such lien or encumbrance is fully paid.

(6)(a) Upon final payment of any first lien or encumbrance, a satisfaction thereof shall be endorsed in the space provided on the face of the certificate of title and if there are no subsequent liens shown thereon said certificate shall be delivered to the owner, person, firm or corporation paying off said lien or encumbrance and an executed satisfaction on a form to be provided by said department shall be forwarded within 10 days to said department by the lienholder who has received payment.

(b) In the event the certificate of title shows a subsequent lien or liens not then being discharged, an executed satisfaction of the first lien shall be delivered to the person, firm or corporation paying off said lien and the certificate of title showing satisfaction of the first lien shall be forwarded to said department within 10 days.

(c) If there are no subsequent liens or encumbrances upon said motor vehicle, the department shall, upon receipt of certificate of title showing satisfaction of the first lien, forward to the owner a corrected certificate showing no liens or encumbrances. If there is a subsequent lien not being discharged, the certificate of title shall be delivered to the subsequent lienholder as provided in subsection (5).

(7) When the original certificate of title cannot be returned and evidence satisfactory to the department is produced that all liens or encumbrances have been satisfied, upon application by the owner for a duplicate copy of the certificate upon the form prescribed by the department, accompanied by the fee prescribed in this law, a duplicate copy of the certificate of title, without statement of liens or encumbrances, shall be issued by the department and delivered to the owner.

(8) Any person failing to forward to the department upon its written demand such satisfaction of lien and the certificate of title, as required by this section, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Any person failing to return to the department a certificate of title, when there are subsequent liens or encumbrances to be noted, or for correction and delivery of corrected certificate as provided by this law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. No person shall be guilty of a violation of this section if he shall forward the certificate of title to the department within 10 days of the demand by the department together with the satisfaction of any lien or encumbrance paid to said person.

(10) The department shall assign a number for each certificate of title and shall maintain in its office indices for such certificate of title. The department shall not be required to retain on file any bill of sale or duplicate thereof, or notice of lien, or satisfaction of lien, covering any motor vehicle for a period longer than 7 years after the date of the filing thereof and thereafter the same may be destroyed.

(11) The department shall in the sending of any notice only be required to use the last known address as shown by the records in his office.

History.—s. 5, ch. 23658, 1947; s. 4, ch. 25150, 1949; ss. 2-5, ch. 28184, 1953; s. 1, ch. 59-189; s. 1, ch. 61-510; s. 1, ch. 61-450; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 188, ch. 71-136.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

319.241 Removal of lien from records.—If the owner of a motor vehicle upon which a lien has been filed with the department or noted upon a certificate of title for a period of 5 years, applies to the department in writing for such lien to be removed from the department's files or from the certificate of title and accompanies said application with evidence satisfactory to the department that the applicant has notified the lienholder by registered mail, not less than 20 days prior to the date of said application, of his intention to apply to the department for removal of said lien, 10 days after receipt of the said application, the department may remove said lien from its office files or from the certificate of title, as the case may be, provided, no statement in writing protesting removal of said lien is received by the department from the lienholder within the said 10-day period. If however, the lienholder should file with the department within the said 10-day period, a written statement that the said lien is still outstanding with the amount unpaid, the department shall not remove said lien until such time as the lienholder presents a satisfaction thereof to the department.

History.—s. 1, ch. 59-479; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.25 Rules and regulations; forms; cancellation of certificates; lists and searches; fees.—

(1) The Department of Highway Safety and Motor Vehicles may adopt such reasonable rules and regulations as it may deem necessary to insure uniform and orderly operation of this law. Said department shall provide and furnish the forms required by this law.

(2) If it appears that a certificate of title has been improperly issued, said department shall have the power and it shall be its duty to cancel same. Upon cancellation of any certificate of title said department shall notify the person to whom such certificate of title was issued as well as any lienholders appearing thereon of said cancellation and shall demand the surrender of such certificate of title, but said cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return same to the department forthwith. If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

(3) The department shall keep on hand a suffi-

cient supply of blank forms, which, except certificate of title and memorandum certificate forms, shall be furnished and distributed without charge to all persons residing within the state.

(4) The department is authorized, upon application of any person and payment of the proper fees, to prepare and furnish lists containing title information in such form and subject to such territorial division and/or other classification as the department may authorize; to search the records of the department and make reports thereof, and to make photographic copies of the department records and attestations thereof.

(5) Fees therefor shall be charged and collected as follows:

(a) For lists of title for the entire state, or any part or parts thereof, divided according to counties, a sum computed at the rate of not over 5 cents per item.

(b) For photographic copies of records and attestations thereof, under the seal of the department, $1 a copy. Such copy or copies shall be taken as prima facie evidence of the fact therein stated, in any court of the state.

(c) For information relating to the registration and title of a motor vehicle, 50 cents, provided, licensed dealers or individuals, firms or corporations who own or represent a person having an interest in or who hold a recorded lien may obtain without charge oral or written information upon such vehicles up to and including 5 vehicles in any 1 day and not more than 50 in any 1 month.

(d) The department, upon being satisfied that the investigation is for a proper purpose, shall furnish, without charge or limitation as to number, to state attorneys, the state highway patrol, sheriffs, chiefs of police, or any licensed dealer or his authorized representative, information or photographic copies of records and certifications thereof, under seal of the department, on any title or tag.

History.—s. 6, ch. 23658, 1947; s. 5, ch. 25150, 1949; s. 6, ch. 28184, 1953; s. 1, ch. 59-157; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 4, ch. 79-344.

319.26 Theft or conversion of motor vehicles.—

(1) It shall be the duty of every sheriff or chief of police having knowledge of a stolen motor vehicle immediately to furnish the Department of Highway Safety and Motor Vehicles with full information in connection therewith.

(2) It shall be the duty of the department whenever it may receive a report of the theft or conversion of a motor vehicle, whether the same has been registered or not, and whether owned in this or any other state, together with the make and manufacturer's serial number or motor number thereof, to make a distinctive record thereof and file same in the numerical order of the manufacturer's serial number or motor number with the index records of the vehicles of such make. Such index shall be known as the "Stolen and Recovered Motor Vehicle Index." The department shall prepare a report listing motor vehicles stolen and recovered as disclosed by the reports submitted to it, to be distributed as it may deem advisable.

(3) The department shall publish once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in Florida. The published list shall not include the converted cars. Such list shall also be forwarded to the Secretary of State, or other proper official, in each state of the United States. Before issuing a certificate of title, or corrected certificate, or duplicate, or memorandum certificate, as heretofore provided, the said department shall check the motor, chassis and serial number on the motor vehicle to be registered against the stolen and recovered motor vehicle index.

(4) In the event of the recovery of a stolen or converted motor vehicle it shall be the duty of the owner immediately to notify the department which shall cause the record of the theft or conversion to be removed from its index.

History.—s. 7, ch. 23658, 1947; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 92, ch. 77-104.

319.27 Notice of lien on motor vehicles; notation on certificate; recording of lien.—

(1) All liens, mortgages and encumbrances on motor vehicles titled in Florida shall be noted upon the face of the certificate of title as and when issued in Florida or on a duplicate or corrected copy thereof, as is now provided by law; provided, however, that this section shall not apply to any retain title contract, conditional bill of sale, chattel mortgage or other like instrument covering any motor vehicle floor plan stock of any motor vehicle dealer. Except for the recording of liens upon motor vehicles for which no certificate of title has been issued in this state as provided in subsection (3), the Department of Highway Safety and Motor Vehicles shall not be a recording office for liens on motor vehicles.

(2) No liens for purchase money or as security for a debt in the form of retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument, upon a motor vehicle, as now or may hereafter be defined by law, upon which a certificate of title has been issued in this state shall be enforceable in any of the courts of this state, against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien showing the following information:

(a) Date and amount of lien;
(b) Kind of lien;
(c) Name and address of registered owner;
(d) Description of motor vehicle, showing make, type, and serial number; and
(e) Name and address of lienholder;

has been filed in the department and such lien has been noted upon the certificate of title covering such motor vehicle, and shall be effective as constructive notice when filed.

(3)(a) Notwithstanding the provisions of subsection (2) any person, firm or corporation holding a lien for purchase money or as security for a debt in the form of a retain title contract, conditional bill of sale, chattel mortgage or other similar instrument covering a motor vehicle previously titled or registered outside of this state upon which no certificate of title has been issued in this state, may use the facilities of the department for the recording of such lien as constructive notice of such lien to creditors and purchasers of such motor vehicle in Florida provided

such lienholder files a sworn notice of such lien in the department, showing the following information:

1. Date and amount of lien;
2. Kind of lien;
3. Name and address of registered owner;
4. Description of motor vehicle, showing make, type, and serial number; and
5. Name and address of lienholder.

Upon the filing of such notice of lien and payment of a fee of $1 for the recording of each notice of lien and a fee of $1 for the satisfaction thereof, both to be paid at the time of the filing of the lien, it shall be recorded in the Department of Highway Safety and Motor Vehicles.

(b) When a Florida certificate of title is first issued on a motor vehicle previously titled or registered outside this state, the department shall note on the Florida certificate of title, the following liens:

1. Any lien shown on the application for Florida certificate of title;
2. Any lien filed in the department in accordance with paragraph (a) of this subsection; and
3. Any lien shown on the existing certificate of title issued by another state.

(c) When a certificate of title on a motor vehicle has been issued in this state on a motor vehicle previously titled or registered outside this state, liens valid in and registered under the law of the state wherein such liens were created are not valid in this state unless filed and noted upon the certificate of title under the provisions of this section.

(4) All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the department. Provided, however, that the lien shown on the application for original certificate of title shall take priority over all liens or encumbrances filed subsequent to the date shown on such application. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any duly noted lien, mortgage, or encumbrance thereon, shall not render the same void or ineffective as against the creditors of such owner, or holder of subsequent liens, mortgages or encumbrances upon such motor vehicle.

(5) The holder of a retain title contract, conditional bill of sale, chattel mortgage or other similar instrument covering a motor vehicle, upon presentation of the certificate of title issued in this state, together with a sworn notice of lien on a form to be provided by the department and showing the following information:

(a) Date and amount of lien;
(b) Kind of lien;
(c) Name and address of registered owner;
(d) Description of motor vehicle, showing make, type, and serial number; and
(e) Name and address of the lienholder;

may have notation of such lien made on the face of such certificate of title. Should the original lienholder sell and assign his lien to some other person and such assignee desires to have his name substituted on the certificate of title as the holder of such lien, he may on delivering the original certificate of title to the department and a sworn statement of such assignment, have his name substituted as such lienholder.

History.—s. 8, ch. 23658, 1947; s. 6, ch. 25150, 1949; s. 10, ch. 26484, 1951; s. 7, ch. 28184, 1953; s. 1, ch. 59-340; s. 6, ch. 65-190; s. 1, ch. 65-342; s. 2, ch. 67-215; ss. 24, 35, ch. 69-106.

319.28 Transfer of ownership by operation of law.—

(1)(a) In the event of the transfer of ownership of a motor vehicle by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, attachment, execution or other judicial sale or whenever the engine of a motor vehicle is replaced by another engine, or whenever a motor vehicle is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a chattel mortgage, conditional sales contract, trust receipt or other like agreement, the department, upon the surrender of the prior certificate of title, or when that is not possible, upon presentation of satisfactory proof to the said department of ownership and right of possession to such motor vehicle, and upon payment of the fee prescribed by law, and presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the application is predicated upon a chattel mortgage, conditional sales contract, trust receipt or other like agreement, the original or a certified copy of the original of such instrument shall accompany the application provided that if the owner under a chattel mortgage voluntarily surrenders possession of such motor vehicle the original of the chattel mortgage shall accompany the application for a certificate of title and it shall not be necessary to institute proceedings in any court to foreclose such mortgage.

(b) When the application for a certificate of title is made by an heir or heirs of a previous owner who died intestate it shall not be necessary to accompany the application with an order of a probate court, provided the applicant files with the department an affidavit that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, have amicably agreed among themselves upon a division of the estate. If the previous owner died testate the application shall be accompanied by a certified copy of the will, if probated and an affidavit that the estate is solvent with sufficient assets to pay all just claims, and if the will is not being probated then by sworn copy of the will and an affidavit that the estate is not indebted.

(2) Only an affidavit by the person, or agent of the person to whom possession of such motor vehicle has so passed, setting forth facts entitling him to such possession and ownership, together with a copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession. If the applicant cannot produce such proof of ownership he may submit such evidence as he may have, and the department may thereupon, if it finds the evidence sufficient, issue a certificate of title.

(3) If, from the records of said department, there appears to be any other lien or liens on said motor

vehicle, such certificate of title shall contain a statement of said liens, unless such application is either accompanied by proper evidence of their satisfaction or extinction, or contains a statement reciting that at least 5 days' registered mail notice of intention to seek repossessed certificate of title has been given each lien or encumbrance holder noted as subsequent on the last issued certificate of title. If such notice is given and no written protest to the department is presented within 10 days from the date of the giving of the registered notice by any subsequent lienholder, then the certificate of title shall be issued showing no liens. If the former owner or any subsequent lienholder should file within the said 10 days a written protest, under oath, then the department shall not issue the repossessed certificate for 10 days thereafter. If within said 10 days no injunction or other order of a court of competent jurisdiction has been served on the department commanding it not to deliver the certificate, then it shall deliver the repossessed certificate to the applicant or as may otherwise be directed in the application showing no other liens than those shown in the application.

History.—s. 9, ch. 23658, 1947; ss. 1, 2, ch. 23723, 1947; s. 7, ch. 25150, 1949; s. 8, ch. 28184, 1953; s. 1, ch. 61-446; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

319.29 Lost or destroyed certificates; memorandum certificates.—

(1) In the event of a lost or destroyed certificate of title, application shall be made to the Department of Highway Safety and Motor Vehicles by the owner of said motor vehicle or the holder of a lien thereon for a duplicate copy of same upon a prescribed form and under regulations issued by the department and accompanied by a fee prescribed by this law. Such application shall be signed and sworn to by the person making the same. Thereupon the department shall issue a duplicate copy of said certificate of title to the person entitled to receive the certificate of title under the provisions of this law. Said duplicate copy and all subsequent certificates of title issued in the chain of title originated by said duplicate copy shall be plainly marked across their faces "duplicate copy," and any subsequent purchaser of said motor vehicle in the chain of title originating through such duplicate copy shall acquire only such rights in such motor vehicle as the original holder of said duplicate copy himself had.

(2) Any purchaser of such motor vehicle may at the time of such purchase require the seller of same to indemnify him and all subsequent purchasers of said motor vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the original certificate. In the event of the recovery of the original certificate of title by said owner he shall forthwith surrender same to the department for cancellation.

(3) The owner of a motor vehicle shown by the certificate of title may at any time make application to the department for a memorandum certificate, which application shall be made upon a form to be prescribed by the department and signed and sworn to by such applicant. Upon receipt of such application, if the same appears to be regular, together with the fee prescribed by this law, the department shall issue to such applicant a memorandum certificate for said motor vehicle. Whenever the original certificate is delivered to a lienholder, the department shall furnish to the owner a memorandum certificate without application and without any further fees. If the application is made at the time of application for a certificate of title no fee shall be required for the memorandum certificate. In the event such memorandum certificate is lost or destroyed, the holder thereof may obtain a duplicate copy of the same upon the filing of an application therefor with said department on a prescribed form and accompanied by the fee prescribed in this law. In the event of the recovery of the original memorandum certificate by said owner he shall forthwith surrender same to the department for cancellation. Such memorandum certificate shall be effective only for the purpose of obtaining a certificate of registration, is not assignable, and constitutes no evidence of title or of right to transfer or encumber the motor vehicle described therein.

History.—s. 10, ch. 23658, 1947; s. 8, ch. 25150, 1949; s. 11, ch. 25035, 1949; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.30 Dismantling, destruction, change of identity of vehicle; motor vehicle declared salvage.—

(1) Each owner of a motor vehicle and each person mentioned as owner in the last certificate of title, when such motor vehicle is dismantled, destroyed, or changed in such manner that it is not the motor vehicle described in the certificate of title, shall surrender his certificate of title to the Department of Highway Safety and Motor Vehicles and thereupon said department shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

(2) When the frame or engine is removed from a motor vehicle and not immediately replaced by another frame or engine, or when an insurance company has paid money as compensation for a total loss of any motor vehicle, such motor vehicle shall be considered to be salvage. The owner of every motor vehicle, 5 model years old or less, which is considered to be a total loss or salvage shall, within 72 hours after such total loss or salvage occurs, forward to the department the title to the motor vehicle, whereupon the department shall process the title in a manner prescribed by law or regulation. An insurance company which pays money as compensation for total loss of a motor vehicle shall obtain such vehicle's certificate of title and, within 72 hours after receiving such vehicle's certificate of title, shall forward such title to the department for processing. In the event that payment was made because of the theft of the vehicle, which shall be considered a total loss as defined in this section, the insurance company shall forward the certificate of title as provided herein to the department within 72 hours after receiving such title. However, nothing in this subsection shall be applicable when a stolen motor vehicle is recovered in substantially intact condition and is readily resalable without extensive repairs to or replacement of the frame or engine.

(3) It shall be unlawful for the owner of any junkyard, scrap metal processing plant which meets the criteria of a resource recovery and management facility as defined in s. 403.703(7), or salvage yard or his agent or employee to have in his possession any motor vehicle which is junk or salvage or a total loss as defined in subsection (5), when the manufacturer's identification number plate(s) or serial plate(s) have been removed therefrom. However, nothing in this subsection shall be applicable when a vehicle defined in this section as a junk or total loss was purchased or acquired from a foreign state requiring such vehicle's identification number plate(s) and license plate(s) to be surrendered to such state; provided, however, the owner of the junkyard or salvage yard or his agent or employee shall have a notarized bill of sale describing such salvage by manufacturer's serial number and the state to which such vehicle's identification number plate(s) were surrendered. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It shall be unlawful for any person, firm, or corporation to knowingly possess, sell, or exchange, offer to sell or exchange, or to give away any certificate of title or manufacturer's identification number plate(s) or serial plate(s) of any motor vehicle which has been sold as junk or salvage or as a total loss contrary to the provisions of this section, and every officer, agent, or employee of any person, firm, or corporation and every person who shall authorize, direct, aid in, or consent to the possession, sale, or exchange or offer to sell, exchange, or give away such certificate of title or manufacturer's identification number plate(s) or serial plate(s) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) For the purposes of compliance with this section, a total loss shall occur when any insurance company pays to the owner of the vehicle 80 percent or more of the cost, at the time of loss, of replacing the wrecked or damaged vehicle with one of like kind and quality. A motor vehicle wrecked or damaged that is uninsured shall likewise be declared a total loss when the cost is 80 percent or more, at the time of loss, of replacing the wrecked or damaged vehicle with one of like kind or quality by the owner.

(6) The owner of any junkyard or salvage yard or his agent or employee who purchases or otherwise acquires a motor vehicle, or any part thereof, defined as junk or salvage or a total loss shall keep an accurate and complete record of all such motor vehicles, or any major component part thereof, purchased or received in the course of his business. As used in this subsection, the term "major component part" means the front end assembly (fenders, hood, grill, and bumper); rear body section (both quarter panels, decklid, bumper, and floor pan); door assemblies; engine; and transmission. These records shall contain the name and address of each person from whom a motor vehicle defined as junk or salvage or a total loss was purchased or acquired, including the signature of the person selling or disposing of same together with said person's driver's license number if available. These records shall indicate when such purchases or receipts occurred. For the purposes of enforcement of this section, the department or its agents and employees shall have the same right of inspection as law enforcement officers as provided in s. 812.055. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The department shall make, promulgate, and enforce regulations as are reasonably necessary to carry out the intent of this section in accordance with the provisions of chapter 120.

History.—s. 11, ch. 23658, 1947; s. 9, ch. 25150, 1949; s. 1, ch. 59-341; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 69-373; s. 189, ch. 71-136; s. 1, ch. 72-94; s. 3, ch. 78-412; s. 2, ch. 79-32; s. 1, ch. 79-56.

319.31 Requisites of certificates; forms.—A certificate of title shall be printed upon a special watermarked paper to be selected by the Department of Highway Safety and Motor Vehicles. The department may by regulation require additional information and may alter, change or modify the following forms shown in this section. It may prescribe such additional forms as may be needed in the administration of this law.

(1) CERTIFICATE OF TITLE

No.....

State of Florida, County of .....

This is to Certify that (Registered Owner's Name), (Registered Owner's Address in Full) is the owner of the following described motor vehicle:

Make ..... Body ..... Type ..... Model ..... Mfr's Serial No. ..... Motor No. ..... Year made ..... having acquired title to said motor vehicle from (Name of Previous Owner) upon which motor vehicle are the following liens, mortgages or encumbrances:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above, if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount	Kind of Lien	Holder	Address
.....			

Date of Notation .....

Date of Satisfaction .....

(Director's Signature)

SECOND LIEN

Amount	Kind of Lien	Holder	Address
.....			

Date of Notation .....

Date of Satisfaction .....

(Director's Signature)

THIRD LIEN

Amount	Kind of Lien	Holder	Address
.....			

Date of Notation .....

Date of Satisfaction .....

(Director's Signature)

Witness my hand this ..... day of ....., 19.....

(Director, Division of Motor Vehicles)

(2) An "Assignment of Certificate of Title" shall

appear on the face of or on the reverse side of each certificate of title.

ASSIGNMENT OF CERTIFICATE OF TITLE

State of Florida
County of .....

The undersigned, being the owner of the motor vehicle described in the within Certificate of Title, hereby sells and assigns all right, title, and interest in and to said Certificate of Title and the motor vehicle described therein to

(Name of Assignee)

(Address of Assignee in Full) (Assignor's Selling Price)

The undersigned states and warrants that there are no mortgages, liens, or encumbrances on said motor vehicle except as noted on the face of this Certificate of Title.

Date .....

(Signature of Assignor)

(Address in Full)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ....., 19.....

(Notary Public)

A "reassignment by ..... dealer" shall likewise appear on the reverse side of each Certificate of Title.

REASSIGNMENT BY ..... DEALER

To be filled in by ..... Dealer only .....

State of Florida
County of .....

The undersigned, being a ..... Dealer, License No. ..... who purchased the motor vehicle described in the within Certificate of Title, hereby sells and assigns all his right, title, and interest in and to said Certificate of Title and the motor vehicle described therein to

(Name of Assignee)

(Address of Assignee)

The undersigned states and warrants that there are no mortgages, liens, or encumbrances on said motor vehicle except as noted on the face of this Certificate of Title.

Date .....

(DEALER)

SUBSCRIBED and sworn to before me at ..... in the State of ..... this ..... day of ....., 19.....

(Notary Public)

(3) APPLICATION FOR CERTIFICATE OF TITLE

State of Florida
County of .....

(Name of Applicant) (Address in Full)

hereby states that he, she, or it is the lawful owner or purchaser of the following described motor vehicle and makes application for a Certificate of Title to same:

Make ..... Body ..... Type ..... Model ..... Mfr's Serial No. ..... Motor No. ..... Year Made .....

Applicant acquired said motor vehicle by (State How Acquired)

From ..... residing at (Address of Previous Owner in Full)

The following is a full statement of all liens, mortgages or encumbrances on said motor vehicle:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances, the word "none" must appear on the above line; if there are any liens the word "yes" must appear with the following information.)

	Amt.	Kind	Holder	Address
First Lien				
Second Lien				
Third Lien				

Deliver Certificate to .....

Address .....

If previously registered outside of Florida;

The above vehicle was previously registered on the ..... day of ..... A. D. 19..... at ..... in the County of ..... State of .....

By (Officer, Agency or Authority)

Date .....

(Signature of Applicant)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

(Notary Public)

DEALER CERTIFICATE
(To be part of Application)

I hereby certify that the Motor Vehicle described above is a (new or used) vehicle, and was acquired by me from (Name of Manufacturer, Distributor or Former Owner) whose address is ..... and no certificate has previously been issued.

I warrant title and certify that there are no liens other than shown in such application.

.....

By .....

License No. .....

Address .....

(4) MEMORANDUM CERTIFICATE CERTIFICATE OF TITLE

State of Florida, County of .....

No. .....

This is to certify that (Registered Owner's Name), (Registered Owner's Address in Full) appears from the record of this office to be the registered owner named in the above-mentioned certificate of title for the following described motor vehicle:

Make ..... Body ..... Type ..... Model ..... Mfr's. Ser. No. ..... Motor No. ..... Year Made .....

Having acquired title to said motor vehicle from:

(Address of Previous Owner in Full)

(Name of Previous Owner)

upon which motor vehicle are the following liens, mortgages or encumbrances:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above; if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....

Date of Notation ..... Date of Satisfaction .....

(Director's Signature)

SECOND LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....
Date of Notation ..... Date of Satisfaction .....

(Director's Signature)

THIRD LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....
Date of Notation ..... Date of Satisfaction .....

(Director's Signature)

This memorandum certificate is effective only for the purpose of obtaining a certificate of registration, is not assignable, and constitutes no evidence of title or of right to transfer or encumber the motor vehicle described herein.

Witness my hand this ..... day of ..... 19.....

(Director, Division of Motor Vehicles)

(5) APPLICATION FOR MEMORANDUM CERTIFICATE

State of Florida, County of .....

The undersigned hereby represents that he is the Registered Owner named in the Certificate of Title Number ..... issued by Director, Division of Motor Vehicles ..... for the following described motor vehicle:

Make ..... Body ..... Type ..... Model ..... Mfr's. Ser. No. ..... Motor No. ..... Year Made ..... and that he is the lawful owner of said motor vehicle and is entitled by law to receive a memorandum certificate therefor.

(Signature of Applicant)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

(Notary Public)

(6) APPLICATION FOR ASSIGNMENT OF LIEN

State of Florida
County of .....

The undersigned hereby represents that he is the assignee of that certain lien dated the ..... day of ..... 19..... covering that certain motor vehicle described as follows:

Make Type Motor Serial Number

.....

originally held by ..... whose address is ..... as shown by accompanying certificate of title and desires to have the certificate show such lien now held by the undersigned and represents that on this date there is a balance of $.....as principal still due and unpaid.

(Signature of Applicant)

(Address)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

(Notary Public)

(7) APPLICATION FOR DUPLICATE COPY OF CERTIFICATE OF TITLE OR MEMORANDUM CERTIFICATE

State of Florida, County of .....

The undersigned hereby makes application for a duplicate copy of (Certificate of Title) (Memorandum Certificate) No. ..... issued to (Owner's Name) residing at ..... on the ..... day of ..... 19....., for the following described motor vehicle:

Make ..... Body ..... Type ..... Model ..... Mfr's. Ser. No. ..... Motor No. ..... Year Made ..... upon which there are the following mortgages, liens, and encumbrances:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above; if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....
Date of Notation .....

SECOND LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....
Date of Notation .....

THIRD LIEN

Amount ..... Kind of Lien ..... Holder ..... Address .....
Date of Notation .....

This applicant represents, for the purpose of obtaining said duplicate copy that he is the lawful owner of (lienholder of) said motor vehicle, and that the original Certificate of Title (memorandum certificate) has been lost or destroyed; that said motor vehicle has not been sold or disposed of, or mortgaged or otherwise encumbered except as above set forth, and is now in the possession of (Name of Owner or Lienholder) residing at (Address in Full) and that if said Certificate of Title (memorandum certificate) be hereafter recovered by this applicant, he will deliver same to the Director of the Division of Motor Vehicles for cancellation.

Deliver Certificate to .....
Address .....
Dated .....

(Signature of Applicant)

(Address in Full)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

(Notary Public)

(8) NOTICE OF LIEN

Certificate No. .....

Notice is hereby given that there is an existing written contract between the undersigned involving the motor vehicle described below, and the undersigned lienholder claims a lien as herein shown.

Motor No. ..... Serial No. ..... Make ..... Year ..... Type ..... Kind of Lien ..... Amount of Lien ..... Date of Lien .....

(To be signed by the Registered Owner or Owners and by the Lienholder and sworn to by each before a Notary.)

(Signature of Registered Owner)

(Address of Owner)
Sworn to and subscribed before me this ..... day of ..... 19.....
(Notary Public) (SEAL)

(Signature of Lienholder)

(Address of Lienholder)

Sworn to and subscribed before me this ..... day of ..... 19.....
(Notary Public) (SEAL)

(9) SATISFACTION OF LIEN
Certificate No. .....

The undersigned owner and holder of the following described lien on the following described motor vehicle:
Motor No. ..... Serial No. ..... Make ..... Year ..... Type ..... Kind of Lien ..... Amount of Lien ..... Date of Lien .....
Hereby acknowledges full payment and satisfaction of the above described lien this ..... day of ..... 19.....

(Signature of Lienholder)

(Address of Lienholder)

Sworn to and subscribed before me this ..... day of ..... 19.....
(Notary Public) (SEAL)

History.—s. 12, ch. 23658, 1947; s. 10, ch. 25150, 1949; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 6, ch. 79-359.

319.32 Fees.—

(1) The Department of Highway Safety and Motor Vehicles shall charge a fee of $2 for each duplicate copy of a certificate of title; $2 for each assignment by a lienholder; and $2 for each original certificate of title. It shall also charge a fee of $2 for noting a lien on a certificate, which fee shall include the services for the subsequent issuance of a corrected certificate or cancellation of lien when that particular lien is satisfied. In addition to all other fees charged, a sum of $1 shall be paid for the issuance of an original or duplicate certificate of title to cover the cost of materials used for security purposes.

(2) All fees collected under this law shall be paid into the General Revenue Fund.

History.—s. 13, ch. 23658, 1947; s. 11, ch. 25150, 1949; s. 42, ch. 26869, 1951; s. 6, ch. 65-190; s. 3, ch. 67-215; ss. 24, 35, ch. 69-106; s. 2, ch. 79-399.

319.323 Expedited service; applications; fees.—The Department of Highway Safety and Motor Vehicles shall establish a separate title office which may be utilized by private citizens and licensed motor vehicle dealers to receive expedited service on title transfers, title issuances, duplicate titles, and recordation of liens. A fee of $5 shall be charged for this service, which fee is in addition to the fees imposed by s. 319.32. Applications for such expedited service may be made by mail or in person. The department shall issue each title applied for pursuant to this section within 72 hours of receipt of the application.

History.—s. 1, ch. 79-399.

319.33 Offenses involving vehicle serial numbers, applications, certificates, papers; penalty.—

(1) It is unlawful:

(a) To alter or forge any certificate of title to a motor vehicle or any assignment thereof or any cancellation of any liens on a motor vehicle;

(b) To hold or use such certificate, assignment, or cancellation knowing the same to have been altered or forged;

(c) To procure or attempt to procure a certificate of title to a motor vehicle, or pass or attempt to pass a certificate of title or any assignment thereof to a motor vehicle, knowing or having reason to believe that such motor vehicle has been stolen;

(d) To sell or offer for sale in this state a motor vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of such destruction, removal, covering, alteration, or defacement of said motor number or manufacturer's serial number;

(e) To use a false or fictitious name, give a false or fictitious address, or make any false statement in any application or affidavit required under the provisions of this law or in a bill of sale or sworn statement of ownership or otherwise commit a fraud in any application.

(2) It is unlawful for any person knowingly to obtain goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a motor vehicle.

(3) It is unlawful for any person knowingly to obtain goods, services, credit, or money by means of a certificate of title to a motor vehicle, which certificate is required by law to be surrendered to the Department of Highway Safety and Motor Vehicles.

(4) It is unlawful for any person knowingly and with intent to defraud to have in his possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a motor vehicle, or to conspire to do any of the foregoing.

(5) Any person who violates any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of motor vehicles, but shall be deemed supplementary thereto.

History.—s. 14, ch. 23658, 1947; s. 1, ch. 69-9; ss. 24, 35, ch. 69-106; s. 190, ch. 71-136.

319.34 Transfer without delivery of certificate; operation without certificate; failure to surrender; other violations.—Whoever shall, except as otherwise provided for in this law, purport to sell or transfer a motor vehicle without delivery to the purchaser or transferee thereof a certificate of

title thereto duly assigned to such purchaser as provided in this law or shall operate in this state a motor vehicle for which a certificate of title is required without such certificate having been obtained in accordance with the provisions of this law, or upon which the certificate of title has been canceled; or whoever shall fail to surrender any certificate of title or memorandum certificate or any certificate of registration or license plates or tags upon cancellation of the same by the Department of Highway Safety and Motor Vehicles and notice thereof as prescribed in this law; or whoever fails to surrender the certificate of title to the department as provided in this law in case of the destruction or dismantling or change of a motor vehicle in such respect that it is not the motor vehicle described in the certificate of title; or whoever shall violate any of the other provisions of the law, or any lawful rule or regulation promulgated pursuant to the provisions of this law, shall be fined not more than $500 or imprisoned for not more than 6 months, or both, for each offense.

History.—s. 15, ch. 23658, 1947; s. 12, ch. 25150, 1949; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

319.35 Unlawful acts in connection with motor vehicle odometer readings; penalties.—

(1) It is unlawful for any person knowingly to tamper with, adjust, alter, change, set back, disconnect, or fail to connect an odometer of a motor vehicle, or to cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the motor vehicle has actually been driven, or to supply any written odometer statement knowing such statement to be false or based on mileage figures reflected by an odometer that has been so tampered with or altered, except as hereinafter provided. It shall be unlawful for any person to knowingly bring into this state a motor vehicle which has an odometer that has been illegally altered.

(2) The provisions of subsection (1) shall not apply to the following:

(a) The disconnection of the odometer used for registering the mileage or use of new motor vehicles being tested by the manufacturer prior to delivery to a franchised dealer;

(b) The disconnection of an odometer used for registering mileage or use of new motor vehicles occasioned by exchanges of new motor vehicles between licensed franchised dealers, or delivery to licensed franchised dealers from assembly points;

(c) Passenger car vehicles having a capacity exceeding 15 persons; or

(d) Trucks having a net weight in excess of 3,000 pounds.

(3) Any person who intentionally violates the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1-6, ch. 70-233; s. 2, ch. 71-242; s. 191, ch. 71-136; s. 1, ch. 78-183.

319.36 Definitions; shipment of motor vehicles; proof of right of possession; penalties.—

(1) In construing this section, where the context permits, the word, term or phrase:

(a) "Department" means Department of Highway Safety and Motor Vehicles.

(b) "Motor vehicle" means and includes all vehicles as defined in s. 320.01(1).

(c) "Aircraft" means and includes all aircraft as defined in s. 330.01.

(d) "Vessel" means and includes all watercraft as defined in s. 371.021(1).

(e) "Person" includes individuals, firms, partnerships, corporations, associations, or other artificial bodies, trustees, receivers and officers, employees, agents, and others acting for or on behalf of any person.

(2) No master or captain of any vessel, captain of any aircraft, or person who owns any vessel or aircraft in whole or in part shall take on board, or allow to be taken on board, said vessel or aircraft at any port in this state any motor vehicle to be transported to any destination outside of the continental United States without:

(a) Having received a right of possession certificate issued by the department in the name of the person offering such motor vehicle for transportation; and

(b) Having examined said motor vehicle and having verified that the description and serial number are identical with the description and serial number shown in said certificate of right of possession.

(3) No person shall transport, or cause to be transported, from any port or airport facility in this state, any motor vehicle, by watercraft or aircraft, outside of the continental United States without first having obtained a certificate of right of possession of such vehicle issued by the department.

(4) Any owner of a motor vehicle may file an application for a certificate of right of possession with the department, upon a form prescribed by the department, which shall be sworn to before a notary public or other officers empowered to administer oaths. Such application shall be accompanied by a fee of $2, together with evidence of the applicant's right of possession of such vehicle satisfactory to the department, which may consist of:

(a) A certificate of title issued in the name of the applicant by this state or a foreign state wherein such vehicle is currently registered; or

(b) A registration certificate issued in the name of the applicant by a foreign state wherein such vehicle is currently registered, which state does not require issuance of a certificate of title.

Upon receipt of such application, the fee prescribed by this section, and said evidence of right of possession, the department shall issue to such applicant a certificate of right of possession. Such certificate shall not be negotiable or transferable.

(5) This section shall not apply to:

(a) New motor vehicles shipped from ports in this state consigned by the manufacturers thereof to consignees outside of the continental United States;

(b) Persons transporting motor vehicles owned by the federal government or its departments or agencies; or

(c) Federal officers or employees transporting motor vehicles in the performance of their duties of employment.

(6) No person shall counterfeit, copy, forge, or otherwise falsify a right of possession certificate.

(7) The department shall adopt and promulgate such rules and regulations as are deemed necessary to administer the provisions of this section. The department shall provide and furnish all forms required by this section.

(8)(a) Any person violating subsection (2) or subsection (6) of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person violating the provisions of subsection (3) of this section, who has not previously been convicted of violating said subsection and was the lawful owner of the vehicle at the time of the violation, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person violating the provisions of subsection (3) of this section who has previously been convicted of violating said subsection or who was not the lawful owner of the vehicle at the time of the violation shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, ch. 70-289; s. 842, ch. 71-136; s. 1, ch. 72-26; ss. 1, 2, ch. 72-356; s. 65, ch. 74-383.

Note.—Former s. 814.07.

CHAPTER 320

MOTOR VEHICLE LICENSES, ETC.

320.01 Definitions, general.—In construing these statutes, when applied to motor vehicles, and when the context permits, the word, phrase, or term:

(1) "Motor vehicle" includes:

(a) Automobiles, motorcycles, motor trucks, trailers, semitrailers, tractor trailer combinations, and all other vehicles operated over the public streets and highways of this state and used as a means of transporting persons or property over the public streets and highways and propelled by power other than muscular power, but does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, or "mopeds," as defined in subsection 316.003(2).

(b) Recreational vehicle-type units primarily designed as temporary living quarters for recreational, camping, or travel use, which either have their own motive power or are mounted on or drawn by another vehicle. As defined below, the basic entities are:

1. "Travel trailer": A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It is of a body width of no more than 8 feet and a body length of no more than 35 feet when factory-equipped for the road.

2. "Camping trailer": A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. "Truck camper": A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping, or travel use. Truck campers are portable units designed to be affixed to a truck chassis and constructed to provide temporary living quarters for recreational, travel, or camping use.

4. "Motor home": A vehicular unit, not exceeding length and width limitations provided in s. 316.515, built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. "Fifth wheel recreation trailer": A vehicular portable unit mounted on wheels of such size or weight as not to require special highway movement permits. It is primarily designed and constructed to provide temporary living quarters for recreation, camping, or travel use and designed to be connected for towing through the use of a fifth wheel device. It is of a length and width not exceeding the limitations provided in s. 316.515, as the same may be hereafter amended.

(2) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis, and designed to be used as a dwelling when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(3) "Local authorities" includes all officers and public officials of the several counties and municipalities of this state.

(4) "Owner" includes any person, firm, corporation, or association controlling any motor vehicle by right of purchase, gift, lease, or otherwise.

(5) "Chauffeur" includes any person operating any motor vehicle as an employee of the owner thereof; however, the term "chauffeur" does not apply to a person using a motor-driven vehicle as an incident to his employment in some other capacity.

(6) "Trailer" includes all four-wheel vehicles coupled to, or drawn by, a motor vehicle.

(7) "Semitrailer" includes any two-wheel vehicle coupled to, or drawn by, any motor vehicle.

(8) "Solid tires" includes all tires of any material or substance which do not depend upon confined air for the support of the load, except airless cushion tires.

(9) "Pneumatic tires" includes all tires made of rubber and fabric which are inflated with air.

(10) "Net weight" shall be construed to be the actual scale weight with complete catalog equipment.

(11) "Gross weight" shall be construed to be the net weight of a motor vehicle, plus the weight of the load carried by such vehicle.

(12) "Cwt" shall be understood to refer to the weight per hundred pounds, or major fraction thereof, of a motor vehicle.

(13) "Trucks" includes any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform, rack, or other equipment for the purpose of carrying merchandise other than the person or effects of the passengers.

(14) "Truck-tractor" means a motor vehicle having four or more wheels designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer, which shall be attached or coupled thereto by means of such fifth wheel and having no provision for carrying loads independently.

(15) "GVW" means the gross vehicle weight of a truck-tractor and semitrailer combination, which shall be calculated by adding to the net weight of the truck-tractor the gross weight of the semitrailer, which shall be the maximum gross weight as declared by the owner or person applying for registration, such vehicles being coupled together by means of a fifth-wheel arrangement whereby part of the weight of the semitrailer and load rests upon the truck-tractor.

(16) The word "passenger," or any abbreviation thereof, shall not include the driver.

(17) "Private use" shall be construed to mean the use of all vehicles which are not properly classified as "for-hire" vehicles.

(18)(a) "For-hire" vehicles include all motor vehicles, or trailers drawn by motor vehicles, when used for transporting persons, commodities, or materials for compensation; let or rented to another for a consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; or used in connection with a travel bureau or when offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When freight or passengers are transported for compensation in a motor vehicle outside of a municipal corporation of this state, or when freight is transported in a motor vehicle not owned by the same person owning the said freight, so that there is identity of ownership between the said freight and motor vehicle, such transportation shall be deemed "for hire." The carrying of goods, wares, merchandise, and other personal property in motor vehicles by corporations or associations for their stockholders, shareholders, and members, cooperative or otherwise, shall be deemed transportation "for hire."

(b) The following shall not be deemed as operating "for hire," to wit: Motor vehicles used for transporting school children to and from school under contract with school officials; hearses and ambulances when operated by licensed embalmers or morticians or their agents or employees in this state; motor vehicles used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of said supplies or to associations of said growers or consumers; and motor vehicles temporarily used by farmers for the transportation of agricultural or horticultural products from farms or groves to packinghouses or to points of shipment by transportation companies; motor vehicles not exceeding 1½ tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

(19) "State road" shall be construed to mean any part of any road, including the bridges thereon, heretofore or hereafter designated by the Legislature or by the Department of Transportation, in accordance with law, as a state road, which has been, or may hereafter be, constructed, maintained, or otherwise improved by said department or which is now, or may hereafter be, in course of construction, maintenance, or improvement by such department.

(20) "Station wagons," also known as "suburbans," not used for hire are hereby declared to be "automobiles for private use" so far as the same relates to the laws of this state fixing and prescribing fees and taxes on automobiles, and shall hereafter pay the same fees and taxes as are prescribed by the laws of Florida for "automobiles for private use."

(21) A "farm tractor" is hereby defined to be a motor vehicle operated principally upon a farm, grove, or orchard in agricultural or horticultural pursuits and which is operated upon the highways of this state incidentally in going from the owner's or operator's headquarters to such farms, groves, or orchards and returning therefrom, or in going from one farm, grove, or orchard to another. A "farm trailer" is defined as a vehicle without motive power which is used principally for the purpose of transporting plows, harrows, fertilizer distributors, spray machines, and other farm or grove implements, and which uses the highways of this state only incidentally.

(22) "Motor-driven cycle" shall be construed to mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower, and every bicycle propelled by a helper motor rated in excess of 1½ brake horsepower.

(23) "Brake horsepower" shall be construed to mean the actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(24) "Department" means the Department of Highway Safety and Motor Vehicles.

(25) A "registration period" shall be a period of 12 months, to be determined as follows:

(a) For vehicles subject to registration under s.

320.08(1), (2), (3)(a)-(c), (e), (f), (5)(b)-(e), (6)(a), and (7)-(9) and owned by a natural person, the period begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month of the succeeding year. If such vehicle is registered in the name of more than one person, the birth date of the person whose name first appears on the registration shall be used to determine the registration period.

(b) For vehicles subject to registration under s. 320.08(10), the period begins January 1 and ends December 31.

(c) For all other vehicles subject to registration for which a registration period is not otherwise prescribed, the period begins June 1 and ends May 31.

(26) "Renewal period" shall be a period of 30 days, to be determined as follows:

(a) For vehicles owned by a natural person and subject to registration under s. 320.08(1), (2), (3)(a)-(c), (e), (f), (5)(b)-(e), (6)(a), and (7)-(9), renewal shall occur during the 30-day period ending at midnight of the vehicle owner's birthday.

(b) For vehicles subject to the registration period beginning January 1 and ending December 31, renewal shall occur during the 30-day period beginning January 1.

(c) For vehicles subject to the registration period beginning June 1 and ending May 31, renewal shall occur during the 30-day period beginning June 1.

(27) "Marine boat trailer dealer" is defined as any person engaged in:

(a) The business of buying, selling, manufacturing, or dealing in trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels, as defined in s. 371.021; or

(b) The offering or displaying of such trailers for sale.

(28) "Director" means the Director of the Division of Motor Vehicles of the Department of Highway Safety and Motor Vehicles.

History.—ss. 1, 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1006, 1011; ss. 2, 5, ch. 8410, 1921; s. 2, ch. 9156, 1923; s. 1, ch. 9157, 1923; ss. 1, 3, ch. 10182, 1925; CGL 1280, 1285, 1677; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 20743, 1941; s. 1, ch. 20911, 1941; s. 1, ch. 26923, 1951; s. 1, ch. 59-351; s. 1, ch. 65-61; s. 1, ch. 65-446; ss. 23, 24, 35, ch. 69-106; s. 1, ch. 70-215; s. 1, ch. 70-391; s. 93, ch. 71-377; s. 1, ch. 72-339; s. 1, ch. 73-284; s. 2, ch. 74-243; s. 3, ch. 75-66; s. 2, ch. 76-135; s. 4, ch. 76-286; s. 1, ch. 77-180; s. 1, ch. 77-357; s. 1, ch. 78-221; s. 125, ch. 79-400.

cf.—s. 1.01 Definitions.

320.0105 Legislative intent; chapter 75-66, Laws of Florida.—

(1) It is the intent of the Legislature that the provisions contained herein shall be implemented in such a manner that the convenience of the applicant is the first consideration.

(2) It is further the intent of the Legislature that:

(a) The tag shall remain with the owner of the vehicle.

(b) Each motor vehicle privately owned by a natural person, except those vehicles taxed under the provisions of s. 320.08(3)(d), (4), (5)(a), (6)(b), (10), or (13), shall be registered and reregistered based on the owner's birth month during the renewal period.

(c) License plates shall be transferable between certain weight classes without the necessity of replacing the original plate until the alphanumeric system is totally effected.

(d) The department shall accomplish an accurate data file on each owner of a motor vehicle and that the data file shall have a common base with each of the other two files (driver file and title certificate file) maintained by the department on that same owner. As soon as the department has accomplished an accurate data file on motor vehicle registrations, the time for the completion of which shall not exceed 3 years, the three separate files (motor vehicle registration, driver's license, and title certificate) shall be combined, updated, and maintained in a single file.

History.—s. 1, ch. 75-66; s. 1, ch. 77-174; s. 2, ch. 77-357.

320.011 Department, powers and duties.— The powers and duties of the Department of Highway Safety and Motor Vehicles shall include the following. The department shall:

(1) Have charge of all affairs of administering and enforcing the laws of the state relative to motor vehicles, as hereinafter provided, and employ such clerical assistants and appoint such enforcement personnel as may be necessary to enable it to completely and efficiently perform its duties.

(2) Issue and cancel motor vehicle certificates of title.

(3) Collect all sums of money required to be collected as provided by law.

(4) Issue all licenses, permits and certificates required to be issued, being strictly accountable therefor.

(5) Adopt and promulgate such reasonable rules and regulations as are deemed necessary to administer the provisions of chapters 319, 320, 324, and 330, which shall have the force and effect of law.

(6) Administer and enforce all provisions of law pertaining to financial responsibility, licensing, registration, certification, sale, and distribution of motor vehicles, as set forth in chapters 319, 320, 324, and 330 and the rules and regulations promulgated thereunder.

(7) Wherever in chapter 320 the Department of Highway Safety and Motor Vehicles is authorized or directed to conduct hearings, the Director of the Division of Motor Vehicles in the department shall conduct said hearings and shall be the hearing officer.

History.—s. 3, ch. 65-190; ss. 24, 35, ch. 69-106; s. 3, ch. 77-357.
Note.—Former s. 318.031.

320.015 Taxation of mobile homes.—A mobile home, as defined in s. 320.01(2), regardless of its actual use, shall be subject only to a license tax unless classified and taxed as real property. A mobile home is to be considered real property only when the owner of the mobile home is also the owner of the land on which the mobile home is situated and said mobile home is permanently affixed thereto. Any prefabricated or modular housing unit or portion thereof not manufactured upon an integral chassis or undercarriage for travel over the highways shall be taxed as real property even though transported over the highways to a site for erection or use.

History.—Formerly s. 13, Art IX of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in

1968; s. 2, ch. 70-391; s. 2, ch. 72-339.

320.02 Application for registration; forms.—(1) Every owner, or person in charge, of a motor vehicle which shall be operated or driven upon the highways of the state, or which shall be maintained in this state, shall, for each such vehicle so owned, cause to be filed by mail or otherwise, in the office of the department, a certified application for registration of same on a blank to be furnished for that purpose, containing:

(a) A description of each motor vehicle to be registered, including: the purpose for which it is to be used; the name of the manufacturer; the style, type, engine number, or permanent vehicle identification number (VIN); the horsepower; the net weight in pounds; in case of motor trucks, trailers, and semitrailers, the factory-rated load capacity; the maximum gross weight as stated by the person requesting registration; and, in case of motor vehicles for carrying passengers, the seating capacity. However, if the application is for the registration of an antique automobile, antique truck, or vehicle which qualifies for a horseless carriage license plate, the application shall contain the engine number and the year and model of the engine.

(b) The full first name, middle or maiden name, last name, date of birth, sex, and mailing address of the registered owner of such vehicle; if the mailing address is a post-office box or if the mailing address is different from the street address of the owner's permanent residence or street address of the permanent place of business, the street address of the owner's permanent residence or the street address of the permanent place of business; and also the county and state or place, if outside of the state, in which he resides. In cases of joint ownership, the birthday of the first person listed on the registration form shall be used for the purpose of determining the registration period.

(2) If the owner does not have a permanent residence, the owner's permanent residence cannot be identified by a street address, the business does not have a permanent place of business, or the permanent place of business cannot be identified by a street address, the application shall include:

(a) If the vehicle is registered to a business, the name and street address of the permanent residence of an owner of the business, an officer of the corporation, or an employee who is in a supervisory position.

(b) If the vehicle is registered to an individual, the name and street address of the permanent residence of a close relative or friend who is a resident of this state.

(3) Prior to the registration in this state of any vehicle registered outside the State of Florida, the application shall be accompanied by either a sworn affidavit from the seller and purchaser verifying that the vehicle identification number shown on the affidavit is identical to the vehicle identification number shown on the motor vehicle or a copy of the appropriate motor vehicle inspection or departmental form evidencing that a physical examination has been made of the motor vehicle by the owner and by a motor vehicle inspection station inspector, a duly constituted police department in any state, or a licensed motor vehicle dealer and that the vehicle identification number shown on the applicable form and the application is identical with the vehicle identification number shown on the motor vehicle. Vehicle identification number verification shall not be required [1]for any new vehicle sold in this state by a licensed motor vehicle dealer, any mobile home, any trailer-type recreational vehicle, or any other trailer with a weight of less than 1 ton.

(4) The owner of any motor vehicle registered in the state shall notify the department, in writing, of any change of address within 20 days of such change. The notification shall include the vehicle identification number (VIN) or title certificate number, year of vehicle make, and the owner's name as described in subsection (1)(b).

(5)(a) Proof that personal injury protection benefits have been purchased when required under s. 627.733 shall be made by the applicant at the time of application for registration of any motor vehicle owned as defined in s. 627.732. The issuing agent shall refuse to issue registration if such proof of purchase is not made. Insurers shall furnish uniform proof of purchase cards in such form as prescribed by the Department of Highway Safety and Motor Vehicles, and such card, or an insurance policy, an insurance policy binder, a certificate of insurance, a notarized affidavit in substantially the following form:

I (Name of Insured) do hereby certify that
I have (Personal Injury Protection or Liability)
Insurance currently in effect. (Signature of Insured)

or such proof as may be prescribed by the Department of Highway Safety and Motor Vehicles shall be accepted as such proof. When applications are made through a licensed motor vehicle dealer as required in s. 319.23, the original or a photostatic copy of such card, insurance policy, insurance policy binder, certificate of insurance, or the original notarized affidavit from the insured shall be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing and notarizing aforesaid affidavit, no licensed motor vehicle dealer shall be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. Such cards shall also indicate the existence of any bodily injury liability insurance voluntarily purchased. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers providing such benefits. Any person altering such card or duplicating or counterfeiting such card or making a false affidavit in order to furnish such false proof or to knowingly permit another person to furnish such false proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) When an operator owning a motor vehicle or motor vehicles comes under the operation of the financial responsibility requirements of chapter 324, such operator shall provide proof of compliance with such financial responsibility requirements at the time of registration of any such motor vehicle, through the use of a uniform proof of purchase of insurance card specifying such coverage, an insurance policy, an insurance policy binder, a certificate of insurance, a notarized affidavit as provided in this

section, or by such other method of furnishing such proof as may be required by the Department of Highway Safety and Motor Vehicles. The issuing agent shall refuse to issue registration of a motor vehicle if such proof of purchase is not made. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers writing motor vehicle liability insurance in this state. Any person altering such card or counterfeiting such card in order to furnish such false proof or to knowingly permit another person to furnish such false proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) The verifying of proof of personal injury protection insurance or proof of financial responsibility insurance and the issuance or failure to issue the motor vehicle registration under the provisions of this chapter shall not be construed in any court as a warranty of the reliability or accuracy of the evidence of such proof. In verifying the proof of personal injury protection insurance or financial responsibility insurance under the provisions of this chapter, no tax collector shall be liable in damages for any inadequacy, insufficiency, falsification, or unauthorized modification of any item of the proof of personal injury protection insurance or financial responsibility insurance either prior to, during, or subsequent to the verification of the proof. The issuance of a motor vehicle registration shall not constitute prima facie evidence or a presumption of insurance coverage.

(6) Mopeds, as defined in s. 316.003(2), shall be subject, solely for the purposes of registration and the payment of license taxes, to those portions of this chapter which relate to registration and payment of license taxes of motor-driven cycles; however, any other provisions of law to the contrary notwithstanding, including, without limitation, any provisions relating to motor vehicle dealer licensing and bonding, titling, and vehicle inspection, registration and payment of license taxes of mopeds in accordance with these requirements and for the purposes stated herein shall in no way be construed as placing any requirements upon mopeds beyond registration and payment of license taxes.

History.—s. 2, ch. 7275, 1917; RGS 1007; s. 3, ch. 8410, 1921; s. 2, ch. 10182, 1925; CGL 1281; s. 1, ch. 15625, 1931; s. 1, ch. 16085, 1933; s. 1, ch. 26909, 1951; s. 1, ch. 28186, 1953; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 71-42; s. 2, ch. 73-284; s. 1, ch. 75-57; s. 4, ch. 75-66; s. 4, ch. 77-357; s. 4, ch. 77-468; s. 1, ch. 78-186; s. 3, ch. 78-225; s. 2, ch. 78-353; s. 4, ch. 78-363; s. 4, ch. 78-412; s. 3, ch. 79-32.

[1]**Note.**—The word "for" was substituted for "of" by the editors.

cf.—s. 48.171 Service on nonresident motor vehicle owners, etc.

320.025 Confidential motor vehicle license; application for registration.—

(1) Confidential motor vehicle licenses shall be issued only for motor vehicles of law enforcement agencies of the state, county, municipal, and federal governments. The requesting agency shall file a written application with the department on forms furnished by the department, which application shall include a statement that the license plate will be used for law enforcement activities requiring concealment of publicly leased or owned motor vehicles and a statement of the position classifications of the individuals who are authorized to use the license plate.

(2) Except as provided in subsection (1), all motor vehicles owned and operated by the state shall at all times display a license number plate of the type prescribed in s. 320.07(2).

History.—s. 1, ch. 73-37.

320.03 License plates; duties of tax collectors.—

(1) The tax collectors in the several counties of the state shall deliver license plates and mobile home stickers to applicants, subject to the requirements of law, in accordance with rules and regulations to be prescribed with reference thereto by the department.

(2) Each tax collector shall be required to give a good and sufficient surety bond, payable to the department, conditioned that he will faithfully and truly perform the duties imposed upon him according to the requirements of law and the rules and regulations of the department, and that he will well and truly pay over and account for all license plates, records and other property and money which may come into his possession or control by reason of such service. The amount of such bond shall be fixed by the department and shall be in proportion to the amount of accountability which is likely to arise in such capacity, the said amount to be fixed by the department.

(3) Each tax collector shall keep a full and complete record and account of all license plates, mobile home stickers, or other properties received by him from the department, or from any other source, and shall make prompt remittance of moneys collected by him at such times and in such manner as rules and regulations promulgated in that behalf may prescribe.

(4) Each tax collector or license tag agent who has on-line computer access to the department's data center or other reasonable access thereto shall, except where the department has issued a registration renewal notice, upon receipt of an application for the registration of any vehicle other than a mobile home, determine from the driver file of the applicant whether his driver's license has been canceled, suspended, or revoked and, if so, whether the applicant has surrendered his license to the department as required by s. 322.251. If the applicant has not surrendered his license in accordance with the provisions of said section, the tax collector shall refuse to register the vehicle until such time as the applicant surrenders his driver's license to the department.

History.—s. 2, ch. 7275, 1917; RGS 1007; s. 3, ch. 8410, 1921; s. 2, ch. 10182, 1925; CGL 1281; s. 1, ch. 15625, 1931; s. 1, ch. 16085, 1933; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 2, ch. 78-37; s. 1, ch. 78-207.

320.031 Mailing of license plates, registration, and revalidation stickers.—

(1) The department and the tax collectors of the several counties of the state may at the request of the applicant use United States mail service to deliver motor vehicle registrations and renewals thereof, license plates, mobile home stickers, and revalidation stickers to applicants.

(2) A mail service charge shall be collected for registrations, license plates, mobile home stickers,

and revalidation stickers mailed by the department or any tax collector. All registrations, license plates, mobile home stickers, and revalidation stickers shall be mailed by first-class mail unless otherwise requested by the purchaser. The amount of said mail service charge shall be the actual postage required, rounded to the nearest 5 cents, plus 25 cents handling charge. Said service charge shall be in addition to the service charge provided by s. 320.04 and shall be used and accounted for in accordance with law.

History.—ss. 1, 2, ch. 29956, 1955; s. 1, ch. 59-190; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 5, ch. 75-66; s. 2, ch. 78-207.

320.04 License plates; service charge.—

(1) There shall be a service charge of $1 for each application which is handled in connection with the issuance of any license plate, mobile home sticker, revalidation sticker, aircraft license, certificate of title, duplicate, transfer, or transfer or duplicate registration certificate, which service charge shall be collected from the applicant as compensation for all services rendered in connection with the handling of the application. Said fees shall be retained by the department or by the tax collector, as the case may be, as other fees accruing to the said offices.

(2) The same service fees herein provided for shall be collected by the department on all applications handled direct from its office, and the proceeds thereof, together with any fees returned to it by the tax collector shall be paid into the general revenue fund. No tax collector, deputy tax collector or employee of the state or any county shall charge, collect or receive any fee or compensation as notary public in connection with or incidental to the issuance of license tags or titles.

History.—s. 2, ch. 7275, 1917; RGS 1007; s. 3, ch. 8410, 1921; s. 2, ch. 10182, 1925; CGL 1281; s. 1, ch. 15625, 1931; ss. 1, 5, ch. 16085, 1933; ss. 1, 2, ch. 23149, 1945; s. 10, ch. 26484, 1951; s. 43, ch. 26869, 1951; s. 1, ch. 61-403; s. 1, ch. 63-143; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 72-79; s. 1, ch. 74-338; s. 6, ch. 75-66; s. 3, ch. 78-207.

320.05 Registration; open to inspection.— Upon receipt of an application for the registration of a motor vehicle, as herein provided for, the department shall file such application and register such motor vehicle with the name, residence, and business address of the owner, manufacturer, or dealer, as the case may be, together with the facts stated in such application, under the distinctive number assigned to such motor vehicle by the department, which record shall be open to the inspection of the public during business hours.

History.—s. 3, ch. 7275, 1917; RGS 1008; CGL 1282; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 69-178; s. 5, ch. 77-357.

320.06 Registration; validation stickers, license plates transferable; duplicate certificates; replacement plates; transfer fee.—

(1) Upon the filing of such application, the department shall assign to such motor vehicle a registration license number consisting of letters and numerals or numerals and issue and deliver to the owner a certificate of registration and one registration license plate for each vehicle so registered.

(a) Registration license plates and certificates of registration shall be issued to, and remain in the name of, the owner of each vehicle registered and may be transferred by the owner from the vehicle for which the registration license plate was issued to any vehicle which the owner may acquire within the same classification; or, subject to the procedures set forth in subsection (2), such plate may be surrendered to the department in exchange for a license plate of the appropriate classification, if the replacement vehicle is of a different classification. However, the registration license plate issued in 1974 for a period of 3 years shall be revalidated, upon application, for a period not to extend beyond December 1978. The aforesaid license plate shall be transferable from any class of motor vehicle taxed under the provisions of s. 320.08(2), (3)(a), (b), (c), and (9) to any other motor vehicle so classified and taxed under these provisions, regardless of weight, without the necessity of exchanging the original plate for one of the appropriate weight class, so long as the owner thereof makes application for and accomplishes the transfer with the department. At such time as the aforesaid license plate expires and the alphanumeric system of license plate is issued, no such transfer shall be permitted unless otherwise provided by law. Any other provisions of the law to the contrary shall not apply to these transfers, except that any violation incurred by not accomplishing the proper transfer with the department shall subject the owner of the license plate and the driver of the vehicle to which it is attached, severally, to the penalty for operating a motor vehicle without proper registration, as provided in s. 320.57.

(b) Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for an indefinite period beginning July 1, 1977, only to owners of new or used motor vehicles who are not in possession of valid license plates and for the replacement license plates provided for in ss. 320.06(5)(a), 320.06(7), and 325.19. Beginning July 1, 1979, alphanumeric license plates shall be issued to every owner of a motor vehicle not possessing an alphanumeric license plate, according to the schedule provided in paragraph (c). Full implementation of the alphanumeric system shall be completed by June 30, 1980. With each license plate, a validation sticker reflecting the owner's birth month, or appropriate renewal period if a nonnatural person is the owner, and a serially numbered validation sticker reflecting the year of expiration shall be issued in accordance with the following schedule. Such license plate and validation sticker shall be issued, based on the applicant's appropriate renewal period. The registration period shall be for a period of not more than 12 months, except for those applicants desiring advance registration, in which cases the registration period shall not exceed 15 months, and all expirations shall occur, based on the applicant's appropriate registration renewal period. The sticker reflecting the owner's month of birth shall be placed on the upper left corner of the license plate and shall be issued one time during the life of the license plate, or upon request when it has been damaged or destroyed.

(c) Registration license plates equipped with validation stickers shall be valid for not more than 12 months and shall expire at midnight on the last day of the registration period. Upon expiration of the license plate, as stated above, a revalidation sticker shall be issued upon payment of the proper fee and

shall be valid for not less than 12 months. Whenever license plates equipped with validation stickers are issued in any month other than the owner's birth month or the designated registration period for any other motor vehicle, the effective date shall reflect the birth month or month and the year of renewal. However, in accordance with the provisions of s. 320.08, when a license plate, validation sticker, or revalidation sticker is issued for a period of less than 12 months, the applicant shall pay the applicable fee under the provisions of s. 320.14 in addition to all other fees and charges.

(d) Each mobile home shall be registered or reregistered during the month of January for a period of 12 months. All other motor vehicles required to be registered under the provisions of s. 320.02, including those motor vehicles registered to natural persons, which vehicles are taxed under the provisions of s. 320.08(3)(d), (4), (5)(a), (6)(b), or (13), shall be registered and reregistered during the month of June.

(2) Upon a sale, trade, transfer, or other disposition of a motor vehicle, the owner shall remove the registration license plate therefrom and either return it for a pro rata refund on the unused registration period, if the remaining portion exceeds $3, or transfer it to a replacement motor vehicle. No registration license plate shall be temporarily or permanently attached to any new or used replacement or substitute vehicle without filing an application for transfer of such registration license plate and paying the transfer fee of $4.50 to the department. However, the transfer fee shall not apply to those vehicles taxed under the provisions of s. 320.08(2)(b), (c), or (d) or s. 320.08(3)(a), (b), or (c).

(a) Registration license plates assigned to vehicles shall be transferable to any other vehicle within the same classification. If such license plate is not so transferable, the owner may surrender such license plate to the department in exchange for a license plate of the appropriate classification for use on the newly acquired vehicle.

(b) A surviving spouse of a registered owner of any motor vehicle may, upon presenting the death certificate, request a registration certificate and transfer of the registration license plate.

(c) It is unlawful for any person authorized to make an application for transfer of registration to fail to forward or cause to be forwarded to the department such application before transferring a registration license plate from any motor vehicle to any other vehicle owned by the same person. Any person violating the provisions of this section shall be subject to the penalties provided in s. 320.57.

(d) If a new or used replacement motor vehicle is classified in s. 320.08, other than those classified under s. 320.08(2)(b), (c), or (d) or s. 320.08(3)(a), (b), or (c), as requiring the same registration license tax as the original vehicle to be replaced, no additional tax other than the transfer fee of $4.50, accompanied by an application for transfer on a form supplied by the department, shall be required to transfer or exchange a registration license plate to a replacement vehicle for the duration of a current registration period and to issue a new certificate of registration.

(e) If the new or used replacement motor vehicle is within a classification, other than those classified under s. 320.08(2)(b), (c), or (d) or s. 320.08(3)(a), (b), or (c), requiring a greater registration tax than that of the original vehicle to be replaced, then the original license plate shall be surrendered in exchange for a plate within the appropriate classification, and an amount representing the pro rata difference in the tax required shall be paid for the remaining months of the registration period. Such payment shall be in addition to the transfer fee as authorized in this section. The minimum charge for issuance of license plates provided in s. 320.14 shall not apply to exchange of license plates under this section.

(f) If the new or used replacement motor vehicle is within a classification, other than those classified under s. 320.08(2)(b), (c), or (d) or s. 320.08(3)(a), (b), or (c), requiring a lesser registration tax than the original vehicle to be replaced, then an amount representing the pro rata difference, less a transfer fee of $4.50, shall be refunded only if the remaining portion exceeds $3.

(g) Upon a sale, trade, transfer, or other disposition of a mobile home, the owner shall remove the sticker therefrom and may exchange it for another sticker to be applied to a replacement mobile home. Such exchange shall be without cost to the owner. No credit shall be given toward the purchase of a license plate for any other type vehicle. The department shall insure that adequate internal control is maintained in the receipt of mobile home stickers that have been removed for exchange or refund.

(h) The transfer of a license plate from a vehicle disposed of to a newly acquired vehicle shall not constitute a new registration. The application for transfer shall be made without the necessity of requiring proof of personal injury protection or liability insurance.

(3) The registration certificate, or an official copy thereof, or a true copy of a rental or lease agreement issued for a motor vehicle or issued for a replacement vehicle in the same registration period, shall, at all times while the vehicle is being used or operated upon the highways or streets of Florida, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department. The provisions of this subsection shall not apply during the first 10-day period after purchase of a replacement vehicle. No person charged with violating this subsection shall be convicted or fined if, prior to or at the time of his court or hearing appearance, the operator produces in court or to the clerk of the court in which the charge is pending a copy of such registration certificate valid at the time of his or her arrest. The clerk of the court is authorized to dismiss such cases at any time prior to the defendant's appearance in court.

(4)(a) Registration license plates shall be of metal specially treated with a retroreflective material, as specified by the department. Such registration license plate is designed to increase nighttime visibility and legibility and shall be at least 6 inches wide and not less than 12 inches in length. Validation stickers shall be treated with a retroreflective material, shall be of such size as specified by the depart-

ment, and shall adhere to the license plate. The registration license plate shall be imprinted with combinations of bold letters and numerals or numerals, not to exceed six digits, to identify the registration license plate number. The license plate shall also be imprinted with the word "Florida" at the top and the name of the county in which it is sold at the bottom.

(b) The department shall provide the several county tax collectors and tag agents the necessary number of validation stickers to be attached to the license plates.

(c) Registration stickers for mobile homes shall be 2 inches by 2½ inches in size, specially colored, serially numbered, and issued annually.

(5)(a) Revalidation stickers shall be issued in lieu of metal registration license plates for each registration period following the registration period in which the metal registration license plate is issued. Owners of motor vehicles submitting the required tax and fees and requesting registration license plates for motor vehicles not previously registered when metal registration plates were issued shall be issued a registration license plate and current validation stickers.

(b) For each registration period after the one in which the alphanumeric metal license plate is issued, and until the metal plate is required to be replaced, revalidation stickers shall be issued. Each year at the time of motor vehicle inspection, the metal plate shall be inspected for proper display, damage, legibility, and retroreflectivity. The inspector or any law enforcement officer may require the plate to be replaced. Such license plate shall be replaced at no charge upon application and presentation at the tax collector or tag agency office of the motor vehicle inspection form or a law enforcement citation requiring the replacement. Upon receipt of the replacement tag bearing proper validation stickers, the old tag shall be turned in to the tax collector or tag agency office, and such agent shall send it to the department to be destroyed. The department is hereby authorized, only after giving 6 months' public notice and no more frequently than at 8-year intervals, if found to be necessary, to require every owner of a motor vehicle registered in the state to reregister during the appropriate renewal period and be issued a metal license plate with a validation sticker and birth month sticker attached thereto. Authority provided herein for mass reissuance of metal license plates to all registered vehicles shall be used only if it is found to be essential to public safety.

(6) An additional sum of 50 cents shall be added and collected on each motor vehicle license plate and revalidation sticker sold in this state, whether individually or as a single unit, in order that all Florida license plates shall be fully treated with retroreflective material.

(7) Any owner of a registered motor vehicle, upon filing in the office of the department an application accompanied by a fee of $2, may obtain:

(a) A replacement registration license plate, upon surrender of the old plate for cancellation.

(b) A replacement registration license plate with current applicable validation stickers attached, plus a certificate of registration, upon surrender of the old license plate and validation stickers required to be attached for the current validation period, plus the certificate of registration or official copy thereof.

(8) In order to enable the Department of Corrections to manufacture the plates authorized herein, the Department of Highway Safety and Motor Vehicles is hereby authorized to prepay to the Department of Corrections the amount required to purchase the materials needed for the manufacture of reflectorized license plates. The amount prepaid shall not exceed the amount of the appropriation made to the Department of Highway Safety and Motor Vehicles, but shall be sufficient to enable the Department of Corrections to meet the responsibilities required by the Legislature through enactment of this legislation.

History.—ss. 4, 13, ch. 7275, 1917; RGS 1009, 1018; ss. 4, 10, ch. 8410, 1921; s. 5, ch. 10182, 1925; CGL 1283, 1292; s. 1, ch. 13701, 1929; s. 1, ch. 20408, 1941; s. 1, ch. 26481, 1951; ss. 1, 2, ch. 63-490; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 2, ch. 69-178; ss. 2, 9, ch. 72-79; s. 92, ch. 73-333; s. 2, ch. 74-338; s. 7, ch. 75-66; s. 4, ch. 77-120; s. 1, ch. 77-174; s. 6, ch. 77-357; s. 1, ch. 77-395; s. 1, ch. 77-415; s. 1, ch. 78-48; s. 2, ch. 78-186; s. 4, ch. 78-207; s. 2, ch. 78-225; s. 9, ch. 79-3; s. 65, ch. 79-164.

320.061 Unlawful to alter license plate or validation stickers; penalty.—No person shall change or alter the original appearance of any official registration license plate or validation sticker when officially issued for and assigned to any motor vehicle, whether by mutilation, alteration, defacement, or change of color, or in any other manner. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 28186, 1953; s. 3, ch. 69-178; s. 192, ch. 71-136; s. 3, ch. 72-79; s. 7, ch. 77-357.

320.0611 Lost, stolen or damaged plates or stickers.—

(1) In the event any registration plate or revalidation sticker is lost, stolen, defaced, or destroyed, the owner of the vehicle for which the same was issued shall make application to the department for a replacement registration plate or revalidation sticker. However, if a registration plate sought to be replaced has been lost or stolen the owner thereof shall, prior to making application for replacement, notify the police department or the sheriff's office of the city or county in which he lives of such fact and recite the same in his application.

(2) Upon the filing of any such application, accompanied by a fee of $2, the department shall issue a replacement registration plate or a revalidation sticker, as the case may be, if it is satisfied that the information reported in the application is true.

(3) Any damaged or defaced registration plate or revalidation sticker replaced pursuant to this section shall be surrendered to the department upon the issuance of the replacement.

History.—s. 4, ch. 69-178; ss. 24, 35, ch. 69-106; s. 4, ch. 72-79; s. 3, ch. 74-338.

320.062 Safety glass prerequisite to registration; penalty.—

(1) On and after January 1, 1954, no school bus, passenger bus, taxicab, private passenger car, or other passenger motor vehicle, sold as a new motor vehicle on or after that date shall be registered in this state unless it is equipped with safety glass of a type approved by the department with respect to glass used in partitions, doors, windows, and windshields.

No truck or truck tractor sold as a new motor vehicle after said date shall be registered unless it is equipped with safety glass approved by the said department in all doors, windows, and windshields of the driver's compartment. The windscreen as required for electric powered vehicles with a rating of 3 to 6 horsepower shall not be required to have a front windshield equipped with safety glass as a prerequisite to registration.

(2) The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other or similar product as may be approved by the said department.

(3) The department shall publish a list of types of glass by name approved by it as meeting the requirements of this section and the department shall not register after January 1, 1954, any new motor vehicle unless it is equipped with an approved type of safety glass and it shall thereafter suspend the registration of any motor vehicle subject to the provisions of this section which it finds to be not so equipped, said suspension of registration to remain in effect until the motor vehicle is made to conform to the requirements of this section.

(4) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to replace any glass or glazing material used in partitions, doors, windows or windshields in any motor vehicle with any material other than safety glass of a type approved by the department, except that with respect to trucks this section shall be applicable only to glass used in doors, windows and windshields of the driver's compartments.

History.—ss. 1-4, ch. 28047, 1953; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 193, ch. 71-136; s. 3, ch. 76-34; s. 1, ch. 77-174.

320.065 Registration of certain rental trailers.—

(1) Notwithstanding any of the provisions of this chapter, special indefinite registration license plates and special indefinite vehicle registration certificates shall be issued to the owner of 500 or more trailers for hire who submits an application meeting the following requirements:

(a) The application shall certify the average number of trailers operated within or through the state for the 12 months immediately preceding the year for which the application is made. If the number of trailers taxed in subsequent years decreases, the applicant shall surrender to the department a number of license plates equal to such decrease. If the number of trailers taxed in subsequent years increases, the applicant shall, in addition to the registration tax and fees levied, pay an amount to the department equal to the cost of manufacture of such additional special license plates.

(b) Proper bond, in a form and amount to be approved by the department, shall be posted by the applicant, guaranteeing the payment of the registration license tax and fees for each succeeding year.

(2) Payment of registration license tax and fees shall be made annually commencing June 1, 1978, and be evidenced only by the issuance of a single receipt by the department. No annual validation sticker is required.

(3) The special license plates issued hereunder shall conform in all respects to the provisions of this chapter, except that no county name shall be imprinted.

(4) The department is authorized to adopt rules to effectuate the purposes of this section.

History.—s. 1, ch. 76-152; s. 1, ch. 77-174; s. 8, ch. 77-357.

320.07 Registration renewed annually.—

(1) Registration shall be renewed annually during the applicable renewal period, upon payment of the applicable fee as provided in s. 320.08. Preregistration shall be allowed upon application and payment of the applicable fees. However, persons owning motor vehicles licensed under s. 320.08(4), (6)(b), and (13) may register semiannually the motor vehicles used by them in their businesses, and no registration or license fee shall be required to be paid during such semiannual period, as the same may not be registered and in use, if the annual registration rate for the aforesaid motor vehicles is in excess of $100, fee not included. All other motor vehicles not covered herein shall be required to be registered, and such registration shall be renewed annually in accordance with a schedule to be promulgated by the department.

(2)(a) The registration of vehicles owned or exclusively operated by this state or any county, municipality, or other governmental agency shall not be renewed annually, but permanent license number plates of a distinctive coloring shall be issued for such vehicles. All such license number plates shall be of the same distinctive coloring which shall differ from that used on plates issued as provided in s. 320.06. Such permanent plates shall be displayed as required by [1]s. 320.35, and shall be removed upon the sale of the vehicle or when it becomes no longer eligible for a tax-exempt plate, and may be replaced when lost, mutilated, or destroyed, as provided in s. 320.06 and s. 320.0611. The use of any such plate on any vehicle other than those owned or exclusively operated by a state, county, municipal, or other governmental agency is hereby expressly prohibited, except as approved by the department.

(b) The registration of vehicles owned and exclusively operated by a volunteer fire department shall not be renewed annually, but permanent license number plates of a distinctive coloring shall be issued for such vehicles. All such license number plates shall be of the same distinctive coloring, which shall differ from that used on plates issued as provided in s. 320.06. Such permanent plates shall be displayed as required by [1]s. 320.35 and shall be removed upon the sale of the vehicle or when such vehicle is no longer eligible for a tax-exempt plate. Such plates may be replaced when lost, mutilated, or destroyed, as provided in ss. 320.06 and 320.0611. The use of any such plate on any vehicle other than those owned and exclusively operated by a volunteer fire department is hereby expressly prohibited, except as approved by the department.

(3) The registration of a vehicle shall expire at midnight on the last day of the registration period, and the vehicle shall not thereafter be operated upon the highways of this state, except during the

appropriate renewal period, until it has been reregistered according to law. The operation of any motor vehicle without having attached thereto a registration license plate and validation stickers for the current registration period shall subject the operator thereof to the penalty provided in s. 318.18.

History.—s. 5, ch. 7275, 1917; RGS 1010; CGL 1284; s. 2, ch. 15625, 1931; s. 1, ch. 16084, 1933; ss. 2, 5, ch. 16085, 1933; s. 1, ch. 26544, 1951; s. 2, ch. 28186, 1953; s. 1, ch. 61-12; s. 4, ch. 63-528; s. 2, ch. 63-496; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 5, ch. 69-178; s. 3, ch. 73-284; s. 8, ch. 75-66; s. 1, ch. 77-174; s. 9, ch. 77-357; s. 2, ch. 77-454; s. 4, ch. 79-27; s. 1, ch. 79-79.

[1]**Note.**—Section 320.35 was repealed by s. 2, ch. 79-97, effective October 1, 1979.

320.071 Advance registration renewal; procedures.—

(1) The owner of any motor vehicle currently registered in this state may file an application for renewal of registration with the department, or its authorized agent in the county wherein the owner resides, any time during the 3 months preceding the expiration of the registration period.

(2) Upon the filing of the application and payment of a service charge of $1, together with the fee and registration tax as provided for in the original registration, the department or its agent shall issue to the owner of such motor vehicle a revalidation sticker which, when affixed to the license plate, shall revalidate the plate for the appropriate registration period.

(3) The department is empowered to prescribe and enforce rules and regulations for the administration of this section.

(4) Any person who shall use a revalidation sticker without lawful authority or who shall willfully violate any rule or regulation prescribed by the department pursuant to this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 70-6; s. 1, ch. 70-439; s. 194, ch. 71-136; s. 10, ch. 77-357.

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles and mobile homes, as defined in s. 320.01, and mopeds, as defined in s. 316.003(2), which shall be paid to and collected by the department upon the registration or reregistration of the following:

(1) MOTORCYCLES.—

(a) All motorcycles: $10 flat.

(b) All motor-driven cycles which are certified by the manufacturer not to exceed 5 brake horsepower: $10 flat.

(c) All mopeds as defined in s. 316.003(2): $5 flat; however, annual reregistration shall not be required.

(2) AUTOMOBILES FOR PRIVATE USE.—

(a) Antique automobiles: $7.50 flat. An "antique automobile" is defined as any passenger automobile manufactured more than 20 years prior to the current date and equipped with an engine manufactured more than 20 years prior to the current date or an engine manufactured to the specifications of the original engine.

(b) Net weight of less than 2,500 pounds: $12.50 flat.

(c) Net weight of 2,500 pounds or more, but less than 3,500 pounds: $20.50 flat.

(d) Net weight of 3,500 pounds or more: $30.50 flat.

(3) TRUCKS.—

(a) Net weight of less than 2,000 pounds: $12.50 flat.

(b) Net weight of 2,000 pounds or more, but not more than 3,000 pounds: $20.50 flat.

(c) Net weight more than 3,000 pounds, but not more than 5,000 pounds: $30.50 flat.

(d) Net weight more than 5,000 pounds: $10 flat plus $1.10 per cwt.

(e) Trucks used in citrus groves, known as "goats," and any other vehicles when used in the field by farmers or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which shall not be operated principally upon the highways of the state: $7.50 flat. A "goat" is defined as being a motor vehicle designed, constructed, and used principally for the transportation of citrus fruit within citrus groves.

(f) Antique trucks: $7.50 flat. An "antique truck" is defined as any truck with a net weight of not more than 3,000 pounds manufactured more than 20 years prior to the current date and equipped with an engine manufactured more than 20 years prior to the current date or an engine manufactured to the specifications of the original engine.

(4) TRUCK-TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Gross weight less than 35,000 pounds: $240 flat.

(b) Gross weight of 35,000 pounds or more, but less than 44,000 pounds: $300 flat.

(c) Gross weight of 44,000 pounds or more, but less than 53,000 pounds: $360 flat.

(d) Gross weight of 53,000 pounds or more, but less than 62,000 pounds: $420 flat.

(e) Gross weight of 62,000 pounds or more: $460 flat.

However, a truck-tractor used exclusively for hauling forestry products shall, notwithstanding the GVW declared weights, be eligible for a license plate and operation within a 150-mile radius of its home address with the rate of $240 flat.

(f) License plates issued under s. 320.08(4), (6)(b), and (13) may be issued for semiannual periods, and no registration or license fee shall be required to be paid for a semiannual period during which a vehicle is not registered and is not used. During the first 3 months of semiannual registration period beginning June 1, the semiannual fee shall be $2.50 more than one-half of the respective annual amount set forth in this section. The fee for registration during the fourth month or thereafter of the said semiannual period shall be at the rate of one-sixth of the semiannual amount for the month of registration and one-sixth of the semiannual amount for each month of the said semiannual registration period succeeding the month of such registration. The fee for registration during the first month of a semiannual registration period beginning December 1 shall be one-half of the respective annual amount set forth in this section. The fee for registration during the second month thereafter of the said semiannual period shall

be at the rate of one-sixth the semiannual amount for the month of registration and one-sixth of the semiannual amount for each succeeding month of registration. However, any such vehicle not registered in this state during the last semiannual period or subject to such registration may be registered in any month of the semiannual registration period beginning June 1 at the rate of one-sixth the semiannual amount for the month of registration and one-sixth of the semiannual amount for each month of the said semiannual period succeeding the month of registration. The provisions of s. 320.14 shall not apply to such vehicles.

(g) The owner of a truck-tractor and semitrailer combination found to be loaded with more weight than declared shall be required to pay the difference between actual tag fees paid and the required tag fee for the proper GVW plus a civil penalty of $50.

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Semitrailers drawn by GVW truck-tractors by means of a fifth-wheel arrangement, regardless of weight: $10 flat per registration year or any part thereof. There shall be no reduction for half-year or quarter-year licenses for trailers in this special class. The minimum charge law for issuing license tags shall be inapplicable to the aforesaid special class.

(b) Motor vehicles, trailers, and semitrailers equipped with machinery and designed for an exclusive use in the nature of well drilling, excavation, construction, spraying, and like purposes: $32.50 flat.

(c) School buses used exclusively for the purpose of transporting pupils to and from school or school or church activities or functions within their own counties: $30 flat. The operators of any motor vehicle used exclusively for the transportation of pupils to and from school or school or church activities or functions shall not be charged any sum greater than that paid by the operators or owners of ambulances, hearses, or automobile wreckers owned and operated by a garage in connection with its regular business.

(d) Motor vehicles operated solely as wreckers, owned and operated by a garage in connection with its regular business: $30 flat.

(e) Hearses or ambulances: $30 flat.

(6) AUTOMOBILES FOR HIRE.—

(a) Under nine passengers: $12.50 flat plus $1 per cwt.

(b) Nine passengers and over: $12.50 flat plus $1.50 per cwt. plus $10 per passenger.

(7) TRAILERS FOR PRIVATE USE.—

(a) All two-wheel semitrailers weighing 500 pounds or less: $5 flat per year or any part thereof. There shall be no reduction for half-or quarter-year licenses for trailers in this special class. The minimum charge law for issuing license tags shall be inapplicable to the aforesaid special class.

(b) Net weight over 500 pounds: $2.50 flat plus 75 cents per cwt.

(8) TRAILERS FOR HIRE.—

(a) Net weight not over 1,999 pounds: $2.50 flat plus $1 per cwt.

(b) Net weight 2,000 pounds or more: $10 flat plus $1 per cwt.

(9) RECREATIONAL VEHICLES.—Recreational vehicle-type units primarily designed as temporary living quarters for recreational, camping, or travel use, as defined by s. 320.01(1)(b), other than mobile home class.

(a) Travel trailers, as defined by subparagraph 320.01(1)(b)1.: $20 flat.

(b) Camping trailers, as defined by subparagraph 320.01(1)(b)2.: $10 flat.

(c) Motor homes, as defined by subparagraph 320.01(1)(b)4.:

1. Net weight of less than 4,500 pounds: $20 flat.
2. Net weight of 4,500 pounds or more: $35 flat.

(d) Truck campers: Chassis-mount campers, as defined by subparagraph 320.01(1)(b)3.:

1. Net weight of less than 4,500 pounds: $20 flat.
2. Net weight of 4,500 pounds or more: $35 flat.

(10) MOBILE HOMES.—Mobile homes used for housing accommodations, as defined by s. 320.01(2), other than recreational vehicle class.

(a) Mobile homes not exceeding 35 feet in length: $20 flat.

(b) Mobile homes over 35 feet in length, but not exceeding 40 feet: $25 flat.

(c) Mobile homes over 40 feet in length, but not exceeding 45 feet: $30 flat.

(d) Mobile homes over 45 feet in length, but not exceeding 50 feet: $35 flat.

(e) Mobile homes over 50 feet in length, but not exceeding 55 feet: $40 flat.

(f) Mobile homes over 55 feet in length, but not exceeding 60 feet: $45 flat.

(g) Mobile homes over 60 feet in length, but not exceeding 65 feet: $50 flat.

(h) All mobile homes over 65 feet in length: $80 flat.

(11) DEALER TAGS.—Franchised and independent motor vehicle dealer, marine boat trailer dealer, and mobile home dealer tags: $12.50 flat.

(12) EXEMPT OR OFFICIAL.—All exempt or official tags: $3 flat.

(13) LOCAL BUSES.—Buses and passenger cars operated wholly within cities or within 25 miles thereof: $12.50 flat plus $1.50 per cwt.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; ss. 1, 2, ch. 13888, 1929; s. 1, ch. 14656, 1931; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; CGL 1936 Supp. 1285(1); ss. 1, 2, ch. 18030, 1937; CGL 1940 Supp. 1285(2); s. 1, ch. 20310, 1941; s. 1, ch. 20507, 1941; s. 1, ch. 24272, 1947; s. 1, ch. 25393, 1949; s. 3, ch. 28186, 1953; s. 2, ch. 59-351; s. 1, ch. 59-387; s. 1, ch. 59-312; s. 1, ch. 61-116; s. 1, ch. 63-528; s. 6, ch. 65-190; s. 1, ch. 65-257; s. 1, ch. 65-332; s. 1, ch. 67-187; ss. 24, 35, ch. 69-106; s. 1, ch. 71-300; s. 3, ch. 72-339; s. 1, ch. 73-197; s. 1, ch. 73-244; s. 4, ch. 73-284; s. 1, ch. 74-243; s. 9, ch. 75-66; s. 2, ch. 76-135; s. 1, ch. 77-174; s. 2, ch. 77-395; s. 3, ch. 78-353; s. 5, ch. 78-363; s. 126, ch. 79-400.

320.0803 Moped tags.—

(1) Beginning on January 1, 1979, the Department of Highway Safety and Motor Vehicles shall issue a moped tag to each owner of a moped as defined in s. 316.003(2).

(2) Each request for a moped tag shall be submitted to the department on an application form supplied by the department, accompanied by the license tax required in s. 320.08.

(3) The moped tag shall be 4 inches wide by 7 inches long and shall have the word "MOPED" in large letters.

(4) Moped tags shall be of the same material as standard license plates issued by the state for any registration year; however, the word "Florida" shall

be stamped across the top of the plate in small letters.

(5) The department shall make all rules necessary to carry out the provisions of this section.

History.—s. 4, ch. 78-353.

320.0805 Personalized prestige license plates.—

(1) The department shall issue personalized prestige license plates to owners of automobiles for private use, trucks weighing not more than 5,000 pounds, recreational vehicles as specified in s. 320.08(9)(c) or (d), or motorcycles, which vehicles are not used for hire or commercial use, upon requests received from such owners who submit applications and fees.

(2) Each request for specific numbers or letters or combinations thereof shall be submitted annually to the department on an application form supplied by the department, accompanied by the following tax and fees:

(a) The license tax required for such vehicle, as set forth in s. 320.08(1), (2), (3)(a)-(c), or (9)(c) or (d);

(b) A special fee of 50 cents to provide for reflectorization of the prestige license plate and validation stickers;

(c) A prestige plate annual use fee of $10; and

(d) A processing fee of $2.

Applications and fees shall be received by the department no later than 60 days prior to the first day of the applicant's registration period.

(3) The department shall review each application requesting a personalized prestige license plate and, if requested numerals or letters or combinations thereof have not been previously assigned or issued to any other applicant, and if all the required fees have been submitted, the department shall issue and deliver such requested numbered or lettered personalized prestige license plate to the applicant.

(4) The department is authorized to reject requests for specific letters or numerals or combinations thereof deemed by it to be objectionable, and the department is further authorized to recall, during a registration year, any issued personalized license plate containing letters, numerals, or combinations thereof discovered, after issuance to an applicant, to be obscene or otherwise objectionable.

(5) Any application rejected by the department shall be returned to the applicant, in addition to the fees submitted, within 15 days after the receipt of the application. If any personalized license plate is recalled within a current registration period, the department shall refund the prestige plate use fee of $10, the special fee of 50 cents, and the portion of the license tax, computed on a monthly basis, for the unused balance of the remaining months of the registration period.

(6) A personalized prestige license plate shall be issued for the exclusive continuing use of the applicant. An exact duplication of letters or numbers or combinations thereof shall not be issued to any other individual during the same registration period. An exact duplicate shall not be issued for any succeeding year unless the previous owner of a specific numbered or lettered plate relinquishes said combination by failure to apply for renewal or reissuance for three consecutive annual registration periods following the original year of issuance.

(7) If a vehicle owner who has been issued a personalized prestige license plate acquires a new or used replacement vehicle within a registration period, the department shall authorize a transfer of a prestige license plate to the replacement vehicle upon receipt of a request for transfer plus payment of a transfer fee of $4.50. When the replacement vehicle is of a classification requiring a greater registration tax than the vehicle previously owned for which the prestige plate was issued, the pro rata difference in the license tax required shall be paid for the remaining portion of the registration period. When the replacement vehicle is of a classification requiring a lesser registration tax than the vehicle previously owned for which the prestige plate was issued, a pro rata difference shall be refunded, provided that the difference exceeds $3. There shall be no refund of the annual use or processing fee. No transfer fee or refund shall apply to those vehicles taxed under the provisions of s. 320.08(2)(b), (c), or (d), or s. 320.08(3)(a), (b), or (c).

(8)(a) Personalized prestige license plates shall consist of three types of plates as follows:

1. A plate imprinted with numerals only. Such plates shall consist of numerals from 1 to 999, inclusive.

2. A plate imprinted with capital letters only. Such plates shall consist of capital letters "A" through "Z" and shall be limited to a total of seven of the same or different capital letters. A hyphen may be added in addition to the seven letters.

3. A plate imprinted with both capital letters and numerals. Such plates shall consist of no more than a total of seven characters, including both numerals and capital letters, in any combination, except those plates issued to, and bearing the names of, organizations, in which case the letters and numerals shall be of such size, if necessary, as to accommodate a maximum of 18 digits for automobiles, trucks, and recreational vehicles, and 7 digits for motorcycles. A hyphen may be added in addition to the seven characters if desired or needed. However, plates consisting of the four capital letters "PRES" preceded or followed by a hyphen and numerals of 1 to 999 shall be reserved for issuance only to applicants who qualify as members of the press and who are associated with, or are employees of, the reporting media.

(b) Personalized prestige plates shall be of the same material, size, and distinctive color as standard license plates issued by the state for any registration period; however, the imprinting of personalized prestige license plates shall be limited solely to the following:

1. The letters or numerals or combination of both requested by the applicant shall be stamped in large bold letters and numerals across the center of the plate.

2. The word "Florida" shall be stamped across the bottom of the plate in small letters.

(9)(a) Upon application under this section by any member of Congress, the department is authorized to issue to such Congressman an automobile license plate stamped "MC," these letters to be followed by the number of the appropriate congressional dis-

trict. When the applicant is a United States Senator, the department is authorized to issue a license plate stamped "USS," followed by the numeral II in the case of a junior senator.

(b) Upon application under this section by any member of the state House of Representatives, the department is authorized to issue such state representative two automobile license plates stamped in bold letters "State Legislator," followed by the number of the appropriate House district on one plate, the other plate number to be that assigned by the department. When the applicant is a State Senator, the department is authorized to issue two license plates stamped in bold letters "State Senator," followed by the number of the appropriate Senate district on one plate, the other plate number to be that assigned by the department.

(c) License plates purchased under paragraphs (a) or (b) shall be replaced by the department at no cost, other than the fees required by ss. 320.04 and 320.06(6), when the person to whom such plates have been issued leaves the elective office with respect to which such license plates were issued. Within 30 days after leaving office, the person to whom such license plates have been issued shall make application to the department for a replacement license plate. Such person may return the prestige license plates to the department or may retain such plates as souvenirs. Upon receipt of the replacement license plate, such person shall not continue to display on any vehicle the prestige license plate or plates issued with respect to his former office.

(d) Any person who does not make application for a replacement license plate as required by paragraph (c), or who, after receipt of the replacement license plate, continues to display on any vehicle the prestige license plate or plates issued with respect to his former office, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(10) This section is supplementary to the motor vehicle registration laws of Florida, and nothing contained herein shall be construed as abridging or invalidating such laws.

History.—ss. 1-9, ch. 72-80; s. 1, ch. 74-301; s. 1, ch. 75-229; s. 1, ch. 77-125; s. 11, ch. 77-357; s. 3, ch. 77-395; s. 2, ch. 77-415; s. 1, ch. 78-213.

[1]320.0806 Handicapped persons; license plates.—

(1) Beginning with the October 1, 1974 motor vehicle license plate registration year, and annually thereafter, the Department of Highway Safety and Motor Vehicles shall, upon application, issue license plates to persons eligible to receive a certificate under the provisions of s. 316.1964, which shall bear the letters "HP."

(2) Each request for an "HP" license plate shall be submitted annually to the department on an application form supplied by the department, accompanied by the license tax required for private use automobiles, trucks weighing not more than 5,000 pounds, and recreational vehicles as specified in s. 320.08(9)(c) or (d), which are not used for hire or commercial use.

(3) No county, city or town, or any agency thereof, shall exact any fee for parking on the public streets or highways or in any metered parking space from any person who is issued an "HP" license plate and who is licensed to operate a motor vehicle in this state.

(4) No penalty shall be imposed upon any person who is issued an "HP" license plate for parking on the streets or highways or in a metered space for a longer period of time than other persons are permitted to park on such streets or highways or in such metered space. However, persons not so disabled using a vehicle with an "HP" license plate for their own use shall not have the privileges of this section.

(5) The department shall make all rules and regulations necessary to carry out the provisions of this section.

History.—s. 1, ch. 74-202; s. 1, ch. 77-68; s. 15, ch. 77-357; s. 8, ch. 79-82; s. 127, ch. 79-400.

[1]**Note.**—Repealed by s. 8, ch. 79-82, effective January 1, 1980.

320.081 Collection and distribution of fees imposed pursuant to s. 320.08(9) and (10).—

(1) The annual license fees prescribed in s. 320.08(9) and (10) shall be in lieu of ad valorem taxes, and a suitable RV license plate or mobile home sticker shall be issued to evidence payment thereof. It shall be permissible in this state to operate a mobile home, licensed hereunder, without a corresponding state license on the vehicle towing same.

(2) The owner or operator of a mobile home shall make application for such license in the manner provided in s. 320.02, and the tax collectors in the several counties of the state shall collect the license taxes imposed by s. 320.08(9) and (10) in the same manner and under the same conditions and requirements as provided in s. 320.03.

(3) Each tax collector shall make prompt remittance of all moneys collected by him to the department at such times and in such manner as the rules and regulations promulgated by the department may prescribe. Upon the receipt of the license taxes collected on mobile homes from the tax collectors of the several counties, the department shall pay the sum of $1.50 on each such license issued into the State Treasury for deposit in the general revenue fund for the use of the state, and the balance remaining shall be paid into a trust fund in the state treasury designated "License Tax Collection Trust Fund," and the moneys deposited in said trust fund shall be paid to the respective counties and cities wherein such mobile homes are located, regardless of where the mobile home license taxes are collected, in the manner hereinafter provided.

(4) The department shall keep records showing the total number of mobile home licenses issued, the total amount of license taxes collected, and the county or city wherein each such mobile home is located and shall from month to month certify to the Comptroller the amount derived from mobile home license taxes in each county and each city within the county, and such amount, less the amount of $1.50 collected on each license, shall be paid to the counties and cities within the counties wherein the mobile homes are located as follows: one-half to the district school board and the remainder either to the board of county commissioners, for the mobile homes which are located within the unincorporated areas of the county, or to any city within such county, for the mobile homes which are located within its corporate limits.

Payment shall be by warrant drawn by the Comptroller upon the treasury, which amount is hereby appropriated monthly out of the License Tax Collection Trust Fund.

History.—ss. 1-3, ch. 23969, 1947; s. 2, ch. 63-528; s. 6, ch. 65-190; s. 2, ch. 65-446; ss. 24, 35, ch. 69-106; s. 1, ch. 69-300; s. 4, ch. 72-339; s. 17, ch. 72-360; ss. 1, 2, ch. 73-342; s. 93, ch. 77-104; s. 12, ch. 77-357; s. 5, ch. 78-207.

320.0815 Mobile home and recreational vehicle required to have appropriate plate or sticker issued.—

(1) Recreational vehicles licensed under s. 320.08(9) shall be issued appropriate plates, in the manner and at the fees therein prescribed. Each license plate shall be securely attached to the rear of the recreational vehicle for which issued and shall be conspicuously displayed in a horizontal position, with the front of the license plate out and the top up when the recreational vehicle is being moved over the highway.

(2) Mobile homes or recreational vehicles which are permanently affixed to the land shall be issued mobile home stickers at the fees prescribed in s. 320.08(10) unless the mobile home or recreational vehicle is qualified and taxed as real property, in which case the mobile home or recreational vehicle shall be issued an "RP" series sticker. Series "RP" stickers shall be provided by the department to the tax collector and issued by the tax collector to the registered owners of such mobile homes or recreational vehicles upon the production of a certificate of the respective property appraiser that such mobile home or recreational vehicle is included in an assessment of the property of such registered owner for ad valorem taxation. The stickers shall be issued by the tax collector for an aggregate fee of $1.50 each, to be distributed as follows: $1 shall be retained by the tax collector as a service charge; 25 cents shall be remitted to the property appraiser; and 25 cents shall be remitted to the department to defray the cost of manufacture and handling. Mobile home stickers and "RP" series stickers shall be affixed to the lower left corner of the window closest to the street or road providing access to such residence.

History.—s. 3, ch. 70-391; s. 5, ch. 72-339; s. 1, ch. 77-102; s. 94, ch. 77-104; s. 13, ch. 77-357; s. 6, ch. 78-207.

320.083 Amateur radio operators; special tags; fee.—

(1) An owner of an automobile for private use, a truck weighing not more than 5,000 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state, and who holds an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission, upon application, accompanied by proof of ownership of such amateur radio station license, complying with the state laws relating to registration and licensing of motor vehicles shall, upon the payment of the regular license fee for tags, as prescribed under s. 320.08(2), (3)(a), (b), or (c), or (9), and the payment of an additional fee of $5, be issued a license plate, as prescribed by s. 320.06, upon which, in lieu of the numbers as prescribed by said s. 320.06, shall be inscribed the official amateur radio call letters of such applicant, as assigned by the Federal Communications Commission, including as a prefix, when applicable, those call letters assigned by the armed services of the United States of America, not to exceed 8 characters.

(2) The department shall make such rules as necessary to ascertain compliance with all state license laws relating to use and operation of such private use vehicles before issuing these tags in lieu of the regular Florida license plate, and all applications for such tags shall be made to the department.

(3) The department shall, on or before January 1 of each year, furnish to the sheriff of each county in the state an alphabetically arranged list of the names, addresses and license tag letters of each person to whom a license tag is issued under the provisions of this section, and it shall be the duty of the sheriffs of the state to maintain and to keep current such lists for public information and inquiry.

(4) An owner of an automobile for private use, a truck weighing not more than 5,000 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and who holds an unrevoked and unexpired official citizens' band radio station license issued by the Federal Communications Commission, upon application, accompanied by proof of ownership of such radio station license and of compliance with the state laws relating to registration and licensing of motor vehicles shall, upon the payment of the regular license fee for tags, as prescribed under s. 320.08, and an additional fee of $5, be issued a license plate, as prescribed by s. 320.06, upon which plate, in lieu of the numbers as prescribed by said s. 320.06, shall be inscribed the official citizens' band radio call letters of such applicant, as assigned by the Federal Communications Commission.

(5) This section is supplemental to the motor vehicle licensing laws of Florida and nothing herein shall be construed as abridging or amending such laws.

History.—ss. 1-4, ch. 25049, 1949; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 72-379; s. 2, ch. 77-68; s. 14, ch. 77-357.

320.084 Free motor vehicle license plate to certain disabled veterans.—

(1) One free motor vehicle license number plate shall be issued by the department for use on any motor vehicle owned by any disabled veteran who has been a resident of Florida continuously for the preceding 5 years or has established a domicile in this state as provided by s. 222.17(1), (2), or (3), and who has been honorably discharged from the armed forces, upon application, accompanied by proof that:

(a) Said vehicle was acquired through financial assistance by the Veterans' Administration of the Federal Government specifically for the purchase of an automobile.

(b) The applicant has been determined by the Veterans' Administration of the Federal Government to have a service-connected 100 percent disability rating for compensation.

(c) The applicant has been determined to have a service-connected disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the uniformed armed services.

(2) Beginning July 1, 1980, and at 8-year intervals thereafter, the department shall require each person to whom a motor vehicle license plate has

been issued pursuant to subsection (1) to apply to the department for renewal of his registration. Upon receipt of such renewal application and validation of the applicant's continued eligibility, the department shall issue a new permanent "DV" numerical motor vehicle license plate which shall be of the colors red, white, and blue similar to the colors of the United States flag. The operation of a motor vehicle displaying an old "DV" license plate or a noncurrent validation sticker after October 1, 1980, and after each 8-year interval thereafter, shall subject the operator to the penalty provided in s. 318.18(2). Such permanent license plate shall be removed upon sale of the vehicle, but may be transferred to another vehicle owned by such veteran in accordance with necessary rules made by the department. The license number of all plates issued under this section shall be identified by the letter designation "DV." Upon request of any such veteran, the department is authorized to issue a designation plate containing only the letters "DV," to be displayed on the front of the vehicle.

(3)(a) With each issuance of a new permanent "DV" numerical motor vehicle license plate, the department shall initially issue, without cost to the applicant, a validation sticker reflecting the owner's birth month and a serially numbered validation sticker reflecting the year of expiration. The initial sticker reflecting the year of expiration shall not exceed 15 months. Validation stickers shall be treated with a retroreflective material, shall be of such size as specified by the department, and shall adhere to the license plate.

(b) The sticker reflecting the owner's month of birth shall be placed on the upper left corner of the license plate and shall be issued one time during the life of the license plate, or upon request when it has been damaged or destroyed. The sticker reflecting the year of expiration shall be placed on the upper right corner of the license plate and shall be revalidated annually by the department for a period not to exceed 12 months based on the birth month of the applicant. There shall be a service charge in accordance with the provisions of s. 320.04 for each application or revalidation sticker and an additional sum of 50 cents on each license plate and revalidation sticker as provided in s. 320.06(6).

(c) The annual revalidation of the sticker reflecting the year of expiration shall be on forms prescribed by the department, which shall include, in addition to any other information required by the department, a certified statement as to the continued eligibility of the applicant to receive a revalidation sticker. Any applicant who falsely or fraudulently submits to the department the certified statement required by this paragraph is guilty of a noncriminal violation and shall be punished by a fine of $50.

(4) The department shall make such rules as are necessary to carry out the provisions of this section.

History.—s. 1, ch. 26839, 1951; s. 7, ch. 28186, 1953; s. 3, ch. 57-266; s. 1, ch. 59-104; s. 1, ch. 63-277; s. 6, ch. 65-190; ss. 1, 2, ch. 67-47; s. 1, ch. 67-420; ss. 24, 35, ch. 69-106; s. 1, ch. 69-269; s. 92, ch. 71-355; s. 3, ch. 77-68; s. 16, ch. 77-357; s. 1, ch. 79-208.

320.0841 Free motor vehicle license plates to members of Seminole and Miccosukee Indian Tribes.—

(1) The department shall issue each year, free of charge to any state agency or individual, 1,250 motor vehicle license plates for use on vehicles owned and operated by members of the Seminole and Miccosukee Indian Tribes. The allocation for any year may be increased by an amount equal to up to 10 percent of the allocation for the previous year. Any request for such increase shall be accompanied by formal certification of the need therefor by the Seminole and Miccosukee Tribal Councils.

(2) The Department of Highway Safety and Motor Vehicles shall provide an appropriate application form and procedures for requesting the license plates.

History.—ss. 1, 2, ch. 71-302; s. 17, ch. 77-357; s. 1, ch. 78-232.

320.0842 Free motor vehicle license plates to veterans confined to wheelchairs.—

(1) The Department of Highway Safety and Motor Vehicles shall issue a free motor vehicle license plate, similar in all respects to the plate issued under s. 320.084, with the exception that the letter and series designation "DV" shall be replaced by a series designation which shall be the internationally accepted wheelchair symbol. The internationally accepted wheelchair symbol is to be as follows:

(2) The only persons to whom the motor vehicle license plate described in subsection (1) shall be issued are those persons who are eligible for a free motor vehicle license number plate under s. 320.084 and who comply with the following provisions:

(a) The veteran must apply for such license plate in lieu of or in exchange for the motor vehicle license number plate authorized by s. 320.084; and

(b) Such veteran must offer, in addition to the proof required by s. 320.084(1), proof that due to a service-connected disability he is a paraplegic.

(3) The department shall issue, to persons who have received a motor vehicle license number plate under subsection (2), a designation plate containing only the internationally accepted wheelchair symbol, to be displayed on the front of a vehicle.

(4) Nothing contained in this section shall be interpreted to require a veteran who is eligible for a license plate as described in subsection (1) to apply for such license plate.

[1](5) No county, city or town, or any agency thereof, shall exact any fee for parking on the public streets or highways or in any metered parking space from any person who is issued a designated "DV" license plate or the internationally accepted wheelchair symbol license plate.

[1](6) No penalty for parking on the streets or highways or in a metered space, except in clearly defined bus loading zones or areas posted as "NO PARK-

ING" zones, shall be imposed upon any person who is issued a designated "DV" license plate or the internationally accepted wheelchair symbol license plate.

(7) The provisions of subsections (2), (3), and (4) of s. 320.084 shall apply to this section in their entirety.

History.—s. 1, ch. 72-31; s. 2, ch. 74-202; s. 5, ch. 79-82; s. 2, ch. 79-208.
[1]Note.—As amended by ch. 79-82, effective January 1, 1980.

320.0843 License plates for wheelchair users.—

[1](1) Any owner or lessee of a motor vehicle who resides in this state and is permanently confined to a wheelchair, upon application to the department accompanied by competent and appropriate proof of disability, and upon payment of the registration fee for motor vehicles registered under s. 320.08(2), (3)(a), (b), (c), or (f), (6)(a), or (9)(c) or (d), shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial number prescribed by s. 320.06, shall be stamped with the international wheelchair user symbol after the serial number of the license plate.

[1](2) The department shall make such rules and regulations as necessary to ascertain compliance with all state license laws relating to use and operation of a motor vehicle before issuing tags pursuant to this section in lieu of the regular Florida license plate, and all applications for such tags shall be made to the department.

(3) This section is supplementary to the motor vehicle licensing laws of Florida, and nothing herein shall be construed as abridging or amending such laws.

History.—s. 1, ch. 74-30; s. 4, ch. 77-68; s. 4, ch. 77-83; s. 6, ch. 79-82; s. 66, ch. 79-164.
[1]Note.—As amended by ch. 79-82, effective January 1, 1980.

[1]320.0848 Handicapped persons; issuance of exemption entitlement parking permits.—

(1) The Department of Highway Safety and Motor Vehicles shall, upon application, issue an exemption entitlement parking permit indicating that the bearer has met the requirements of this section to any handicapped Florida resident who is currently certified, by a physician licensed under chapter 458 or chapter 459, the Social Security Administration, or the Veterans Administration, as being severely physically disabled and having permanent mobility problems which substantially impair his ability to ambulate or who is certified as legally blind. The metal parking permit shall have the two words "PARKING PERMIT" across the upper portion and a sequential audit number across the lower portion. The parking permit shall be affixed to the lower left corner of the Florida license plate of any vehicle used to transport the applicant and may be transferred from one vehicle to another. The department may issue one additional exemption entitlement parking permit to any applicant who demonstrates that an additional permit is needed.

(2) The department may adopt rules necessary to carry out this section and to provide the procedures for assuring that all applicants meet the qualifications prescribed in this section.

(3) The department shall prescribe the form of the application and supply it to all authorized license plate agencies.

(4) The department shall prescribe the fee to be paid by the applicant for the parking permit not to exceed 50 cents. All such fees shall be used by the department to defray the expenses of administering this section.

(5) Any person who fraudulently obtains or unlawfully uses such parking permit or who uses an unauthorized replica of such parking permit with the intent to deceive is guilty of a nonmoving traffic violation, punishable as provided in s. 318.18(2).

History.—s. 7, ch. 79-82.
[1]Note.—Effective January 1, 1980.

320.086 Ancient motor vehicles; "horseless carriage" license plates.—Notwithstanding any other provision of law, any owner of a motor vehicle of the age of 35 years or more from the date of manufacture, equipped with an engine of the age of 35 years or more from the date of manufacture, and operated or moved over the highway primarily for the purpose of historical exhibition or other similar purpose, shall, upon application in the manner and at the time prescribed by the department, be issued a special license plate for such motor vehicle at a fee of $7.50 for each such plate, which shall be permanent and valid for use thereon without renewal so long as the vehicle is in existence in lieu of the regular license plate. In addition to the payment of all other fees required by law, the applicant shall pay such fee for the issuance of the special license plate as may be prescribed by the department commensurate with the cost of manufacture. The registration numbers and special license plates assigned to such motor vehicles shall run in a separate numerical series, commencing with "Horseless Carriage No. 1" and the plates shall be of a distinguishing color.

History.—s. 1, ch. 57-326; s. 1, ch. 59-206; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 6, ch. 78-363.

320.087 Intercity buses operated in interstate commerce; tax.—All intercity motor buses owned or operated by residents or nonresidents of Florida in interstate commerce or combined interstate and intrastate commerce as a result of which operation such motor buses operate both within and without Florida under the authority of the Interstate Commerce Commission, shall be subject to motor vehicle license and registration taxes on a basis commensurate with the use of Florida highways. The department shall require the registration in Florida of that percentage of intercity motor buses operating in interstate commerce or combined interstate-intrastate commerce, into or through Florida, which the mileage of those intercity buses actually operated in Florida bears to the total mileage all such intercity motor buses are operated both within and without Florida. Such percentage figure, so determined, shall be the Florida mileage factor. In determining the Florida license and registration tax to be paid on the buses actually operated in Florida, under the foregoing method, the department shall first compute the amount that the Florida license tax would be if all of such buses were in fact subject to Florida tax, and then apply to said amount the Florida mileage factor above referred to. The department shall prescribe rules and regulations as it

deems necessary for the proper carrying out of the provisions of this section.

History.—ss. 1, 2, ch. 59-194; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

320.088 Manufacturers of motor-driven cycles; certification with department.—It shall be the responsibility of each manufacturer of motor-driven cycles offered for sale in Florida to certify to the department, by model designation, all models which they have manufactured since January 1, 1949, which produce not to exceed 5-brake horsepower. Said certification shall be in such form as prescribed by the department.

History.—s. 3, ch. 59-351; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

320.089 Members of National Guard; special tags; fee.—

(1) Each owner of an automobile for private use, truck weighing not more than 5,000 pounds, or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and an active member of the Florida National Guard shall, upon application to the department, accompanied by proof of active membership in the Florida National Guard and upon payment of the license fee for the vehicle as provided in s. 320.08, be issued a license plate as provided by s. 320.06, upon which, in lieu of the serial numbers prescribed by s. 320.06, shall be stamped the words "National Guard," followed by the serial number of the license plate.

(2) The department shall make such rules as necessary to ascertain compliance with all state license laws relating to use and operation of a private use vehicle before issuing these tags in lieu of the regular Florida license plate, and all applications for such tags shall be made to the department.

(3) This section is supplementary to the motor vehicle licensing laws of Florida and nothing herein shall be construed as abridging or amending such laws.

History.—ss. 1-3, ch. 65-132; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 74-52; s. 5, ch. 77-68; s. 18, ch. 77-357.

320.09 Additional fee for certain vehicles.—Buses, trailers and semitrailers, of seven-passenger capacity or more, shall pay in addition to the fee charged per hundred pounds provided in s. 320.08, the same fee per passenger capacity, as is provided to be paid by "for hire" buses.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933.

320.10 Exemptions.—

(1) The provisions of ss. 320.08 and 320.09 shall not apply to:

(a) Any motor vehicle, trailer, or semitrailer owned or exclusively operated by the Federal Government;

(b) Any local transit system motor bus, either privately or publicly owned;

(c) Any motor truck, trailer, or semitrailer owned or exclusively operated by this state or any county or any municipality of this state, including public school authorities owning vehicles used in transporting school children to and from school in the state and churches owning vehicles used in transporting passengers without compensation solely for church and Sunday school purposes in the state;

(d) Any motor truck, trailer, or semitrailer owned and operated exclusively by the Boy Scouts of America or any subsidiary organization thereof;

(e) Motor vehicles or station wagons owned and operated exclusively for the benefit of Boys' Clubs, the National Audubon Society, the National Children's Cardiac Hospital, Humane Societies, the Civil Air Patrol, the American Legion, the Children's Bible Mission, Girl Scouts of America, the Salvation Army, the Red Cross of America or any of its official vehicles operated by local chapters, the United Service Organization, the Young Men's Christian Association, Camp Fire Girls' Council, the Young Women's Christian Association, the Twenty-Niners, Inc., the Children's Home Society of Florida, and the Goodwill Industries, while used exclusively for carrying out the purposes of said organizations and motor vehicles owned and operated by the Seventh-day Adventist Church for exclusive use as community service vans;

(f) Mobile blood bank units when operated as a nonprofit service by organizations;

(g) Mobile X-ray units or trucks or buses used exclusively for public health purposes; and

(h) School buses owned and operated by a nonprofit educational or religious corporation.

(2) All such vehicles, except those owned or exclusively operated by the Federal Government, shall be furnished a license plate, upon the proper application to the department and upon the payment of $3 to cover the cost of same; and there shall be issued therefor a license plate under series "X." Vehicles exempt under this provision must be equipped with proper plates showing such exempt status.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 20411, 1941; s. 1, ch. 20912, 1941; s. 1, ch. 28314, 1953; s. 1, ch. 29980, 1955; s. 1, ch. 57-804; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 72-105; s. 1, ch. 73-198; s. 95, ch. 77-104; s. 19, ch. 77-357; s. 3, ch. 77-454; s. 2, ch. 79-79.

320.13 Dealer tags and alternative method of registration.—

(1)(a) Any motor vehicle dealer and any trailer coach dealer licensed by the department may, upon payment of the license taxes levied and imposed by subsection 320.08(11), secure one or more dealer tags, which shall be valid for use on motor vehicles owned by the dealer to whom such tags are issued while the motor vehicles are in inventory and for sale, or while being operated in connection with such dealer's business, but shall not be valid for use for hire.

(b)1. Marine boat trailer dealers and manufacturers may, upon payment of the license taxes levied and imposed by subsection 320.08(11), secure one or more dealer tags which shall be valid for use on boat trailers owned by the dealer to whom such tags are issued while being used in connection with such dealer's business, but shall not be valid for use for hire.

2. It is the intent of the Legislature that the method currently used to license marine boat trailer dealers to do business in the state, that is, by an occupational license issued by the city or county, not be changed. The Department of Highway Safety and Motor Vehicles shall not interpret this act to mean that it is empowered to license such dealers to do

business. An occupational license tax certificate shall be sufficient proof upon which the department may issue dealer tags.

(2) A dealer tag may be duplicated by the department upon an affidavit that the original has been actually destroyed or lost. Duplicates when issued shall be paid for at $2 each.

(3)(a) When a licensed dealer chooses to register any motor vehicle, trailer, or semitrailer he owns and has for sale and secure a regular motor vehicle license plate therefor, the dealer may, upon sale thereof, submit to the department an application for transfer of the license plate to a comparable motor vehicle, trailer, or semitrailer, of the same weight series as set forth under s. 320.08, owned by the dealer, with payment of the transfer fee of $4.50.

(b) When a marine boat trailer dealer chooses to register any boat trailer he owns and has for sale and secure a regular motor vehicle license plate therefor, the dealer may, upon the sale thereof, submit to the department an application for the transfer of the license plate to a comparable boat trailer of the same weight series as set forth under s. 320.08, owned by the dealer, with payment of transfer fee of $4.50.

History.—ss. 1, 3, ch. 9159, 1923; CGL 1313, 1315; s. 1, ch. 24186, 1947; s. 1, ch. 63-173; s. 6, ch. 65-190; s. 1, ch. 65-461; ss. 24, 35, ch. 69-106; s. 5, ch. 72-79; ss. 1, 3, ch. 76-135; s. 1, ch. 76-137; s. 3, ch. 77-125; s. 1, ch. 77-174; s. 20, ch. 77-357; s. 128, ch. 79-400.

320.131 Temporary tags.—

(1) The department is hereby authorized and empowered to design, issue, and regulate the use of temporary tags to be designated "temporary tags," for use in cases in which dealer tags may not be lawfully used and in cases in which the sale of a motor vehicle constitutes a casual or private sale. A casual or private sale shall be construed to mean any sale other than that by a licensed dealer. No such temporary tag shall be valid for more than 20 days after it is affixed to a motor vehicle.

(2) The department is hereby authorized and empowered to sell to any franchised dealer, licensed used car dealer, trailer coach dealer, certificated common carrier, or county tax collector "temporary tags" for $1 each, and the proceeds shall be deposited in the General Revenue Fund. The county tax collector is authorized to sell the temporary tag for $1 plus a $1 service charge.

(3) For the purpose of requiring proof of personal injury protection or liability insurance, the issuance of a temporary tag by a licensed motor vehicle dealer shall not constitute registration of the vehicle. However, upon expiration of the temporary tag, application for registration shall be accomplished and at that time proof of personal injury protection or liability shall be made.

(4) The department is hereby empowered to issue and enforce rules and regulations for the administration of this section.

(5) The department shall issue a temporary tag to any owner of a motor vehicle which is not currently registered or operated, for the purpose of allowing such owner to demonstrate the vehicle to a prospective buyer in contemplation of a casual sale. The department shall include in the application form for such a temporary tag an affidavit attesting to the owner's intention to demonstrate the vehicle for purposes of casual sale only. Temporary tags issued pursuant to this subsection shall be sold for $1 each, and the proceeds shall be deposited in the General Revenue Fund. The county tax collector may purchase such tags from the department and sell them to qualifying applicants for $1 each plus a $1 service charge. No such temporary tag shall be valid for more than 20 days after it is affixed to a motor vehicle.

(6) Any person unlawfully using any such "temporary tag" or violating any rule or regulation issued by the department pursuant to this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-4, ch. 59-348; s. 1, ch. 61-150; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 195, ch. 71-136; s. 1, ch. 72-46; s. 10, ch. 75-66; s. 1, ch. 77-174; s. 1, ch. 78-217; s. 4, ch. 78-225.

320.132 In-transit tags; cost; regulation of sale; penalty for violation.—

(1) The department is authorized and empowered to design, issue and regulate the use of tags to be designated "in-transit tags" for use only on a motor vehicle sold in this state to a resident of another state for registration in a state other than this state and not required to be registered under s. 320.38. Such in-transit tag shall be valid for 30 days after it is affixed to a motor vehicle.

(2) The department is authorized and empowered to sell to any licensed motor vehicle dealer, trailer coach dealer or certificated common carrier such in-transit tags for $5 each and the proceeds shall be deposited in the General Revenue Fund.

(3) The department is empowered to issue and enforce rules and regulations for the administration of this law.

(4) Any person unlawfully using any such in-transit tag or violating any rule or regulation issued by the department pursuant to this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-4, ch. 65-191; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 196, ch. 71-136.

320.14 Fractional registration fee.—

(1)(a) Any truck, tractor, bus, trailer or semitrailer registered during the first 3 months of any registration period, that has been registered in this state during the previous registration period, shall be charged the full fee for such registration period, as provided in ss. 320.07 and 320.08.

(b) Any such truck, tractor, bus, trailer or semitrailer registered during the fourth month or thereafter of such registration period, that has not been subject to registration for such period prior to that time, shall be charged for such registration one-twelfth of the annual registration rate for the month of registration and one-twelfth of such annual rate for each month of the registration period succeeding the month of registration; provided, however, that no license plate shall be issued for less than $5, except where otherwise expressly provided.

(2)(a) Any truck, tractor, bus, trailer or semitrailer registered during the first month of any registration period, that has not been registered nor subject to registration in this state during the previous registration period, shall be charged the full fee for such registration period as provided in ss. 320.07 and 320.08.

(b) Any such truck, tractor, bus, trailer or semitrailer registered during the second month or thereafter of such registration period, that has not been subject to registration for such period prior to that time, shall be charged for such registration at the rate of one-twelfth of the annual registration rate for the month of registration and one-twelfth of the annual fee for each month of the registration period succeeding the month of registration, as provided in ss. 320.07 and 320.08; provided, however, that no license plate shall be issued for less than $5, except where otherwise expressly provided.

(3) Any motor vehicle other than a truck, tractor, bus, trailer, or semitrailer, as hereinbefore specified, registered during the seventh, eighth, or ninth month of the registration period and not subject to registration prior to that time, as provided in s. 320.07, shall be charged for such registration one-half of the annual rate, as provided in s. 320.08. However, no license plate shall be issued for less than $5, except when otherwise expressly provided.

(4) Any motor vehicle other than a truck, tractor, bus, trailer, or semitrailer, as hereinbefore specified, registered during the tenth month or thereafter of the registration period and not subject to registration prior to that time, as provided in s. 320.07, shall be charged for such registration one-fourth of the annual rate as provided in s. 320.08. However, no license plate shall be issued for less than $5, except when otherwise expressly provided.

History.—s. 7, ch. 7275, 1917; s. 1, ch. 7276, 1917; RGS 1012; s. 5, ch. 8410, 1921; s. 4, ch. 10182, 1925; CGL 1286; s. 4, ch. 16085, 1933; s. 1, ch. 25139, 1949; s. 8, ch. 28186, 1953; s. 1, ch. 57-373; s. 6, ch. 65-190; s. 1, ch. 67-553; s. 11, ch. 75-66; s. 46, ch. 77-357.

320.15 Deductions from registration tax.—Any resident owner of a motor vehicle that has been destroyed or permanently removed from the state shall, upon application to the department and surrender of the license plate issued to such vehicle, be entitled to either a credit to apply upon the registration of any other vehicle in the name of such owner or a refund in the amount of the pro rata of the annual registration fee or tax, if the amount is $3 or more, for the unexpired period of such license; provided, that if the license surrendered be a "for-hire" automobile license the amount of credit or refund shall not be more than one-half of such license period. Such credit shall not be valid after the date operation of motor vehicles becomes illegal with license plates current on date of credit, as provided in s. 320.07.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 59-266; s. 6, ch. 65-190; s. 1, ch. 65-465; ss. 24, 35, ch. 69-106; s. 3, ch. 78-186.

320.16 Interstate commerce; advance payment and refund.—Where any automobile is used for hire, whether for carrying passengers or freight either singly or in combinations, over the highways of the state, in interstate commerce, a charge shall be collected in the form of a registration fee initially computed and assessed on the basis of the foregoing schedule, and the same shall be collected upon the registration of the vehicle as an advance payment on the compensation entitled to be received by the state for the use of the state's highway system, but the person so registering or reregistering said vehicle shall be entitled to a refund of the entire amount collected with legal interest thereon upon making payment to the state for the mileage actually traveled by the vehicle in its use of the state's highway system, to be paid for at the rate of 4 cents per mile each way, which rate of 4 cents per mile each way is determined and declared to be a reasonable and just compensation to be charged and collected for the use of the improved highway system provided by the state and its several counties, districts and municipalities for the use of motor vehicles. Proof of the mileage traveled shall be made to the department, which shall ascertain and determine the number of miles actually traveled by the vehicle, which mileage would be subject to the charge of a road tax under this chapter, and the findings of said department when made shall be deemed and held to be prima facie just and correct.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 6, ch. 65-190; s. 4, ch. 65-337; ss. 24, 35, ch. 69-106; s. 20, ch. 78-95.

320.17 Classification and assessment by department.—The department may determine the classification of, and the amount of tax due on, any motor vehicle required to be registered under the laws of Florida, and may fix, determine and assess the amount of registration or reregistration fees and taxes to be paid for registration, reregistration and license thereof, and its determination when made and certified to in writing shall be prima facie evidence of the validity, regularity and propriety thereof and of the liability of the motor vehicles involved therein to classification and tax so determined, fixed and assessed. No such determination when made by the department shall be disregarded or set aside in any court, except when clearly shown to be unwarranted in law or in fact.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

320.18 Withholding registration.—

(1) The department may withhold the registration of any motor vehicle, the owner of which shall have failed to register the same under the provisions of law for any previous period or periods for which it appears registration should have been made, in this state, until the fee for such period or periods shall be paid.

(2) An owner of a motor vehicle, except a mobile home with MH or RP tags, shall be exempted from the payment of a registration fee for any previous period or periods for which registration should have been made upon the presentation to the department by him of a notarized or certified affidavit to the effect that such motor vehicle was continuously maintained in dead storage and was not operated at any time during the registration period or periods for which the exemption is being claimed.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 6, ch. 69-178; s. 1, ch. 78-216.

320.19 Lien of tax and enforcement.—The registration tax required under this chapter, when not paid, shall constitute a first lien upon the motor vehicles against which the same is chargeable, which lien shall be superior to all other liens upon

such motor vehicle, and may be enforced and collected, if delinquent more than 30 days, by levy and sale in the same manner as under an execution of law on the amount of the tax due, which enforcement may be under a tax warrant issued for that purpose by the department and enforced in like manner as is provided by law for the enforcement of tax warrants by the Department of Revenue.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 6, ch. 65-190; ss. 21, 24, 35, ch. 69-106.
cf.—s. 56.061 Levy and sale under executions.

320.20 Disposition of license moneys.—The revenues derived from the licensing of motor vehicles, excluding those collected and distributed under the provisions of s. 320.081, shall be distributed monthly, as collected, to the following funds:

(1) The first proceeds, to the extent necessary to comply with the provisions of s. 18 of Art. XII of the State Constitution of 1885, as adopted by s. 9(d), Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d) and s. 236.602, shall be deposited in the district Capital Outlay and Debt Service School Trust Fund.

(2) Thirty-six and five-tenths percent of such revenues shall be deposited in the State Transportation Trust Fund.

(3) The remainder of such revenues shall be deposited in the General Revenue Fund.

History.—s. 27, ch. 7275, 1917; RGS 1031; s. 12, ch. 8410, 1921; CGL 1304; s. 4, ch. 15625, 1931; s. 44, ch. 26869, 1951; s. 1, ch. 65-514; s. 31, ch. 69-216; s. 1, ch. 69-300; s. 1, ch. 77-416.

320.23 Taxes deemed compensatory.—All taxes prescribed by this chapter shall be deemed to be compensatory for the use of the public highways of this state by operators of motor vehicles and motor carriers taxed under the provisions of this chapter and as a fair contribution to the cost of constructing and maintaining the public highways of this state; and the administration and enforcement of this chapter and all regulations and restrictions imposed hereby and authorized to be imposed by this chapter are declared to be for the purpose of conservation of the state's property and in the interest of safety in the use of its highways.

History.—s. 5, ch. 15625, 1931; CGL 1936 Supp. 1304(1); s. 2, ch. 63-496.

320.24 Counties and municipalities may not impose licenses on motor vehicles, etc.—It is unlawful for any county or municipality to collect any license or registration fee on any motor-driven vehicle, trailer, semitrailer or motorcycle sidecar in this state.

History.—s. 8, ch. 7275, 1917; RGS 1013; s. 6, ch. 8410, 1921; CGL 1287.

320.25 Obtaining license by false statements; penalty.—Any person who shall apply for and obtain from the department a license plate by means of false or fraudulent representations made in any application therefor shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The department may take up and cancel any such license which has been so obtained by false and fraudulent representation.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; CGL 1936 Supp. 7792(3); s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 197, ch. 71-136.

320.26 Counterfeiting plates or revalidation stickers, etc., prohibited; penalty.—

(1) No person shall counterfeit, manufacture, sell, or dispose of registration license plates or revalidation stickers in the state, without first having obtained the permission and authority of the department in writing.

(2) Any person violating the terms of this section shall be guilty of a felony of the third degree, and if the violator be a natural person, he shall be punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) If the violator of this section is an association or corporation, it shall be punishable as provided in s. 775.083, and the official of the association or corporation under whose direction or with whose knowledge, consent or acquiescence such violation occurred may be punished as provided in s. 775.082, in addition to the fine which may be imposed upon such association or corporation.

History.—ss. 1, 2, ch. 16086, 1933; CGL 1936 Supp. 7792(5); s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 7, ch. 69-178; s. 198, ch. 71-136; s. 6, ch. 72-79; s. 5, ch. 78-412.

320.261 Attaching registration license tag plate not assigned unlawful; penalty.—Any person who knowingly attaches to any motor vehicle, trailer, or semitrailer any registration license plate, or revalidation sticker to the plate, not issued and assigned or lawfully transferred to such vehicle shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-478; s. 199, ch. 71-136; s. 7, ch. 72-79.

[1]320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms and phrases when used in this section shall have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(a) "Department" means the Department of Highway Safety and Motor Vehicles.

(b) "Motor vehicle" means any motor vehicle of the type and kind required to be registered and titled under chapters 319 and 320, except recreational vehicles and mobile homes.

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale. Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. The term "motor vehicle dealer" does not include: Public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; and motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under this section.

(2) LICENSE REQUIRED.—No person shall engage in business as, serve in the capacity of or act as a motor vehicle dealer in this state without first

obtaining a license therefor as provided in this section.

(3) APPLICATION AND FEE.—The application for said license shall be in such form as may be prescribed by the department and subject to such rules and regulations with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of said applicant; and prior business or businesses in which said applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned in fee simple by the applicant and when acquired or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location is a permanent one, is not the residence of the applicant, is not a tent or a temporary stand or other temporary quarters, that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale, and is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at the said location. Such certification shall not apply to any applicant who held a current license as a motor vehicle dealer on January 1, 1964. Such application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. Such application shall contain such other relevant information as may be required by the department. The application shall be accompanied by an official credit report and a sworn statement of two reputable persons of the community in which the principal place of business is to be located certifying to the good moral character of the applicant and that the facts set forth in the application are true. Upon making such initial application, the person applying therefor shall pay to the department a fee of $100 in addition to any other fees now required by law; upon making subsequent renewal applications, the person applying therefor shall pay to the department a fee of $25 in addition to any other fees now required by law. Upon making an application for a change of location, the person shall pay a fee of $25 in addition to any other fees now required by law. The department shall, if it deems it necessary, cause an investigation to be made to ascertain if the facts set forth in such application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in said application are true.

(4) LICENSE CERTIFICATE.—A license certificate shall be issued by the department in accordance with such application when the same shall be regular in form and in compliance with the provisions of this section. Such license, when so issued, shall entitle the licensee to carry on and conduct the business of a motor vehicle dealer for a period of 1 year from January 1 of the current year only at the location set forth in said license.

(5) SUPPLEMENTAL LICENSE.—Any person licensed hereunder shall obtain a supplemental license for each additional place or places of business not contiguous to the premises for which the original license is issued, on a form to be furnished by the department, and upon payment of a fee of $10 for each such additional location. Upon making renewal applications for such supplemental licenses, such applicant shall pay $10 for each additional location.

(6) RECORDS TO BE KEPT BY LICENSEE.—Every licensee shall keep a book or record in such form as may be prescribed or approved by the department, in which it shall keep a record of the purchase, sale or exchange, or receipt for the purpose of sale, of any motor vehicle, a description of such motor vehicle, together with the name and address of the seller, the purchaser and the alleged owner or other person from whom such motor vehicle was purchased or received or to whom it was sold or delivered, as the case may be. Such description shall include the identification or engine number, maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon and shall also include a statement that a number has been obliterated, defaced or changed, if such is the fact.

(7) CERTIFICATE OF TITLE REQUIRED.—Every licensee shall have in his possession a duly assigned certificate of title from the owner of each motor vehicle in accordance with the provisions of chapter 319, or any other law or parts of laws providing for the issuance of certificates of title, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

(8) PENALTY.—Any person found guilty of violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) DENIAL, SUSPENSION, OR REVOCATION.—The department may deny, suspend, or revoke any license issued hereunder for the violation by the licensee of any of the provisions of this section or on any of the following grounds:

(a) Willful violation of any other law of this state having to do with dealing in motor vehicles or willful failure to comply with any administrative rules promulgated by the department.

(b) Perpetration of a fraud upon any person as a result of dealing in motor vehicles.

(c) Representation that a "demonstrator" is a new motor vehicle or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator. For the purposes of this section, a

"demonstrator," a "new motor vehicle," and a "used motor vehicle" shall be defined as under s. 320.60.

(d) Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer. However, if such refusal is at the direction of said manufacturer, distributor, or importer, such refusal shall not be a ground under this section.

(e) Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.

(f) Requirement by any motor vehicle dealer that a customer or purchaser accept equipment on his motor vehicle which was not ordered by the customer or purchaser.

(g) Requirement by any motor vehicle dealer that any customer or purchaser finance a motor vehicle with a specific financial institution or company.

(h) Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by said customer or purchaser.

(i) Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.

(j) Requirement by the motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance.

(k) Violation of any of the provisions of s. 319.35 by any motor vehicle dealer.

(10) BOND.—Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond, executed by the applicant-dealer as principal and by a surety company qualified to do business in the state as surety, in the sum of $5,000. Such bond shall be in a form to be approved by the department and shall be conditioned that the motor vehicle dealer shall comply with the conditions of any written contract made by such dealer in connection with the sale or exchange of any motor vehicle and shall not violate any of the provisions of chapters 319 and 320 in the conduct of the business for which he is licensed. Such bond shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions hereinabove contained. Such bond shall be for the license period, and a new bond or a proper continuation certificate shall be delivered to the department at the beginning of each license period. However, the aggregate liability of the surety in any one year shall, in no event, exceed the sum of such bond.

(11) INJUNCTION.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application to any circuit court of the state, and such circuit court shall have jurisdiction, upon a hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from acting as a motor vehicle dealer under the terms of this section without being properly licensed hereunder, from violating or continuing to violate any of the provisions of chapters 319 and 320 or for failing or refusing to comply with the requirements of chapters 319 and 320 or any rule or regulation adopted thereunder, such injunction to be issued without bond. A single act in violation of the provisions of chapter 319 or chapter 320 shall be sufficient to authorize the issuance of an injunction.

History.—s. 11, ch. 9157, 1923; CGL 1060, 7452; ss. 1, 2, ch. 23660, 1947; ss. 10, 11, ch. 28186, 1953; s. 1, ch. 57-404; s. 1, ch. 59-238; ss. 1, 2, ch. 63-349; s. 6, ch. 65-190; s. 1, ch. 65-235; s. 1, ch. 67-93; ss. 24, 35, ch. 69-106; s. 1, ch. 70-424; s. 1, ch. 70-439; s. 200, ch. 71-136; s. 94, ch. 71-377; s. 1, ch. 75-203; s. 3, ch. 76-168; s. 21, ch. 77-357; s. 1, ch. 77-457; s. 20, ch. 78-95; s. 2, ch. 78-183.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.
s. 320.642 Dealer licenses in areas previously served.

[1]320.271 Used cars; removal of registration license plates.—Each person, upon the sale and delivery of any used or secondhand motor vehicle, shall remove any registration license plate from such motor vehicle before transferring ownership and delivering the motor vehicle to the purchaser.

History.—s. 1, ch. 57-182; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 8, ch. 72-79; s. 3, ch. 76-168; s. 22, ch. 77-357; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.273 Reinstatement of license of motor vehicle dealers.—When the license of a motor vehicle dealer has been revoked or suspended by the department pursuant to the provisions of s. 320.27, the department may for good cause reinstate the license of any former licensee under this law if it determines that said former licensee is rehabilitated, meets the requirements of s. 320.27, files an application for license pursuant to s. 320.27(3), and complies with said section.

History.—s. 2, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.274 Hearing procedure, dealers' licenses.—In the event that the department shall conduct any hearing pursuant to the provisions of ss. 320.27-320.274, the hearing or hearings shall be conducted pursuant to chapter 120, the Administrative Procedure Act, and the Director of the Division of Motor Vehicles of the Department of Highway Safety and Motor Vehicles shall have the power to conduct such hearings, notwithstanding the provisions of s. 120.57(1)(a), and the director shall thereupon make his rulings and orders, which shall constitute final agency action. The Director of the Division of Motor Vehicles shall have further power in hearings arising under this law to determine the place in the state where the hearings shall be held. Any information obtained from a hearing may not be used against a

licensee as a basis for criminal prosecution under the laws of this state.

History.—s. 3, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 23, ch. 77-357; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to this date.

[1]320.28 Nonresident dealers in secondhand motor vehicles, recreational vehicles, or mobile homes.—Every dealer in used or secondhand motor vehicles, recreational vehicles, or mobile homes who is a nonresident of the state, does not have a permanent place of business in this state, and has not qualified as a dealer under the provisions of ss. 320.27 and 320.77, and any person other than a dealer qualified under the provisions of said ss. 320.27 and 320.77, who brings any used or secondhand motor vehicle, recreational vehicle, or mobile home into the state for the purpose of sale, except to a dealer licensed under the provisions of ss. 320.27 and 320.77, shall, at least 10 days prior to the sale of said vehicle, the offering of said vehicle for sale, or the advertising of said vehicle for sale, make and file with the department the official application for a certificate of title for said vehicle as provided by law. Any person who has had one or more transactions involving the sale of three or more used or secondhand motor vehicles, recreational vehicles, or mobile homes in Florida during any 12-month period shall be deemed to be a secondhand dealer in motor vehicles, recreational vehicles, or mobile homes.

History.—ss. 1, 6, ch. 17113, 1935; s. 1, ch. 18032, 1937; CGL 1940 Supp. 1317(1), (6); s. 1, ch. 24192, 1947; s. 1, ch. 25140, 1949; s. 1, ch. 57-388; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 3, ch. 76-168; s. 24, ch. 77-357; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 320.71 Nonresident automobile dealer's license.

[1]320.30 Penalty for violating s. 320.28.—No action or right of action to recover any such motor vehicle, or any part of the selling price thereof, shall be maintained in the courts of this state by any such dealer or vendor or his successors or assigns in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of s. 320.28, and in addition thereto, such vendor or dealer, upon conviction for the violation of any of the provisions of said sections, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, this section shall not apply to the holder of a note or notes representing a portion of the purchase price of such motor vehicle when the owner thereof was and is a bona fide purchaser of said note or notes, before maturity, for value and without knowledge that the vendor of such vehicle had not complied with said sections.

History.—s. 3, ch. 17113, 1935; s. 3, ch. 18032, 1937; CGL 1940 Supp. 1317(3), (8), 8132(1), (2); s. 201, ch. 71-136; s. 3, ch. 76-168; s. 25, ch. 77-357; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.31 Definitions covering ss. 320.28-320.30.—The terms "dealer" and "vendor," used in ss. 320.28-320.30, shall be construed to include every individual, partnership, corporation or trust whose business in whole or in part, is that of selling new or used motor vehicles and likewise shall be construed to include every agent, representative, or consignee of any such dealer as defined above, as fully as if same had been herein expressly set out.

History.—s. 4, ch. 17113, 1935; s. 4, ch. 18032, 1937; CGL 1940 Supp. 1317(4), (9); s. 7, ch. 24337, 1947; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

320.33 Unlawful to possess motor vehicles from which serial number has been removed.—It is unlawful for any person to knowingly buy, sell, receive, dispose of, conceal or have in his possession any motor vehicle from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said motor vehicle.

History.—s. 25, ch. 7275, 1917; RGS 1030; CGL 1303.

320.351 Motor vehicle noise limit compliance prerequisite to registration.—On and after January 1, 1975, no new motor vehicle subject to the requirements of s. 403.415 shall be registered in this state if a certificate of compliance with new motor vehicle noise limits has not been filed for that make and model as required in s. 403.415(6).

History.—s. 5, ch. 74-110.

320.36 Registration of "for hire" vehicles; marking of certificate of title by department.—(1) Every person, firm or corporation who shall apply to the department or its legally authorized agent for registration of a "for hire" motor vehicle as defined in s. 320.01(19), shall accompany such application for registration also with a certificate of title for said motor vehicle or an application for a certificate of title, as provided by law, and upon payment of the lawful issuing fees, the department or such agent shall issue an appropriate "for hire" registration license plate. The department shall also issue and deliver to the applicant a certificate of title for such vehicle and shall impress upon such certificate the words, "Taxicab" or "For Hire," or "Police Car" or "U-Drive-It," or "Long Term Lease," as the case may be, as is shown in the application for registration.

(2) If such motor vehicle has been previously registered for private use in this state and a "private use" registration license plate and a certificate of title have been issued for such vehicle by the department said application shall be accompanied by the "private use" registration license plate theretofore issued together with the official certificate of title issued for such vehicle, and the written consent of lienholders, if any, holding a lien upon said vehicle, for the transfer of the vehicle from private use to for hire use, and upon payment of the lawful issuing fees, less the unused value of the "private use" license plate, the department or its agent shall issue an appropriate registration "for hire" license plate and shall impress upon the original certificate of title the words, "For Hire."

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; CGL 1936 Supp. 7792(4); s. 7, ch. 22858, 1945; s. 12, ch. 28186, 1953; s. 2, ch.

29850, 1955; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106.

320.37 Registration not to apply to nonresidents.—The provisions of this chapter relative to registration and display of license number plates shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation doing business in this state; provided, that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory, or federal district of his residence, relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required thereby; but such exemption shall not apply to motor vehicles operated for hire or to recreational vehicles or mobile homes located in this state for at least 6 consecutive months.

History.—s. 15, ch. 7275, 1917; RGS 1020; s. 1, ch. 9155, 1923; s. 6, ch. 10182, 1925; ss. 1, 2, ch. 10187, 1925; s. 1, ch. 12096, 1927; CGL 1293; s. 8, ch. 78-207.
cf.—s. 48.171 Service on nonresident motor vehicle owners, etc.
s. 205.171 Disabled veterans; exemption.
s. 322.23 Suspending privileges of nonresidents.

320.38 When nonresident exemption not allowed.—

(1) The provisions of law authorizing the operation of motor vehicles over the highways of the state by nonresidents of this state, when such vehicles are duly registered or licensed under the laws of some other state or foreign country, shall not apply to any nonresident who accepts employment, or engages in any trade, profession or occupation in this state, except a nonresident migrant farm worker as defined in s. 316.003(62). In every case where a nonresident, except a nonresident migrant farm worker as defined in s. 316.003(62), accepts employment or engages in any trade, profession, or occupation in the state or enters his children to be educated in the public schools of the state, such nonresident shall within 10 days after the commencement of such employment or education be required to register his motor vehicles in this state if such motor vehicles are proposed to be operated on the highways of the state.

(2) The provisions of law authorizing the operation in the state of motor vehicles under nonresident or foreign registration shall not apply to any motor vehicle equipped with auxiliary fuel tanks or carrying an auxiliary fuel supply to be used in avoidance of the purchase of fuel in the state.

History.—s. 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1011; s. 5, ch. 8410, 1921; s. 3, ch. 10182, 1925; CGL 1285; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 19252, 1939; s. 1, ch. 69-153; s. 1, ch. 69-156.

320.39 Reciprocal agreements for nonresident exemption.—

(1) The Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Public Service Commission may negotiate and consummate with the proper authorities of the several states of the United States, reciprocal agreements whereby residents of such other states operating motor vehicles properly licensed and registered in their respective states may have such privileges and exemption in the operation of their said motor vehicles in this state, as residents of this state may have and enjoy in the operation of motor vehicles, duly licensed and registered in this state, in such other states. However, nothing herein shall be construed to relieve any motor vehicle owner or operator from complying with and abiding by all other applicable laws, rules, and regulations relating to safety of operation of motor vehicles and the preservation of the highways of this state. In the making of such reciprocal agreements, such departments and said Public Service Commission shall have due regard to the advantage and convenience of motor vehicle owners and the citizens of this state.

(2) Any and all such reciprocal agreements consummated by said Department of Highway Safety and Motor Vehicles, the said Division of Planning and Programming, and the Public Service Commission shall not become effective until approved by the Governor of the state; provided, all such reciprocal agreements are made subject to cancellation at any time by the Legislature. However, nothing herein contained shall apply to rates, rules or regulations now or hereafter applicable to common or contract carriers by motor carriers over the highways of the state.

(3) The Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Public Service Commission shall give proper publicity to the terms of every such reciprocal agreement entered into by them, or by any one of them.

History.—ss. 1-3, ch. 19479, 1939; CGL 1940 Supp. 1326(2)-(4); s. 1, ch. 24095, 1947; s. 1, ch. 63-279; s. 2, ch. 63-496; s. 1, ch. 65-52; s. 6, ch. 65-190; ss. 23, 24, 35, ch. 69-106; s. 2, ch. 73-326; s. 26, ch. 77-357.

320.51 Farm tractors and trailers exempt.—Farm tractors and farm trailers as defined in s. 320.01(22) shall be exempt from the provisions of the motor vehicle laws of this state which require the registration of such vehicles, and shall be exempt from the payment of any fee of any kind and shall be exempt from the requirement that such vehicle display a registration tag as is required on other vehicles. Provided, however, that nothing herein contained shall be construed as exempting such farm tractors and farm trailers from the requirements of the motor vehicle laws of this state, and rules and regulations issued thereunder, relating to the tires to be used upon such tractors and trailers when using the highways of this state.

History.—s. 2, ch. 20911, 1941.

320.57 Penalties for violations of this chapter.—Any person convicted of violating any of the provisions of this chapter shall, unless otherwise provided herein, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 26, ch. 7275, 1917; RGS 5605; s. 14, ch. 8410, 1921; s. 7, ch. 10186, 1925; CGL 7792, 7793; s. 202, ch. 71-136.

320.58 License inspectors; powers, appointment.—The department shall appoint as many license inspectors and supervisors as it deems necessary to enforce the provisions of chapters 319, 320, 322, 324, and 330. In order to enforce the provisions of the aforesaid laws of the state, the inspectors are empowered to issue uniform traffic citations to persons found in violation thereof. The department is further empowered to delegate such authority to persons acting as its agents for the purpose of enforcing the registration provisions of chapter 320. Any person failing or refusing to surrender his driver's license, registration certificate, and license plate

upon lawful demand of an inspector or investigator shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The aforesaid persons appointed by the department shall not be considered for membership in the state's high risk retirement program.

History.—s. 7, ch. 10182, 1925; CGL 1305; s. 46, ch. 26869, 1951; s. 19, ch. 63-400; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 73-305; s. 27, ch. 77-357.

[1]320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes, in the case of a corporation or copartnership, its central or principal sales corporation or other agency through which it distributes its products.

(2) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(3) "Factory branch" means a branch office maintained by a manufacturer, distributor, or importer for the sale of motor vehicles to distributors or to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this state.

(4) "Factory representative" means a representative employed by a manufacturer, distributor, importer, or factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.

(5) "Importer" means any person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease.

(6) "Person" means a person, firm, corporation, or association.

(7) "Department" means the Department of Highway Safety and Motor Vehicles.

(8) "Licensee" means any person licensed or required to be licensed under s. 320.61.

(9) "Motor vehicle" means any new automobile, motorcycle, or truck the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.

(10) "Used motor vehicle" means any motor vehicle title to or possession of which has been transferred from the person who first acquired it from the manufacturer, distributor, importer, or dealer and which is commonly known as "secondhand" within the ordinary meaning thereof.

(11) "Demonstrator" means any new motor vehicle which is carried on the records of the dealer as a demonstrator and is used by, being inspected or driven by the dealer or his employees or prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

(12)(a) "Motor vehicle dealer" means any person, firm, or corporation who, for commission, money or other things of value, sells, exchanges, buys, or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles or who is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, or corporation.

(b) Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. The terms "selling" and "sale" include lease-purchase transactions.

(c) The term "motor vehicle dealer" does not include:

1. Public officers while performing their official duties;

2. Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;

3. Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; or

4. Motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under s. 320.27.

(13) "Agreement" means contract, franchise, new motor vehicle franchise, selling agreement, or any other terminology used to describe the contractual relationship between manufacturers, distributors, importers, and dealers.

History.—s. 1, ch. 20236, 1941; s. 7, ch. 22858, 1945; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 4, ch. 70-424; s. 1, ch. 70-439; s. 95, ch. 71-377; s. 1, ch. 72-112; s. 3, ch. 76-168; s. 28, ch. 77-357; s. 1, ch. 77-457; s. 129, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.61 Licenses required of motor vehicle manufacturers, factory branches, factory representatives, distributors, importers, etc.—

(1) No manufacturer, factory branch, factory representative, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business as such in this state without a license therefor as provided in ss. 320.60-320.70. No such licensee's vehicles shall be sold in this state unless either the manufacturer or factory branch, on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles, on direct dealerships, or the distributor, on indirect dealerships of either domestic or foreign vehicles, is licensed under ss. 320.60-320.70.

(2) The department may prescribe an abbreviated application for renewal of a license if said licensee had previously filed an initial application pursuant to s. 320.63. The application for renewal shall include any information necessary to bring current the information required in the initial application.

(3) All licenses shall be granted or refused within 30 days after application.

(4) When a complaint of unfair cancellation of a dealer agreement is made by a motor vehicle dealer against a licensee and is in the process of being heard

pursuant to ss. 320.60-320.70, by the department, no replacement application for such agreement shall be granted until a final decision is rendered by the department on the complaint of unfair cancellation.

(5) The obtaining of a license under ss. 320.60-320.70 shall conclusively establish that the licensee is doing business in this state and shall subject the licensee to all provisions of Florida law.

History.—s. 2, ch. 20236, 1941; s. 5, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**320.615 Agent for service of process.**—The acceptance by any person of a license under ss. 320.60-320.70 shall be deemed equivalent to an appointment by such person of the Secretary of State as the agent of such person upon whom may be served all lawful process in any action, suit, or proceeding against such person arising out of any transaction or operation connected with or incidental to any activities of such person carried on under such license, and the acceptance of such license shall be signification of the agreement of such person that any process against him which is so served shall be of the same legal force and validity as if served personally on him. Service of such process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provisions of chapter 48.

History.—s. 6, ch. 70-424; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**320.62 Licenses; amount; disposition of proceeds.**—The annual license for each manufacturer, factory branch, factory representative, distributor, or importer shall be $10 and shall be in addition to all other licenses or taxes now or hereafter levied, assessed, or required of the applicant. The proceeds from all licenses under ss. 320.60-320.70 shall be paid into the State Treasury to the credit of the General Revenue Fund. All licenses shall be payable on or before October 1 of each year and shall expire, unless sooner revoked or suspended, on the following September 30.

History.—s. 3, ch. 20236, 1941; s. 47, ch. 26869, 1951; s. 7, ch. 70-424; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**320.63 Application for license; contents.**—Any person desiring to be licensed pursuant to ss. 320.60-320.70 shall make application therefor to the department upon a form containing such information as the department shall require. The department may require, with such application or otherwise and from time to time, all of the following, which may be considered by the department in determining the fitness of said applicant to engage in the business for which the applicant desires to be licensed:

(1) Information relating to the applicant's solvency and his financial standing.

(2) A certified copy of applicant's new motor vehicle warranty or warranties in any way connected with a motor vehicle or any component thereof, accompanied by a detailed explanation thereof.

(3) From each manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships which utilizes an identical blanket basic agreement for its dealers or distributors in Florida, which agreement comprises all or any part of applicant's agreements with motor vehicle dealers in Florida, a copy of the written agreement and all supplements thereto, together with a list of applicant's authorized dealers or distributors and their addresses. The applicant shall further notify the department immediately of the appointment of any additional dealers or distributors, of any revisions of or additions to the basic agreement on file, or of any individual dealer or distributor supplements to such agreements.

(4) A certified copy of the delivery and preparation obligations of its motor vehicle dealers, which obligations shall constitute the motor vehicle dealers' only responsibility for product liability as between the dealer and manufacturer.

(5) An affidavit stating the rates which the applicant pays or agrees to pay any authorized motor vehicle dealer for parts and labor by the authorized motor vehicle dealer for the manufacturer under delivery and preparation obligations or the new vehicle warranty.

(6) The fee for the annual license.

(7) Any other pertinent matter commensurate with the safeguarding of the public interest.

History.—s. 4, ch. 20236, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 8, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**320.64 Denial, suspension, or revocation of license; grounds.**—A license may be denied, suspended, or revoked within the entire state or at any specific location or locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(1) The department has proof of unfitness of applicant.

(2) The applicant has made a material misstatement in his application for a license.

(3) The applicant or licensee has failed willfully to comply with any provision of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

(4) The applicant or licensee has indulged in any illegal act relating to his business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, threatened to cancel or not to renew the franchise agreement of such motor vehicle dealer.

(8) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, canceled, or

failed to renew, the franchise agreement of such motor vehicle dealer.

(9) The applicant or licensee has attempted to enter, or entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to his purchasers of new motor vehicles which are covered by the new motor vehicle warranty issued by the applicant or licensee.

(10) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealers' purchasers with a specified financial institution.

(11) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(12) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to any duly licensed motor vehicle dealer who has an agreement with such applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by applicant or licensee, any such motor vehicles or parts as are covered by such agreement specifically publicly advertised by such applicant or licensee to be available for immediate delivery. However, the failure to deliver any motor vehicle or part shall not be considered a violation of this section if the failure is due to acts of God, work stoppages, or delays due to strikes or labor difficulties, freight embargoes, or other causes over which the applicant or licensee has no control. Failure to deliver parts or components for the current, and 5 preceding year, models within 60 days from date of order shall be deemed prima facie unreasonable.

(13) The applicant or licensee has sold, exchanged, or rented a motorcycle or motor scooter which produces in excess of five brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver's license.

(14) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant had been licensed.

History.—s. 5, ch. 20236, 1941; s. 4, ch. 59-351; s. 9, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.641 Unfair cancellation of franchise agreements.—

(1)(a) An applicant or licensee shall notify the motor vehicle dealer and forward a copy of such notice to the department of the licensee's intention to discontinue, cancel, or fail to renew the franchise agreement of any of its motor vehicle dealers at least 90 days before the effective date thereof, together with the specific grounds for discontinuation, cancellation, or failure to renew of said agreement, if discontinued, canceled, or not renewed.

(b) The failure by licensee to comply with the 90-day notice period and procedure prescribed herein shall render voidable, at the option of the motor vehicle dealer, any discontinuation, cancellation or nonrenewal of any franchise agreement. Designation of a franchise agreement at a specific location as a "nondesignated point" shall be deemed an evasion of this section and shall constitute an unfair cancellation.

(2) Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, or failure to renew the agreement of any of its motor vehicle dealers, and annual renewal of the license provided for under ss. 320.60-320.70 is not necessary for any cause of action against licensee.

(3) Any motor vehicle dealer whose franchise agreement is discontinued, canceled, or not renewed may, within such 90-day notice period, file with the department a verified complaint in triplicate for a determination of unfair discontinuation or cancellation. Agreements and certificates of appointment shall continue in effect until final determination by the department of the issues raised in such complaint by the motor vehicle dealer, and no replacement motor vehicle dealer shall be named for this point or location to engage in business prior to the final adjudication by the department on the discontinuation, cancellation, or failure to renew.

(4) If said complainant motor vehicle dealer prevails, he shall have a cause of action against the defendant for reasonable attorneys' fees and costs incurred by him in such proceeding for unfair discontinuation, cancellation or failure to renew, pursuant to this section.

History.—s. 9, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.642 Dealer licenses in areas previously served.—The department shall deny an application for a motor vehicle dealer license in any community or territory where the licensee's presently licensed franchised motor vehicle dealer or dealers have complied with licensee's agreements and are providing adequate representation in the community or territory for such licensee. The burden of proof in showing inadequate representation shall be on the licensee.

History.—s. 9, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.664 Reinstatement of license.—When any license has been revoked or suspended by the department pursuant to the provisions of ss. 320.60-320.70, the department may for good cause reinstate the license of any former licensee under ss. 320.60-320.70, if it determines that the former licensee is rehabilitated, meets the requirements of ss. 320.60-320.70, files an application for license pursuant to s. 320.63, and complies with ss. 320.60-320.70.

History.—s. 10, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]320.665 Hearing procedures relating to licensing of manufacturers, distributors, etc.—In the event the department shall conduct any hearing pursuant to the provisions of ss. 320.60-320.70, the hearing shall be conducted pursuant to chapter 120, and the Director of the Division of Motor Vehicles of the Department of Highway Safety and Motor Vehicles shall have the power to conduct such hearings, notwithstanding the provisions of s. 120.57(1)(a), and the director shall thereupon make his rulings and orders, which shall constitute final agency action. The director shall have the further power in hearings arising under ss. 320.60-320.70 to determine the place in the state where they shall be held. Any information obtained from a hearing may not be used against such licensee as the basis for a criminal prosecution under the laws of this state.

History.—s. 11, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 29, ch. 77-357; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.67 Inspection of books, etc., of licensee.—(1) The department may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to it against such licensee.

(2) In the exercise of its duties under this section, the department is granted and authorized to exercise the power of subpoena for the attendance of witnesses and the production of any documentary evidence necessary to the disposition by it of any written complaint under this section. Any information obtained may not be used against the licensee as the basis for a criminal prosecution under the laws of this state.

History.—s. 8, ch. 20236, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 12, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.68 Revocation of license held by firms or corporations.—If an applicant or licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of an act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent if the licensee approved of or had knowledge of the acts or other similar acts and after such approval or knowledge retained the benefits, proceeds, profits, or advantages accruing from the acts or otherwise ratified the acts.

History.—s. 9, ch. 20236, 1941; s. 13, ch. 70-424; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.69 Rules and regulations.—The department may make such rules and regulations as it shall deem necessary or proper for the effective administration and enforcement of this law.

History.—s. 10, ch. 20236, 1941; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.694 Advisory council.—The department shall appoint an advisory council, consisting of not more than seven members. The council shall be composed as follows: Three franchised motor vehicle dealers, licensed under s. 320.27; one manufacturer, distributor, or importer, licensed under ss. 320.60-320.70; and two members of the public, who shall represent the consumers of this state. The director of the Division of Motor Vehicles shall be chairman of the council. The council upon request of the department shall advise and assist the department in the administration of ss. 320.60-320.70. The members of the council shall receive no compensation for their services, except that per diem may be paid upon authorization of the department, pursuant to s. 112.061.

History.—s. 14, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]320.695 Injunction.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department, or any motor vehicle dealer in the name of the department and state and for the use and benefit of the motor vehicle dealer, is authorized to make application to any circuit court of the state for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a licensee under the terms of ss. 320.60-320.70 without being properly licensed hereunder, or from violating or continuing to violate any of the provisions of ss. 320.60-320.70, or from failing or refusing to comply with the requirements of this law or any rule or regulation adopted hereunder. Such injunction shall be issued without bond. A single act in violation of the provisions of ss. 320.60-320.70 shall be sufficient to authorize the issuance of an injunction. However, this statutory remedy shall not be applicable to any motor vehicle dealer after final determination by the department under s. 320.641(3).

History.—s. 15, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.696 Warranty responsibility.—The licensee shall reasonably compensate any authorized motor vehicle dealer who performs work to rectify the licensee's product or warranty defects or fulfills delivery and preparation obligations. In the determination of what constitutes reasonable compensation under this section, the factors to be given consideration shall include, among others, the compensation being paid by other licensees to their dealers, the prevailing wage rate being paid by the dealers, and the prevailing labor rate being charged by the deal-

ers, in the city or community in which the dealer is doing business.

History.—s. 16, ch. 70-424; s. 93, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.697 Civil damages.—Any person suffering pecuniary loss because of a violation by a licensee of ss. 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70, shall have a cause of action against the licensee for damages, and may recover damages therefor in any court of competent jurisdiction in an amount equal to three times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.

History.—s. 17, ch. 70-424; s. 3, ch. 76-168; s. 96, ch. 77-104; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.698 Civil fines; procedure.—In addition to the exercise of other powers under ss. 320.60-320.70, the department is authorized to assess, impose, levy, and collect by legal process civil fines against licensees as follows:

(1) The department may fine any licensee who refuses to furnish all information required under s. 320.63, furnishes erroneous information, or fails to notify the department of any revisions or changes in information as they occur a sum not exceeding $1,000, and such fine may be levied for each and every such violation.

(2) The department may fine any licensee a sum not exceeding $5,000 when such licensee, or an agent or employee thereof, is adjudged by the department to be guilty of a violation of s. 320.64, and the fine may be levied for each and every such violation.

(3) Any licensee shall be entitled to a hearing pursuant to chapter 120 should said licensee wish to contest the fine levied, or about to be levied, upon the licensee.

(4) The department may waive or suspend any fine authorized hereunder upon a showing of good cause by the licensee for failure to comply with ss. 320.60-320.70.

History.—s. 18, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]320.70 Penalties for violation.—Any person being a manufacturer, factory branch, or factory representative, who violates any provision of ss. 320.61-320.70, or who does any act enumerated in s. 320.64 as a ground for the denial, suspension or revocation of a license, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 20236, 1941; s. 7, ch. 22858, 1945; s. 203, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

320.71 Nonresident motor vehicle, mobile home, or recreational vehicle dealer's license.—Any person who is a nonresident of the state, who does not have a dealer's contract from the manufacturer or manufacturer's distributor of motor vehicles, mobile homes, or recreational vehicles authorizing the sale thereof in definite Florida territory, and who sells or engages in the business of selling said vehicles at retail within the state shall pay a license tax of $750 per annum in each county where such sales are made; $500 of said tax shall be transmitted to the Department of Banking and Finance to be deposited in the General Revenue Fund of the state, and $250 thereof shall be returned to the county. The license tax shall cover the period from January 1 to the following December 31, and no such license shall be issued for any fractional part of a year.

History.—s. 1, ch. 20851, 1941; s. 2, ch. 57-388; ss. 12, 35, ch. 69-106; s. 30, ch. 77-357.

[1]320.77 License required of mobile home dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases, when used in this section, shall have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(a) "Director" means the director of the Division of Motor Vehicles of the Department of Highway Safety and Motor Vehicles.

(b) "Mobile home dealer" means any person engaged in the business of buying, selling, or dealing in mobile homes or recreational vehicles or offering or displaying mobile homes or recreational vehicles for sale. Any person who buys, sells, or deals in three or more mobile homes or recreational vehicles in any 12-month period or who offers or displays for sale three or more mobile homes or recreational vehicles in any 12-month period shall be prima facie presumed to be engaged in the business of mobile home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "mobile home dealer" does not include banks and finance companies that acquire mobile homes or recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes or recreational vehicles to mobile home dealers licensed under this section.

(c) For the purposes of this section, the term "recreational vehicle" shall not include camping trailers as defined in subparagraph 320.01(1)(b)2.

(2) LICENSE REQUIRED.—No person shall engage in business as, or serve in the capacity of, a mobile home dealer in this state without first obtaining a license as provided in this section. Motor vehicle dealers licensed under s. 320.27 shall not be required to obtain the license provided in this section to sell motor homes as defined in subparagraph 320.01(1)(b)4.

(3) APPLICATION AND FEE.—The application for said license shall be in the form prescribed by the department and subject to such rules and regulations as may be so prescribed by it. The application

shall be verified by oath or affirmation and shall contain:

(a) A full statement of the name and the date of birth of the person or persons applying therefor.

(b) The name of the firm or copartnership with the names and places of residence of all its members, if the applicant is a firm or copartnership.

(c) The names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body.

(d) The name of the state under whose laws the corporation is organized.

(e) The former place or places of residence of the applicant.

(f) The prior business or businesses in which the applicant has been engaged and the location thereof.

The application shall describe the exact location of the place of business, when it was acquired, and whether it is owned in fee simple by the applicant. If leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location is a permanent one, not a tent or a temporary stand or other temporary quarters, and that the location affords sufficient unoccupied space upon and within which adequately to store all mobile homes and recreational vehicles offered and displayed for sale and is a suitable place in which the applicant can in good faith carry on business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a mobile home dealer is the principal business which shall be conducted at the said location; however, this provision shall not apply to mobile home park operators licensed as mobile home dealers. The application shall contain a statement that the applicant is either franchised by a manufacturer of mobile homes or recreational vehicles, in which case the name of each mobile home or recreational vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) mobile home dealer. The application shall contain such other relevant information as may be required by the department. The application shall be accompanied by a sworn statement of two reputable persons from the community in which the applicant's principal place of business is to be located, certifying to the good moral character of the person or persons applying for the license and certifying that the facts set forth in the application are true. Upon making such application, the applicant shall pay to the department a fee of $100 in addition to any other fees now required by law. The department shall, if it deems it necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true. Upon making an application for a change of location, the applicant shall pay a fee of $25 in addition to any other fees required by law.

(4) LICENSE CERTIFICATE.—A license certificate shall be issued by the department in accordance with the application when the same shall be regular in form and in compliance with the provisions of this section. The license, when so issued, shall entitle the licensee to carry on and conduct the business of a mobile home dealer at the location set forth in the license for a period of 1 year from October 1, preceding the date of issuance.

(5) SUPPLEMENTAL LICENSE.—Any person licensed pursuant to this section shall be entitled to operate one or more additional places of business under a supplemental license for each such business, if the ownership of each business is identical to that of the principal business for which the original license is issued. Each supplemental license shall run concurrently with the original license and shall be issued upon application by the licensee on a form to be furnished by the department and payment of a fee of $25 for each such license. Only one licensed dealer shall operate at the same place of business.

(6) RECORDS TO BE KEPT BY LICENSEE.—Every licensee shall keep a book or record in such form as may be prescribed or approved by the department, in which he shall keep a record of the purchase, sale or exchange, or receipt for the purpose of sale, of any mobile home or recreational vehicle, and a description thereof, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the mobile home or recreational vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description shall include the identification or serial number and such other numbers or identification marks as may be thereon. The description shall also include a statement that a number has been obliterated, defaced, or changed, if such is the fact.

(7) EVIDENCE OF TITLE REQUIRED.—The licensee shall also have in his possession for each new mobile home or recreational vehicle a manufacturer's invoice or statement of origin, and for each used mobile home or recreational vehicle, a properly assigned certificate of title or registration certificate, if the used mobile home or recreational vehicle was previously registered in a nontitle state, from the time the mobile home or recreational vehicle is delivered to him until it has been disposed of by him.

(8) PENALTY.—Any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 30 or more than 90 days, or both, as the court may decree.

(9) INJUNCTION.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application to any Circuit Court of the state, and the circuit court shall have jurisdiction, upon a hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from acting as a mobile home dealer under the terms of this section who is not properly licensed or who violates or fails or refuses to comply with any of the provisions of chapters 319 and 320, or any rule or regulation adopted thereunder. Such injunction shall be issued without bond. A single act in violation of the provi-

sions of chapter 319 or chapter 320 shall be sufficient to authorize the issuance of an injunction.

(10) SUSPENSION OR REVOCATION.—The department may suspend or revoke any license issued hereunder for a violation of any provision of this section or of any other law of this state having to do with dealing in mobile homes or recreational vehicles or for perpetrating a fraud upon any person as a result of said dealing in mobile homes or recreational vehicles.

(11) BOND.—Annually, before any license shall be issued to a mobile home or recreational vehicle dealer, the applicant shall deliver to the department a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in the state as surety, in an amount as provided in this section. The bond shall be in a form to be approved by the department and shall be conditioned upon the mobile home dealer's complying with the conditions of any written contract made by him in connection with the sale or exchange of any mobile home or recreational vehicle and his not violating any of the provisions of chapters 319 or 320 in the conduct of the business for which he is licensed. The bond shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions hereinabove contained. The bond shall be for the license period, and a new bond or a proper continuation certificate shall be delivered to the department at the beginning of each license period. However, the aggregate liability of the surety in any one year shall, in no event, exceed the sum of such bond. The amount of the bond required shall be determined as follows:

(a) A single dealer who buys, sells, or deals in mobile homes and who has four or less supplemental licenses shall provide a surety bond in the amount of $25,000.

(b) A single dealer who buys, sells, or deals in mobile homes and who has more than four supplemental licenses shall provide a surety bond in the amount of $50,000.

(c) A single dealer who buys, sells, or deals in recreational vehicles and has four or less supplemental licenses shall provide a surety bond in the amount of $10,000.

(d) A single dealer who buys, sells, or deals in recreational vehicles and who has more than four supplemental licenses shall provide a surety bond in the amount of $20,000.

For the purposes of this subsection, any person who buys, sells, or deals in both mobile homes and recreational vehicles shall provide the same surety bond required of dealers who buy, sell, or deal only in mobile homes.

History.—s. 1, ch. 23665, 1947; s. 2, ch. 70-215; s. 1, ch. 70-439; s. 1, ch. 74-169; s. 2, ch. 75-203; s. 3, ch. 76-168; s. 32, ch. 77-357; s. 1, ch. 77-457; s. 20, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

320.822 Definitions.—In construing ss. 320.8225-320.864, unless the context otherwise requires, the following words or phrases have the following meaning:

(1) "Mobile home manufacturer" means any person, resident or nonresident, who, as a trade or commerce, manufactures or assembles mobile homes or recreational vehicles or converts van type vehicles in such manner that they then qualify as a recreational vehicle, for sale in Florida.

(2) "Mobile home dealer" means any person engaged in the business of buying, selling, or dealing in mobile homes or recreational vehicles or offering or displaying mobile homes or recreational vehicles for sale. Any person who buys, sells, or deals in three or more mobile homes or recreational vehicles in any 12-month period or who offers or displays for sale three or more mobile homes or recreational vehicles in any 12-month period shall be prima facie presumed to be engaged in the business of a mobile home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "mobile home dealer" does not include banks and finance companies that acquire mobile homes or recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes or recreational vehicles to mobile home dealers licensed under s. 320.77.

(3) "Code" means the appropriate standards found in:

(a) The Federal Mobile Home Construction and Safety Standards for single family mobile homes, promulgated by the Department of Housing and Urban Development;

(b) The Uniform Standards Code approved by the United States of America Standards Institute, ANSI A-119.1 for duplex mobile homes;

(c) The Uniform Standards Code approved by the United States of America Standards Institute, ANSI A-119.2 for recreational vehicles; or

(d) The Used Mobile Home or Recreational Vehicle Code.

(4) "Seal" or "label" means a device issued by the department certifying that a mobile home or recreational vehicle meets the appropriate code, which device is to be displayed on the exterior of the mobile home or recreational vehicle.

(5) "Construction" means the minimum requirements for materials, products, equipment, and workmanship needed to assure that the mobile home or recreational vehicle will provide structural strength and rigidity, protection against corrosion, decay, and other similar destructive forces, resistance to the elements, and durability and economy of maintenance.

(6) "Buyer" means a person who purchases at retail from a dealer or manufacturer a mobile home or recreational vehicle for his own use as a residence, or other related use.

(7) "Setup" means the operations performed at the occupancy site which render a mobile home fit for habitation. Such operations include, but are not limited to, transporting, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units.

(8) "Supplier" means the original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air-conditioners, heating units, and similar components,

which are furnished to a manufacturer or dealer for installation in the mobile home or recreational vehicle prior to sale to a buyer.

(9) "Substantial defect" means:

(a) Any substantial deficiency or defect in materials or workmanship occurring to a mobile home or recreational vehicle which has been reasonably maintained and cared for in normal use.

(b) Any structural element, utility system, or component of the mobile home or recreational vehicle, which fails to comply with the code.

(10) "Licensee" means any person licensed or required to be licensed under s. 320.8225.

(11) "Institute" means the United States of America Standards Institute.

(12) "Responsible party" means a manufacturer, dealer, or supplier.

(13) "Length," for purposes of transportation only, means the distance from the extreme front of the mobile home to the extreme rear, including the drawbar and coupling mechanism, but not including expandable features that do not project from the body during transportation.

(14) "Length of a mobile home" means the distance from the exterior of the front wall (nearest to the drawbar and coupling mechanism) to the exterior of the rear wall (at the opposite end of the home) where such walls enclose living or other interior space and such distance includes expandable rooms but not bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments.

(15) "Width of a mobile home" means the distance from the exterior of one side wall to the exterior of the opposite side wall where such walls enclose living or other interior space and such distance includes expandable rooms but not bay windows, porches, wall and roof extensions, or other attachments.

History.—s. 3, ch. 67-350; ss. 24, 35, ch. 69-106; s. 96, ch. 71-377; s. 2, ch. 74-169; s. 3, ch. 75-203; s. 1, ch. 76-195; s. 1, ch. 77-174; s. 33, ch. 77-357; s. 2, ch. 78-221.

cf.—s. 320.01 Mobile home defined.

320.8225 Mobile home and recreational vehicle manufacturer's license.—

(1) LICENSE REQUIRED.—Any person who engages in the business of a mobile home or recreational vehicle manufacturer in this state, or who manufactures mobile homes or recreational vehicles out-of-state which are ultimately offered for sale in this state, shall obtain annually a license for each factory location in this state and for each factory location out of state which manufactures mobile homes or recreational vehicles for sale in this state, prior to distributing mobile homes or recreational vehicles for sale in this state.

(2) APPLICATION.—The application for a license shall be in the form prescribed by the department and shall contain sufficient information to disclose the identity, location, and responsibility of the applicant. The application shall also include a copy of the warranty and a complete statement of any service agreement or policy to be utilized by the applicant, any information relating to the applicant's solvency and financial standing, and any other pertinent matter commensurate with safeguarding the public. The department may prescribe an abbreviated application for renewal of a license if the licensee had previously filed an initial application pursuant to this section. The application for renewal shall include any information necessary to bring current the information required in the initial application.

(3) FEE.—The applicant or licensee, upon applying for or renewing a license under this section, shall submit a nonrefundable fee of $100. All fees shall be deposited in the General Revenue Fund.

(4) NONRESIDENT.—Any person applying for a license who is not a resident of this state shall have designated an agent for service of process pursuant to s. 48.181.

(5) REQUIREMENT OF ASSURANCE.—

(a) Annually, prior to the receipt of a license to manufacture mobile homes, the applicant or licensee shall submit a surety bond, or evidence of an insurance program, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond or program of insurance shall be $2,000 per mobile home manufactured in the prior license year, up to a maximum of $50,000. When no mobile homes were produced in the prior year, the amount of bond or insurance program required shall be based on the estimated number of mobile homes to be produced during the current year. The surety bond or insurance program shall be to the department, in favor of any retail customer who shall suffer loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department shall have the right to disapprove any bond or insurance program which does not provide assurance as provided in this section. The department is authorized to promulgate rules and regulations pursuant to chapter 120 consistent with this section in providing assurance of satisfaction of claims.

(b) Annually, prior to the receipt of a license to manufacture recreational vehicles, the applicant or licensee shall submit a surety bond, or evidence of an insurance program, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond or program of insurance shall be $10,000 per year. The surety bond or insurance program shall be to the department, in favor of any retail customer who shall suffer loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department shall have the right to disapprove any bond or insurance program which does not provide assurance as provided in this section. The department is authorized to promulgate rules and regulations pursuant to chapter 120 consistent with this section in providing assurance of satisfaction of claims.

(6) LICENSE YEAR.—A license issued to a mobile home manufacturer entitles the licensee to conduct the business of a mobile home manufacturer for a period of 1 year from October 1 preceding the date of issuance.

(7) DENIAL OF LICENSE.—The department may deny a mobile home manufacturer's license on the ground that:

(a) The applicant has made a material misstatement in his application for a license.

(b) The applicant has failed to comply with any applicable provision of this chapter.

(c) The applicant has failed to provide warranty service.

(d) The applicant or one or more of his principals or agents has violated any law, rule, or regulation relating to the manufacture or sale of mobile homes or recreational vehicles.

(e) The department has proof of unfitness of the applicant.

(f) The applicant or licensee has engaged in previous conduct in any state which would have been a ground for revocation or suspension of a license in this state.

Upon denial of a license, the department shall notify the applicant within 10 days, stating in writing its grounds for denial. The applicant is entitled to a public hearing and may request that such hearing be held within 45 days of denial of the license. All proceedings shall be pursuant to chapter 120.

(8) REVOCATION OR SUSPENSION OF LICENSE.—The department may revoke or suspend any license for a violation of this chapter or any other law of this state regarding the manufacturing, warranty, or sale of mobile homes or recreational vehicles. When any license has been revoked or suspended by the department, it may be reinstated if the department finds that the former licensee has complied with all applicable requirements of this chapter and an application for a license is refiled pursuant to this section.

History.—s. 3, ch. 74-169; s. 4. ch. 75-203; s. 34, ch. 77-357; s. 20, ch. 78-95.

cf.—s. 320.861 Inspection of books, etc., of licensee.
s. 320.862 Revocation of license held by firms or corporations.

320.823 Establishment of uniform mobile home standards.—Each single-family mobile home manufactured in this state or manufactured outside this state but sold or offered for sale in this state shall meet the Federal Mobile Home Construction and Safety Standards, promulgated by the Department of Housing and Urban Development. Each duplex mobile home manufactured in this state or manufactured outside this state but sold or offered for sale in this state shall meet the Uniform Standards Code ANSI book A-119.1 approved by the institute. Such standards shall include, but not be limited to, standards for body and frame construction and the installation of plumbing, heating, and electrical systems.

History.—s. 4, ch. 67-350; s. 5, ch. 75-203; s. 35, ch. 77-357.

320.8231 Establishment of uniform standards for recreational vehicle-type units.—Each recreational vehicle-type unit, as defined in paragraph 320.01(1)(b), manufactured in this state or manufactured outside this state but sold or offered for sale in this state shall meet the Uniform Standards Code ANSI book A-119.2, approved by the American National Standards Institute. Such standards shall include, but not be limited to, standards for the installation of plumbing, heating, electrical systems, and fire and life safety in recreational vehicle-type units.

History.—s. 6, ch. 75-203; s. 35, ch. 77-357.

320.8232 Establishment of uniform standards for used mobile homes or recreational vehicles.—Each used mobile home or recreational vehicle manufactured after January 1, 1968, and sold or offered for sale in this state by a mobile home dealer or manufacturer shall meet the standards of the Used Mobile Home or Recreational Vehicle Code. The provisions of said code shall insure safe and livable housing and shall not be more stringent than those standards required to be met in the manufacture of mobile homes and recreational vehicles. Such provisions shall include, but not be limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety.

History.—s. 36, ch. 77-357.

320.824 Rules and regulations, changes and modifications of standards.—

(1) The department may make such rules and regulations as it shall deem necessary or proper for the effective administration and enforcement of ss. 320.822-320.864 and may adopt and promulgate any changes in, or additions to, the standards adopted in s. 320.823 or s. 320.8231, which are approved and officially published by the institute or promulgated by the Department of Housing and Urban Development subsequent to the effective date of this act.

(2) The department or its authorized agent may enter any place or establishment where mobile homes or recreational vehicles are manufactured, sold, or offered for sale, for the purpose of ascertaining whether the requirements of the code and the regulations adopted by the department have been met.

History.—s. 5, ch. 67-350; ss. 24, 35, ch. 69-106; s. 37, ch. 77-357; s. 67, ch. 79-164.

320.8245 Limitation of alteration or modification to mobile homes or recreational vehicles.—

(1) LIMITATION OF ALTERATIONS OR MODIFICATIONS.—No alteration or modification shall be made to a mobile home or recreational vehicle by a licensed dealer after shipment from the manufacturer's plant unless such alteration or modification is authorized in this section.

(2) EFFECT ON MOBILE HOME WARRANTY.—Unless an alteration or modification is performed by a qualified person as defined in subsection (4), the warranty responsibility of the manufacturer as to the altered or modified item shall be void.

(a) An alteration or modification performed by a mobile home or recreational vehicle dealer or his agent or employee shall place warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills, or is required to fulfill, the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his costs and attorneys' fees from the dealer.

(b) An alteration or modification performed by a mobile home or recreational vehicle owner or his agent shall render the manufacturer's warranty as to that item void. A statement shall be displayed

clearly and conspicuously on the face of the warranty that the warranty is void as to the altered or modified item if the alteration or modification is performed by other than a qualified person. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(3) AUTHORITY OF THE DEPARTMENT.—The department is authorized to promulgate rules and regulations pursuant to chapter 120 which define the alterations or modifications which must be made by qualified personnel. The department may regulate only those alterations and modifications which substantially impair the structural integrity or safety of the mobile home.

(4) DESIGNATION AS A QUALIFIED PERSON.—

(a) In order to be designated as a person qualified to alter or modify a mobile home or recreational vehicle, a person must comply with local or county licensing or competency requirements in skills relevant to performing alterations or modifications on mobile homes or recreational vehicles.

(b) When no local or county licensing or competency requirements exist, the department may certify persons to perform mobile home alterations or modifications. The department shall by rule or regulation determine what skills and competency requirements are requisite to the issuance of a certification. A fee sufficient to cover the costs of issuing certifications may be charged by the department. The certification shall be valid for a period which terminates when the county or other local governmental unit enacts relevant competency or licensing requirements. The certification shall be valid only in counties or localities without licensing or competency requirements.

(c) The department shall determine which counties and localities have licensing or competency requirements adequate to eliminate the requirement of certification. This determination shall be based on a review of the relevant county or local standards for adequacy in regulating persons who perform alterations or modifications to mobile homes. The department shall find local or county standards adequate when minimal licensing or competency standards are provided.

History.—s. 4, ch. 74-169; s. 38, ch. 77-357.

320.8255 Mobile home and recreational vehicle inspection.—

(1) In order to insure the highest degree of quality control in the construction of mobile homes and recreational vehicles, each new or used mobile home or recreational vehicle sold in the state shall be inspected by the department pursuant to procedures developed by the department which assure compliance with code provisions. The department may make reasonable rules and regulations pursuant to chapter 120 for the implementation and enforcement of this inspection.

(2) Department inspectors shall make unannounced visits to manufacturing plants or take any other appropriate action which assures compliance with the code.

(3) The department shall determine a fee for the seal authorized under s. 320.827 which is sufficient to cover the cost of inspection and administration under this section. Fees collected for the seals shall be deposited in the General Revenue Fund.

(4) In order to carry out the inspection requirements of this section, there is appropriated from the General Revenue Fund $1,807,856 for the purpose of providing one department employee for every 750 seals issued by the department in 1973.

History.—s. 5, ch. 74-169; s. 39, ch. 77-357.

320.827 Seal or label; procedures for issuance; certification; requirements.—No dealer shall sell or offer for sale in this state any new mobile home or recreational vehicle, or used mobile home or recreational vehicle, manufactured after January 1, 1968, unless the mobile home or recreational vehicle bears a seal or label and the certification by the manufacturer, or by the dealer in the case of a used mobile home or recreational vehicle, that the mobile home or recreational vehicle to which the seal is attached meets or exceeds the appropriate code. Seals or labels may be issued by the department when applied for with an affidavit certifying that the dealer or manufacturer applying will not attach a seal or label to any new or used mobile home or recreational vehicle that does not meet or exceed the appropriate code. No mobile home or recreational vehicle may be manufactured in this state unless it bears a seal or label and certification that the mobile home or recreational vehicle meets or exceeds the code. The seal or label for each mobile home or recreational vehicle shall be displayed in a manner to be prescribed by the department.

History.—s. 8, ch. 67-350; s. 7, ch. 75-203; s. 40, ch. 77-357.

320.8285 Onsite inspection.—

(1) On or before January 1, 1975, each county in this state shall prepare and adopt a plan providing for an onsite inspection of each new mobile home located within such county. The onsite inspection shall insure compliance with state and local building codes, ordinances, and regulations regarding such functions as blocking and leveling, tie-downs, utility connections, conversions of appliances, and external improvements on the mobile home. If a mobile home is manufactured in conformity with the code, as established in s. 320.823, a county may not require modification of the mobile home in order to comply with local tie-down regulations.

(2) When a county has not prepared and adopted a plan providing for onsite inspection by January 1, 1975, the department shall prepare a minimum onsite inspection plan for such county. The department may promulgate reasonable rules and regulations pursuant to chapter 120 in preparing and enforcing such a minimum onsite inspection plan.

(3) Each county may designate the persons who are to perform the onsite inspection. If a county does not so designate, the department shall designate the persons who are to perform the onsite inspection. No person shall be designated to perform onsite inspections unless such person is competent in the areas of mobile home blocking and leveling, tie-downs, utility connections, conversions of appliances, and external improvements. Pursuant to the onsite inspection, each mobile home shall be issued a certificate of occupancy if the mobile home complies with state and local building codes, ordinances, and regulations

regarding such functions as blocking and leveling, tie-downs, utility connections, conversion of appliances, and external improvements to the mobile home.

(4) Fees for onsite inspections and certificates of occupancy of mobile homes shall be reasonable for the services performed. A guideline for fee schedules shall be issued by the department.

(5) The Department of Highway Safety and Motor Vehicles shall enforce every provision of this section and the regulations adopted pursuant thereto, except that local land use and zoning requirements, fire zones, building set back and side and rear yard requirements, site development and property line requirements, subdivision control, and onsite installation requirements, as well as review and regulation of architectural and aesthetic requirements, are hereby specifically and entirely reserved to local jurisdictions. Such local requirements and regulations and others must be reasonable, uniformly applied, and enforced without distinctions as to whether such housing is manufactured, located in a mobile home park or a mobile home subdivision, or built in a conventional manner.

History.—s. 6, ch. 74-169; s. 10, ch. 75-203; s. 1, ch. 77-174.

320.830 Reciprocity.—If any other state has codes for mobile homes or recreational vehicles at least equal to those established by this chapter, the department, upon determining that such standards are being enforced by an independent inspection agency, shall place the other state on a reciprocity list, which list shall be available to any interested person. Any mobile home or recreational vehicle which bears a seal of any state which has been placed on the reciprocity list may not be required to bear the seal of this state. A mobile home or recreational vehicle which does not bear the seal herein provided shall not be permitted to be manufactured or offered for sale by a manufacturer or dealer anywhere within the geographical limits of this state unless the mobile home or recreational vehicle is designated for delivery into another state which has not adopted a code entitling such state to be placed on the reciprocity list.

History.—s. 11, ch. 67-350; ss. 24, 35, ch. 69-106; s. 8, ch. 74-169; s. 8, ch. 75-203.

320.831 Penalties.—Any manufacturer, dealer, or inspector who violates or fails to comply with any of the provisions of ss. 320.822-320.864 or any of the rules and regulations promulgated by the department shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or if applicable, penalized as provided in Title VI of the National Mobile Home Construction Safety Standard Act.

History.—s. 12, ch. 67-350; ss. 24, 35, ch. 69-106; s. 1, ch. 74-99; s. 41, ch. 77-357; s. 5, ch. 78-221.

[1]**320.832 Legislative intent.**—Nothing herein shall act to nullify or supersede the provisions of chapter 527.

History.—s. 13, ch. 67-350; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

320.8325 Mobile home tie-down requirements; minimum installation standards; injunctions, penalty.—

(1) The owner of a mobile home shall secure the mobile home to the ground by the use of anchors and tie-downs so as to resist wind overturning and sliding. However, nothing herein shall be construed as requiring that anchors and tie-downs be installed to secure mobile homes which are permanently attached to a permanent structure. A permanent structure shall have a foundation and such other structural elements as are required pursuant to rules and regulations promulgated by the department which assure the rigidity and stability of the mobile home.

(a) A mobile home manufactured in accordance with the code standards and labeled "hurricane and windstorm resistive" shall be anchored to each anchor point provided on the mobile home. A mobile home not meeting these standards must be anchored with anchor points spaced as required by the department starting at each end of the mobile home.

(b) In addition, each mobile home shall be tied down by one of the following means:

1. A mobile home having built-in, over-the-roof ties shall be secured by the tie-down points, provided such built-in ties and points meet the standards promulgated by the department.

2. A mobile home not having built-in, over-the-roof ties and tie-down points meeting department standards shall be secured in accordance with standards promulgated by the department.

(2) The department shall promulgate rules and regulations setting forth minimum standards for the manufacture or installation of anchors, tie-downs, over-the-roof ties, or other reliable methods of securing mobile homes when over-the-roof ties are not suitable due to factors such as unreasonable cost, design of the mobile home, or potential damage to the mobile home. Such devices as required under this section, when properly installed, shall cause the mobile home to resist wind overturning and sliding. In promulgating such rules and regulations the department may make such discriminations regarding mobile home tie-down requirements as are reasonable when factors such as age, location, and practicality of tying down a mobile home are considered.

(3)(a) Persons licensed in this state to engage in the business of insuring mobile homes that are subject to the provisions of this section against damage from windstorm shall issue such insurance only if the mobile home has been anchored and tied down in accordance with the provisions of this section.

(b) In the event that a mobile home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicates that the mobile home was not anchored or tied down in the manner required by this section, the person issuing the policy shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the mobile home was not properly anchored or tied down.

(4) Whenever a person who engages in the business of installing anchors, tie-downs, or over-the-roof

ties or who engages in the business of manufacturing such devices for use in this state does so in a manner not in accordance with the minimum standards set forth by the department, a person aggrieved thereby may bring an action in the appropriate court for actual damages. In addition, the court may provide appropriate equitable relief including the enjoining of a violator from engaging in the business or from engaging in further violations. Whenever it is established to the satisfaction of the court that a willful violation has occurred, the court shall award punitive damages to the aggrieved party. The losing party may be liable for court costs and reasonable attorney's fees incurred by the prevailing party.

(5) In addition to other penalties provided in this section, the department or the state attorneys and their assistants are authorized to apply to the circuit courts within their respective jurisdictions, and such courts shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person engaging in the business of manufacturing anchors, tie-downs, or over-the-roof ties from manufacturing such devices in a manner not in accordance with the minimum standards set forth by the department or any person in the business of installing anchors, tie-downs, or over-the-roof ties from utilizing devices that do not meet the minimum standards set forth by the department or from installing such devices in a manner not in accordance with the minimum standards set forth by the department, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

(6) This section shall only apply to mobile homes that are being used as dwelling places and that are located on a particular location for a period of time exceeding 14 days.

(7) For the purposes of this section, the definitions set forth in s. 320.822 apply.

History.—s. 6, ch. 73-182; s. 2, ch. 74-9.

320.833 Retention, destruction, and reproduction of records.—Records and documents of the Department of Highway Safety and Motor Vehicles, created in compliance with, and in the implementation of, chapters 319 and 320, shall be retained by the department as specified in record retention schedules established under the general provisions of chapter 119. Further, the department is hereby authorized:

(1) To destroy, or otherwise dispose of, those records and documents, in conformity with the approved retention schedules.

(2) To photograph, microphotograph, or reproduce on film, as authorized and directed by the approved retention schedules, whereby each page will be exposed in exact conformity with the original records and documents retained in compliance with the provisions of this section. Photographs or microphotographs in the form of film or print of any records, made in compliance with the provisions of this section, shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—s. 5, ch. 65-190; ss. 24, 35, ch. 69-106; s. 1, ch. 77-443.
Note.—Former s. 318.051.

320.8335 Disclosure of manner used in determining length of mobile homes.—When the length of the coupling mechanism is included in the overall length of a mobile home, any person who engages in the trade or commerce of selling mobile homes must disclose in writing to the buyer, before the buyer signs a contract for sale, that the length of the coupling mechanism has been included in the length of the mobile home. Any advertisement or other communication which describes a mobile home in terms of its length or width shall conform to the requirements of this section.

History.—s. 1, ch. 75-27; s. 3, ch. 78-221.

320.834 Purpose.—It is the legislature's intent to improve the general welfare and safety of mobile home residents in this state. The legislature finds that mobile homes have become a primary housing resource of many of the citizens of the state; that a growing awareness exists of problems in the quality of mobile homes which diminish their safety and value as housing units; that existing warranties offered by the mobile home industry to buyers are inadequate and do not provide a viable means of remedying quality and safety defects in mobile homes; and that it is the responsibility of the mobile home industry to provide mobile homes which are of reasonable quality and safety. Consistent with these findings, the legislature deems it necessary to further public interests of safety and welfare that the mobile home industry be responsible for mobile homes and that it assures the safety and quality of mobile homes. The legislature finds that the most efficient and economical way to assure quality and responsibility is to require all segments of the mobile home industry to warrant the quality of mobile homes.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169.

320.835 Mobile home and recreational vehicle warranties.—Each manufacturer, dealer, and supplier of mobile homes or recreational vehicles shall warrant each new mobile home or recreational vehicle sold in this state and the setup of each such mobile home, in accordance with the warranty requirements prescribed by this section, for a period of at least 12 months, measured from the date of delivery of the mobile home to the buyer or the date of sale of the recreational vehicle. The warranty requirements of each manufacturer, dealer, and supplier of mobile homes or recreational vehicles are as follows:

(1) The manufacturer warrants:

(a) For a mobile home or recreational vehicle, that all structural elements; plumbing systems; heating, cooling, and fuel-burning systems; electrical systems; fire prevention systems; and any other components or conditions included by the manufacturer are free from substantial defect.

(b) That 100 amp electrical service exists in the mobile home.

(2) The dealer warrants:

(a) That any modifications or alterations made to the mobile home or recreational vehicle by the dealer or authorized by the dealer shall be free from substantial defect. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility only as to the item altered or modified.

(b) That setup operations performed on the mobile home are performed in compliance with s. 320.8325.

(c) That substantial defects do not occur to the mobile home during setup or by transporting it to the occupancy site.

When the setup of a mobile home is performed by a person who is not an employee or agent of the mobile home manufacturer or dealer and is not compensated or authorized by, or connected with, such manufacturer or dealer, then the warranty responsibility of the manufacturer or dealer as to setup shall be limited to transporting the mobile home to the occupancy site free from substantial defect.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of mobile homes and recreational vehicles. When no warranty is extended by suppliers, the manufacturer shall assume warranty responsibility for that component.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169; s. 42, ch. 77-357.

320.836 Presenting warranty claim.—The claim in writing, stating the substance of the warranty defect, may be presented to the manufacturer, dealer, or supplier. When the person notified is not the responsible party he shall inform the claimant and shall notify the responsible party of the warranty claim immediately.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169.

320.837 Warranty service.—

(1) When a service agreement exists between manufacturers, dealers, and suppliers to provide warranty service, the agreement may specify which party is to remedy warranty defects. However, when a warranty defect is not properly remedied, the responsible party as determined pursuant to s. 320.835 shall be responsible for providing warranty service.

(2) When no service agreement exists for warranty service, the responsible party as designated by s. 320.835 is responsible for remedying the warranty defect.

(3) The defect shall be remedied within 30 days of receipt of the written notification of the warranty claim unless the claim is unreasonable or bona fide reasons exist for not remedying the defect. When sufficient reasons exist for not remedying the defect or the claim is unreasonable, the responsible party shall respond to the claimant in writing with its reasons for not promptly remedying the defect and what further action is contemplated by the responsible party.

(4) When the person remedying the defect is not the responsible party as designated by s. 320.835 he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this section.

(5) Warranty service shall be performed at the site at which the mobile home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169; s. 1, ch. 77-174.

320.838 Civil action.—Notwithstanding the existence of other remedies, a buyer may bring a civil suit for damages against a responsible party who fails to satisfactorily resolve a warranty claim. Damages shall be the actual costs of remedying the defect. Court costs and reasonable attorney fees may be awarded to the prevailing party. When the court finds that failure to honor warranty claims is a consistent pattern of conduct of the responsible party, or that the defect is so severe as to significantly impair the safety of the mobile home, it may assess punitive damages against the responsible party.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169; s. 1, ch. 77-174.

320.839 Cumulative remedies.—The warranty provided for in this act shall be in addition to, and not in derogation of, any other rights and privileges which the buyer may have under any other law or instrument. The manufacturer, dealer or supplier shall not require the buyer to waive his rights under this act or any other rights under law. Any such waiver shall be deemed contrary to public policy and unenforceable and void.

History.—s. 16, ch. 74-68; s. 9, ch. 74-169.

320.840 Liquidated damages.—The retail seller of a mobile home may, in the absence of an express provision in the sales contract stipulating reasonable liquidated damages or retention of down payment or deposit if the buyer fails to accept delivery of a mobile home, retain maximum damages according to the following terms:

(1) If the mobile home is in the seller's stock and not specially ordered from the manufacturer for the buyer, the maximum retention shall be $50.

(2) If the mobile home is a single-wide and specially ordered from the manufacturer for the buyer, the maximum retention shall be $350.

(3) If the mobile home is larger than a single-wide and specially ordered for the buyer from the manufacturer, the maximum retention shall be $700.

History.—s. 10, ch. 74-169.

[1]320.861 Inspection of books, etc., of licensee.—

(1) The department may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to it against such licensee.

(2) In the exercise of its duties under this section, the department is granted and authorized to exercise the power of subpoena for the attendance of witnesses and the production of any documentary evidence necessary to the disposition by it of any written complaint under this section. Information obtained may not be used against the licensee as the

basis for a criminal prosecution under the laws of this state.

History.—s. 12, ch. 74-68; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 320.8225 Mobile home manufacturer's license.

[1]**320.862 Revocation of license held by firms or corporations.**—If any applicant or licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of an act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent if the licensee approved of, or had knowledge of, the acts or other similar acts and, after such approval or knowledge, retained the benefits, proceeds, profits, or advantages accruing from, or otherwise ratified, the acts.

History.—s. 13, ch. 74-68; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 320.8225 Mobile home manufacturer's license.

[1]**320.864 Advisory council.**—The department shall appoint an advisory council consisting of not more than seven members. The council shall be composed as follows:

(1) Two manufacturers licensed under ss. 320.822-320.864;

(2) Two mobile home or recreational vehicle dealers licensed under s. 320.77; and

(3) Two members of the public, who shall represent the consumers of this state.

The director of the Division of Motor Vehicles shall be chairman of the council. The council, upon request of the department, shall advise and assist the department in the administration of ss. 320.822-320.864. The members of the council shall receive no compensation for their services, except that per diem and travel expenses may be paid upon authorization of the department pursuant to s. 112.061.

History.—s. 15, ch. 74-68; s. 3, ch. 76-168; s. 43, ch. 77-357; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 321

HIGHWAY PATROL

321.001 Governor to cooperate with federal and state agencies to effectuate purposes of National Safety Act of 1966.—The Governor is hereby empowered to contract and to do all things necessary in behalf of the state to obtain the full benefits of the Federal Highway Safety Act of 1966, and in so doing, to cooperate with federal and state agencies, public and private agencies, interested organizations and individuals to effectuate the purposes of that act, and any and all subsequent amendments thereto. The Governor shall have the ultimate state responsibility for dealing with the Federal Government in respect to programs and activities initiated pursuant to the National Highway Safety Act of 1966 and any amendments thereto. To that end, he shall coordinate the activities of any and all departments, agencies and subdivisions of the state relating thereto.

History.—s. 1, ch. 67-121.

321.02 Powers and duties of department, highway patrol.—The director of the Division of Highway Patrol of the Department of Highway Safety and Motor Vehicles shall also be the commander of the Florida Highway Patrol. The said department shall set up and promulgate rules and regulations by which the personnel of the Florida Highway Patrol officers shall be examined, employed, trained, located, suspended, reduced in rank, discharged, recruited, paid and pensioned, subject to civil service provisions hereafter set out. The department is further specifically authorized to purchase, sell, trade, rent, lease and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, office space, and perform any other acts necessary for the proper administration and enforcement of this chapter. Provided, however, that all supplies and equipment consisting of single items or in lots, shall be purchased under the requirements of s. 287.062. Purchases shall be made by accepting the bid of the lowest responsible bidder; the right being reserved to reject all bids. The department shall prescribe a distinctive uniform and distinctive emblem to be worn by all officers of the Florida Highway Patrol. It shall be unlawful for any other person or persons to wear a similar uniform or emblem, or any part or parts thereof. The department shall also prescribe a distinctive color or colors for all motor vehicles and motorcycles to be used by the Florida Highway Patrol.

History.—s. 3, ch. 19551, 1939; CGL 1940 Supp. 4151(617); s. 3, ch. 20451, 1941; s. 1, ch. 29756, 1955; s. 1, ch. 57-754; ss. 24, 35, ch. 69-106.
cf.—s. 340.23 Traffic control FHP charged with enforcement.

321.03 Imitations prohibited; penalty.—It shall be unlawful for any person or persons in the state to color or cause to be colored any motor vehicle or motorcycle the same or similar color as the color or colors so prescribed for the Florida Highway Patrol. Any person violating any of the provisions of this section or s. 321.02 with respect to uniforms, emblems, motor vehicles and motorcycles shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Highway Safety and Motor Vehicles shall employ such clerical help and mechanics as may be necessary for the economical and efficient operation of such department.

History.—s. 3, ch. 19551, 1939; CGL 1940 Supp. 4151(617); s. 3, ch. 20451, 1941; ss. 24, 35, ch. 69-106; s. 206, ch. 71-136.

321.04 Personnel of the Highway Patrol; rank classifications; probationary status of new patrol officers; subsistence; special assignments.—

(1) The Department of Highway Safety and Mo-

tor Vehicles shall employ patrol officers, as authorized by the Legislature in appropriating funds for their salaries exclusive of those members of the patrol who are assigned to and paid by special departments; and shall establish the necessary supervisory ranks within the Florida Highway Patrol to efficiently supervise and carry out the designated functions of the patrol and the department in accordance with the regulations established by the Department of Administration.

(2) Each person who is employed as a patrol officer shall be carried on a probationary status for the period of 1 year from date of employment, during which period he may be dismissed without recourse. Patrol officers when sent on special detail or missions out of their regular assigned territories or headquarters shall be reimbursed for traveling expenses as provided in s. 112.061.

(3) The Department of Highway Safety and Motor Vehicles shall assign one patrolman to the office of the Governor; said patrolman so assigned shall be selected by the Governor and shall have rank and pay not less than that of a lieutenant of the Florida Highway Patrol, and said patrolman so assigned shall be paid by said department from the appropriation made to said department; said patrolman shall have and receive all other benefits provided for in this chapter or any other statute now in existence or hereinafter enacted.

(4) No patrol officer of the Florida Highway Patrol shall serve beyond the age of 62, any provision of the laws of this state to the contrary notwithstanding.

History.—s. 4, ch. 19551, 1939; CGL 1940 Supp. 4151(618); s. 4, ch. 20451, 1941; s. 1, ch. 24151, 1947; s. 2, ch. 26800, 1951; s. 2, ch. 28125, 1953; s. 1, ch. 29816, 1955; s. 1, ch. 31393, 1956; s. 1, ch. 57-286; s. 1, ch. 59-114; s. 1, ch. 61-253; s. 1, ch. 63-169; s. 19, ch. 63-400; s. 1, ch. 67-44; s. 1, ch. 67-183; ss. 1-3, ch. 69-194; s. 25, ch. 69-353; ss. 24, 31, 35, ch. 69-106; s. 1, ch. 72-33.

321.05 Duties, functions, and powers of patrol officers.—The members of the Florida Highway Patrol are hereby declared to be conservators of the peace and law enforcement officers of the state, with the common law right to arrest a person who, in the presence of the arresting officer, commits a felony or commits an affray or breach of the peace constituting a misdemeanor, with full power to bear arms and they shall apprehend, without warrant, any person in the unlawful commission of any of the acts over which the members of the Florida Highway Patrol are given jurisdiction as hereinafter set out and deliver him to the sheriff of the county that further proceedings may be had against him according to law. In the performance of any of the powers, duties and functions authorized by law, members of the Florida Highway Patrol shall have the same protections and immunities afforded other peace officers which shall be recognized by all courts having jurisdiction over offenses against the laws of this state, and shall have authority to apply for, serve, and execute search warrants, arrest warrants, capias and other process of the court in those matters in which patrol officers have primary responsibility as set forth in subsection (1) below. The patrol officers under the direction and supervision of the Department of Highway Safety and Motor Vehicles shall perform and exercise throughout the state the following duties, functions and powers:

(1) To patrol the state highways and regulate, control and direct the movement of traffic thereon; to maintain the public peace by preventing violence on highways; to apprehend fugitives from justice; to enforce all laws now in effect regulating and governing traffic, travel, and public safety upon the public highways and providing for the protection of the public highways and public property thereon; to make arrests without warrant for the violation of any state law committed in their presence in accordance with the laws of this state; providing that no search shall be made unless it is incident to a lawful arrest, to regulate and direct traffic concentrations and congestions; to enforce laws governing the operation, licensing and taxing, and limiting the size, weight, width, length and speed of vehicles and licensing and controlling the operations of drivers and operators of vehicles; to cooperate with officials designated by law to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose; to require the drivers of vehicles to stop and exhibit their driver's licenses, registration cards or documents required by law to be carried by such vehicles; to investigate traffic accidents, secure testimony of witnesses and of persons involved and make report thereof with copy, when requested in writing, to any person in interest or his or her attorney; to investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.

(2) To assist other constituted law enforcement officers of the state to quell mobs and riots, guard prisoners and police disaster areas.

(3)(a) To make arrests while in fresh pursuit of a person believed to have violated the traffic and other laws;

(b) To make arrest of a person wanted for a felony or against whom a warrant has been issued on any charge in violation of federal, state or county laws or municipal ordinances.

(4)(a) All fines and costs and the proceeds of the forfeiture of bail bonds and recognizances resulting from the enforcement of this chapter by patrol officers shall be paid into the fine and forfeiture fund of the county where the offense is committed. In all cases of arrest by patrol officers the person arrested shall be delivered forthwith by said officer to the sheriff of the county or he shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested, and all fees accruing shall be taxed against the party arrested, which fees are hereby declared to be part of the compensation of said sheriffs authorized to be fixed by the Legislature under s. 5(c), Art. II of the State Constitution, to be paid such sheriffs in the same manner as fees are paid for like services in other criminal cases. All patrol officers are hereby directed to deliver all bonds accepted and approved by them to the sheriff of the county in which the offense is alleged to have been committed. However, no sheriff shall be paid any arrest fee for the arrest of a person for violation of any section of chapter 316 when the arresting officer was transported in a Florida Highway Patrol car to the vicini-

ty where the arrest was made; and no sheriff shall be paid any fee for mileage for himself or a prisoner for miles traveled in a Florida Highway Patrol car. No patrol officer shall be entitled to any fee or mileage cost except when responding to a subpoena in a civil cause or except when such patrol officer is appearing as an official witness to testify at any hearing or law action in any court of this state as a direct result of his employment as a patrol officer during time not compensated as a part of his normal duties. Nothing herein shall be construed as limiting the power to locate and to take from any person under arrest or about to be arrested deadly weapons. Nothing contained in this section shall be construed as a limitation upon existing powers and duties of sheriffs or police officers.

(b) Any person so arrested and released on his own recognizance by an officer and who shall fail to appear or respond to a notice to appear shall, in addition to the traffic violation charge, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The department may employ or assign some fit and suitable person with experience in the field of public relations who shall have the duty to promote, coordinate and to publicize the traffic safety activities in the state and assign such person to the office of the Governor at a salary to be fixed by the department. The person so assigned or employed shall be a member of the uniform division of the Florida Highway Patrol and he shall have the pay and rank of lieutenant while on such assignment.

History.—s. 5, ch. 19551, 1939; CGL 1940 Supp. 4151(619); s. 5, ch. 20451, 1941; ss. 1, 2½, ch. 23724, 1947; s. 1, ch. 26709, 1951; s. 1, ch. 28081, s. 1, ch. 28119, 1953; s. 1, ch. 29774, s. 1, ch. 29970, 1955; s. 1, ch. 67-143; ss. 24, 35, ch. 69-106; s. 1, ch. 69-155; s. 9, ch. 69-216; s. 207, ch. 71-136; s. 1, ch. 71-275.

cf.—s. 30.231 Sheriffs' fees.
s. 142.01 et seq. County fine and forfeiture fund.
s. 901.01 et seq. Arrests generally.
s. 903.02 et seq. Bail.

321.06 Civil service.—The Department of Highway Safety and Motor Vehicles is hereby empowered and directed to make civil service rules governing the employment and tenure of the members of the highway patrol. All persons employed as said patrol officers shall be subject to said civil service rules and regulations, and any amendment thereto which may thereafter from time to time be adopted. The department may, for cause, discharge, suspend or reduce in rank or pay, any member of said highway patrol by presenting to such employee the reason or reasons therefor in writing, subject to the civil service rules and regulations of the department, and subject to the review of the Governor and cabinet, as head of the department who shall serve as a court of inquiry in such cases and shall hear all complaints and defenses, if requested by such employee. Their decision shall be final and conclusive. Such civil service rules or regulations shall be subject to the revision of the Legislature in the event civil service rules adopted by the department are declared unlawful or unreasonable.

History.—s. 6, ch. 19551, 1939; CGL 1940 Supp. 4151(620); s. 6, ch. 20451, 1941; ss. 24, 35, ch. 69-106.

321.07 Compensation of employees and officers.—

(1) The Department of Highway Safety and Motor Vehicles is authorized to promulgate such rules and regulations as may be necessary to properly effectuate an orderly schedule of salaries and compensation for the employees and officers of the department.

(2) Any salary plan so adopted and approved by the department shall be in accordance with the available funds appropriated by the Legislature and may contain recognition for longevity of service, promotional advancement, special service details and such other steps as may be provided elsewhere in this chapter or deemed advisable by the department.

History.—s. 7, ch. 19551, 1939; CGL 1940 Supp. 4151(621); s. 7, ch. 20451, 1941; s. 1, ch. 22865, 1945; s. 2, ch. 24151, 1947; s. 3, ch. 26800, 1951; ss. 1, 2, ch. 29962, 1955; s. 1, ch. 31394, 1956; s. 1, ch. 57-285; s. 1, ch. 61-232; s. 1, ch. 63-361; s. 1, ch. 65-268; ss. 24, 35, ch. 69-106; s. 1, ch. 72-142; s. 2, ch. 79-335.

321.071 Special service officers.—

(1) The Department of Highway Safety and Motor Vehicles is authorized to assign patrol officers as special service officers to:

(a) Supervise driver's license examining personnel, and

(b) Perform duties of the safety education section of the department.

(2) Said special service officers shall, while on such assignments only, be entitled to the rank and pay of sergeant in the Florida Highway Patrol. There shall at no time be more than 20 of such assignments for the purpose of supervising driver's licensing personnel. There shall at no time be more than 20 of such assignments to the safety education section.

(3) The department may designate certain officers as flight officers to perform actual flight duties as authorized pilots of the aircraft of the department.

(4) Said flight officers shall be entitled, in addition to their maximum salary as permitted under this chapter, to additional compensation in the amount of $35 each month while on such assignment.

History.—s. 2, ch. 57-285; s. 2, ch. 59-114; s. 1, ch. 61-283; ss. 24, 35, ch. 69-106.

321.08 Bonds required of certain employees and officers.—

(1) The following officers and employees of said department shall give bond with good and sufficient surety in the following amounts, the form of which shall together with the sufficiency of the surety be approved by the Department of Banking and Finance, conditioned for the faithful performance of their respective duties and for the proper accounting and prompt payment over to the department, or the person lawfully entitled thereto, of any and all moneys received by them in the performance of their duties. Such bonds shall further be conditioned to save the department or any person harmless from any and all damage, claims or liability which may occur as a result of any act of such officer or employee done in the scope of his employment or under color of his authority or office:

(a) Director, Division of Florida Highway Patrol $25,000

(b) Deputy Director, Division of Florida Highway Patrol 25,000

(c) Major 10,000

(d) Captains 5,000
(e) Lieutenants 3,000
(f) All sergeants 2,000
(g) Corporals and patrolmen 1,000

(2) The bond premiums required under the provisions of this chapter shall be paid out of the funds of the department.

(3) In lieu of individual bonds, the department is authorized, with the approval of the Department of Banking and Finance, to purchase a schedule position bond to cover all employees specified in subsection (1).

History.—s. 8, ch. 19551, 1939; CGL 1940 Supp. 4151(622); s. 8, ch. 20451, 1941; s. 3, ch. 24151, 1947; ss. 12, 35, ch. 69-106; s. 97, ch. 77-104; s. 1, ch. 78-144.
cf.—s. 113.07 Bonds of officials.

321.09 Salaries and expenses to be paid from General Revenue Fund.—The salaries and expenses of said Florida Highway Patrol shall be paid from the General Revenue Fund, and the necessary and regular expenses incident to carrying out the provisions of this chapter shall be appropriated from said fund, and the same shall be disbursed from the State Treasury in the manner and according to the same provisions of law as similar funds in the State Treasury are disbursed and expended.

History.—s. 9, ch. 19551, 1939; CGL 1940 Supp. 4151(623); s. 9, ch. 20451, 1941; s. 50, ch. 26869, 1951.

321.11 Political activities prohibited.—No member or officer of the patrol shall perform any police duty connected with the conduct of any election, nor shall any member or officer of the patrol at any time or in any manner electioneer for or against any party ticket, or any candidate for nomination or officer on any party ticket, or for or against any proposition of any kind or nature to be voted upon at any election. Any member or officer of said patrol who shall violate the preceding provision shall be immediately discharged.

History.—s. 12, ch. 19551, 1939; CGL 1940 Supp. 4151(625); s. 12, ch. 20451, 1941.

321.12 Penalties.—

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter, or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 51, ch. 19551, 1939; CGL 1940 Supp. 8135(56); s. 51, ch. 20451, 1941; s. 208, ch. 71-136.

321.13 Certain laws exempted.—Nothing herein contained shall be construed to repeal chapter 18396, Laws of Florida, 1937, being an act creating the offices of chief traffic officer and deputy traffic officers in counties having population of more than 100,000 by the last preceding state and federal census.

History.—s. 11, ch. 19551, 1939; CGL 1940 Supp. 4151(626); s. 11, ch. 20451, 1941.

321.14 Construction.—This chapter shall be liberally construed to the end that the greatest force and effect may be given to its provisions for the promotion of public safety.

History.—s. 53, ch. 19551, 1939; CGL 1940 Supp. 4157(662); s. 54, ch. 20451, 1941.

321.15 Highway patrol; pensions and pension trust fund.—There is hereby created and established a continuing fund to be known as the "Highway Patrol Pension Trust Fund." Such fund shall be made up from contributions from members (employees) of the Department of Highway Safety and Motor Vehicles who have subscribed to the constitutional oath of office, and from a yearly sum to be paid into such fund from the appropriation of the department in such an amount as shall be sufficient to carry out the provisions of this law. Such state funds shall not be less than the yearly contribution paid by all members.

History.—s. 1, ch. 22863, 1945; s. 4, ch. 26800, 1951; s. 2, ch. 61-119; ss. 24, 35, ch. 69-106.

321.17 Contributions; leaving patrol; leave of absence; transferees.—

(1) Every member of the Department of Highway Safety and Motor Vehicles who has subscribed to the constitutional oath of office shall come under the provisions of this law and, beginning July 1, 1965, shall contribute every month 7 percent of his monthly salary, to be deducted by the State Comptroller and paid into the State Treasury to the credit of the Highway Patrol Pension Trust Fund. A member who ceases to be an employee after completing 10 or more years of service may elect to leave his contributions on deposit and be eligible to receive retirement benefits upon attaining normal retirement age.

(2) Such members as are eligible for service credit as set forth under s. 321.19(1) may pay to the State Treasurer to the credit of the Highway Patrol Pension Trust Fund, the sum of $5 for each month of such service credit. Satisfactory proof of former service must be furnished the Division of Retirement of the Department of Administration in the form of a sworn, written statement from member's former employer or other reliable person, or other documents of proof as may be required by them. Such money as becomes due by reason of this clause shall be paid by said employee in equal monthly payments over a period not to exceed 60 months after October 1, 1945. Employees who fail to take advantage of the benefits offered under s. 321.19(1) within 90 days after October 1, 1945, shall forfeit such service credits forever. New members who may hereafter enter the service of division of the Florida Highway Patrol who fail to take advantage of the benefits offered under s. 321.19(1) within 90 days after time of employment shall forfeit such service credits forever.

(3) Should a member cease to be an employee of the Department of Highway Safety and Motor Vehicles because of death or by any other reason before attaining retirement or before becoming eligible for benefits for other reasons, the Comptroller shall pay to him or a designated beneficiary all of the contributions made by him standing to his credit in the Highway Patrol Pension Trust Fund. Such request for refund shall be made by written requisition signed

by the executive director of the department. Any member may file in writing a designation of beneficiary. The member shall, at any time, have the privilege of changing the designated beneficiary provided such change shall be in writing. If no such written designation has been made or if the designated beneficiary predeceases the member, the beneficiary shall be the estate of the member.

(4) Members who have served in the nation's armed services and return to service with the Florida Highway Patrol shall be given full service credit for such time provided a contribution is made for a period not to exceed 5 years into the Highway Patrol Pension Trust Fund in an amount equal to that which would have been contributed had such member remained in the service of the patrol.

(5) Any Florida highway patrolman who prior to becoming a Florida highway patrolman was a member of the high hazard section of the State and County Retirement System as a law enforcement officer, and who is not receiving retirement benefits under said fund, may become a member of the highway patrol retirement plan. If such patrolman has not received a refund from the State and County Retirement System, the amount he has paid into said fund, exclusive of amounts paid for social security coverage, plus the amount the state has paid into said fund to match the employee's payments shall be transferred from the State and County Retirement System to the Highway Patrol Pension Trust Fund. If such person has received a refund from the State and County Retirement System, he shall, within 2 years from the time of becoming a member of the Florida Highway Patrol, pay an amount equal to the amount refunded into the Florida Highway Patrol Pension Trust Fund. In either event, the Highway Patrol Pension Trust Fund shall give credit for time accrued and other benefits equivalent to the amount transferred or paid in.

History.—s. 3, ch. 22863, 1945; s. 6, ch. 26800, 1951; s. 2, ch. 28121, 1953; s. 2, ch. 61-119; s. 2, ch. 65-550; ss. 24, 31, 35, ch. 69-106; s. 1, ch. 69-120; s. 3, ch. 69-128; s. 1, ch. 69-1753; s. 2, ch. 71-181; s. 1, ch. 73-326; s. 93, ch. 73-333.

321.18 Age for retirement.—

(1) Every member of the Department of Highway Safety and Motor Vehicles who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has served 20 years, or has served both 10 years and attained age 60 years; and every member of said department who has subscribed, on or after July 1, 1953, but before July 1, 1963, to the constitutional oath of office and who has served both 20 years and has attained age 55; and every member of said department who has subscribed, on or after July 1, 1963, to the constitutional oath of office whose highest rank at any time during employment is first sergeant or higher who has served both 10 years and has attained age 60; and every member of said department who has subscribed, on or after July 1, 1963, to the constitutional oath of office whose highest rank at any time during employment is trooper, corporal or sergeant who has served both 10 years and has attained age 55; and every member of said department who has subscribed, at any time, to the constitutional oath of office who has been totally or partially disabled in line of duty, shall be entitled to be retired and to receive a pension as hereinafter provided. Every member who has reached the age of 65 shall, at the discretion of the Governor and cabinet, as head of the department, be required to retire.

(2) Such retirement shall be on order of the Governor and Cabinet, as head of the department, and upon request of the member to be retired, or at the discretion of the executive director. In the event the Governor and Cabinet or the executive director orders the retirement of any member eligible to retirement, and such member shall consider himself aggrieved by such order, the member so affected shall be entitled to a hearing pursuant to chapter 120. Any request for such hearing shall be in writing and filed with the Secretary of State within 30 days after receipt of such order of retirement. The Governor and Cabinet shall constitute the agency head for purposes of such hearing and shall issue a final order either continuing or revoking the order of retirement.

History.—s. 4, ch. 22863, 1945; s. 7, ch. 26800, 1951; s. 3, ch. 28121, 1953; s. 1, ch. 65-550; ss. 24, 35, ch. 69-106; s. 20, ch. 78-95.

321.19 Computing length of service; definitions; examining committee.—

(1)(a) The computation of the length of service under this law shall include the total time spent with the Department of Public Safety since its creation in chapter 19551, Laws of Florida, 1939, and previous law enforcement service, not to exceed 10 years credit, for members employed by the department prior to January 1, 1945, and previous law enforcement service shall mean service in the state on a regular monthly or annual salary basis.

(b) Members employed on or after January 1, 1945, may claim credit for 50 percent of the total time served by the individual as a law enforcement officer prior to becoming a member of the highway patrol.

(c) Members, claiming credit under subsection (1)(a) shall, within 90 days of the effective date of this law, pay to the department pension fund the sum of $5 for each month of such previous law enforcement service credit claimed, and members employed after July 1, 1953, shall receive no credit for law enforcement service prior to becoming a member of the highway patrol.

(d) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the director of the Division of Retirement of the Department of Administration, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his death. Such service shall be added to the creditable service of the member and used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

(2) The term "total disability" shall be construed to mean the loss of eyesight, speech, right arm, both legs, or other injury, as a result of occupation while in the performance of duty, which shall totally disable such person for the performance of manual labor.

(3) The term "partial disability" shall be construed to mean the loss of hearing, nose, one eye, one leg, left arm, fingers on either hand, or any other member of the body which comes within the common law of mayhem, or any other injury which shall par-

tially disable such person for the performance of manual labor, as the result of occupation while in the performance of duty, which shall render such member temporarily incapable of performing his duties.

(4) The [1]director of the Division of Health of the Department of Health and Rehabilitative Services and two other reputable physicians, one to be appointed by the Department of Highway Safety and Motor Vehicles and one by the applicant, shall examine every applicant for a pension on the grounds of disability, and shall determine whether or not total or partial disability exists, and if partial, the extent thereof, and shall certify the results of their findings to the executive director of the department and to the Governor and cabinet, as head of the department, which findings shall be binding upon the department.

(5) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his employment while a member of any state retirement system shall be subject to the following provisions:

(a) If the member receives no salary payments for the period of time he receives workers' compensation payments, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. No employee or employer contributions shall be required in order for the member to receive retirement credit for such period. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(b) If the member receives partial salary for the period of time he receives workers' compensation payments, the required employee contributions shall be deducted from his partial salary each pay period, and, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(c) If the member is retained in full-pay status in lieu of receiving workers' compensation payments, the required employee contributions shall be deducted from his salary each pay period, and he shall receive retirement credit for such period in the same manner he would have received credit had he not been injured or incapacitated.

History.—s. 5, ch. 22863, 1945; s. 8, ch. 26800, 1951; s. 1, ch. 28124, 1953; ss. 19, 24, 35, ch. 69-106; s. 5, ch. 72-334; s. 3, ch. 72-345; s. 6, ch. 72-347; s. 70, ch. 79-40.

[1]**Note.**—See s. 3, ch. 75-48, which abolished the Division of Health and assigned its functions to the Department of Health and Rehabilitative Services.

321.191 Nonservice-connected disability retirement.—

(1) A member who becomes totally and permanently disabled after completing 10 years of service shall be entitled to a disability benefit. The disability retirement date for such member shall be the first day of the month following the month during which the Division of Retirement of the Department of Administration approved payment of disability retirement benefits.

(2) A member shall be considered totally and permanently disabled if, in the opinion of the Division of Retirement, he is prevented by physical or mental impairment from engaging in any gainful activity for which he is, or may reasonably become, fitted by education, training, or experience. The decision of the division shall be final and binding.

(3) A member shall not be entitled to receive any disability retirement income if his disability is a result of any of the following:

(a) Excessive and habitual use by the member of drugs, intoxicating liquors, or narcotics;

(b) Injury or disease sustained by the member while willfully participating in acts of violence, riot, or civil insurrections, or while committing a felony or serious misdemeanor;

(c) Injury or disease sustained by the member while serving in any armed forces or as the result of warfare;

(d) Injury or disease sustained by the member after his employment has terminated;

(e) Injury or disease sustained by the member while working for anyone other than the employer and arising out of such other employment, or;

(f) Intentional, self-inflicted injury.

(4) The division, before approving payment of any disability retirement benefit, may require proof, in such form as it may decide, that the member is disabled as defined herein.

(5) Upon disability retirement, a member shall receive a monthly benefit which shall commence on his disability retirement date and be payable on the first day of each month thereafter during his lifetime and continued disability. The amount of each monthly retirement benefit shall be computed as prescribed by s. 321.20, but based on the average compensation and service as of the member's disability retirement date, subject to the following conditions:

(a) If the member's disability occurred in line of duty, his monthly benefit shall be in accordance with s. 321.20(2), with no period of completed service required.

(b) If the member's disability occurred other than in line of duty and he had completed 10 years of service as of the time of his disability, his monthly benefit shall not be less than 22½ percent of average monthly compensation.

(c) If the member's disability occurred other than in line of duty and he had not completed 10 years of service as of the date of disability, he shall be entitled to a return of his contributions without interest.

(6)(a) If the Division of Retirement finds that a member who is receiving disability benefits is, at any time prior to his normal retirement date, no longer disabled, it shall direct that the benefits be discontinued. The decision of the division on this question shall be final and binding.

(b) If the member described in paragraph (a) of this subsection does not reenter the employ of the Florida Highway Patrol and had not completed 10 years of service as of his disability retirement date, he shall be entitled to the excess, if any, of his own contributions, without interest, over the total disability benefits received up to his date of recovery.

(c) If the member described in paragraph (a) of

this subsection does not reenter the employ of the Florida Highway Patrol but has completed 10 or more years of service as of his disability retirement date, he may elect to receive:

1. The excess, if any, of his own contributions without interest over the total disability benefits received up to his date of recovery; or

2. A deferred benefit commencing on his normal retirement date which shall be payable on the first day of the month thereafter during his lifetime. The amount of each monthly benefit shall be computed in the same manner as for a normal retirement benefit, but based on average monthly compensation and service as of the member's disability retirement date.

(7) If the member recovers from disability and reenters the Florida Highway Patrol within 6 months after his recovery, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability benefit payment and ending with the date he reentered the patrol will not be considered as service for the purpose of computing benefits.

History.—s. 2, ch. 69-120; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

321.20 Retirement pay; basis.—

(1) Every member who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has been retired following 20 years of service shall receive an annual pension payable monthly, equal to 50 percent of the average annual salary for the last 5 years such member was in service; provided however, that such member may continue in service more than 20 years, and shall then receive an annual pension payable monthly, equal to 50 percent for 20 years of service plus 2 percent for each additional year of service based upon the average annual salary for the last 5 years such member was in service. Every member who has subscribed, on or after July 1, 1953, to the constitutional oath of office and who has been retired following the attainment of age 55 shall receive an annual pension payable monthly equal to 2 percent for each year of service based upon the average annual salary for the last 5 years such member was in service. Every member who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has been retired following the attainment of age 60 shall receive an annual pension payable monthly, equal to 25 percent of his average annual salary for the last 5 years such member was in service, plus 2½ percent of such average annual salary for each year of service in excess of 10 years. Provided however, that each such member to be eligible to receive a pension shall have accumulated a minimum of 10 years of service within the contemplation of this law. The average annual salary of any member who has subscribed on or after July 1, 1959, to the constitutional oath of office, shall be the average annual salary received by such member during the last 10 years such member was in service.

(2) Any member who has been retired because of total disability shall receive, in addition to the award made to him under the Workers' Compensation Law, an annual pension, payable monthly, of 45 percent of the annual salary of said member at the time of his disability or 45 percent of $6,000, whichever is greater, and he shall continue to receive the said pension payment so long as such total disability exists. Any member who has been retired because of partial disability shall receive, in addition to the award made to him under the Workers' Compensation Law, an annual pension, payable monthly, of 35 percent of the annual salary of said member at the time of his disability, and he shall continue to receive the said pension payment so long as such partial disability exists. The department may require such member to submit to a medical examination from time to time by a doctor selected by the department, and, if the examination discloses that such member is no longer disabled, such member may be ordered by the department to return to active duty with the same rank and salary that he had at the time of disability. Any such retired member who shall fail to return to duty following such order shall forfeit all rights and claims under this law.

(3) Every member who shall be entitled to retirement under the provisions of this law shall receive credit in computing his 20 years of service by taking into consideration his service in the Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard, (Federal Service) of the United States, provided said member of the Department of Highway Safety and Motor Vehicles was an employee of said department prior to entering the armed forces and received an honorable discharge from such forces and has become reemployed by the department since termination of active service with the armed forces.

(4) Every member shall have the right at any time prior to receipt of his first monthly pension payment to elect to receive a reduced pension with the provision that if such member dies after pension payments have commenced the excess, if any, of his total contributions made to the pension fund, without interest, over the total pension payments received by him shall be paid in accordance with the beneficiary designation of s. 321.17(3). The amount of such reduced pension shall be the actuarial equivalent of the amount of such pension otherwise payable to him in accordance with subsection (1).

(5) Every member shall have the right at any time prior to receipt of his first monthly pension payment to elect to receive a reduced pension during his lifetime with the provision that such reduced pension, (or one-half thereof if so designated) shall be continued after his death to his spouse during her lifetime. The amount of such reduced pension shall be the actuarial equivalent of the amount of such pension otherwise payable to the member in accordance with subsection (1).

History.—s. 6, ch. 22863, 1945; s. 9, ch. 26800, 1951; ss. 4, 5, ch. 28121, 1953; s. 1, ch. 59-307; ss. 24, 35, ch. 69-106; s. 1, ch. 71-181; s. 71, ch. 79-40.

321.201 Early retirement benefit.—Effective July 1, 1969, any member employed subsequent to July 1, 1953 may elect to retire on an early retirement date which shall be not more than 5 years prior to his normal retirement date. Such date shall be his early retirement date. Upon early retirement, the member shall receive an immediate monthly benefit which shall commence on his early retirement date and be payable on the first day of each month thereafter during his lifetime. The amount of each monthly payment shall be computed as prescribed by s.

321.20, but based on average compensation and service as of the member's early retirement date, and the benefits so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes his normal retirement date.

History.—s. 3, ch. 69-120.

321.202 Termination by death subsequent to normal retirement date but prior to actual retirement.—If the employment of a member is terminated by reason of his death subsequent to his normal retirement date but prior to his actual retirement, it shall be assumed that the member retired as of his date of death and that he had elected the optional form of payment most favorable to his legal spouse as determined by the Division of Retirement of the Department of Administration. The benefits so determined shall be payable monthly to the spouse until the death of the spouse.

History.—s. 3, ch. 69-120; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

321.21 Funeral expenses.—Whenever an active or retired member of the Department of Highway Safety and Motor Vehicles shall be killed, or dies, from injuries, disease, or illness, contracted by reason of his occupation as a member of the department, there shall be provided a sum not to exceed $500 from the Highway Patrol Pension Trust Fund for his funeral expenses. Such payment shall be in addition to return of contributions set forth in s. 321.17(3), and shall be in addition to pension payments set forth in s. 321.18.

History.—s. 7, ch. 22863, 1945; s. 10, ch. 26800, 1951; s. 6, ch. 28121, 1953; s. 2, ch. 61-119; ss. 24, 35, ch. 69-106.

321.22 Pensions exempt from process.—No pension under the provisions of this law, either before or after its order of distribution, shall be held, seized, taken, retained, or levied on by virtue of any legal process issued out of any court against the beneficiary, but the same shall be paid directly to the beneficiary thereof. The Highway Patrol Pension Trust Fund shall be expended only for the benefits as set forth in this law, and shall not be otherwise disposed. Should the name and/or duties of the Department of Public Safety be changed, and/or the name and/or duties of the Drivers' License Division of the State Department of Public Safety be changed, such change or changes shall in no way affect the validity of this law; such names shall be automatically substituted for the name or names now in effect, and such superseding agencies shall assume full responsibilities as provided by this law and continue benefits to eligible members. Necessary funds for the continuance of benefits to such members as may be eligible shall be provided, if necessary, from other revenue than heretofore set forth, which shall come from the State General Revenue Fund; the legislative intent being to establish a permanent fund for eligible members so long as it may be required.

History.—s. 8, ch. 22863, 1945; s. 11, ch. 26800, 1951; s. 2, ch. 61-119.

321.2205 Widows' benefit options.—Notwithstanding any other provision in this chapter to the contrary, the following provisions shall apply to any member who has accumulated at least 10 years of service and dies:

(1) If the deceased member's surviving spouse has previously received a refund of the member's contributions made to the Highway Patrol Pension Trust Fund, such spouse may pay to the Division of Retirement of the Department of Administration an amount equal to the sum of the amount of the deceased member's contributions previously refunded and interest at 3 percent compounded annually on the amount of such refunded contributions from the date of refund to the date of payment to the Division of Retirement, and receive the monthly retirement benefit provided in subsection (3).

(2) If the deceased member's surviving spouse has not received a refund of the deceased member's contribution, such spouse shall, upon application to the Division of Retirement, receive the monthly retirement benefit provided in subsection (3).

(3) The monthly benefit payable to the spouse described in subsection (1) or subsection (2) shall be the amount which would have been payable to the deceased member's spouse, assuming that the member had retired on the date of his death and had selected the option in s. 321.20 which would afford the surviving spouse the greatest amount of benefits, such benefit to be based on the ages of the spouse and member as of the date of death of the member. Such benefit shall commence on the first day of the month following the payment of the aforesaid amount to the Division of Retirement, if subsection (1) is applicable, or on the first day of the month following the receipt of the spouse's application by the Division of Retirement, if subsection (2) is applicable.

History.—s. 1, ch. 69-130; ss. 31, 35, ch. 69-106; s. 1, ch. 72-336; s. 3, ch. 72-345.

321.221 Pensions, wives of deceased patrolmen.—

(1) The widow of any highway patrolman heretofore or hereafter killed in the line of duty shall receive a monthly pension equal to one-half the monthly salary drawn by the deceased patrolman at the time of his death for the rest of her life, unless she remarries, in which case the pension shall terminate at the date of her remarriage. In the event of the remarriage of the widow of a patrolman killed in line of duty, who has legal children of the deceased patrolman under 18 years of age that have not been formally adopted by the present husband, any sums of money which would have accrued to the widow had she not remarried shall accrue to the children in the same manner as if the widow had died, as provided in subsection (2). These payments will cease as of the date of legal adoption of the children or upon their reaching the age of 18.

(2) In the event of the death of the widow, any sums of money which would have accrued to her had she lived until the 18th birthday of such patrolman's youngest child shall accrue, share and share alike, for the use and benefit of such patrolman's child or children under 18 years of age and unmarried during such minority. Such sums, as the same would have accrued to such widow, shall be paid to the legal guardian of the estate of such child or children, or either of them, during such minority to age 18 years.

(3) Any widow or children not now receiving a pension under this section shall be entitled to this

pension retroactive to January 1, 1954.

(4) In determining the amount of pension to be received under this section, the benefits received in the form of workers' compensation and/or social security shall be considered, and the total monthly compensation shall not exceed one-half of the salary received by the deceased patrolman at the time of his death. Should such total compensation exceed one-half of the monthly salary drawn by the deceased patrolman at the time of his death, the pension herein provided for shall be reduced by the amount of such excess.

(5) The payments of this pension shall be made from any unappropriated funds of the General Revenue Fund.

History.—ss. 1-4, ch. 29969, 1955; s. 1, ch. 57-348; s. 4, ch. 69-120; s. 72, ch. 79-40.

321.222 Provisions for modification.—Notwithstanding any provision contained herein to the contrary, the provisions relating to age for retirement under s. 321.18 shall be subject to amendment or modification by subsequent legislation at any time and all other provisions of this chapter relating to the administration of the system or to the duties, rights, privileges, requirements, and benefits of employees of the Department of Highway Safety and Motor Vehicles who become members of the Highway Patrol Pension System on or after July 1, 1963, shall be subject to amendment, modification, deletion, or substitution by act of the 1965 Legislature of the state and such legislation shall apply retroactively to July 1, 1963 with regard to such members; provided, however, that such legislation shall not set the age for retirement, as specified in s. 321.18, to exceed the age of 60 years, nor shall such legislation affect any benefit which becomes payable to, or with respect to, such members prior to July 1, 1965.

History.—s. 1, ch. 63-390; ss. 24, 35, ch. 69-106.

321.223 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of ss. 321.15 through 321.222 is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under ss. 321.15 through 321.222.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of ss. 321.15 through 321.222, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The provisions of this section are declaratory of the legislative intent upon the original enactment of ss. 321.15 through 321.222 and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108.

321.23 Photographing records; destruction of obsolete reports, etc.; effect as evidence.—

(1) The purpose of this section is to make available for the use of the Department of Highway Safety and Motor Vehicles sufficient floor space to enable it to efficiently administer the affairs of the department.

(2) The department is hereby authorized to destroy reports, records, documents, papers and correspondence which are considered obsolete.

(3) The department is authorized to photograph, microphotograph, or reproduce on film such documents, records, reports as it may select. The photographs or microphotographs in the form of film or print of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—ss. 1-3, ch. 26978, 1951; s. 1, ch. 63-371; ss. 24, 35, ch. 69-106.

321.24 Auxiliarymen to Florida Highway Patrol.—

(1) The director of the Florida Highway Patrol is hereby authorized to establish an auxiliary to the Florida Highway Patrol to be composed of such persons who may volunteer to serve as auxiliarymen to the Florida Highway Patrol. Such service to be without compensation to the individual so volunteering.

(2) Auxiliarymen serving with the Florida Highway Patrol shall at all times serve under the direction and supervision of the director and members of the Florida Highway Patrol. After approval by the director on an individual basis and after completion of a firearms course approved by the director, auxiliarymen, while serving under the supervision and direction of the director, or a member of the Florida Highway Patrol, shall have the power to bear arms. Auxiliarymen shall have the same protection and immunities afforded regularly employed highway patrolmen, which shall be recognized by all courts having jurisdiction over offenses against the laws of this state.

(3) The director of the Florida Highway Patrol shall determine the fitness of persons to serve as auxiliarymen, shall require their completion of a regularly prescribed course of study for auxiliarymen as established and conducted by the Florida Highway Patrol. The total number of members of the auxiliary to the Florida Highway Patrol shall be limited to five times the total number of regularly employed highway patrolmen authorized by law.

(4) No member of the auxiliary shall be required to serve on any duty of and for said auxiliary without his consent thereto. The duties of the auxiliary shall

be limited to assisting the Florida Highway Patrol in the performance of its regularly constituted duties. Nothing herein shall be construed to authorize any member of the auxiliary to make arrests.

History.—ss. 1-4, ch. 57-96; s. 1, ch. 71-15.

321.25 Training of local officers in patrol schools.—The Department of Highway Safety and Motor Vehicles is authorized to provide for the training of local law enforcement officials in matters relating to traffic in the schools established by the department for the training of highway patrol candidates and officers. This training may be offered to municipal police, sheriffs and deputy sheriffs, and county traffic officers. The cost of training such local enforcement officers shall be determined by the director and shall be paid for by their respective offices, counties or municipalities, as the case may be. Such cost shall be deemed a proper county or municipal expense or a proper expenditure of the office of sheriff.

History.—s. 1, ch. 57-292; ss. 24, 35, ch. 69-106.

CHAPTER 322

DRIVERS' LICENSES

322.01 Definitions.—The following words and phrases have the meanings respectively ascribed to them in this chapter:

(1) "Vehicle": Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting bicycles but including "mopeds" as defined in subsection 316.003(2), or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle": Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, excluding any bicycle

but including any "moped" as defined in subsection 316.003(2).

(3) "Farm tractor": Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(4) "School bus": Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(5) "Person": Every natural person, firm, copartnership, association or corporation.

(6) "Operator": Every person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(7) "Chauffeur": Any person who operates a motor truck or truck tractor with a gross weight in excess of 8,000 pounds or width in excess of 80 inches, except the registered owner or lessee of any motor truck or truck tractor shall be exempted when transporting his own products or personal property, and except persons operating an authorized emergency vehicle as defined in s. 316.003(1). Any person who operates any motor vehicle transporting passengers for hire, or operates a bus transporting school children shall be required to hold a chauffeur's license.

(8) "Owner": A person who holds the legal title of a vehicle or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(9) "Nonresident": Every person who is not a resident of this state.

(10) "Street or highway": The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(11) "Department": The Department of Highway Safety and Motor Vehicles.

(12) "Suspension," "revocation," and "cancellation":

(a) "Suspension" means that the licensee's privilege to drive a motor vehicle is temporarily withdrawn;

(b) "Revocation" means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted in this chapter;

(c) "Cancellation" means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(13) "Narcotic drugs": Coca leaves, opium, isonipecaine, cannabis, and every substance neither chemically nor physically distinguishable from them, and any and all derivatives of same, and any other drug to which the narcotics laws of the United States shall apply, and shall include all drugs and derivatives thereof known as barbiturates.

(14) "Certificate of eligibility": A statement issued by the Department of Highway Safety and Motor Vehicles declaring that an applicant for an original or renewal license is eligible for issuance of an operator's, chauffeur's, or restricted operator's license by reason that said applicant's or licensee's privilege is not under suspension, revocation, or cancellation by law of Florida or any other state or country.

(15) "Color photographic driver's license": A color photograph of a completed driver's license form meeting the requirements prescribed in s. 322.14.

(16) "Driver's license": A certificate authorizing an individual to operate a motor vehicle upon the streets and highways of this state, without which such operation would be a violation. "Driver's license" includes any license to drive which is issued by the department.

(17) "Resident": A person who has his principal place of domicile within the state for a period of more than 6 consecutive months, has registered to vote, has made a statement of domicile, or has filed for homestead tax exemption on property in this state.

History.—s. 13, ch. 19551, 1939; CGL 1940 Supp. 4151(627); s. 13, ch. 20451, 1941; s. 1, ch. 29721, 1955; s. 1, ch. 61-457; s. 1, ch. 63-156; s. 1, ch. 65-496; s. 1, ch. 67-242; s. 1, ch. 67-304; s. 1, ch. 67-346; ss. 24, 35, ch. 69-106; s. 99, ch. 71-377; s. 5, ch. 76-286; s. 5, ch. 78-353; s. 1, ch. 78-394.

322.02 Administration.—

(1) The Department of Highway Safety and Motor Vehicles is charged with the administration and function of enforcement of the provisions of this chapter.

(2) The department shall employ a director, who is charged with the duty of serving as the executive officer of the Division of Driver Licenses of the department insofar as the administration of this chapter is concerned. He shall be subject to the supervision and direction of the department, and his official actions and decisions as executive officer shall be conclusive unless the same are superseded or reversed by the department or by a court of competent jurisdiction.

(3) The department shall make and adopt rules and regulations for the orderly administration of this chapter.

History.—s. 14, ch. 19551, 1939; CGL 1940 Supp. 4151(628); s. 14, ch. 20451, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 63-34; ss. 24, 35, ch. 69-106; s. 2, ch. 78-394.

322.03 Operators and chauffeurs must be licensed.—

(1) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this chapter. No person shall receive an operator's license unless and until he surrenders to the department all valid operator's licenses in his possession issued to him by any other jurisdiction, except that no surrender is required upon a showing to the department that such license or licenses from other jurisdictions are necessary because of employment or part-time residence. All surrendered licenses shall be returned by the department to the issuing department together with information that licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid Florida driver's license at any time.

(2) No person shall drive a motor vehicle as a chauffeur unless he holds a chauffeur's license. The driver of any motor truck or truck-tractor with a gross weight in excess of 8,000 pounds or in excess of 80 inches in width shall be required to hold a chauffeur's license, except the registered owner or lessee of any motor truck or motor truck-tractor shall be exempted when transporting his own products or his own personal property, and except persons operating an authorized emergency vehicle as defined in s. 316.003(1).

(3) Any person who operates a motor vehicle transporting passengers for hire, or the driver of any bus transporting school children shall be required to hold a chauffeur's license, provided, however, that any temporary emergency movement of a motor vehicle shall not necessarily require a chauffeur's license as defined.

(4) No person shall receive a chauffeur's license unless and until he surrenders to the department any operator's or chauffeur's license issued to him by any other jurisdiction or an affidavit that he does not possess an operator's or chauffeur's license.

History.—s. 15, ch. 19551, 1939; CGL 1940 Supp. 4151(629); s. 15, ch. 20451, 1941; s. 2, ch. 29721, 1955; s. 2, ch. 61-457; s. 1, ch. 63-156; s. 2, ch. 65-496; s. 24, ch. 73-334; s. 3, ch. 78-394.

cf.—s. 322.32 Unlawful use of license.

322.031 Nonresident; when license required.—

(1) In every case in which a nonresident, except a nonresident migrant farm worker as defined in s. 316.003(62), accepts employment or engages in any trade, profession, or occupation in this state or enters his children to be educated in the public schools of this state, such nonresident shall, within 30 days after the commencement of such employment or education, be required to obtain a Florida driver's license if such nonresident operates a motor vehicle on the highways of this state. The spouse or dependent child of such nonresident shall also be required to obtain a Florida driver's license within that 30-day period prior to operating a motor vehicle on the highways of this state.

(2) A member of the United States Armed Forces on active duty in this state shall not be required to obtain a Florida driver's license under this section solely because he enters his children to be educated in the public schools of this state if he has a valid military driving permit or a valid driver's license issued by another state.

(3) A nonresident who is domiciled in another state and who commutes into this state in order to work shall not be required to obtain a Florida driver's license under this section solely because he has accepted employment or engages in any trade, profession, or occupation in this state if he has a valid driver's license issued by another state.

History.—s. 1, ch. 73-238; s. 6, ch. 75-228; s. 4, ch. 78-394; s. 1, ch. 79-117.

322.04 Persons exempt.—

(1) The following persons are exempt from obtaining a driver's license:

(a) Any employee of the United States Government, while operating a motor vehicle owned by or leased to the United States Government and being operated on official business.

(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(c) A nonresident who is at least 16 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this state only as an operator.

(d) A nonresident who is at least 18 years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur; except, any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state.

(2) The provisions of this section shall not apply to any person to whom s. 322.031 applies.

(3) Any person working for firms under contract to the United States Government, whose residence is without this state and whose main point of employment is without this state may drive a vehicle on the public roads of Florida for periods up to 60 days while in this state on temporary duty, provided that such person has a valid driver's license from the state of such person's residence.

History.—s. 16, ch. 19551, 1939; CGL 1940 Supp. 4151(630); s. 16, ch. 20451, 1941; s. 1, ch. 21949, 1943; s. 3, ch. 29721, 1955; s. 1, ch. 59-315; s. 1, ch. 61-124; s. 1, ch. 69-186; s. 5, ch. 78-394.

322.05 Persons not to be licensed.—The department shall not issue any license:

(1) To any person, as an operator, who is under the age of 16 years, except that the department may issue a restricted license as hereinafter provided to any person who is at least 15 years of age.

(2) To any person, as a chauffeur, who is under the age of 16 years. Persons between the ages of 16 years and 18 years who make application for a chauffeur's license shall be subject to all the requirements and provisions of s. 322.09. Any person who applies for a chauffeur's license between the ages of 16 and 18 years shall have had a restricted operator's license, a temporary instruction permit as required in s. 322.07, or an operator's license for at least 90 days prior to the time he shall be eligible to receive a chauffeur's license. The department may require of any applicant for a chauffeur's license such examination of the qualifications of the applicant as the department shall deem proper, and the department may limit the use of any license granted as it may deem proper.

(3) To any person, as operator or chauffeur, whose license has been suspended, during such suspension, nor to any person whose license has been revoked, until the expiration of the period of revocation imposed under the provisions of this chapter.

(4) To any person, as an operator or chauffeur, who is an habitual drunkard, or is an habitual user of narcotic drugs, or is an habitual user of any other drug to a degree which renders him incapable of safely driving a motor vehicle.

(5) To any person, as an operator or chauffeur, who has been adjudged to be afflicted with, or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(6) To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

(7) To any person, when the department has good cause to believe that the operation of a motor vehicle on the highways by such person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued an operator's license.

History.—s. 17, ch. 19551, 1939; CGL 1940 Supp. 4151(631); s. 17, ch. 20451, 1941; s. 2, ch. 21949, 1943; s. 4, ch. 29721, 1955; s. 1, ch. 67-174; ss. 24, 35, ch. 69-106; s. 6, ch. 78-394.

322.051 Identification cards for persons not licensed.—

(1) Any person 12 years of age or older who does not have a valid Florida driver's license may be issued an identification card by the department upon completion of an application and payment of an application fee. The application shall include the full name (first, middle or maiden, and last), sex, race, residence address, proof of birth as provided in s. 232.03, and other data the department may require. Applications for identification cards shall be signed and verified by the applicant before a person authorized to administer oaths. The fee for an identification card shall be $3, including payment for the color photograph of the applicant.

(2) Every identification card shall expire, unless canceled earlier, on the fourth birthday of the applicant following the date of original issue. Renewal of any identification card shall be made for a term which shall expire on the fourth birthday of the applicant following expiration of the identification card renewed, unless surrendered earlier. Any application for renewal received later than 90 days after expiration of the identification card shall be considered the same as an application for an original identification card. The renewal fee for an identification card shall be $3. The department shall, at the end of 4 years and 6 months after the issuance or renewal of an identification card, destroy any record of the card if it has expired and has not been renewed.

(3) In the event an identification card issued under this section is lost, destroyed, or mutilated or a new name is acquired, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of such fact to the department and upon payment of a fee of $2.50 for such duplicate, which shall include payment for the color photograph of the applicant. Any person who loses an identification card and who, after obtaining a duplicate, finds the original card shall immediately surrender the original card to the department. The same documentary evidence shall be furnished for a duplicate as for an original identification card.

(4) Upon the issuance of a Florida driver's license, any identification card issued hereunder shall be surrendered by the licensee to the department. There shall be no refund of any fees paid for the issuance of such identification card.

(5) When used with reference to identification cards, "cancellation" means that an identification card is terminated without prejudice and must be surrendered. Cancellation of the card may be made when a card has been issued through error or when voluntarily surrendered to the department.

(6) No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this section.

(7) It is unlawful for any person:

(a) To display, cause or permit to be displayed, or have in his possession any fictitious, fraudulently altered, or fraudulently obtained identification card.

(b) To lend his identification card to any other person or knowingly permit the use thereof by another.

(c) To display or represent any identification card not issued to him as being his card.

(d) To permit any unlawful use of an identification card issued to him.

(e) To do any act forbidden, or fail to perform any act required, by this section.

(f) To photograph, photostat, duplicate, or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card, or to display or have in his possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this section.

History.—s. 1, ch. 73-236; s. 1, ch. 77-14; s. 1, ch. 78-105; ss. 7, 27, ch. 78-394.

322.07 Instruction permits and temporary licenses.—

(1) Any person who, except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain an operator's license under this chapter, may apply for a temporary instruction permit, and the department shall issue such permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of 90 days, but, except when operating a motorcycle, such person must be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

(2) The department may, in its discretion, issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

History.—s. 19, ch. 19551, 1939; CGL 1940 Supp. 4151(633); s. 19, ch. 20451, 1941.

322.08 Application for license or instruction permit.—

(1) Each application for an instruction permit, a restricted operator's license, or a chauffeur's license shall be made upon a form to be furnished by the department and sworn to or affirmed by the applicant as to the truth of the statements made in the application.

(2) Each such application shall reflect the full name (first, middle or maiden, and last), proof of birth date, as provided in s. 232.03, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has previously been licensed as an operator or chauf-

feur, and if so, when and by what state, and whether any such license or driving privilege has ever been revoked or suspended, or whether an application has ever been refused, and if so, the date of and reason for such suspension, revocation, or refusal.

History.—s. 20, ch. 19551, 1939; CGL 1940 Supp. 4151(634); s. 20, ch. 20451, 1941; s. 1, ch. 71-74; s. 8, ch. 78-394.

322.09 Application of minors.—

(1)(a) The application of any person under the age of 18 years for an instruction permit or driver's license shall be signed and verified before a person authorized to administer oaths by the father, mother, or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor. This section shall not apply to a person under the age of 18 years who is emancipated by marriage.

(b) There shall be submitted with each application a certified copy of the birth certificate of the applicant. If the applicant is unable to furnish such certified copy, a certificate from the public school authorities as to the age of the applicant upon entering school as required by s. 232.03, or the school authorities of the state where applicant enrolled in school, shall be submitted. Upon inability of applicant to establish a birth date as above provided, then the same may be established in the order of preference as provided by s. 232.03. However, uncertified copies of such documents shall not be accepted.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct.

History.—s. 21, ch. 19551, 1939; CGL 1940 Supp. 4151(635); s. 21, ch. 20451, 1941; s. 1, ch. 29671, 1955; s. 1, ch. 77-373; s. 9, ch. 78-394.

322.10 Release from liability.—Any person who has signed the application of a minor for a driver's license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon, the department shall cancel the license of that minor, and the person who signed the application of such minor shall be relieved from liability imposed under this chapter by reason of having signed that minor's application for any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History.—s. 22, ch. 19551, 1939; CGL 1940 Supp. 4151(636); s. 22, ch. 20451, 1941; s. 10, ch. 78-394.

322.11 Revocation of license upon death of person signing minor's application.—The department, upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license, shall cancel such license and shall not issue a new license until such time as the new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

History.—s. 23, ch. 19551, 1939; CGL 1940 Supp. 4151(637); s. 23, ch. 20451, 1941.

322.12 Examination of applicants.—

(1) The department shall examine every applicant for a restricted operator's, operator's or chauffeur's license, except as otherwise provided in this chapter. Every applicant shall be required to pay a fee of $3 for each such examination; provided, however, that any person required to submit to an examination following the suspension or revocation of his driver's license shall be required to pay a fee of $15 following a suspension and $35 following a revocation for such additional examination. All such examination fees shall be collected by the department at the time of said examination. The department shall issue proper receipts for said examination fees and shall promptly transmit all funds received by it to the State Treasurer for deposit in the General Revenue Fund.

(2) Such examination shall be held in the county where the applicant resides. It shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, and his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

History.—s. 24, ch. 19551, 1939; CGL 1940 Supp. 4151(638); s. 24, ch. 20451, 1941; s. 2, ch. 61-232; s. 1, ch. 67-197; s. 3, ch. 75-113; s. 11, ch. 78-394.

322.121 Periodic reexamination of all drivers.—

(1) Each licensee shall pass a reexamination at the time he applies for renewal. The reexamination shall include a test of the licensee's eyesight, hearing, and ability to read and understand highway signs regulating, warning, and directing traffic.

(2) The fee for reexamination is $3. All reexamination fees shall be collected by the department at the time of reexamination. The department shall issue proper receipts for reexamination fees and promptly transmit all funds received by it to the State Treasurer for deposit in the General Revenue Fund.

(3) The department is authorized, upon recommendation of the Department of Administration, to employ additional examiners as it deems necessary.

(4) The provisions of this section shall not apply to members of the armed forces, or their dependents residing with them, while serving on active duty outside of the State of Florida.

History.—s. 1, ch. 67-464; ss. 2, 3, ch. 67-371; ss. 24, 31, 35, ch. 69-106; s. 1, ch. 75-228; s. 12, ch. 78-394.

[1]322.125 Medical Advisory Board.—

(1) There shall be a Medical Advisory Board composed of not fewer than 12 or more than 18 members, whose medical and other specialties relate to driving abilities, which number shall include a medical doctor who is employed by the Department of Health and Rehabilitative Services in Tallahassee, who shall serve as administrative officer for the committee. The Executive Director of the Department of Highway Safety and Motor Vehicles shall recommend persons to serve as board members. All but two

of the members shall be selected from a list of qualified physicians submitted by the Florida Medical Association. One of the remaining two members shall be employed by the Department of Health and Rehabilitative Services in Tallahassee, and one member shall be selected from a list submitted by the Florida Optometric Association. Members shall be approved by the Cabinet and shall serve 4-year staggered terms. The board membership shall, to the maximum extent possible, consist of equal representation of the disciplines of the medical community treating the mental or physical disabilities that could affect the safe operation of motor vehicles.

(2) Upon request, the board shall advise the department on medical criteria and vision standards relating to the licensing of drivers and shall report to the department on the individual physical and mental qualifications of a licensed driver or applicant.

(3) Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the board or the department and may not be divulged to any person except the licensed driver or applicant or used as evidence in any trial, except that the reports may be admitted in proceedings under s. 322.271 or s. 322.31. Any person conducting an examination pursuant to this section may be compelled to testify concerning his observations and findings in such proceedings.

(4) Members of the board and other persons making examinations shall not be held liable for their opinions and recommendations.

History.—s. 1, ch. 75-289; s. 1, ch. 77-174; s. 4, ch. 78-323; ss. 1, 2, ch. 79-64.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 2 of ch. 79-64 provides that if this section "is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this act shall also be repealed on the same date as is therein provided."

322.126 Report of disability to department; content; use.—

(1) For the purpose of the reports authorized by this section, the Department of Highway Safety and Motor Vehicles, assisted by the Medical Advisory Board, shall define mental or physical disabilities affecting the ability of a person to safely operate a motor vehicle.

(2) Any physician, person, or agency having knowledge of any licensed driver's or applicant's mental or physical disability to drive is authorized to report such knowledge to the Department of Highway Safety and Motor Vehicles. The report should be made in writing giving the full name, date of birth, and address of any person over 15 years of age having mental or physical disorders that could affect his driving ability.

(3) The reports authorized by this section shall be confidential and shall be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle on the highways of this state. No civil or criminal action may be brought against any physician, person, or agency who provides the information required herein.

(4) No report forwarded under the provisions of this section shall be used as evidence in any civil or criminal trial or in any court proceeding.

History.—s. 2, ch. 75-289; s. 1, ch. 77-174.

322.13 Driver's license examiners.—

(1) The department shall designate persons to serve as driver's license examiners who, upon accepting such designation, shall conduct examinations hereunder, perform other assigned duties, and make factual reports of findings and recommendations to the department as it may require. In the course of his duties, an examiner is authorized to administer oaths or have persons affirm as to the truth of statements filed before him.

(2) The department shall further designate persons to serve as driver's license examiners to enforce all driver's license laws; suspension, revocation, and cancellation orders; and laws relating to the registration of motor vehicles entered in compliance with the provisions of this chapter and chapters 320, 324, and 488. Upon designation, certain examiners shall be empowered to issue uniform traffic citations to persons found in violation of such chapters. Any person who fails or refuses to surrender his driver's license, registration certificate, and license plate upon lawful demand of an examiner is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Persons designated as examiners by the department shall not be considered for membership in the state high risk retirement program.

History.—s. 25, ch. 19551, 1939; CGL 1940 Supp. 4151(639); s. 25, ch. 20451, 1941; s. 1, ch. 57-767; s. 13, ch. 78-394.

322.14 Licenses issued to operators and chauffeurs.—The department shall, upon payment of the required fee, issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee and the full name, date of birth, residence address, and brief description of the licensee. A space shall be provided upon which the licensee shall affix his usual signature. No license shall be valid until it has been so signed by the licensee except that the signature of said licensee shall not be required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

History.—s. 26, ch. 19551, 1939; CGL 1940 Supp. 4151(640); s. 26, ch. 20451, 1941; s. 1, ch. 29735, 1955; s. 14, ch. 78-394.

322.141 Color of licenses issued to minors.—All licenses issued by the department to persons under the age of eighteen years for the operation of motor vehicles shall have markings or color, including photographic backdrop, which shall be an obviously separate and distinct color backdrop from all other licenses issued by the department for the operation of motor vehicles.

History.—s. 1, ch. 65-344; ss. 24, 35, ch. 69-106; s. 1, ch. 73-237.

322.142 Color photographic licenses.—

(1) The department shall, upon receipt of the required fee, issue to each qualified applicant for an original driver's license a color photographic driver's license bearing a fullface photograph of the licensee. A space shall be provided upon which the licensee shall affix his usual signature, as required in s.

322.14, in the presence of an authorized agent of the department so as to insure that such signature becomes a part of the license.

(2) The department shall, upon receipt of the required fee, issue to each qualified licensee applying for a renewal license in accordance with s. 322.18 a color photographic license as provided for in subsection (1).

(3) A fee of 50 cents will be charged in addition to the fees required in ss. 322.21 and 233.063 to cover the additional cost of the color photographic license.

(4) The department may conduct negotiations and enter into contracts with qualified firms possessing the requisite qualifications for the development and production of photographic identification documents to assure efficient and economical processing of such licenses in sufficient quantity and of acceptable quality to meet the requirements and intent of this section, and to insure adequate service at a sufficient number of convenient locations in each county, at the lowest competitive bid price. The terms of such contract may provide for return of the original copy of each application, a photographic duplicate thereof or the original negative.

(5) The department shall maintain a film negative or print file. Prints from the file shall be made and issued only for departmental administrative purposes, for the issuance of duplicate licenses, or in response to law enforcement agency requests approved by the department. Each request from a law enforcement agency shall be submitted in writing by the head of the agency or his designated representative. It shall contain a brief explanation of the case and a statement that the case involves an active felony investigation and that a photograph of the licensee is not otherwise available.

History.—s. 2, ch. 67-346; ss. 1, 2, ch. 72-279; s. 15, ch. 78-394.

322.15 License to be carried and exhibited on demand.—

(1) Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a patrol officer, peace officer, or field deputy or inspector of the department.

(2) No person charged with violating this section shall be convicted if, prior to or at the time of his court or hearing appearance, he produces in court or to the clerk of the court in which the charge is pending a driver's license theretofore issued to him and valid at the time of his arrest. The clerk of the court is authorized to dismiss such cases at any time prior to the defendant's appearance in court.

History.—s. 27, ch. 19551, 1939; CGL 1940 Supp. 4151(641); s. 27, ch. 20451, 1941; s. 1, ch. 69-89; s. 24, ch. 73-334; s. 2, ch. 78-48.

322.16 Restricted licenses.—

(1)(a) The department, upon issuing an operator's or chauffeur's license, shall have authority whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type or special mechanical control devices required on a motor vehicle which the licensee may operate, or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may further impose other suitable restrictions on use of the license with respect to time and purpose of use or impose any other condition or restriction deemed necessary towards driver improvement, safety or control of operators and chauffeurs of motor vehicles in this state.

(c) The department may further, at any time, impose other restrictions on the use of the license with respect to time and purpose of use or impose any other condition or restriction upon recommendation of any court, the Florida Parole and Probation Commission, or the Department of Corrections with respect to any individual under their jurisdiction, supervision or control on probation or parole.

(2) The department may issue a special restricted license or may set forth such restrictions upon the usual license form, or the department may issue a restrictive license to operate a motor-driven cycle as defined; provided that:

(a) In no instance shall a restricted license be issued to a minor under 16 years of age, except on condition that such minor when operating a motor vehicle, other than a motorcycle, motor scooter, or motorbike, shall be accompanied at all times by a licensed operator or chauffeur who is not less than 18 years of age and who is actually occupying the front seat beside such minor;

(b) During the last 60 days before the licensee's 16th birthday, the restricted license holder may, subject to the above conditions, operate a motor vehicle after dark; and

(c) A restricted licensee under 16 years of age shall not be permitted to rent a motorcycle, motor scooter, motor bike, or other motor-driven vehicle the operation of which does not require that such minor be accompanied by a licensed operator or chauffeur under this section.

(3) The department may, upon receiving satisfactory evidence of any violation of the restriction of such license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(4) It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

History.—s. 28, ch. 19551, 1939; CGL 1940 Supp. 4151(642), 8135(58); s. 28, ch. 20451, 1941; s. 1, ch. 29683, 1955; s. 1, ch. 57-757; s. 1, ch. 59-432; s. 2, ch. 67-174; s. 1, ch. 67-265; s. 1, ch. 69-81; s. 209, ch. 71-136; s. 1, ch. 71-144; s. 5, ch. 77-120; s. 14, ch. 77-121; s. 16, ch. 78-394; s. 10, ch. 79-3.

322.17 Duplicate and replacement certificates.—

(1) In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may, upon payment of $2.50, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed, and further furnishing the full name, date of birth, proof of birth as provided in s. 232.03, sex, and residence address to the department.

(2) Upon the surrender of the original license and the payment of a $1 replacement fee, the depart-

ment shall issue a replacement license to make a change in name, address, or restrictions.

History.—s. 29, ch. 19551, 1939; CGL 1940 Supp. 4151(643); s. 29, ch. 20451, 1941; s. 1, ch. 71-73; s. 2, ch. 75-228; s. 1, ch. 77-174.

322.18 Original applications, licenses and renewals; expiration of licenses; delinquent licenses.—

(1) An original operator's, restricted operator's or chauffeur's license may be issued only after the applicant successfully passes the required driver's license examination and presents the application to the department.

(2) Each applicant who is entitled to the issuance of a driver's license, as provided in this section, shall be issued a driver's license, as follows:

(a) An applicant applying for an original or renewal issuance during the 30-day period ending at midnight of the applicant's birthday shall be issued a driver's license which expires at midnight on the licensee's birthday which next occurs on or after the fourth anniversary of the date of issue.

(b) Applicants applying for an original issuance on any date other than the period specified in paragraph (a) shall be issued a driver's license which expires at midnight of the first birthday of the licensee which occurs after the third anniversary of the date of issue.

(c) An applicant applying for a renewal issuance shall be issued a driver's license which expires at midnight on the licensee's birthday which next occurs 4 years after the month of expiration of the license being renewed.

(3) If a license expires on a Saturday, Sunday, or legal holiday, it shall be valid until midnight of the next regular working day and may be renewed on that day without payment of a delinquent fee.

(4) Except as otherwise provided in this chapter, all licenses shall be renewable every 4 years during the 30-day period ending at midnight of the expiration date and shall be issued upon application, payment of the required fees, and successful passage of any required examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license.

(5) All renewal operators', restricted operators', or chauffeurs' licenses may be issued after the applicant licensee has been issued a certificate of eligibility by the department.

(6) If the licensee does not receive a certificate of eligibility, the licensee or applicant may apply to the department, under oath, at the nearest driver's license examining office. Such application shall be on a form prepared and furnished by the department. The department shall make such forms available to the various examining offices throughout the state. Upon receipt of such application, the department shall issue a license or temporary permit to the applicant or shall advise the applicant that no license or temporary permit will be issued and advise the applicant of the reason for his ineligibility.

(7) An expired Florida driver's license may be renewed any time within 12 months after the expiration date, with reexamination, if required, upon presenting to the department a valid certificate of eligibility and upon payment of the required delinquent fee or taking and passing the written examination. If the final date upon which a license may be renewed under this section falls upon a Saturday, Sunday, or legal holiday, the renewal period shall be extended to midnight of the next regular working day. The department may refuse to issue any license if:

(a) The department has reason to believe the licensee is no longer qualified to receive a license.

(b) The licensee has failed to answer a traffic summons involving a moving violation.

(c) The department's records reflect that the applicant's driving privilege is under suspension or revocation.

(8) All drivers' licenses issued prior to January 1, 1976, expire as designated on the license.

History.—s. 30, ch. 19551, 1939; CGL 1940 Supp. 4151(644); s. 30, 20451, 1941; s. 1, ch. 24346, 1947; s. 1, ch. 26911, 1951; s. 1, ch. 61-13; s. 2, ch. 67-242; ss. 24, 35, ch. 69-106; s. 1, ch. 72-211; ss. 3, 5, ch. 75-228; s. 17, ch. 78-394.

322.19 Notice of change of address or name.—Whenever any person, after applying for or receiving an operator's or chauffeur's license, shall move from the address named in such application, or in the license issued to him, or when the name of a licensee is changed by marriage or otherwise, such person shall within 10 days thereafter notify the department in writing of his old and new addresses, or of such former and new names, and of the number of his license.

History.—s. 31, ch. 19551, 1939; CGL 1940 Supp. 4151(645); s. 31, ch. 20451, 1941.

322.20 Records of the department.—

(1) The department shall file every application for license received by it. Possession of such an application form, whether filled out or in blank, or of a counterfeit thereof, not authorized by the department or its personnel shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The applications filed with the department shall be suitably indexed by it in alphabetical order containing:

(a) All applications denied and on each thereof the reasons for such denial.

(b) All applications granted.

(c) The name of every addressee whose license has been suspended or revoked by the department, and after every such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it, and maintain convenient records or make suitable notations, in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily available for the consideration of the department upon any application for renewal of a license and at other suitable times.

(3) It is unlawful for any person to falsify, alter, erase, remove, destroy, or cause to be altered, erased, removed, or destroyed, any record maintained by the department unless the alteration, erasure, removal, or destruction has been duly authorized.

(4) On or before July 1, 1980, the department shall promulgate rules and procedures to ensure adequate safeguards and auditing capabilities to enable records of uniform traffic dispositions to be reported to the department in an automated fashion,

through cooperative arrangements which may be entered into between court clerks and the department, in order to enhance the effectiveness and efficiency of dispositions reported on the uniform traffic citation. Automated procedures must be subjected to tests to ensure that the integrity of the driver file is enhanced or maintained and that the intent of this chapter, as stated in s. 322.263, is given priority consideration with respect to either on-line data entry activities between the courts and the department or the forwarding of electronically recorded data. Departmental rules shall require that data verification be accompanied by comparison with data from uniform traffic disposition reports.

(5) The department shall tabulate and publish statistics of traffic citation dispositions and provide records to court clerks for the purpose of verifying that the data was properly received and recorded.

(6) The requirement for the department to keep records shall terminate upon the death of an individual licensed by the department upon notification by the Department of Health and Rehabilitative Services of such death. The department shall make such notification as is proper of the deletions from their records to the court clerks of the state.

History.—s. 32, ch. 19551, 1939; CGL 1940 Supp. 4151(646); s. 32, ch. 20451, 1941; s. 1, ch. 57-758; s. 210, ch. 71-136; s. 18, ch. 78-394; s. 3, ch. 79-99.

322.201 Records as evidence.—A copy or transcript of all accident reports and abstracts of court records of convictions received by the department and the complete driving record of any individual duly certified by the department, shall be received as evidence in all courts of this state without further authentication; provided, however, that the same is otherwise admissible in evidence.

History.—s. 2, ch. 63-371; s. 1, ch. 67-305; ss. 24, 35, ch. 69-106.

322.21 Fees to be paid for licenses and machinery for handling and collecting the same.—

(1) The fee for:

(a) An operator's or a restricted operator's license is $4, in addition to the fees for driver education, as provided by s. 233.063, and a color photograph, as provided by s. 322.142.

(b) A chauffeur's license is $8, in addition to the fees for driver education and a color photograph, provided by ss. 233.063 and 322.142.

(c) The renewal of a license is the same as for its original issue set forth in paragraphs (a) and (b), except that a delinquent fee of $1 shall be added for a renewal made not more than 12 months after the license expiration date, unless the applicant elects to take and passes the written examination.

(2) It is hereby expressly made the duty of the Director of the Driver's License Division to set up a division in the department with the necessary personnel to perform the necessary clerical and routine work for the department in issuing and recording applications, licenses, and certificates of eligibility, including the receiving and accounting of all license funds and their payment into the State Treasury, and other incidental clerical work connected with the administration of this chapter. The department is authorized to use such electronic, mechanical, or other devices as necessary to accomplish the purposes of this chapter.

(3) The department shall prepare sufficient forms for certificates of eligibility, applications, notices, and license materials to supply all applicants for operators', restricted operators', and chauffeurs' licenses and all renewal licenses.

(4) If the department determines from its records or is otherwise satisfied that the holder of a license about to expire is entitled to have it renewed, the department shall mail a certificate of eligibility to him at his last known address, not less than 30 days prior to the licensee's birthday. The licensee shall be issued a renewal license, after reexamination, if required, during the 30 days immediately preceding his birthday upon presenting a certificate of eligibility, his current license, and the fee for renewal to the department at any driver's license examining office.

(5) The department shall collect and transmit all fees received by it under this section to the State Treasurer to be placed in the General Revenue Fund of the state, and sufficient funds for the necessary expenses of the department shall be included in the annual appropriations act. The fees shall be used for the maintenance and operation of the department.

(6) Any member of the Armed Forces or a member of his immediate family, defined as spouse, daughter, son, stepdaughter, or stepson, holding a Florida driver's license who presents an affidavit showing that he was out of the state due to service in the Armed Forces of the United States at the time of license expiration is exempt from the delinquent fee if renewal is applied for within 90 days of the date of discharge or transfer to a military or naval establishment in this state as shown in the affidavit.

(7) Any veteran honorably discharged from the Armed Forces who has been determined by the Veterans' Administration to have a 100 percent service-connected disability and who is qualified to obtain an operator's or chauffeur's license under this chapter is exempt from all fees required by this section.

History.—s. 33, ch. 19551, 1939; CGL 1940 Supp. 4151(647); s. 33, ch. 20451, 1941; s. 1, ch. 22838, s. 7, ch. 22858, 1945; ss. 2, 3, ch. 24346, 1947; s. 51, ch. 26869, 1951; s. 1, ch. 59-314; s. 2, ch. 61-13; s. 3, ch. 67-242; s. 1, ch. 67-306; ss. 24, 35, ch. 69-106; s. 2, ch. 72-211; s. 1, ch. 73-305; s. 4, ch. 75-228; s. 1, ch. 77-174.

322.212 Unauthorized use or possession of drivers' licenses.—

(1) It is unlawful for any person knowingly to have in his possession any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued operator's or chauffeur's license unless possession by such person has been duly authorized by the department.

(2) It is unlawful for any person to barter, trade, sell, or give away any operator's or chauffeur's license or to perpetrate a conspiracy to barter, trade or sell, or give away any such license unless said person has been duly authorized to issue the license by the department as provided in this chapter, or the adopted rules and regulations of said department.

(3) It is unlawful for any employee of the department to allow or permit the issuance of an operator's or chauffeur's license when he knows that the applicant has not lawfully fulfilled the requirements of this chapter for the issuance of such license.

(4) It is unlawful for any person to agree to supply or to aid in supplying any person with an operator's or chauffeur's license by any means whatsoever not in accordance with the provisions of this chapter.

(5) Any person who violates any of the provisions

of this act is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) The foregoing provisions of this section shall be in addition to and supplemental to all other provisions of this chapter and of the laws of Florida, relating to drivers' licenses.

History.—s. 1, ch. 65-167; ss. 24, 35, ch. 69-106; s. 212, ch. 71-136; s. 24, ch. 73-334; s. 19, ch. 78-394.

322.22 Authority of department to cancel license.—

(1) The department is authorized to cancel any operator's or chauffeur's license, upon determining that the licensee was not entitled to the issuance thereof, or that the licensee failed to give the required or correct information in his application or committed any fraud in making such application, or that the licensee has two or more licenses on file with the department, each in a different name but bearing the photograph of the licensee, unless the licensee has complied with the requirements of this chapter in obtaining the licenses.

(2) Upon such cancellation, the licensee must surrender to the department the license so canceled.

History.—s. 34, ch. 19551, 1939; CGL 4151(648); s. 34, ch. 20451, 1941; s. 20, ch. 78-394.

322.221 Department may require reexamination.—

(1) The department, having good cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may, at any time upon written notice of at least 5 days to the licensee, require him to submit to an examination or reexamination. Good cause as used herein shall be construed to mean that a licensee's driving record or other evidence is sufficient to indicate that his driving privilege is detrimental to public safety.

(2)(a) The department may require an examination or reexamination to determine the competence and driving ability of any driver causing or contributing to the cause of any accident resulting in death, personal injury, or property damage.

(b) The department may, in its discretion, require any licensed driver to submit to an examination or reexamination prior to his normal renewal date upon receipt of a recommendation from a court having jurisdiction of traffic offenses, a law enforcement agency, or a physician stating that the driver's ability to operate a motor vehicle safely is questionable. At the time of renewal of his license a driver may be required to submit to an examination or reexamination at the discretion of the examiner if the physical appearance or actions of the licensee give rise to serious doubt as to his ability to operate a vehicle safely.

(c) If the department has reason to believe that a licensee is physically or mentally unqualified to operate a motor vehicle, it may require the licensee to submit medical reports regarding his physical or mental condition to the department's medical advisory board for its review and recommendation. The submission of medical reports shall be made without expense to the state.

(3) Upon the conclusion of such examination or reexamination the department shall take action as may be appropriate and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under s. 322.16. Refusal or neglect of the licensee to submit to such examination or reexamination shall be ground for suspension or revocation of his license.

History.—ss. 1-3, ch. 28120, 1953; s. 1, ch. 59-443; ss. 24, 35, ch. 69-106; s. 1, ch. 70-366; s. 21, ch. 78-394.

322.23 Suspending privileges of nonresidents and reporting convictions.—

(1) The privilege of driving a motor vehicle on the highways of this state, given to a nonresident, shall be subject to suspension or revocation by the department in the same manner and for the same cause as a license issued by the department may be suspended or revoked.

(2) The department is authorized, upon receiving a record of the conviction in this state of a nonresident driver, of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

History.—s. 35, ch. 19551, 1939; CGL 1940 Supp. 4151(649); s. 35, ch. 20451, 1941.

cf.—ss. 320.37-320.39 Privileges of nonresidents.

322.24 Suspending resident's license upon conviction in another state.—The department is authorized to suspend or revoke the license of any resident of the state, upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of his license.

History.—s. 36, ch. 19551, 1939; CGL 1940 Supp. 4151(650); s. 36, ch. 20451, 1941.

322.25 When court to forward license to department and report convictions; temporary reinstatement of driving privileges.—

(1) Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction, to the department.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other law of this state regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and shall suspend or revoke in accordance with the provisions of this chapter, the operator's or chauffeur's license of the person so convicted.

(3) There shall be no notation made upon a license of either an arrest or warning until the holder of the license has been duly convicted or forfeited bond.

(4) For the purpose of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(5) For the purpose of this chapter, the entrance of a plea of nolo contendere by the defendant, accepted by the court and under which plea the court has entered a fine or sentence, whether in this state or any other state or county, shall be equivalent to a conviction.

(6) The report of a judicial disposition of an offense committed under this chapter or of any traffic violation, including parking on a roadway outside the limits of a municipality, or of [1]a violation of any law of this state regulating the operation of motor vehicles on highways shall be made by the court to the department on a standard form prescribed by the department. The form shall be a copy of the uniform traffic citation and complaint as prescribed by s. 316.650 and shall include a place for the court to indicate clearly whether it recommends suspension or revocation of the offender's driver's license. The report shall be signed by the judge or clerk or by the facsimile signature of the clerk. The clerks of the court may submit disposition data to the department in an automated fashion, in a form prescribed by the department.

(7) Any licensed driver convicted within the past 10-year period of only one violation of driving, or being in the actual physical control of, a vehicle within this state while under the influence of alcoholic beverages, model glue, or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, and whose license and driving privilege have been revoked as provided in subsection (1) may be issued a court order for reinstatement of a driving privilege on a temporary basis; provided that, as a part of the penalty, upon conviction, the defendant is required to enroll in and complete a driver improvement course for the rehabilitation of drinking drivers. The court order for reinstatement shall be on a form provided by the department and must be taken by the person convicted to a Florida driver's license examining office, where a temporary driving permit may be issued. The period of time for which a temporary permit issued in accordance with this subsection is valid shall be deemed to be part of the period of revocation imposed by the court.

History.—s. 37, ch. 19551, 1939; CGL 1940 Supp. 4151(651); s. 37, ch. 20451, 1941; s. 1, ch. 59-313; s. 3, ch. 61-457; s. 8, ch. 72-175; ss. 1, 3, ch. 74-248; s. 40, ch. 76-31; s. 1, ch. 77-119; s. 22, ch. 78-394; s. 2, ch. 79-99.

[1]**Note.**—The words "a violation of" were inserted by the editors.

322.2505 Court to forward license of person adjudicated incompetent to department.—Whenever a person is adjudicated to be mentally or physically incompetent pursuant to the provisions of s. 744.331, the court shall require such person to surrender to it all operator's and chauffeur's licenses held by such person, and the court shall forward the same, together with a record of the adjudication, to the department.

History.—s. 1, ch. 78-204.

322.251 Personal service or registered mail; surrender of license required.—

(1) All orders of cancellation, suspension, or revocation issued under the provisions of this chapter shall be given either by personal delivery thereof to the licensee whose license is being canceled, suspended, or revoked, or by deposit in the United States mail in an envelope marked certified mail, postage prepaid, addressed to the licensee at his last known address furnished the department. Such mailing by the department shall constitute notification; and any failure by the person to receive the mailed order shall not affect or stay the effective date or term of the cancellation, suspension, or revocation of the licensee's driving privilege.

(2) The giving of notice and order of cancellation, suspension, or revocation by mail is complete upon expiration of 20 days after deposit in the United States mail. Proof of the giving of notice and order of cancellation, suspension, or revocation in either such manner shall be made by affidavit of the employee of the department who causes the notice and order to be given. The affidavit shall be sworn to by the employee upon the issuance of such notice and order and shall name the person to whom such notice and order was given and specify the time, place, and manner of the giving thereof.

(3) Whenever the driving privilege is suspended or revoked under the provisions of this chapter, the period of such suspension or revocation shall be indicated on the order of suspension or revocation, and the department shall require the licensee whose driving privilege is suspended or revoked to surrender all licenses then held by him to the department. However, should the person fail to surrender said licenses, the suspension or revocation period shall not expire until a period identical to the period for which the driving privilege was suspended or revoked has expired after the date of surrender of the licenses, or the date an affidavit swearing such licenses are lost has been filed with the department. In any instance where the suspension or revocation order is mailed as provided herein, and the license is not surrendered to the department, and such license thereafter expires, the department shall not renew that license until a period of time identical to the period of such suspension or revocation imposed has expired.

(4) Whenever a cancellation, suspension, or revocation occurs, the department shall enter the cancellation, suspension, or revocation order on the licensee's driver file 20 days after the notice was actually placed in the mail. Any inquiry into the file after the 20-day period shall reveal that the license is canceled, suspended, or revoked and whether the license has been received by the department.

History.—s. 5, ch. 59-278; ss. 24, 35, ch. 69-106; s. 1, ch. 78-37.

322.26 Mandatory revocation of license by department.—The department shall forthwith revoke the license or driving privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses:

(1) Manslaughter resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle or being in actual physical control thereof, or entering a plea of nolo contendere, said plea being accepted by the court and said court entering a fine or sentence to a charge of driving, while under the influence of alcoholic beverages or a substance controlled under chapter 893, or being in actual physical control of a motor vehicle while under the influence of alcoholic bever-

ages or a substance controlled under chapter 893.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

(5) Perjury or the making of a false affidavit or statement under oath to the department under this law, or under any other law relating to the ownership or operation of motor vehicles.

(6) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(7) Any violation of the law against lewdness, assignation and prostitution where such violation has been effected through the use of a motor vehicle.

(8) Conviction in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation of the licensee's driving privilege.

History.—s. 38, ch. 19551, 1939; CGL 1940 Supp. 4151(652); s. 38, ch. 20451, 1941; s. 1, ch. 21764, 1943; s. 4, ch. 61-457; s. 2, ch. 65-124; s. 20, ch. 73-331; s. 1, ch. 77-119; s. 2, ch. 78-204.

cf.—s. 860.01 Driving while intoxicated.

322.261 Suspension of license; chemical test for intoxication.—

(1)(a) Any person who shall accept the privilege extended by the laws of this state of operating a motor vehicle within this state shall by so operating such vehicle be deemed to have given his consent to submit to an approved chemical test of his breath for the purpose of determining the alcoholic content of his blood if he is lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of alcoholic beverages. The test shall be incidental to a lawful arrest and administered at the request of a peace officer having reasonable cause to believe such person was driving a motor vehicle within this state while under the influence of alcoholic beverages. Such person shall be told that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of 3 months.

(b)1. Notwithstanding the provisions of this section, a law enforcement officer who has reason to believe that a person's ability to operate a motor vehicle is impaired by alcohol and that the person has been operating a motor vehicle during the period of such impairment may, with the person's consent, give, or the person may demand, a pre-arrest breath test for the purpose of determining if said person is in violation of s. 316.193(1), but the taking of such pre-arrest breath test shall not be deemed a compliance with the provisions of paragraph (a). The results of any test administered under this section shall not be admissible into evidence in any civil or criminal proceeding. An analysis of a person's breath, in order to be considered valid under the provisions of this section, must have been performed according to methods approved by the Department of Health and Rehabilitative Services. For this purpose, the department is authorized to approve satisfactory techniques or methods.

2. Prior to administering any pre-arrest breath test, a law enforcement officer shall advise the motor vehicle operator that he has the right to refuse to take such test, and, prior to administering such test, a law enforcement officer shall obtain the written consent of the motor vehicle operator.

(c) Any such person who is incapable of refusal by reason of unconsciousness or other mental or physical condition shall be deemed not to have withdrawn his consent to such test. Any such person whose consent is implied as hereinabove provided and who, during the period within which a test prescribed herein can be reasonably administered, or who, being admitted to a hospital as a result of his involvement as a driver in a motor vehicle accident, is so incapacitated as to render impractical or impossible the administration of the aforesaid test of his breath shall be deemed to have consented also to an approved blood test given as provided for herein and shall be deemed not to have withdrawn his consent therefor. Under the foregoing circumstances, a blood test may be administered whether or not such person is told that his failure to submit to such blood test will result in the suspension of his privilege to operate a motor vehicle upon the public highways of this state.

(d) If any such person refuses the officer's request to submit to a chemical test herein provided, the department, upon receipt of the officer's sworn statement that he had reasonable cause to believe such person had been driving a motor vehicle within this state while under the influence of alcoholic beverages and that the person had refused to submit to the test after being requested by the officer, shall suspend his privilege to operate a motor vehicle for a period of 3 months. No suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in paragraph (e).

(e) The department shall immediately send notification to such person, in writing by certified mail to his last known address furnished to the department, of the action taken and of his right to petition for hearing as hereinafter provided and to be represented at the hearing by legal counsel. Such mailing by the department will constitute notification as required by this section, and any failure by the person to receive such notification will not affect or stay such suspension order. Upon his petition in writing, a copy of which he shall forward to the department, being filed within 10 days from the date of receipt of the notice, directed to the municipal, county, or state court having trial jurisdiction of the offense for which he shall stand charged such person shall be afforded an opportunity for a hearing at a time to be set by the court, which hearing date shall be within 20 days of the filing of the petition with the court. For the purposes of this section, the question of whether such person lawfully refused to take a chemical test as provided for by this law and the issues determinative shall be:

1. Whether the arresting peace officer had reasonable cause to believe the person had been driving a motor vehicle in this state while under the influence of alcoholic beverage;

2. Whether the person was placed under lawful arrest;

3. Whether the person refused to submit to the test after being requested by a peace officer; and

4. Whether, except for the person described in paragraph (c) above, he had been told that his privilege to operate a motor vehicle would be suspended for a period of 3 months if he refused to submit to the test.

(f) A petition for a hearing provided in paragraph (e), filed by the affected person within 10 days of receiving notice of the department's action, shall operate to stay the suspension of the department for the period provided for the said hearing. If the trial court fails to afford the hearing within the time herein prescribed, the suspension shall not take place until such time as the person has been granted such hearing. If within the prescribed hearing period the person affected requests a continuance of the hearing to a date beyond the expiration of the prescribed hearing period, the suspension shall become effective on the day immediately following the prescribed period or immediately upon receipt of the court's notice that the request for continuance has been granted, whichever is the later. In every event, the court shall forthwith rule on the question herein prescribed and forward a copy of its decision to the department.

(g) If the court determines upon the hearing that the suspension herein provided is according to law and should be sustained, the person's driving privileges shall forthwith be suspended by order of the court, and his license shall forthwith be delivered to the court and forwarded to the department.

(h) If the arresting officer does not request a chemical test of the person arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of alcoholic beverages, such person may request the arresting officer to have a chemical test made of the arrested person's breath for the purpose of determining the alcoholic content of the person's blood, and, if so requested, the arresting officer shall have the test performed.

(i) Warning of the consent provision of this section shall be printed above the signature line on each new or renewed driver's license issued after the effective date of this act.

(j) By applying for a driver's license and by accepting and using a driver's license, the person holding the driver's license shall be deemed to have expressed his consent to the provisions of this section.

(k) A nonresident or any other person driving in a status exempt from the requirements of the driver's license law shall by his act of driving in such exempt status be deemed to have expressed his consent to the provisions of this section.

(2)(a) The test determining the weight of alcohol in the defendant's blood shall be administered at the direction of the arresting officer in accordance with rules and regulations which shall have been adopted by the department. Such rules and regulations shall be adopted after public hearing, and shall specify precisely the test or tests which are approved by said department for reliability of result and facility of administration and shall provide an approved method of administration which shall be followed in all tests given under this section.

(b) Only a physician, registered nurse, or duly licensed clinical laboratory technologist or clinical laboratory technician, acting at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content therein. Such withdrawal of blood shall be performed only at a hospital, clinic, or other medical facility. This limitation shall not apply to the taking of a breath specimen.

(c) The person tested may, at his own expense, have a physician, registered nurse, duly licensed clinical laboratory technologist or clinical laboratory technician, or any other person of his own choosing administer a test in addition to a test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood or breath. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(d) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(e) No hospital, clinical laboratory, medical clinic, or similar medical institution or physician, registered nurse, or duly licensed clinical laboratory technologist or clinical laboratory technician shall incur any civil or criminal liability as a result of the proper withdrawal or analysis of a blood or breath specimen when requested in writing by a peace officer.

History.—s. 1, ch. 67-308; ss. 24, 35, ch. 69-106; ss. 1, 2, ch. 70-279; ss. 2, 10, ch. 74-384; s. 41, ch. 76-31.

322.262 Presumption of intoxication; testing methods.—

(1) It is unlawful and punishable as provided in this chapter and in s. 316.193 for any person who is under the influence of alcoholic beverages, when affected to the extent that his normal faculties are impaired, to drive or be in actual physical control of any motor vehicle within this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving, or in actual physical control of, a vehicle while under the influence of alcoholic beverages, when affected to the extent that his normal faculties were impaired, the results of any test administered in accordance with s. 322.261 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood or breath shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the ex-

tent that his normal faculties were impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired. Moreover, such person who has a blood alcohol level of 0.10 percent or above shall be guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood alcohol level.

(d) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(e) The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(3) Chemical analyses of the person's blood or breath, in order to be considered valid under the provisions of this section, must have been performed according to methods approved by the Department of Health and Rehabilitative Services and by an individual possessing a valid permit issued by the department for this purpose. The Department of Health and Rehabilitative Services is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the Department of Health and Rehabilitative Services.

(4) Any person charged with driving a motor vehicle while under the influence of intoxicating beverages to the extent that his normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

History.—ss. 2, 3, ch. 67-308; ss. 19, 35, ch. 69-106; ss. 3, 4, ch. 70-279; s. 1, ch. 70-439; s. 3, ch. 74-384; s. 42, ch. 76-31; s. 1, ch. 76-153; s. 51, ch. 77-147.

322.263 Legislative intent.—It is declared to be the legislative intent to:

(1) Provide maximum safety for all persons who travel or otherwise use the public highways of the state.

(2) Deny the privilege of operating motor vehicles on public highways to persons who, by their conduct and record, have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state and the orders of the state courts and administrative agencies.

(3) Discourage repetition of criminal action by individuals against the peace and dignity of the state, its political subdivisions, and its municipalities and impose increased and added deprivation of the privilege of operating motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws.

History.—s. 1, ch. 72-175.

322.264 "Habitual traffic offender" defined.—A "habitual traffic offender" is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that such person has accumulated the convictions for separate offenses described in subsections (1), (2) and (3), committed within a 5-year period:

(1) Three or more convictions, singly or in combination, of any of the following offenses arising out of separate acts:

(a) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(b) Driving a motor vehicle or being in actual physical control while having an unlawful blood alcohol level or while under the influence of alcoholic beverages or any substance controlled under chapter 893;

(c) Any felony in the commission of which a motor vehicle is used;

(d) Driving a motor vehicle while operator's license is suspended or revoked;

(e) Failing to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) Fifteen convictions for moving traffic offenses for which points may be assessed as set forth in s. 322.27, including those offenses in subsection (1).

(3) The offenses included in subsections (1) and (2) shall be deemed to include also offenses under any federal law, any law of another state, or any valid ordinance of a municipality or county of another state substantially conforming to the aforesaid state statutory provisions.

In computing the number of convictions, all convictions during the 5 years previous to July 1, 1972 will be used, provided at least one conviction occurs after that date. The fact that previous convictions may have resulted in suspension or revocation under another section shall not exempt them from being used for suspension or revocation under this section as a habitual offender.

History.—s. 2, ch. 72-175; s. 21, ch. 73-331; s. 4, ch. 74-384.

cf.—s. 316.193 Driving while under the influence of alcoholic beverages, model glue, or controlled substances.

322.27 Authority of department to suspend or revoke license.—

(1) Notwithstanding any provisions to the contrary in chapter 120, the department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction; or

(b) Has been convicted of a violation of any traffic law which resulted in an accident that caused the death or personal injury of another or property damage in excess of $500; or

(c) Is incompetent to drive a motor vehicle; or

(d) Has permitted an unlawful or fraudulent use of such license or has knowingly been a party to the obtaining of a license by fraud or misrepresentation or to display, or represent as one's own, any opera-

tor's or chauffeur's license not issued him. Provided, however, no provision of this section shall be construed to include the provisions of s. 322.32(1); or

(e) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

(2) The department shall suspend the license of an operator or chauffeur without preliminary hearing upon a showing of its records that the licensee has been convicted in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the suspension of the licensee's driving privilege.

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any operator or chauffeur upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(a) When a licensee accumulates 12 points within a 12-month period, the period of suspension shall be for not more than 30 days.

(b) When a licensee accumulates 18 points, including points upon which suspension action is taken under paragraph (a), within an 18-month period, the suspension shall be for a period of not more than 3 months.

(c) When a licensee accumulates 24 points, including points upon which suspension action is taken under paragraphs (a) and (b), within a 36-month period, the suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of an accident resulting in property damage of more than $50—6 points.

3. Unlawful speed resulting in an accident—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. Improper equipment (brakes, lights, steering) —2 points.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points.

8. Any moving violation covered above resulting in an accident—4 points.

(e) A conviction in another state of a violation therein which, if committed in this state, would be a violation of the traffic laws of this state; except a violation of s. 322.26, may be recorded against a driver on the basis of one-half the number of points received had the conviction been made in a court of this state.

(f) In computing the total number of points, when the licensee reaches the danger zone, the department is authorized to send the licensee a warning letter advising that any further convictions may result in suspension of his driving privilege.

(g) The department shall administer and enforce the provisions of this law and may make rules and regulations necessary for its administration.

(h) Three points shall be deducted from the driver history record of any person whose driving privilege has been suspended only once pursuant to this subsection and has been reinstated, if such person has complied with all other requirements of this chapter.

(4) The department in computing the points and period of time for suspensions under this section, shall use the offense date of all convictions.

(5) The department shall revoke the license of any person designated a habitual offender, as set forth in s. 322.264, and such person shall not be eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271. Any person whose license is revoked may, by petition to the department, show cause why his license should not be revoked.

(6) Review of an order of suspension or revocation shall be by writ of certiorari as provided in s. 322.31.

History.—s. 39, ch. 19551, 1939; CGL 1940 Supp. 4151(653); s. 39, ch. 20451, 1941; s. 7, ch. 22858, 1945; ss. 1, 2, ch. 57-756; s. 1, ch. 57-759; s. 1, ch. 59-278; s. 1, ch. 61-42; s. 1, ch. 61-53; s. 1, ch. 65-175; s. 1, ch. 67-86; s. 26, ch. 69-353; ss. 24, 35, ch. 69-106; s. 1, ch. 70-115; s. 3, ch. 72-175; s. 1, ch. 74-36; s. 5, ch. 74-384; s. 5, ch. 76-153; s. 1, ch. 77-119; s. 20, ch. 78-95; s. 3, ch. 78-204; s. 1, ch. 78-226; ss. 23, 27, ch. 78-394.

cf.—s. 322.331 Habitual traffic offender; restoration of license.

322.271 Authority to modify revocation or suspension.—

(1)(a) Upon the suspension, cancellation, or revocation of the driver's license of any person as authorized or required in this chapter, except a person whose license is revoked as a habitual traffic offender under s. 322.27(5), the department shall immediately notify the licensee, and upon his request shall afford him an opportunity for a hearing pursuant to chapter 120, as early as practical within not to exceed 30 days after receipt of such request, in the county wherein the licensee resides, unless the department and the licensee agree that such hearing may be held in some other county. In making its determination, the department may require a reexamination of the licensee.

(b) A person whose driving privilege has been revoked under s. 322.27(5) may, upon expiration of 12 months from the date of such revocation, petition the department for restoration of his driving privilege. Upon such petition and after investigation of the person's qualification, fitness, and need to drive, the department shall hold a hearing pursuant to chapter 120 to determine whether the driving privilege shall be restored on a restricted basis solely for business or employment purposes.

(2) Upon such hearing the person whose license has been suspended, canceled or revoked, may show

that such cancellation, suspension or revocation of his license causes a serious hardship and precludes his carrying out his normal business occupation, trade, or employment, and that the use of his license in the normal course of his business is necessary to the proper support of himself or his family. The department shall require proof of a successful completion of an approved driver training or alcohol education course, and may require letters of recommendation from respected businessmen in the community, law enforcement officers or judicial officers in determining whether such person should be permitted to operate a motor vehicle on a restricted basis for business use only and in determining whether such person can be trusted to so operate a motor vehicle.

(3) Upon such hearing the department shall either suspend, affirm or modify its order and may restore to the licensee the privilege of driving on a limited or restricted basis, for business or employment use only.

History.—s. 6, ch. 59-278; s. 4, ch. 72-175; s. 6, ch. 74-384; s. 1, ch. 77-174; s. 20, ch. 78-95.

322.272 Supersedeas.—The filing of a petition for certiorari to the circuit court does not itself stay the enforcement of the suspension, revocation, or cancellation of license. The department may order a stay of enforcement upon appropriate terms and conditions.

History.—s. 7, ch. 59-278; s. 5, ch. 61-457; s. 2, ch. 76-153.

322.273 Penalty.—The penalty for violation of the terms or conditions of a license so restricted by the department shall be the same as the penalty for driving while such license is revoked, canceled or suspended.

History.—s. 8, ch. 59-278; ss. 24, 35, ch. 69-106.

322.274 Automatic revocation of driver's license.—

(1) The driver's license of any person convicted hereunder of theft of any motor vehicle or parts or components of a motor vehicle shall be revoked. If such revocation shall not be ordered by the court, the Department of Highway Safety and Motor Vehicles shall forthwith revoke the same. The department shall not consider the convicted person's application for reinstatement of such revoked license until the expiration of the full term of the sentence imposed, whether served during actual imprisonment, probation, parole, or suspension.

(2) It shall be grounds for the revocation of any person's parole or probation if he operates a motor vehicle while his license is revoked pursuant to this chapter. However, it shall be within the discretion of the trial judge who imposes sentence upon the person convicted hereunder to direct the reinstatement of the person's driver's license on a limited basis after a reasonable time.

History.—s. 1, ch. 70-19; s. 1, ch. 70-439; s. 4, ch. 71-342; s. 65, ch. 74-383.
Note.—Former s. 814.05.

322.28 Period of suspension or revocation.—

(1) The department shall not suspend a license for a period of more than 1 year and, upon revoking a license, in all cases except in prosecutions for the offense of driving a motor vehicle while under the influence of intoxicating liquor, shall not in any event grant a new license until the expiration of 1 year after such revocation, except as provided herein.

(2) In prosecutions for the offense of driving a motor vehicle with an unlawful blood alcohol level, as defined in s. 316.193(3), or while under the influence of alcoholic beverages to the extent that normal faculties are impaired, as defined in s. 316.193(1), the following provisions shall apply:

(a) Upon conviction of a driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted and shall prescribe the period of such revocation in accordance with the following provisions:

1. Upon first conviction of the offense of driving with an unlawful blood alcohol level as described in s. 316.193(3), the driver's license or privilege shall be revoked for not less than 30 days or more than 90 days, and for the first conviction of the offense of driving while under the influence, as described in s. 316.193(1), the driver's license or privilege shall be revoked for not less than 90 days or more than 1 year. However, the court may, as part of the sentence, restrict the driver's license or privilege to such driving as is required to get to and from work and any necessary on-the-job driving required by the employer or occupation. If such restriction is a part of the sentence, the court shall require the defendant to enroll in, and successfully complete, a driver improvement course for the rehabilitation of drinking drivers, and any necessary driving for completion of such drinking driver rehabilitation course shall be allowed under the license restriction. No pleasure, recreational, or other driving shall be permitted by such restriction, and any conviction for violation of such restriction shall be punishable by mandatory imprisonment for a period of 10 days and revocation of the driver's license or privilege for the period imposed in the original sentence.

2. Upon a second conviction within a period of 5 years from the date of a prior conviction for a violation of the provisions of s. 316.193(1) or (3), or a combination of said subsections, the driver's license or privilege shall be revoked for not less than 6 months or more than 24 months.

3. Upon a third or subsequent conviction within a period of 5 years from the date of conviction of the first of three or more convictions for the violation of the provisions of s. 316.193(1) or (3), or a combination of said subsections, the driver's license or privilege shall be revoked for not less than 1 year or more than 5 years, as provided in s. 322.27(5).

(b) If the period of revocation shall not be specified by the court at the time of imposing sentence or within 30 days thereafter, the department shall forthwith revoke the driver's license or privilege for the maximum period applicable under subsection (2)(a). The driver may, within 30 days of such revocation by the department, petition the court for further hearing on the period of revocation, and the court shall be authorized in such case, at its discretion, to reopen the case and to determine the period of revocation within the limits specified in said subsection (2)(a).

(c) Any person having his license revoked or suspended by the department may, during the period of

said revocation or suspension, apply to the department for review of said revocation or suspension and restoration of his driving privileges. Upon receipt of said application the department shall provide for a hearing after notice to said applicant within 30 days and may, after said hearing and such investigation as may be made, restore the driving privileges subject to such conditions and restrictions as the department may deem proper which shall not extend beyond the original period of revocation or suspension.

(d) The forfeiture of bail bond, not vacated within 20 days, in any prosecution for the offense of driving while under the influence of intoxicating liquor to the extent of depriving the defendant of his or her normal faculties, shall be deemed equivalent to a conviction for the purposes of this paragraph, and the department shall forthwith revoke the defendant's driver's license or privilege for the maximum period applicable under subsection (2)(a); however, if the defendant shall subsequently be convicted of said charge, the period of revocation for such conviction shall not exceed the difference between the applicable maximum under subsection (2)(a) and the period imposed under this subsection that shall have actually expired. This paragraph shall not apply if an appropriate motion contesting the forfeiture is filed within the 20-day period.

(e) When any driver's license or privilege has been revoked pursuant to the provisions of this section, the department shall not grant a new license until the expiration of the period of revocation so prescribed. However, the department shall issue a temporary driver's permit to a licensee presenting a court order for reinstatement and a written request for a hearing established in s. 322.271, provided a record check by the department shows no other convictions for driving a motor vehicle while having an unlawful blood alcohol level or while under the influence of alcoholic beverages to the extent that normal faculties are impaired and that the person is otherwise entitled to the issuance of a driver's license. Such a temporary driver's permit shall be restricted to business or employment purposes and to any necessary driving for the completion of a drinking driver rehabilitation course only and shall not be used for pleasure, recreational, or nonessential driving. Should the department determine at a later date from its records that the applicant has previously been convicted for the offense of driving of a motor vehicle while having an unlawful blood alcohol level or while under the influence of alcoholic beverages to the extent that normal faculties are impaired, the permit issued under this section shall be canceled. Upon administrative hearing, if the department determines the applicant is not eligible for modification of revocation, the permit shall be canceled, and the original revocation imposed by the court shall be reimposed. A temporary permit issued under this section shall be valid for 45 days unless canceled as herein provided.

(f) The period of time for which a temporary permit issued in accordance with paragraph (e) is valid shall be deemed to be part of the period of revocation imposed by the court.

(3) Upon conviction of a person for a violation of s. 322.34, the license or driving privilege, if suspended, shall be suspended for 3 months in addition to the period of suspension previously imposed and, if revoked, the time after which a new license may be issued shall be delayed 3 months.

(4) If, in any case arising under this section, a licensee, after having been given notice of suspension or revocation of his license in the manner provided in s. 322.251, fails to surrender to the department a license theretofore suspended or revoked, as required by s. 322.29, or fails otherwise to account for the license to the satisfaction of the department, the period of suspension of the license, or the period required to elapse after revocation before a new license may be issued, shall be extended until, and shall not expire until, a period has elapsed after the date of surrender of the license, or after the date of expiration of the license, whichever occurs first, which is identical in length with the original period of suspension or revocation.

History.—s. 40, ch. 19551, 1939; CGL 1940 Supp. 4151(654); s. 40, ch. 20451, 1941; s. 2, ch. 59-95; ss. 24, 35, ch. 69-106; s. 5, ch. 72-175; s. 94, ch. 73-333; ss. 2, 3, ch. 74-248; s. 7, ch. 74-384; s. 1, ch. 75-113; s. 43, ch. 76-31; s. 3, ch. 76-153; s. 1, ch. 77-174.

322.281 Mandatory adjudication.—

(1) Notwithstanding the provisions of s. 948.01, no court shall withhold adjudication of guilt or imposition of sentence for the offense of driving, or being in actual physical control of, a motor vehicle while having an unlawful blood alcohol level or while under the influence of alcoholic beverages, model glue, or any substance controlled by chapter 893.

(2) No trial judge shall accept a plea of guilty to a lesser offense from a person charged under the provisions of this act who has been given a breath or blood test to determine blood alcohol content, the results of which show a blood alcohol content by weight of 0.20 percent or more.

History.—s. 8, ch. 74-384; s. 1, ch. 77-174.

cf.—s. 316.193 provides penalties "for any person with a blood alcohol level of 0.10 percent, or above, to drive or be in actual physical control of any vehicle within this state."

322.282 Procedure when court revokes and reinstates license or driving privilege on a restricted basis.—When a court revokes and reinstates a license or driving privilege as authorized under s. 322.28(2)(a)1., it shall:

(1) Pick up all revoked driver's licenses from the person convicted and immediately forward same to the department, together with a record of such conviction. The clerk of said court shall also maintain a list of all revocations by said court.

(2) Issue an order of reinstatement, on a form to be furnished by the department, which the person so convicted may personally take to any Florida driver's license examining office. Upon presentation of such court order and a written request for a hearing as established in s. 322.271, and upon verification from the driving record that the person so convicted has had no other convictions within the past 10 years for driving a motor vehicle while having an unlawful blood alcohol level or while under the influence of alcoholic beverages to the extent normal faculties are impaired, a temporary driving permit authorizing driving for business or employment purposes, as provided in s. 322.28(2)(e), shall thereupon be issued. However, should the department determine from its records that such conviction was not the person's

only such conviction within the past 10 years, the temporary permit shall be canceled, and a revocation order shall be issued for the maximum period applicable under s. 322.28(2)(a)2. or s. 322.28(2)(a)3.

History.—s. 9, ch. 74-384; s. 2, ch. 75-113; s. 1, ch. 77-174; s. 24, ch. 78-394.

322.29 Surrender and return of license.—The department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the department, except that at the end of the period of suspension such license so surrendered shall be returned to the licensee after applicant has successfully passed the complete examination. The department is prohibited from requiring the surrender of a license except as authorized by this chapter.

History.—s. 41, ch. 19551, 1939; CGL 1940 Supp. 4151(655); s. 41, ch. 20451, 1941; s. 1, ch. 59-442; s. 9, ch. 72-175.

322.291 Driver improvement schools; required in certain suspension and revocation cases.—Any person:

(1) Whose driving privilege has been revoked:

(a) Upon conviction for:

1. Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, model glue, or any substance controlled under chapter 893, in violation of s. 316.193 or s. 860.01; or

2. Driving with an unlawful blood alcohol level; or

(b) As a habitual offender; or

(2) Whose license was suspended under the point system

shall, before the driving privilege may be reinstated, in addition to passing the complete driver's license examination, present to the department proof of enrollment in a department-approved driver training or alcohol education course. If the person fails to complete such course within 90 days after reinstatement, the driver's license shall be canceled by the department until such course is successfully completed.

History.—s. 1, ch. 77-219.

322.30 No operation under foreign license during suspension or revocation in this state.—Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter, shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or revocation until a new license is obtained.

History.—s. 42, ch. 19551, 1939; CGL 1940 Supp. 4151(656); s. 42, ch. 20451, 1941.

322.31 Right of review.—The final orders and rulings of the department wherein any person is denied a license, or where such license has been canceled, suspended, or revoked, shall be reviewable in the manner and within the time provided by the Florida Appellate Rules only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida Appellate Rules, any provision in chapter 120 to the contrary notwithstanding.

History.—s. 43, ch. 19551, 1939; CGL 1940 Supp. 4151(657); s. 43, ch. 20451, 1941; s. 1, ch. 59-95; s. 1, ch. 59-278; s. 5, ch. 61-457; s. 18, ch. 63-512; s. 20, ch. 78-95.

322.32 Unlawful use of license.—It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person:

(1) To display, or cause or permit to be displayed, or have in his possession, any canceled, revoked, suspended, fictitious, or fraudulently altered operator's or chauffeur's license.

(2) To lend his operator's or chauffeur's license to any other person or knowingly permit the use thereof by another.

(3) To display, or represent as one's own, any operator's or chauffeur's license not issued to him.

(4) To fail or refuse to surrender to the department upon its lawful demand, any operator's or chauffeur's license which has been suspended, revoked or canceled.

(5) To use a false or fictitious name in any application for an operator's or chauffeur's license, or to knowingly make a false statement, or to knowingly conceal a material fact, or otherwise commit a fraud in any such application.

(6) To permit any unlawful use of an operator's or chauffeur's license issued to him.

(7) To apply for, obtain, or cause to be issued to him two or more photographic driver's licenses which are in different names. The issuance of such licenses shall be prima facie evidence that the licensee has violated the provisions of this section unless the issuance was in compliance with the requirements of this chapter.

(8) To do any act forbidden, or fail to perform any act required by this chapter.

History.—s. 44, ch. 19551, 1939; CGL 1940 Supp. 8135(59); s. 44, ch. 20451, 1941; s. 213, ch. 71-136; s. 25, ch. 78-394.

cf.—s. 322.212 Unauthorized use or possession of drivers' licenses.

322.33 Making false affidavit perjury.—Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter, shall be guilty of perjury and upon conviction shall be punished accordingly.

History.—s. 45, ch. 19551, 1939; CGL 1940 Supp. 7476(9); s. 45, ch. 20451, 1941.

cf.—s. 837.012 Perjury not in an official proceeding.

s. 837.02 Perjury in official proceedings.

322.331 Habitual traffic offenders; restoration of license.—At the expiration of 5 years from the date of license revocation, a person whose license has been revoked under s. 322.27(5) may petition the department for restoration of driving privileges. Upon such petition and after investigation of the person's qualification and fitness to drive, the department shall hold an administrative hearing to determine whether driving privileges shall be restored either on an unrestricted basis or on a restricted basis solely for business or employment purposes.

History.—s. 6, ch. 72-175.

322.34 Driving while license suspended or revoked.—

(1) Any person whose operator's or chauffeur's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon conviction of a first offense, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and any person convicted of a second or subsequent charge of driving while his license is canceled, suspended, or revoked shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person whose operator's or chauffeur's license has been revoked pursuant to s. 322.264 (habitual offender) and who drives any motor vehicle upon the highways of this state while such license is revoked is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 46, ch. 19551, 1939; CGL 1940 Supp. 8135(60); s. 46, ch. 20451, 1941; s. 7, ch. 22858, 1945; s. 1, ch. s. 59-3; s. 214, ch. 71-136; s. 7, ch. 72-175; s. 4, ch. 76-153.

322.35 Permitting unauthorized minor to drive.—No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized by the provisions of this chapter.

History.—s. 47, ch. 19551, 1939; CGL 1940 Supp. 4151(658); s. 47, ch. 20451, 1941.

322.36 Permitting unauthorized operator to drive.—No person shall authorize or knowingly permit a motor vehicle owned by him or under his dominion or control to be operated upon any highway or public street except by persons duly authorized to operate motor vehicles under the provisions of this chapter. Any person violating this provision is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 48, ch. 19551, 1939; CGL 1940 Supp. 4151(659); s. 48, ch. 20451, 1941; s. 1, ch. 65-497; s. 215, ch. 71-136.

322.37 Employing unlicensed chauffeur.—No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter.

History.—s. 49, ch. 19551, 1939; CGL 1940 Supp. 4151(660); s. 49, ch. 20451, 1941.

322.38 Renting motor vehicle to another.—

(1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed, or if a nonresident he shall be licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented, and compared and verified the signature thereon with the signature of such person written in his presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where the said license was issued. Such record shall be open to inspection by any police officer, or officer or employee of the department.

History.—s. 50, ch. 19551, 1939; CGL 1940 Supp. 4151(661); s. 50, ch. 20451, 1941.

322.39 Penalties.—

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter, unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 51, ch. 19551, 1939; CGL 1940 Supp. 8135(56); s. 51, ch. 20451, 1941; s. 216, ch. 71-136.

322.41 Local issuance of drivers' licenses prohibited.—Any person licensed as an operator, chauffeur, or restricted operator may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required by any county, municipality, or other local board or body having authority to adopt local police regulations to obtain any other license to exercise such privilege.

History.—s. 52, ch. 20451, 1941; s. 26, ch. 78-394.

322.42 Construction of chapter.—This chapter shall be liberally construed to the end that the greatest force and effect may be given to its provisions for the promotion of public safety.

History.—s. 53, ch. 19551, 1939; CGL 1940 Supp. 4151(662); s. 54, ch. 20451, 1941.

322.43 Short title.—Sections 322.43-322.48 shall be known as the "Florida Driver License Compact Act."

History.—s. 1, ch. 67-176.

322.44 Driver License Compact.—The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

FINDINGS AND DECLARATION OF POLICY.—

(1) The party states find that:

(a) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) Promote compliance with the laws, ordi-

nances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

DEFINITIONS.—As used in this compact:

(1) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(3) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III

REPORTS OF CONVICTION.—The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

EFFECT OF CONVICTION.—

(1) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle, as provided by ss. 860.01 and 322.26;

(b) Driving a motor vehicle while under the influence of alcoholic beverages or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, as provided by ss. 860.01 and 316.193;

(c) Any felony in the commission of which a motor vehicle is used, as provided by s. 322.26;

(d) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another, as provided by s. 322.26.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

ARTICLE V

APPLICATIONS FOR NEW LICENSES.—Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

APPLICABILITY OF OTHER LAWS.—Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII

COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION.—

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

ENTRY INTO FORCE AND WITHDRAWAL.—

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this com-

pact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY.—This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—s. 2, ch. 67-176; s. 44, ch. 76-31.

322.45 Department of Highway Safety and Motor Vehicles; duty.—As used in ss. 322.44 and 322.50, the term "licensing authority," with reference to this state, means the Department of Highway Safety and Motor Vehicles. Said department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact contained in s. 322.44 and Articles III, IV, and VI of the compact contained in s. 322.50.

History.—s. 3, ch. 67-176; ss. 24, 35, ch. 69-106; s. 4, ch. 77-373.

322.46 Compact administrator.—The compact administrator provided for in Article VII of s. 322.44 and Article VI of s. 322.50 shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History.—s. 4, ch. 67-176; s. 4, ch. 77-373.

322.47 Executive head defined.—As used in ss. 322.44 and 322.50, with reference to this state, the term "executive head" means the Governor.

History.—s. 5, ch. 67-176; s. 4, ch. 77-373.

322.48 Review of employee's acts.—Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of s. 322.44 or s. 322.50 shall be subject to review in accordance with chapter 120 by the Department of Highway Safety and Motor Vehicles, but any review of the validity of any conviction or failure to answer summons reported pursuant to the compact in s. 322.44 or s. 322.50 shall be limited to establishing the identity of the person so convicted or failing to answer summons.

History.—s. 6, ch. 67-176; ss. 24, 35, ch. 69-106; s. 1, ch. 77-117; s. 4, ch. 77-373.

322.49 Short title.—Sections 322.45-322.50 shall be known as the "Florida Nonresident Violator Compact Act."

History.—s. 2, ch. 77-373.

322.50 Nonresident Violator Compact.—The Nonresident Violator Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

FINDINGS AND DECLARATION OF POLICY.—

(1) The party jurisdictions find that:

(a) Under present procedure, a nonresident motorist who is arrested in a jurisdiction other than his home jurisdiction must either post collateral or bond to secure appearance for trial at some later date, or, if he is unable to post such collateral or bond, he is taken into custody until such collateral or bond is posted or taken directly to court for trial to be held. The purpose of this requirement is to obviate the difficulty of ensuring compliance with the terms of a traffic citation by the nonresident who, if permitted to continue on his way after receiving such citation, could return to his home jurisdiction and disregard with impunity his duty under the terms of such citation.

(b) Motorists who are arrested in their home jurisdictions are permitted, with a few exceptions involving the most serious traffic violations, to accept a citation from the arresting officer at the scene of arrest with instructions to appear at a later date at a designated police station for the purpose of posting collateral or a bond or, in the alternative, to appear at an appropriate court for trial, and to continue on their way immediately after receiving such citation.

(c) In many of the arrests described in paragraph (a), great inconvenience and, at times, great hardship is imposed on the nonresident who is unable at the time of arrest to post collateral or to furnish a bond or to stand trial thus compelling the nonresident to remain in custody for a significant length of time.

(d) The arrest of a nonresident motorist for a motor vehicle violation is presently consuming an undue amount of unproductive law enforcement time.

(2) It is the policy of the party jurisdictions to:

(a) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(b) Make possible reciprocal recognition of the right of motorists of the party jurisdictions to accept a citation without delay in all traffic violation cases in which such procedure is permitted whether the motorist is a resident or a nonresident of the jurisdiction in which the arrest was made.

(c) Maximize effective utilization of law enforcement personnel.

(d) Consider an operator who ignores or refuses

a citation from a party jurisdiction to be an unfit or irresponsible person to hold the driving privilege.

ARTICLE II

DEFINITIONS.—As used in this compact:

(1) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) "Citation" means any citation, summons, ticket, or other document issued by an arresting officer for violation of a traffic law, ordinance, rule, or regulation ordering the arrested motorist to appear.

(3) "Home jurisdiction" means the jurisdiction which has issued and has the power to suspend or revoke the use of the license to operate a motor vehicle.

(4) "License" means any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of a party jurisdiction including:

(a) Any temporary or learner's permit;

(b) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(c) Any nonresident's operating privilege conferred upon a nonresident of a party jurisdiction pertaining to the operation by such person of a motor vehicle in such party jurisdiction.

(5) "Collateral" or "bond" means any cash or other security deposited to secure an appearance for trial following a citation by an arresting officer for violation of a traffic law, ordinance, rule, or regulation.

(6) "Personal recognizance" means a signed agreement by an arrested motorist that he will comply with the terms of the citation served upon him at the time of arrest.

ARTICLE III

PROCEDURE BY ARRESTING OFFICERS IN CERTAIN TRAFFIC VIOLATIONS.—

(1) An officer making an arrest for a traffic violation shall issue a citation as appropriate to all motorists who are residents of the party jurisdictions and shall not, subject to the exceptions noted in subsection (2) of this Article, require such motorist to post collateral or bond to secure appearance for trial, but may accept such motorist's personal recognizance that he will comply with the terms of such citation.

(2) No motorist shall be entitled to receive a citation under the terms of subsection (1) of this Article, nor shall any police officer issue such citation under the same terms, in the event the offense for which the citation be issued shall be one of the following:

(a) An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by law; or

(b) An offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.

(3) Upon the failure of any nonresident to comply with the terms of a traffic citation, the arresting officer or other appropriate official may obtain a warrant for arrest and shall report said failure to the licensing authority of the jurisdiction in which the arrest was made. Such report shall clearly identify the person arrested; describe the violation, specifying the section of the traffic law, ordinance, rule, or regulation violated; indicate the location of the offense; and describe the vehicle involved and its registration number. Such report shall be signed by the arresting officer or other appropriate official.

ARTICLE IV

PROCEDURE BY LICENSING AUTHORITIES.—

(1) Upon receipt of the report as described in Article III, the licensing authority of the jurisdiction in which the arrest was made shall transmit an official copy of the record of such report to the licensing authority of the home jurisdiction.

(2) Upon receipt of a certification of noncompliance from the licensing authority of the jurisdiction in which the arrest was made, the licensing authority of the home jurisdiction shall immediately initiate license suspension proceedings against such motorist. The order of suspension shall indicate the reason for the order and shall notify the motorist that his license shall remain suspended until satisfactory evidence has been furnished to the authority issuing such order of compliance with the terms of the citation.

(3) A copy of any suspension order issued hereunder shall be furnished to the licensing authority of the jurisdiction in which the arrest was made.

(4) If the laws of a party jurisdiction do not provide for offenses or violations denominated or described in precisely the words employed in the jurisdiction to which a certification is transmitted, the party jurisdiction shall construe the denomination and descriptions appearing in the laws of such jurisdiction as being applicable to and identifying those offenses or violations of a substantially similar nature.

ARTICLE V

APPLICABILITY OF OTHER LAWS.—

(1) Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

ARTICLE VI

COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION.—

(1) The motor vehicle administrator of each party jurisdiction shall be the administrator of this compact for his jurisdiction. The administrators acting jointly shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party jurisdiction shall furnish to the administrator of each other party jurisdiction any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VII

ENTRY INTO FORCE AND WITHDRAWAL.—

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE VIII

EXCEPTIONS.—The provisions of this compact shall not apply to parking violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY.—This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—s. 3, ch. 77-373.

CHAPTER 323

MOTOR CARRIERS AND FREIGHT FORWARDERS

PART I MOTOR CARRIERS (ss. 323.01-323.36)

PART II FREIGHT FORWARDERS (ss. 323.51-323.68)

PART I

MOTOR CARRIERS

[1]**323.01 Definitions.**—In construing part I of this chapter, where the context permits, the word, phrase or term:

(1) "Commission" means the Florida Public Service Commission.

(2) "Corporation" includes any corporation, company, association, or joint stock association.

(3) "Certificate" means any certificate of public convenience and necessity issued under the provisions of this part.

(4) "Permit" means any permissive permit issued under the provisions of this part to those carriers operating over public highways in transporting persons or property for compensation other than those holding certificates of public convenience and necessity under the provisions of this part.

(5) "Public highway" means every public street, road or highway in this state, and in the case of common carriers holding certificates to transport general commodities over specified highways, the term "public highway" shall comprehend the area abutting the same for a distance of two airline miles on either side thereof.

(6) "Motor vehicle" includes all vehicles or machines propelled by power other than muscular, used upon the public highways (but not over fixed rails) for the transportation of persons or property for compensation.

(7) "Motor carrier" means all persons, their lessees, trustees or receivers, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over fixed rails, used in the business of transporting persons or property for compensation over any public highway in this state and shall specifically include:

(a) Every such person owning, leasing, using or exercising dominion over motor vehicles operated in common carriage of either persons or property for compensation over public highways over regular routes or on fixed schedules or between fixed termini or in charter carriage as herein defined.

(b) Every such person owning, leasing, using or exercising dominion over motor vehicles operated in the transportation of persons or property over public highways under contract or private carriage for compensation.

(c) Every such person, owning, leasing, using or exercising dominion over motor vehicles operated in the transportation of persons or property over public highways for hire as defined and regulated by this part and as further defined and regulated by the commission under the authority conferred on it by this part.

(8) "Private contract carrier" means any motor

carrier engaged in the transportation of persons or property over the public highways of this state who is not a common carrier but transports such persons, or property, under contract for one or more persons for compensation over such highways, where such carriage consists of continuous or recurring carriage under the same contract.

(9) "Charter carriage" or "service" means the transportation of a group of persons who, pursuant to a common purpose and a single contract, have acquired the exclusive use of a motor bus of a greater capacity than nine, including the driver, in which to travel together as a group to a specified destination or for a particular itinerary agreed upon in advance or modified or rearranged after having left the point of origin. Charter carriage shall not be deemed to include sightseeing over public roads and highways for which individual tickets are sold.

(10) "For compensation" as used in these definitions and in this part means a return in money or in property or in anything of value for service in transporting persons or property by motor vehicles over public highways, whether paid, received or realized, directly or indirectly, and shall specifically be deemed to include any profit in money, goods or things realized on the delivered price of goods, merchandise, cargo or property, where title or ownership is temporarily vested during transit in the carrier as a subterfuge for the purpose of avoiding regulation under this part; provided that where said profit is equal to or less than the regularly established rate applicable to the transportation of said property by common carriers authorized by law to transport property for compensation, such scheme or device shall be presumed to be a subterfuge for the purpose of avoiding regulation under this part.

(11) "Suburban territory" means that zone outside of and contiguous to the corporate limits of a base municipality as follows:

(a) When the base municipality has a population less than 2,500, all unincorporated areas within 2 miles of its corporate limits and all of any other municipality any part of which is within 2 miles of the corporate limits of the base municipality;

(b) When the base municipality has a population of 2,500 but less than 25,000, all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality;

(c) When the base municipality has a population of 25,000 but less than 100,000, all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base municipality;

(d) When the base municipality has a population of 100,000 or more, all unincorporated areas within 5 miles of its corporate limits and all of any other municipality any part of which is within 5 miles of the corporate limits of the base municipality.

The population of municipalities shall be according to the most recent federal census.

(12) "Truck" includes any self-propelled motor vehicle designed and used principally for carrying things other than passengers.

(13) "Trailer" includes any vehicle without motive power and having one or more axles at each end, coupled to or drawn by a motor vehicle and designed to carry property solely on its own structure where no part of its own weight or that of its load, rests upon another vehicle.

(14) "Semitrailer" includes any vehicle without motive power with axle or axles at the rear end only, so designed and used in connection with a motor vehicle that some part of its own weight and that of its own load rests upon, or is carried by another vehicle.

(15) "Tractor" shall mean and include any self-propelled motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(16) "Transportation broker" means any person, firm, company or association not included in the term motor carrier and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation of property subject to this part, or which would be subject to it except for the exemptions, provided by s. 323.29, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes or contracts for such transportation; provided, however, the procuring of transportation of cut flowers and the transportation of flower bulbs are exempt from this part.

(17) "Certificate of registration" means a certificate issued as a matter of course upon proper application therefor to any motor carrier engaged in transporting persons or property for compensation in interstate commerce by virtue of a certificate of public convenience and necessity, permit, or exemption from the Interstate Commerce Commission authorizing operation over the public highways of this state.

(18) "Nonemergency service" means the transportation by motor vehicle of persons who do not need, or do not expect to need, medical assistance en route.

(19) "Common carrier" means any person engaged in motor carrier transportation of persons or property for compensation over the public highways of this state who holds his service out to the public and provides transportation over regular or irregular routes.

(20) "Money, securities and other valuables" includes, but is not limited to, currency, coin, bullion, precious metals, silverware, jewelry, precious stones, paintings, negotiable and nonnegotiable securities, and bank checks.

(21) "Road building and construction aggregates" includes, but is not limited to, sand, gravel, limerock, limestone, slag, pumice, granite, stone, crushed rock, shell, clay, and fill dirt.

(22) "Taxicab" means every motor vehicle of nine passenger capacity or less, including the driver, engaged in the general transportation of persons for compensation on occasional trips, not on a regular

schedule or between fixed termini or over regular routes.

History.—s. 1, ch. 14764, 1931; CGL 1936 Supp. 1335(1); s. 1, ch. 18026, 1937; s. 1, ch. 25418, 1949; s. 1, ch. 29787, 1955; s. 1, ch. 57-111; s. 1, ch. 57-157; s. 1, ch. 57-222; s. 20, ch. 61-530; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 1, ch. 65-52; s. 1, ch. 65-549; s. 27, ch. 69-353; s. 1, ch. 70-159; s. 3, ch. 76-168; s. 1, ch. 76-171; ss. 1, 21, ch. 77-434; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 11.031 Official census.

Ch. 350 Florida Public Service Commission.

s. 769.01 et seq. Liability of persons engaged in certain hazardous occupations.

323.011 Fees, fines, etc.; disposition thereof.—The commission shall collect the following fees, fines, etc., pursuant to this chapter:

(1) A fee of $500 to accompany each application for a certificate of public convenience and necessity pursuant to s. 323.03.

(2) A fee of $100 to accompany each application for temporary authority pursuant to s. 323.03.

(3)(a) A fee of $250 to accompany each joint application for transfer pursuant to s. 323.041.

(b) A fee of $250 to accompany each protest or objection to a joint application for transfer pursuant to s. 323.041.

(4) A fee of $100 to accompany each application for a permit pursuant to s. 323.05.

(5) A tax of $50 at the time application is made for a master taxi permit pursuant to s. 323.053, and by June 30 of each year thereafter, plus an annual tax of $10 for each taxicab registered under the permit, said registration to expire annually on June 30.

(6) A fee of $10 to accompany each tariff filing pursuant to s. 323.08, and the following fees to accompany each rate application for a general rate increase pursuant to s. 323.08:

(a) $300 for any carrier with an annual intrastate operating revenue of not over $250,000.

(b) $500 for any carrier with an annual intrastate operating revenue of between $250,000 and $1,000,000.

(c) $700 for any carrier with an annual intrastate operating revenue over $1,000,000.

Tariff organizations shall pay the same fees as for individual carriers, with the total intrastate operating revenues of all member carriers being used to determine the proper classification.

(7) A penalty of not more than $5,000 for each offense as provided by s. 323.09.

(8) A fee of $100 to accompany each application for temporary suspension pursuant to s. 323.10.

(9) A fee of $100 to accompany each petition for a hearing as provided by s. 323.10(5).

(10) A fee of $25 to accompany each application for a certificate of registration and $10 for each supplement registered thereafter pursuant to s. 323.28.

(11) A fee of $8 to accompany each application for a cab card issued pursuant to s. 323.22.

(12) A fee of $20 for all miscellaneous applications or petitions filed pursuant to this chapter for which no specific fee is provided and which requires formal commission action.

(13) A fee of $500 to accompany all applications to become a self-insurer pursuant to s. 323.06.

All moneys collected under this section shall be deposited in the Florida Public Service Regulatory Trust Fund.

History.—s. 2, ch. 77-434.

[1]323.02 Certificate or permit required.—No motor carrier shall operate any motor vehicle for the transportation of persons or property for compensation on any public highway in this state, including the transportation of persons in nonemergency service, without first having obtained from the Public Service Commission a certificate of public convenience and necessity, a permit as hereinafter provided, a certificate of registration of Interstate Commerce Commission authority, or an exemption as hereinafter provided.

History.—s. 2, ch. 14764, 1931; CGL 1936 Supp. 1335(2); s. 2, ch. 57-111; s. 1, ch. 63-496; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 2, ch. 76-171; s. 3, ch. 77-434; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.03 Common and contract carriers; certificate of convenience required.—No motor carrier shall operate any motor vehicle for the transportation of persons or property as a common or contract carrier for compensation on any public highway in this state without first having obtained from the commission a certificate that public convenience and necessity requires such operation.

(1) APPLICATION, FEES, ETC.—Application for such certificate of public convenience and necessity for common or contract carriage made by any motor carrier shall be in writing verified by the applicant and shall specify such information as may be required by the commission, which shall include at least the following matter:

(a) The name and address of applicant and the names and addresses of its officers, if any.

(b) The public highway or highways over which, and the fixed termini or the regular route, if any, between which or over which, or the territory within which, applicant desires to operate.

(c) The kind of transportation, and whether passenger or freight, or both, in which applicant intends to engage, together with the number of vehicles and a brief description of each vehicle which applicant desires to use, including the seating capacity thereof, if buses, or the tonnage thereof, if trucks, and including specifically the size and weight of each vehicle.

(d) The proposed time schedule of operations, if any.

(e) If the application is for contract carriage, a sworn copy of the executed contract or contracts under which applicant desires to operate.

(f) An agreement on the part of the applicant to conform with and abide by all the laws of Florida and by all rules as to freight or passenger carriage which may be lawfully prescribed by the commission from time to time.

(g) A proposed schedule of rates, fares, charges, and classifications, if any.

(h) Such other information that will aid the commission in making a decision pursuant to subsection (4) of this section.

Any such application shall be accompanied by a fee provided by s. 323.011.

(2) HEARING AND NOTICES.—Upon the filing of said application and payment of said fee, the commission shall give notice to all motor carriers serving any part of the route proposed to be served by the applicant, to the mayor or chief magistrate of each city and town in or through which the applicant desires to operate, to the chairman of the board of county commissioners of each county in which the proposed service would be operated, and to the Department of Transportation. Such notice shall contain a brief summary of the subject matter of the application, the type of service proposed, the geographical area by territory or route to be served, and such other pertinent facts as the commission shall designate. Any interested person who may be substantially affected by the proposed operation shall file with the commission and serve upon the applicant a formal protest within 30 days after service of said notice. If no written protest is filed and served as herein provided, the commission may dispose of the application without oral hearing under appropriate rules established by the commission. If one or more protests are filed as herein provided, or if the commission decides on its own motion that such hearing is needed, the commission shall fix a time for hearing of said application, which shall be not less than 20 days or more than 90 days subsequent to the service of notice of hearing, and such notice of hearing shall be served upon applicant and all persons who have filed a written protest.

(3) DISPOSITION OF APPLICATION.—At the time specified in the notice of hearing, or at such time thereafter as may be fixed by the commission, a public hearing upon said application shall be held by the commission, unless there be a lack of written protest as provided in subsection (2) and the commission has elected to dispose of the application without oral hearing. After consideration, the commission shall enter an order in accordance with the provisions of this part and may issue a certificate as sought, refuse to issue the same, or issue the same with modifications or upon such terms and conditions as in its judgment the public convenience and necessity may require.

(4) ISSUANCE OF CERTIFICATE.—A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements and rules thereunder of the commission, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity. In determining whether such certificate shall be granted, the commission, among other things, must specifically consider, and in a contested proceeding make affirmative findings concerning, each of the following elements:

(a) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs.

(b) The present necessity for the certificate in relation to the volume of existing or projected future traffic over such route or in such territory.

(c) The financial ability of the applicant to furnish adequate, continuous, and uninterrupted service at the times required therefor, and to meet the financial obligations of the service which the carrier proposes to perform.

(d) The effect on existing transportation facilities and service of all kinds, and particularly whether the granting of such certificate will or may seriously impair essential public service as provided by existing motor carriers.

(e) The fitness of the applicant properly to perform the proposed service and to conform to provisions of this part and the rules of the commission.

(f) The feasibility of the transportation proposed.

(5) TERRITORY ALREADY SERVED.—When application is made by a motor carrier for a certificate to operate as a carrier in a territory or on a line already served by a certificate holder, the commission shall grant same only when the existing certificate holder or holders serving such territory fail to provide service and facilities which may reasonably be required by the commission.

(6) APPLICATION DENIAL.—When any application for a certificate has been processed by the commission and denied, the commission shall not entertain any further application by the same applicant covering the identical or similar routes, territory, schedules, or service until the expiration of 6 months from the date of such denial.

(7) CONTENTS OF CERTIFICATE.—Any certificate issued under the provisions of this section shall contain, among other things, the following:

(a) The name of the grantee.

(b) The public highway or highways over which, and the fixed termini, if any, between which, the grantee is permitted to operate or the territory in which the grantee is permitted to operate.

(c) The kind of transportation, and whether passenger or freight, or both, in which the grantee is permitted to engage, together with a statement of the specific freight commodities, other than general commodities or passenger service, to be transported by the grantee.

(d) Such additional terms, conditions, provisions, and limitations as the commission shall deem necessary or proper in the public interest. In general commodity freight and intercity bus passenger certificates, the authority and operations thereunder shall be limited to regular routes and schedules.

(8) COMPLIANCE WITH RULES.—No certificate shall issue hereunder unless the grantee has complied with all applicable laws and rules pertaining to the transportation authorized within 90 days from the date of the commission's final order disposing of said application; otherwise, the authority shall be null and void.

(9) TEMPORARY AUTHORITY.—In order to provide service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion:

(a) Grant to a certificated carrier emergency temporary authority for such service by the certificated carrier for such period of time as the commission shall specify, but not more than an aggregate of

60 days. Said emergency temporary authority may be granted without notice and hearing, and the procedure for notice of hearing set forth in s. 323.03 shall not apply to the grant of emergency temporary authority. The commission shall adopt reasonable rules governing procedure and proof on an application for emergency temporary authority.

(b) Grant temporary authority for such service in conjunction with an application for permanent authority. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but not more than an aggregate of 180 days and shall create no presumption that corresponding permanent authority will be granted thereafter. An application for temporary authority shall be accompanied by the payment of a fee as provided by s. 323.011 and shall contain the affidavit of the applicant or his attorney that notice in writing of such application has been served personally or by first class mail upon all motor carriers certified by the commission to the applicant as serving any part of the route or territory proposed to be served by the applicant and authorized to transport the persons, commodities, or articles for which transportation authority is sought and upon the Department of Transportation. If no written protest is received by the commission within 15 days after the filing of the application, the commission may dispose of the application without oral hearing. If written protest is received within the 15-day period from one or more certificated motor carriers possessing all or a portion of the authority sought in the temporary authority application, the commission shall fix a time for hearing of the application which shall be not less than 30 days nor more than 60 days subsequent to the filing of the application. The commission shall enter an order in accordance with the provisions of this part within 30 days after such hearing and may grant or deny temporary authority or grant same with modifications, or upon such terms and conditions as in its judgment the immediate and urgent need requires. In the event temporary authority is granted, the commission may, in its discretion, extend the 180-day period until disposition of an application pursuant to s. 323.03 seeking permanent authority, if the commission finds the immediate and urgent need will continue to exist, and provided that the application for permanent authority is filed within 120 days following the grant of temporary authority.

History.—s. 3, ch. 14764, 1931; CGL 1936 Supp. 1335 (3); s. 52, ch. 26869, 1951; s. 1, ch. 57-112; s. 2, ch. 57-260; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 1, ch. 65-52, s. 1, ch. 67-319; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 4, ch. 77-434; s. 1, ch. 77-457; s. 130, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

323.032 Charter authority.—

(1) Authority to engage in charter carriage as defined in this part shall not be granted unless the applicant has proved in a certificate application proceeding that public convenience and necessity require such operation. In no event may the commission grant charter rights except in conjunction with the grant of regular route certificates to motor common carriers of passengers.

(2) Any carrier authorized to transport passengers in charter carriage may depart from its authorized routes of carriage to transport a party of passengers to any point or place in the state, provided the charter party originates at a point authorized to be served on the regular route of the carrier. The carrier may originate charter parties from points it is not authorized to serve on or off its regular routes if those points are not served by another regular route motor common carrier authorized to perform charter carriage.

(3) Charter rights are not severable by sale, transfer, assignment, or any other means whatsoever from the certificate of which the charter rights are a part. However, any charter rights granted after October 1, 1970, which duplicate the rights of any existing motor common carrier of passengers may be sold, transferred, or assigned only to an existing certificated motor common carrier of passengers whose rights are duplicated by the charter rights.

(4) Carriers either holding or granted charter rights pursuant to this section are entitled to the protection afforded by this chapter when an applicant seeks duplicating charter rights.

(5) In the event an authorized carrier or carriers cannot perform a charter trip, the commission shall have the authority, pursuant to its rules, to order any certificated motor common carrier of passengers to perform the charter trip.

(6) Nothing in this section shall be construed as affecting charter rights held by carriers prior to July 1, 1977, nor shall it be construed as granting authority to any carrier not having charter authority as of that date.

History.—s. 5, ch. 77-434.

[1]323.041 Transfer of certificate; modification, etc.—

(1) No certificate of public convenience and necessity authorizing common carriage or contract carriage, may be sold, assigned, or transferred by the holder to another, until the same has been approved by the commission as herein provided. This section shall apply with like effect to the transfer of control of a corporate certificate holder through transfer of stock ownership or otherwise.

(2) When any such certificate is proposed to be sold, assigned, or transferred, or when stock of a corporate certificate holder is proposed to be assigned, sold, transferred, or purchased and such will effect a transfer of control of the corporation, all of the parties, nominal and actual, to such transaction shall jointly file an application with the commission, upon forms, and according to rules governing form and substance thereof adopted by such commission. Such application shall set forth the details of the transaction, specifying the consideration and method of payment, the date such assignment, sale, or transfer is desired to be consummated, the financial statement of the transferee, the certificate authority, if any, held by the transferee from any regulatory commission of this state, of the United States, or of any state or district of the United States, and any other pertinent facts. Such application shall be accompanied by payment of a filing fee as provided by s. 323.011. In such application, the proposed transferee shall agree to pay all taxes, assessments, and obligations which may be due or owing to this state by the transferor, to the date of the entry of the order

by the commission approving such transfer, as a condition precedent to such approval. Upon the filing of such petition, the commission shall issue and serve upon all railroads and all certificate holders operating under certificates of the commission authorizing transportation in the territory involved of any commodities included in the certificate sought to be assigned or transferred, a written notice, which notice shall contain the general pertinent facts of such application. Said notice shall require any objections or protests to such transfer to be filed in writing with the commission by a date to be fixed by the commission in such notice, and the same shall be accompanied by a filing fee as provided by s. 323.011. Any objection or protest filed shall state fully the basis therefor. In the event no written protest is filed with the commission by a railroad, certificate holder, or other person whose substantial interests are being determined, within the time fixed, then and in that event, the commission may consider said petition and act upon the same as an ex parte matter without the necessity of public hearing, and for the purpose of such consideration, the commission may require either or both of the parties to such proposed transfer to appear before it for the purpose of giving testimony, or to produce any such records or information as the commission may direct and find necessary to consider in passing upon said petition.

(3) In the event one or more written protests stating grounds therefor are filed with the commission as herein provided within the time fixed by the commission, then the commission shall cause a proceeding to be held in accordance with chapter 120 and shall issue and serve upon the applicants and all persons who have filed such protests a notice of such proceeding, containing the general pertinent facts of such application, the date of such proceeding to be not less than 15 days following the date of such notice. If the commission finds and determines that such sale, assignment, or transfer is not contrary to the public interest and that the certificate has not been dormant for more than 6 months, it shall enter an appropriate order in the premises. The commission shall have no power or authority, directly or indirectly, to grant or issue any temporary or interim approval of a sale, assignment, or transfer as aforesaid, but shall have power only to approve or disapprove same, finally, and after hearing if protests are filed as aforesaid and hearing is requested.

(4) A certificate may be divided as to route or territories, and part thereof transferred, sold, or assigned, provided the commission finds that such routes or territories are clearly severable and the division thereof does not permit the creation of duplicate operating rights. No division of certificate rights, by sale, transfer or assignment based upon the class or classes of property authorized to be transported shall be approved, unless it appears to the satisfaction of the commission that the part of the operating rights sought to be transferred, sold or assigned is, because of a difference in the nature or type of the service rendered, considering the type of vehicle and characteristics of the customers served, clearly distinguishable and severable from the remaining operating rights; provided, however, certificates which authorize transportation of general freight or of a specified general class of freight which class would include other classes as an integral part thereof may not be severed as to any commodity or class falling within such overall general class specified in the certificate.

(5) When the transfer of any certificate, or the sale of capital stock of a corporate certificate holder, as herein provided, is approved by the commission, the commission is hereby empowered to reasonably alter, restrict or modify the terms and provisions of such certificate, or impose restrictions on such transfer where the public interest may be best served thereby, or the existing transportation facilities within the territory or on the route involved may be safeguarded or improved in the public interest.

(6) The order of the commission approving any sale, assignment, or transfer shall direct immediate cancellation of the certificate and reissuance thereof to the transferee unless alterations, restrictions, or modifications of the terms and provisions of such certificate canceling any duplicating authority involved in said reissuance are imposed upon the transferee in conjunction with such approval. In such latter event, the commission order of approval shall require the transferee to notify it in writing, within a period of time fixed by the commission, whether or not it will accept the certificate as so altered or restricted. If such notification is not given, or if given in the negative, the commission shall enter its order canceling and revoking its approval; otherwise the commission shall thereafter cancel the certificate and reissue it to the transferee.

(7) Notwithstanding any of the provisions hereof, any executor, administrator, receiver, trustee in bankruptcy or in reorganization, or other court officer, shall be entitled, as judicial assignee, to operate the business of the certificate holder, without the approval of the commission, upon filing with the commission a certified copy of this order of appointment, but any sale, transfer, or assignment by any such judicial officer shall be subject to the terms and conditions hereof.

History.—s. 1, ch. 57-260; s. 4, ch. 67-319; s. 3, ch. 76-168; s. 6, ch. 77-434; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.042 Multiple transportation authority prohibited.—No motor carrier shall acquire or hold a common carrier certificate and a contract carrier certificate or a permit at the same time, or a contract carrier certificate and a permit at the same time, unless the commission shall first find that such dual authority or multiple authority is not contrary to the public interest; however, this prohibition shall not apply to motor carriers holding such dual or multiple authority on May 26, 1959.

History.—s. 1, ch. 59-146; s. 1, ch. 63-496; s. 3, ch. 76-168; s. 7, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.05 Permit to operate motor vehicles.—

(1) The following types of transportation shall be exempt from the requirements of securing a certificate under this part, but must secure a permit from the commission and are subject to s. 323.15, pertain-

ing to the payment of road tax, s. 323.22, pertaining to cab cards, the provisions of this part, and the rules of the commission, except as exempted pursuant to s. 323.29:

(a) Motor carriers engaged exclusively in the transportation of passengers or property for or pursuant to a contract with the United States Government.

(b) Motor carriers engaged exclusively in carrying property consisting of ordinary livestock, seafood, or agricultural products (excluding those that are frozen or processed). The commission may by rule adopt, in whole or in part, the Agricultural Commodity Lists of the Bureau of Motor Carriers, Interstate Commerce Commission, or may by rule promulgate a list of other commodities subject to this section.

(c) Transportation purely incidental to a person's primary business of maintenance, repair, or installation, provided such transportation is in single, casual, and nonrecurring trips and requires the performance of substantial services in addition to transportation.

[2](d) Transportation of houses and buildings formerly attached to realty; however, this shall not include mobile homes, as defined in chapter 320, or manufactured buildings, as defined in s. 553.36.

(2) A permit authorizing the above transportation may be issued as a matter of right and without a hearing, upon the payment of a fee provided by s. 323.011; however, the commission may hold a hearing for the purpose of determining whether the proposed transportation is in compliance with this section. The application for said permit shall be in writing, verified by the applicant, and shall specify, among other things, the following matters:

(a) The name and address of the applicant and the names and addresses of its officers, if any.

(b) A brief description of each vehicle which the applicant proposes to operate and the license tag therefor issued or to be issued as to such vehicles.

(c) An agreement on the part of the applicant to keep such records as may be prescribed by the commission and to abide by the terms of the permit issued and by the rules of the commission as to type and size of equipment, safety appliances and devices, and rules as to load which may be reasonably prescribed by the commission from time to time, within the limits prescribed by law as to such motor vehicles.

(3) Any person providing transportation for compensation under a for-hire permit issued by the commission pursuant to an application filed on or before July 1, 1977, may continue such transportation under the permit subject to reasonable rules of the commission; however, nothing herein shall be construed as extending or expanding such permit beyond its original terms and limitations.

(4) Such permit shall be subject to suspension or revocation at any time by the commission upon hearing when it shall appear that the holder thereof has failed to keep records as prescribed by the commission and to comply with the laws of the state touching motor vehicle operations or with the rules of the commission as to the operation of such vehicles over public highways.

(5) No permit issued or continued in effect by this section shall be assigned, sold, or transferred by the holder to another.

History.—s. 5, ch. 14764, 1931; CGL 1936 Supp. 1335(5); s. 1, ch. 22842, 1945; s. 11, ch. 25035, 1949; s. 2, ch. 25418, 1949; s. 54, ch. 26869, 1951; s. 2, ch. 57-222; s. 1, ch. 63-496; s. 4, ch. 65-337; ss. 12, 35, ch. 69-106; s. 1, ch. 70-221; ss. 1, 6, ch. 70-427; s. 3, ch. 76-168; s. 8, ch. 77-434; s. 1, ch. 77-457; ss. 2, 7, ch. 79-152; s. 68, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 7, ch. 79-152, provides that, if chapter 323 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457 or as subsequently amended, it is the intent of the Legislature that section 2 of that act shall also be repealed on the same date as is therein provided.

cf.—s. 323.15 Road tax; advance deposits; lien for taxes, enforcement of lien; records; statements, etc.

[1]323.052 Regulation of motor carriers by chartered counties.—

(1) Notwithstanding any other provisions of this part to the contrary, any chartered county may regulate and license for-hire passenger motor vehicles in the unincorporated area of the county and in those municipalities that do not regulate such vehicles on July 1, 1974, or that do not adopt regulations at least as strict as those initially adopted by the county, by filing with the Public Service Commission a written resolution that the county will be assuming regulatory jurisdiction of for-hire passenger motor vehicles throughout said county. Said resolution shall not become effective sooner than 90 days from the date the resolution is received by the commission. When said date arrives, the county that has filed its intent to regulate and license shall have exclusive jurisdiction to regulate and license for-hire passenger motor vehicles in the unincorporated area of said county and those municipalities specified above, and no other body shall have jurisdiction to regulate and license such for-hire passenger motor vehicles in such areas. This subsection shall be authority for the chartered counties of the state, solely within the areas herein defined and upon the election set forth herein, to exercise all powers and functions of regulation, including, but not limited to, permits, areas of operation, rates and charges, inspection, and any other powers presently held by the Public Service Commission. Any chartered county making the election set forth herein shall adopt by ordinance, after holding public hearings, a complete set of rules and regulations which shall apply to all regulatory aspects within the areas herein defined.

(2) A chartered county electing to implement subsection (1) shall prescribe uniform rates and charges and set minimum standards, excluding the regulation and licensing by municipalities as provided in subsection (3), throughout said county, including the incorporated and unincorporated areas.

(3) Any municipality regulating and licensing for-hire passenger motor vehicles on July 1, 1974, shall retain all its existing powers under this chapter except as provided in subsection (2), unless such authority is transferred to the county by a majority vote of the governing body of the municipality.

(4) In no event shall a chartered county electing to implement subsection (1) grant permits to operate for-hire passenger motor vehicles within the areas herein defined in excess of one for every 1,000 residents of the county, as established by the latest United States census or succeeding annual up-date, as

certified by the appropriate agency of the state. However, this provision shall be repealed July 1, 1977, and upon such repeal, any chartered county that has enacted an ordinance pursuant to subsection (1) and is regulating and licensing within the areas herein defined shall incorporate within said ordinance a provision establishing a maximum number of for-hire passenger motor vehicles within such areas in relation to the population of the county, based upon a determination of public convenience and necessity which shall take into consideration such factors as growth and inadequacy of existing service.

(5) Permits obtained prior to the effective date of the election described in subsection (1) shall remain in effect, and all rights and privileges conferred by such permits shall remain in effect and be unimpaired by subsection (1), provided such permits are utilized for those for-hire passenger motor vehicles actually in operation with proper equipment and necessary insurance on the date of enactment of the county ordinance.

History.—s. 1, ch. 74-131; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

323.053 Master taxi permits.—

(1) No person shall operate a taxicab as defined in s. 323.01 without having first received a master taxi permit, which may be issued as a matter of right and without hearing when the provisions of this part and the laws of this state touching such motor vehicle operation have been complied with by the applicant. An applicant may be required by the commission to substantiate the nature of the operation as set forth in his application. The commission may decline to issue a permit applied for when it appears that the operations proposed do not comply with this part and the rules of the commission.

(2) Application by a motor carrier for a master taxi permit to operate for hire over the public highways of this state shall be in writing verified by the applicant, shall be accompanied by payment of a fee prescribed by s. 323.011, and shall contain the following:

(a) The name and address of the applicant and the names and addresses of its officers, if any.

(b) A brief description of each vehicle which the applicant proposes to operate and the license tag issued or to be issued as to such vehicles.

(c) An agreement on the part of the applicant to keep such records as may be prescribed by the commission, and to abide by the terms of the permit issued and by the rules of the commission as to type and size of equipment, safety appliances and devices, and rules as to load which may be reasonably prescribed by the commission from time to time, within the limits prescribed by law as to such motor vehicles.

(d) A description of the proposed operation and such other information as the commission may reasonably require.

(3) The permit so issued shall subject the applicant to the rules of the commission respecting the operation of such motor vehicles over state highways for compensation. However, in lieu of the road tax, all motor carriers operating taxicabs under this part shall procure a permit therefor from the commission and shall pay to the commission at the time application is made for the permit a tax as prescribed by s. 323.011. The permit shall entitle such motor carrier to register any number of taxicabs for operation under this part upon the payment of an annual tax, as prescribed by s. 323.011, to the commission for each taxicab so registered. Permits and registrations thereunder for the operation of taxicabs shall expire on June 30, annually, but may be renewed upon payment of the annual tax provided for herein.

(4) This section shall not apply to persons operating taxicabs wholly within a municipality and its suburban territory which regulates such operations or to those operating wholly within the boundaries of a chartered county which regulates such operations pursuant to s. 323.052, or any other county which regulates such operations by local act of the Legislature. However, all persons operating taxicabs so regulated shall be required to obtain a permit as required herein in order to provide occasional unsolicited trips beyond the boundaries of said municipality and its suburban territory or county.

History.—s. 9, ch. 77-434.

323.054 Applicability of municipal ordinances in suburban territory; exceptions.—Recognizing that motor carriers operating wholly within a municipality and its suburban territory are exempt from the requirements of this part, nothing herein shall be construed as limiting the power of any municipality to license, control, and regulate such motor carriers when they are operating wholly within the municipality and its suburban territory. The ordinances, rules, or regulations adopted by the legislative body of such municipality shall be applicable to such motor carriers within the municipality and its suburban territory immediately adjacent thereto, and such municipality shall have the power to enforce such ordinances, rules, or regulations in the suburban territory to the same extent as if the territory was within the corporate limits of the municipality. This section shall apply only to those motor carriers exempted from the provisions of chapter 323 and shall not be applied to those specifically required to comply with said chapter.

History.—s. 10, ch. 77-434.

[1]323.06 Bond required; conditions; insurance policy may be substituted; self-insurance may be furnished when authorized.—

(1) The commission shall, from time to time, fix and determine the amount of the bond to be given by the applicant for the protection, in the case of a passenger vehicle, of the passengers and baggage carried in said vehicle and of the public against injury caused by negligence of the person or corporation operating the said vehicle, and in the case of a vehicle transporting freight, for the protection of the said freight so carried, if in common carriage, and of the public against injuries received through negligence of the person or corporation operating said freight-carrying vehicle. The carrier shall procure and file with the commission the said bond for liability and property damage, including loss of baggage when same has been checked in accordance with the rules prescribed by the commission, giving the said bond

or bonds in a surety company authorized to do business in the state, or deposit, in lieu of said surety, bonds of the United States Government or of any city or county in the state approved by the said commission.

(2) The said bonds shall be conditioned to indemnify passengers and the public receiving personal injuries by any act of negligence, and for damages to property of any person other than the assured; and such bonds shall contain such conditions, provisions and limitations as the commission may prescribe, and said bonds shall be payable to the Governor of the state, or his successor in office, and shall be for the benefit of and subject to action thereon by any person or persons who shall have sustained an actionable injury protected thereby, notwithstanding any provisions in said bond to the contrary, and every bond or insurance policy given shall be conclusively presumed to have been given according to and to contain all of the provisions of this part.

(3) No certificate or permit shall be valid until such bond has been filed and approved, and no such bond so accepted shall be canceled by the company issuing the same except upon 30 days' notice to the commission, and upon such notice being given by the company issuing said bond or bonds, the certificate or permit of the person or the corporation giving bond shall be revoked, unless a new bond shall be filed and accepted before the date for the cancellation of the said bond. However, the applicant may, in the discretion of the commission, be allowed to file in lieu of bond an insurance policy, which shall be approved by the commission, with some casualty or insurance company authorized to do business in the state. The commission may grant a full or partial exemption to a motor carrier from the requirements of this section to file a bond or insurance policy, provided such company shall supply such financial data as the commission may require, and provided the commission determines that the financial data demonstrates that the company is sufficiently stable and solvent to be granted authority to fully or partially self-insure. The commission shall grant full or partial authority to self-insure, subject to reasonable requirements, such as provisions for the filing of periodic financial statements to the commission demonstrating no substantial deterioration of the company's stability, and a finding that the company is not violating any of the requirements set forth in the order granting authority to self-insure. Applications to become self-insurers shall be accompanied by a filing fee as provided by s. 323.011.

History.—s. 6, ch. 14764, 1931; CGL 1936 Supp. 1335(6); s. 1, ch. 25047, 1949; s. 1, ch. 63-496; s. 5, ch. 67-319; s. 3, ch. 76-168; s. 11, ch. 77-434; s. 1, ch. 77-457; s. 131, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.07 Commission given authority to regulate motor carriers, and to adopt rules and regulations.—The commission may supervise and regulate every motor carrier in the state operating under the authority of this part, fix or approve the rates, fares, charges, classifications, rules and regulations for such motor carriers, regulate the service and safety of operations of each such motor carrier, prescribe a uniform system and classification of accounts to be used, which among other things, shall set up adequate depreciation charges; require the filing of annual and other reports and all other data by said motor carriers; and supervise and regulate motor carriers in all other matters affecting the relationship between such companies and the traveling and shipping public. The commission may by order adopt rules and regulations applicable to any and all such motor carriers, provide for the taking of testimony by depositions, prescribe rules of procedure and exercise all judicial powers, issue all writs and do all things necessary or convenient to the full and complete exercise of its jurisdiction or the enforcement of its orders and requirements. The commission may prescribe qualifications for the appointment of hearing examiners and the procedure before hearing examiners, provided, however, that the commission shall not be bound by the findings of fact or conclusions of law of such hearing examiners, and shall have authority to take additional testimony and evidence, and to grant and hear oral arguments and rehearings in all cases. Hearings may be held before the commission, a commissioner designated by the commission or a hearing examiner of the commission at its offices in Tallahassee or at any other point in the state. The commission, in the exercise of the jurisdiction conferred upon it by this part may make orders and prescribe rules and regulations affecting such motor carriers, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, or village, and in case of conflict between any such order, rule or regulation, and such ordinance or permit, the order, rule or regulation of the commission shall in each instance prevail. No municipality shall have the right to require any such motor carrier to furnish any bond or insurance policy, or pay any license, fee or tax except as herein provided.

History.—s. 7, ch. 14764, 1931; CGL 1936 Supp. 1335(7); s. 7, ch. 22858, 1945; s. 1, ch. 57-114; s. 1, ch. 63-496; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 350.01 et seq. Public Service Commission.

[1]323.08 Rates; procedure for fixing and changing.—

(1) Every motor carrier holding a certificate of public convenience and necessity for common carriage shall maintain on file with the commission a schedule of the rates, fares, charges, and classifications, if any, and a time schedule, if any, of all motor vehicles operated under such certificate. The commission shall require each such motor carrier to keep open for public inspection at designated offices so much of said schedules, rates, fares, charges, and classifications, if any, as well as time schedules, as it deems necessary for the public information. All rate applications filed under this part shall be accompanied by a filing fee as provided by s. 323.011.

(2)(a) Whenever such rates or fares or time schedules are found to be unreasonable, the commission, upon its own motion or upon complaint, shall prescribe reasonable rates and time schedules to take the place of those found unreasonable, and such new rates shall be filed in place of the rates and schedules superseded. No rates or time schedules filed with the commission shall be changed by any

such motor carrier except as provided by rules and regulations adopted by the commission. The commission may adopt rules and regulations governing the filing of tariffs and rate schedules and the method whereby changes in such tariffs and rate schedules may be made effective. In the adoption of such rules and regulations, the commission is authorized to give consideration to the desirability of having tariff filing rules similar to those of the Interstate Commerce Commission. Such rules and regulations may provide for the investigation and suspension by the commission of any proposed tariff changes or that such proposed tariff changes may become effective if not suspended by the commission.

(b) In fixing just, reasonable, and compensatory rates and charges to be observed and charged for services within the state by any and all certificated motor carriers, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities and equipment provided and services rendered, and the value of such services to the public; however, no motor carrier shall be denied reasonable earnings on its Florida intrastate operations. In its deliberation, the commission shall consider, but not be limited to, such items as the Florida intrastate revenues, expenses, operating ratio, and cost of capital. No certificated motor carrier shall charge, demand, collect, or receive a greater or lesser or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such company as specified in its tariffs and classification filed with and approved by the commission and in effect at the time; nor shall any such company refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person, firm, copartnership, corporation, or other organization or association privileges or facilities in the transportation of persons or property except such as are regularly and uniformly extended to all; and no such company shall directly or indirectly issue, give, tender, or honor any free fares except to its bona fide officers, agents, employees, and members of their immediate families. However, motor carriers under this part may exchange free transportation within the limits of this section. Nothing in this act shall repeal or in any way amend, alter, or affect any of the provisions of s. 323.26.

(3) The provisions of subsections (1) and (2) shall not be applicable to the following:

(a) Common carrier armored car services now or hereafter holding certificates of public convenience and necessity authorizing the transportation of money, securities, and other valuables.

(b) Motor common carriers holding authority for the transportation of road building and construction aggregates.

(4)(a) Charter carriers of passengers may, under reasonable rules of the commission, arrange for and receive for charter services such compensation as may be agreed upon between the carrier and the party or parties to be served, and the compensation may include charges for services and expenses in addition to transportation charges.

(b) Common carriers holding certificates authorizing the transportation of newspapers and newspaper supplements may transport the same at rates or charges determined or agreed upon by the carrier and the shipper or owner.

(5) Pending a final decision in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the motor carrier requesting such increase, within 30 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond at the end of such period, but the commission shall by order require such motor carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of hearing and final decision in such proceeding shall by further order require such motor carrier to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the motor carrier shall be refunded or disposed of by the motor carrier as the commission may direct; however, no such funds shall accrue to the benefit of the motor carrier.

(6) In reviewing or establishing rates or fares for motor carriers as provided in this section, the Public Service Commission shall not discriminate against the transport of solid waste, recovered resources, or recycled materials and shall, whenever practicable, provide an incentive for resource recovery and recycling.

History.—s. 8, ch. 14764, 1931; CGL 1936 Supp. 1335(8); s. 1, ch. 61-474; ss. 2, 4, ch. 63-416; s. 1, ch. 63-496; s. 1, ch. 65-259; s. 5, ch. 65-452; s. 6, ch. 67-319; s. 1, ch. 67-529; s. 1, ch. 69-169; s. 6, ch. 74-195; s. 3, ch. 74-342; s. 3, ch. 76-168; s. 12, ch. 77-434; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 364.05 Changing rates, tolls, rentals, etc.
ss. 366.06, 367.081 Rates; procedure for fixing and changing.

[1]323.09 Carrier may be fined, permit or certificate revoked, etc.—

(1) Whenever any motor carrier is found to be violating the provisions of this part or any of the rules or regulations prescribed by the commission, or any of the laws of the state touching motor vehicle operation over the public highways, the commission may, upon complaint or upon its own motion, issue its orders to the said motor carrier notifying it to appear before the commission at a fixed time and place, at which time and place the commission shall investigate such violations, and if it shall be satisfied after such hearing that said motor carrier has violated or refused to observe the laws of this state touching motor vehicle operations or any of the terms of the certificate or permit issued to such motor carrier, or any of the commission's orders, rules, or regulations, the commission may suspend, revoke, alter, or amend any certificate or permit issued to such motor carrier, or said commission may in its discretion impose a penalty for each such offense as provided by s. 323.011. Either one or more of such imposi-

tions may be imposed alternately or cumulatively, which penalty shall constitute a lien upon real and personal property of said motor carrier, prior to all other liens except those for taxes due the state, enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited to the credit of the commission to be used in the administration of this part. The holder of said certificate or permit shall have the right of review by the Supreme Court upon filing therewith a petition for issuance of a writ of certiorari in the manner and within the time prescribed by the Florida Appellate Rules.

(2) If the commission shall determine that the holder of any such certificate or permit has failed to keep records, or to pay road taxes as hereinafter provided, the commission shall forthwith issue citation against such motor carrier requiring it to appear before the commission at a fixed time and place and show cause, if any, why it should not have a penalty imposed against it or its certificate or permit revoked or suspended for a fixed period, as hereinbefore provided, in the discretion of the commission.

History.—s. 9, ch. 14764, 1931; CGL 1936 Supp. 1335(9); s. 1, ch. 22658, 1945; s. 10, ch. 26484, 1951; s. 1, ch. 57-113; s. 3, ch. 61-272; s. 13, ch. 63-512; s. 1, ch. 63-496; s. 4, ch. 65-337; s. 3, ch. 76-168; s. 13, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.10 Dormant certificates and rights; revocation of certificates.—

(1) Whenever it shall appear that any motor carrier holding a certificate of public convenience and necessity for the transportation of persons or property on fixed schedules, or over regular routes, has failed to operate, without prior formal approval of suspension by order of the commission, over any route or schedule, or to any point or terminal for a period of 6 months, such certificate is hereby declared to be dormant and abandoned, and the commission, upon its own motion, or upon the petition of any existing certificate holder, shall, after giving reasonable notice by certified mail or actual service to the certificate holder at his last address shown by the commission files, enter an order confirming the cancellation and revocation of such certificate, or the part thereof covering the route, territory, or terminals involved. Applications for formal approval of suspension of operation to the commission shall be accompanied by a filing fee as provided by s. 323.011.

(2) Whenever it shall appear that any motor carrier holding a certificate of public convenience and necessity or permit issued under any provision of this part has failed to operate without prior formal approval of suspension by order of the commission, for a period of 6 months, such certificate or permit is hereby declared to be dormant and abandoned, and the commission, upon its own motion, or upon the petition of any existing certificate holder, shall, after giving reasonable notice by certified mail or actual service to the certificate holder at his last address shown by the commission files, enter an order confirming the cancellation and revocation of such certificate.

(3) The failure of the certificate holder to report and pay the road tax levied and prescribed for such operation for such period of 6 months shall be deemed prima facie evidence of the failure of said certificate holder to operate over such route or schedule or to such terminals for such period; however, the payment of such road tax shall not create any presumption of actual operation, and the burden of proof shall always be upon the certificate holder, when challenged hereunder, to establish by records and testimony the continuity of bona fide and legal operations during the period in question.

(4) Upon the entry of such foregoing order served on the certificate holder at his last address shown by the commission files, said certificate holder may file a formal written petition with the commission requesting a hearing upon such order, but no such petition may be filed or request made after the expiration of 90 days immediately subsequent to the date of such order.

(5) Before the commission shall have jurisdiction to consider such petition, it shall require the petitioning certificate holder to pay to it a sum provided by s. 323.011 toward the costs of a public hearing. Written notice of such hearing shall be mailed to all holders of certificates of public convenience and necessity issued by the commission, at least 15 days prior to the date of such hearing, in addition to any notice requirements in chapter 120. Following such hearing, the commission may reinstate such certificate if good and sufficient cause be shown or shall affirm its order of revocation.

History.—s. 10, ch. 14764, 1931; CGL 1936 Supp. 1335(10); s. 1, ch. 57-173; s. 1, ch. 63-496; s. 4, ch. 65-337; s. 7, ch. 67-319; s. 3, ch. 76-168; s. 14, ch. 77-434; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.11 Maximum width, height, length, etc.— A permit or certificate issued by the commission shall authorize operation of only vehicles complying with the provisions of chapter 316 relating to maximum widths, heights, lengths, etc.

History.—s. 11, ch. 14764, 1931; CGL 1936 Supp. 1335 (11); s. 2, ch. 18026, 1937; s. 1, ch. 19107, 1939; s. 1, ch. 20958, 1941; s. 3, ch. 22825, 1945; s. 11, ch. 25035, 1949; s. 2, ch. 25047, 1949; s. 1, ch. 57-115; s. 95, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.12 Speed laws to be observed.—No motor carrier, holding certificate or permit, shall operate any motor vehicle on public highways in this state in excess of the speed permitted by the laws of this state.

History.—s. 12, ch. 14764, 1931; CGL 1936 Supp. 1335(12); s. 1, ch. 63-496; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.13 Equipment required on vehicles; powers of commission.—The commission may prescribe and require as standard on all vehicles operated by motor carriers under its permits or certificates all necessary safety devices and appliances under its seal designed to establish correct mileage of the vehicle, speed governor, approved rear, side, and front light, approved brakes, including airbrakes or vacuum booster-brakes on all trailers and semitrailers, and other safety and control devices, as well as to prescribe tire size and specifications in the interest of conservation of the public highways, such rules

and regulations to be reasonably prescribed for the protection of the public and the conservation of state highways. Such rules and regulations among other things which the commission may specify and require shall in all instances require the following:

(1) Modern driver control airbrakes or vacuum booster-brakes on all trailers of any kind authorized for operation by its certificates or its permits.

(2) Suitable side and rear lights on all trailers or semitrailers clearly marking the dimensions of such trailers.

(3) Suitable coupling devices on all trailers authorized for use under its certificates or permits assuring accurate following trackage on the part of such trailer and deviation of not more than 3 inches, as hereinbefore provided. Such coupling devices to be so designed with safety chains that the pendle bar, if detached while the vehicle is in motion, will remain suspended and the trailer remain coupled.

(4) Driver vision mirrors so adjusted as to afford the driver ready view of all traffic approaching from the rear without load interference.

(5) The name and city or town address of the certificate or permitholder, as well as the number of such certificate or permit in readily visible and readable form.

(6) Such additional equipment and safety devices and road conservation requirements as the commission may reasonably prescribe from time to time.

History.—s. 13, ch. 14764, 1931; CGL 1936 Supp. 1335(13); s. 1, ch. 63-496; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.14 Detour authority.**—Any motor common carrier holding a certificate may depart from the route described in the certificate if compelled to detour on account of the closing of roads or bridges, pursuant to rules and regulations adopted by the commission.

History.—s. 14, ch. 14764, 1931; CGL 1936 Supp. 1335(14); s. 3, ch. 25418, 1949; ss. 1, 2, ch. 61-519; s. 1, ch. 63-496; s. 1, ch. 70-158; s. 3, ch. 76-168; s. 21, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.15 Road tax; advance deposits; lien for taxes; enforcement of lien; records; statements; etc.—**

(1) There shall be collected on or before January 31 of each year from every motor carrier for each motor vehicle controlled by such motor carrier which travels over the public highways of this state, a road tax as follows:

(a) One hundred dollars for each bus with a capacity of more than 21 passengers, for each truck with 4 or more axles, for each vehicle registered by or leased to a holder of a certificate authorizing the transportation of road aggregates, and for each tractor, except those trucks and tractors operated exclusively within 25 miles of their places of domicile and those controlled by carriers whose authority from the commission is limited to the transportation of household goods or mobile homes.

(b) Fifty dollars for each bus with a capacity of not more than 21 passengers, for each tractor controlled by holders of a permit issued pursuant to or continued in effect by this part, and for each truck of 3 axles.

(c) Forty dollars for each truck or tractor operated and controlled by carriers whose authority from the commission is limited to the transportation of household goods or mobile homes.

(d) Twenty-five dollars for each bus with a capacity of 12 passengers or less.

(e) Fifteen dollars for each truck or tractor regardless of the number of axles which operates exclusively within 25 miles of its place of domicile, except aggregate carriers, and for each truck with 2 axles wherever it operates.

(f) Ten dollars for each truck or tractor controlled by a motor carrier holding a certificate of registration issued pursuant to s. 323.28, authorizing the operation in Florida of motor vehicles under exemptions provided by the interstate commerce act.

(2) Motor carriers shall receive as evidence of payment of the road tax an identifying device as prescribed by the commission, which shall be displayed upon the vehicle for which the tax was paid. The identifying device is nontransferable from one vehicle to another except pursuant to the rules and regulations of the commission.

(3) The road tax shall be applicable to all motor carriers required by this part to obtain a certificate or permit from the commission, whether or not said certificate or permit has been secured by said motor carrier.

(4) The road tax collected shall be only for the remaining portion of the year from when the motor vehicle is placed in service by the motor carrier as follows:

(a) If the annual tax is $100 and the motor vehicle is placed in service between January 1 and July 1, then $100 is to be paid; if between July 1 and December 31, $50.

(b) If the annual tax is $50 and the motor vehicle is placed in service between January 1 and July 1, then $50 is to be paid; if between July 1 and December 31, $25.

(5) Pursuant to the rules and regulations of the commission, a motor carrier may lease vehicles to another motor carrier without the payment of additional road tax, provided that when the tax that has been paid on the vehicle is less than that required when the vehicle is controlled by the lessee, then the lessor may surrender his road tax plate or other identifying device and upon payment of the additional amount receive the required plate.

(6) The road tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character, and description, state, county, or municipal, including excise and license taxes levied or imposed against such motor carriers, or the operation of such business and facilities thereof, or their property, except ad valorem taxes levied upon the property other than motor vehicles of such motor carriers, the gasoline tax and motor vehicle fuel tax, the motor vehicle license tax now or hereafter provided for by law, the sales tax imposed by chapter 212, the income tax imposed by chapter 220, and other fees now or hereafter provided for by chapter 323.

(7) The books and records of all motor carriers shall be at all times open to inspection of the com-

mission or any agent by it appointed for such purpose. The commission shall keep a true and accurate list of all motor carriers to whom certificates shall be issued with the post-office address of each.

History.—s. 16, ch. 14764, 1931; CGL 1936 Supp. 1335(15); s. 3, ch. 18026, 1937; s. 1, ch. 22834, 1945; s. 1, ch. 26663, 1951; s. 1, ch. 61-272; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 1, ch. 65-337; ss. 1, 2, ch. 67-397; s. 2, ch. 71-984; s. 1, ch. 73-347; s. 3, ch. 76-168; s. 15, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 323.05 Permit to operate motor vehicles for hire.

[1]**323.16 Disposition of moneys collected.**—The commission shall keep a separate account of all moneys collected under s. 323.15, and said moneys shall be placed in the State Treasury to be credited as follows:

(1) Thirty-five percent of such funds shall be deposited in the Florida Public Service Regulatory Trust Fund, as created by s. 350.78, for use by the commission in the administration of this part.

(2) Two percent of such funds shall be credited to the Revenue Sharing Trust Fund for municipalities.

(3) The remainder of such fund shall be placed in the State Treasury to the credit of the Revenue Sharing Trust Fund for counties, subject to distribution as provided in this act.

History.—s. 17, ch. 14764, 1931; CGL 1936 Supp. 1335(16); s. 2, ch. 22834, 1945; s. 55, ch. 26869, 1951; s. 2, ch. 26663, 1951; s. 2, ch. 61-119; s. 2, ch. 61-272; s. 1, ch. 63-496; s. 2, ch. 65-337; s. 1, ch. 65-52; s. 1, ch. 69-163; s. 18, ch. 69-216; s. 1, ch. 70-222; s. 15, ch. 72-360; s. 3, ch. 76-168; s. 1, ch. 76-205; s. 16, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.17 Qualifications of drivers.**—No motor carrier shall entrust the operation of any motor vehicle authorized by certificates or permits of the commission to any driver for operation over state highways unless such driver be 18 years of age or older, in good and sound health, experienced with the operation of the vehicle entrusted to him and of proven temperate habits.

History.—s. 18, ch. 14764, 1931; CGL 1936 Supp. 1335(17); s. 1, ch. 63-496; s. 3, ch. 76-168; s. 15, ch. 77-121; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.18 Drivers' working hours.**—In the interest of safety and for the protection of the public, the commission shall adopt appropriate rules and regulations governing the maximum periods of time during which the drivers or chauffeurs of motor carriers subject to the provisions of this part shall be allowed to remain on duty. In conformity with accepted standards of safety in relation to the effect of fatigue upon a driver's ability to operate his vehicle safely, the commission may, as deemed necessary or advisable, classify and adjust the maximum number of hours of duty of a driver or chauffeur with relation to the intervals and extent of periods of rest taken between or during duty periods, conditions under which rest is taken during duty periods, number of drivers used during a given period, actual driving time as distinguished from time spent performing other duties, condition, type, and equipment of vehicles driven, time of day in which driving is done, conditions of highways, weather, traffic, and other matters or conditions of a similar nature.

History.—s. 19, ch. 14764, 1931; CGL 1936 Supp. 1335(18); s. 1, ch. 59-118; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.21 Clerks, investigators, etc.; employment and powers.**—The commission shall employ such necessary clerks, investigators, auditors, attorneys, hearing examiners, and other employees, on such terms and conditions as it shall deem advisable and necessary to carry out the provisions of this part. All investigators employed by the commission are vested with the powers of deputy sheriffs in all counties of the state and authorized to stop any motor vehicle on the highways and to check and inspect any such motor vehicle, including any trailer or semitrailer attached thereto and contents therein, and to inspect any documents on or pertaining to such motor vehicle, trailer, or semitrailer, or their use, and to inspect any bills of lading, manifests, or any other shipping documents relating to the contents of such motor vehicle, trailer, or semitrailer, for violation of this part or any motor vehicle operating under a certificate or permit issued by the commission, for violation of a rule of said commission or the laws touching motor vehicle operation, or use, and to make arrests for any such violation in the same manner as such arrest could be made by deputy sheriffs of the several counties of the state. Said investigators are also authorized to issue citation under rules and regulations of the commission to a motor carrier operating under the commission's jurisdiction or such company's agent, directing said company to appear before the commission at a time and place named in said citation in answer to a charge of violation of a statute of the state or a rule or order of the commission. Failure to appear at said time and place may be treated by the commission as an admission of said charge, and a penalty may be assessed as provided in s. 323.09.

History.—s. 22, ch. 14764, 1931; CGL 1936 Supp. 1335(21); s. 1, ch. 57-261; s. 1, ch. 63-496; s. 3, ch. 76-168; s. 17, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.22 Vehicle registration and identification; fee.**—

(1) The commission shall prescribe reasonable rules and regulations governing the registration and identification of motor vehicles authorized for operation under this part. Under such rules and regulations, the commission may prescribe appropriate identifying devices (cab cards), for which the commission shall charge a fee as provided for in s. 323.011. Any such identifying device prescribed and furnished by the commission shall be conspicuously displayed at all times upon each motor vehicle authorized for operation under this part in such manner as may be prescribed from time to time by the commission. Transfers of such identifying devices from one vehicle to another shall be prohibited.

(2) Motor carriers operating pursuant to a certificate, permit, or registration issued by the commission may obtain emergency or trip-lease permit cards in lieu of cab cards to identify vehicles operat-

ed under a trip-lease or emergency for not more than 15 days. The fee for such card shall be the same as for cab cards and will be in lieu of the road tax. The provisions herein are for vehicles operated on an emergency or temporary basis only, and if the vehicle is in service for more than 15 days, the motor carrier shall be required to pay all applicable fees and taxes.

History.—s. 23, ch. 14764, 1931; CGL 1936 Supp. 1335(22); s. 2, ch. 20958, 1941; s. 1, ch. 22674, 1945; s. 56, ch. 26869, 1951; s. 1, ch. 59-117; s. 1, ch. 63-496; ss. 2, 4, ch. 69-122; ss. 2, 6, ch. 70-427; s. 3, ch. 76-168; s. 4, ch. 76-265; s. 18, ch. 77-434; s. 1, ch. 77-457; s. 132, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.24 Unlawful operation may be enjoined.—Any motor carrier which operates upon the highways of this state or any transportation broker who operates within this state, without first having obtained from the Public Service Commission a certificate, a permit, or a license as prescribed by this part, or who so operates after such certificate, permit, or license is canceled, or who violates any of the provisions of this part, or any order, decision, rule or regulation, direction, demand or requirement, of the commission in relation thereto or any part or provision thereof, may be enjoined by the courts of this state, from any such violation or such unlawful or unauthorized operation within this state, at the instance of the commission or any citizen or taxpayer of this state. Provided further, that in said injunction proceedings the court may order and require such motor carrier to render an account showing the amount of road taxes which it should have paid the state for the operations sought to be enjoined, and the court shall have power and jurisdiction to enter appropriate judgment to enforce or compel the payment of any road taxes found to be due, including the entry of a money judgment for the amount of such taxes.

History.—s. 25, ch. 14764, 1931; CGL 1936 Supp. 1335(24); s. 1, ch. 22777, 1945; s. 1, ch. 59-119; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 1, ch. 65-52; s. 4, ch. 65-337; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.25 Taxes deemed compensatory.—All road taxes prescribed by this chapter and all such taxes imposed on motor carriers using the public highways in the transportation of persons or property for compensation shall be deemed to be compensatory for the use of the public highways of this state by motor carriers taxed under the provisions of this part and as a fair contribution to the cost of constructing and maintaining the public highways of this state and the administration and enforcement of this part and all regulations and restrictions imposed hereby and authorized to be imposed by the commission are declared to be for the purpose of conservation of the state's property and in the interest of safety in the use of its highways.

History.—s. 26, ch. 14764, 1931; CGL 1936 Supp. 1335(25); s. 1, ch. 63-279; s. 1, ch. 63-496; s. 4, ch. 65-337; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.26 Railroad companies may operate motor vehicles under this part.—

(1) Railroad companies, their receivers or trustees, operating in this state may operate motor vehicles for hire upon the highways of this state, provided they obtain from the commission a certificate under this part; and provided further, that they shall be, as to said motor vehicles, motor carriers under this part and subject to all the provisions of this part; and railroad companies, their receivers or trustees operating in this state may also own the whole or any part of the capital stock of a corporation or corporations organized or operating as a motor carrier.

(2) Except as hereinafter provided, no railroad company, its receivers or trustees, nor any company whose stock is owned by a railroad company, its receivers or trustees, shall be granted a certificate of public convenience and necessity without proof such as would be required by an independent motor carrier; provided, however, that upon the making of proper application therefor, by any such railroad company, its receivers or trustees, or by any company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers or trustees, the commission shall, as a matter of right and without a hearing, grant a certificate of public convenience and necessity to any such railroad company, or to the receivers or trustees of such company, or to any such company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers or trustees, to operate for the transportation of freight, express or United States mail over the highways and public roads of this state, using only the most practicable route located nearest to its rail lines and which is generally used between the communities served by its rail lines, said route as herein defined to be determined by the commission, motor vehicles between and within communities which are connected by and served by the rail lines of any such railroad company, but not elsewhere. The rates and charges for transportation by motor vehicles, as in this section provided, shall be the same as those which any such railroad company, its receivers or trustees may be authorized to charge if such transportation had been solely by rail; and said railroad company, its receiver or trustees, and any company in which such railroad company, its receivers or trustees, may own a majority of the stock, engaged in such operation, shall, to the extent of such operation, be liable for the same fees and taxes as are prescribed for other certificated motor carriers.

(3) Any certificate granted by the commission as a matter of right under the foregoing proviso shall be granted subject to the following conditions, viz.: when any application under this proviso is filed with the commission the applicant shall attach thereto the schedules upon which it proposes to operate trucks, and such schedules once being filed shall not be changed or enlarged without the authority of the commission after first making application to it and having such hearing thereon as the said commission may require.

(4) No rate or classification applicable to the service applied for in force and effect as prescribed or

allowed by the commission when such application is made, shall be lowered below the rate or classification of any competing truck lines over the route sought to be served by the applicant without the public service commission first having heard an application so to do, upon due notice as is now or may hereafter be required of any other certificated truck line.

(5) When a certificate granted by the commission under the provisions of this section to a company in which a railroad company may own a majority of the stock has been canceled or revoked by the commission for violation of law or any lawful order, rule or regulation of the commission, no certificate shall be granted to any other company in which said railroad company may own a majority of the stock to operate over that portion of the route as to which the certificate may have been canceled.

History.—s. 27, ch. 14764, 1931; CGL 1936 Supp. 1335(26); s. 1, ch. 18027, 1937; s. 7, ch. 22858, 1945; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.28 Law inapplicable to interstate commerce; certificate of registration.—

(1) Neither this part nor any provisions hereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of the union except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

(2) It is unlawful for any motor carrier transporting for compensation in interstate commerce in Florida for which a certificate of public convenience and necessity or a permit is required from the Interstate Commerce Commission to operate over the public highways of this state without first having filed a certified copy of such Interstate Commerce Commission authority with the Florida Public Service Commission and having obtained from the Florida commission a certificate of registration. It is also unlawful for any such companies transporting for compensation under exemptions provided by the Interstate Commerce Act to operate in Florida without first having obtained such a certificate of registration. The certificate of registration shall be granted as a matter of right without public hearing. The filing of Interstate Commerce Commission authority shall be accompanied by the payment of a fee as provided by s. 323.011.

(3) Applications for certificates of registration when properly filed on forms provided by the commission will be granted as a matter of course, and continued supervision of interstate carriers will be limited to the control of routes traveled, type, weight, size and method of operation of motor vehicles, proper accounting and payment of the compensatory road tax required by law and the giving of a bond or insurance to provide for protection of third parties from injuries due to negligence of interstate operators in the use of the highways and other police regulations required by law and rules and regulations of the commission. No cargo insurance will be required. Proof that bond or insurance is filed with the Interstate Commerce Commission adequate to protect the operation on the highways of this state together with a description of such bond or insurance will be accepted in lieu of said bond.

(4) No motor vehicle shall be used in such service unless said vehicle has first been registered with and its use has been authorized by the commission. Common carriers of passengers holding a certificate of public convenience and necessity or a permit issued by the Interstate Commerce Commission authorizing such service, will be authorized to make occasional charter trips in the state in interstate commerce upon compliance with the following requirements:

(a) Comply with the terms of subsection (3);

(b) Advise the commission in advance of the date of the proposed trip and the routes to be traveled;

(c) Make payment to the Department of Banking and Finance of compensatory road tax required by law;

(d) Agree not to pick up any passengers for intrastate transportation in Florida; and

(e) Furnish satisfactory evidence of payment to the Department of Highway Safety and Motor Vehicles of the required registration fees for each vehicle to be used in this state.

(5) The commission, in the exercise of the jurisdiction conferred upon it by this part, may make such orders and prescribe such rules and regulations affecting such interstate motor carriers as it deems necessary for the safety of the public highways.

(6) Each interstate motor carrier registered under the provisions of this part shall designate a resident agent.

(7) In the event Florida has entered into a reciprocal agreement with another state under the terms of s. 320.39, waiving certain of its laws pertaining to interstate transportation for compensation, such reciprocal agreement will be controlling as to such laws of Florida as are thereby waived.

History.—s. 29, ch. 14764, 1931; CGL 1936 Supp. 1335(28); s. 3, ch. 57-111; s. 1, ch. 63-279; s. 1, ch. 63-460; s. 1, ch. 63-496; s. 1, ch. 65-52; s. 6, ch. 65-190; s. 4, ch. 65-337; s. 10, ch. 67-319; ss. 3, 4, ch. 69-122; ss. 12, 24, 35, ch. 69-106; ss. 3, 6, ch. 70-427; s. 3, ch. 76-168; s. 19, ch. 77-434; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.29 Exemptions from provisions of this part.—The following transportation shall not be subject to the requirements of chapter 323:

(1) Persons operating motor vehicles wholly within the corporate limits of any municipality and the adjoining suburban territory, where such business of carriage is regulated by the legislative body of such municipality as provided in ss. 323.053 and 323.054.

(2) Motor vehicles used exclusively in transporting children to and from schools.

(3) Motor vehicles while engaged exclusively in transporting horticultural [2][or] agricultural goods, wares, or merchandise; logs, lumber, or other forest products; seafoods; or dairy products:

(a) From the point of production to that point of primary manufacture;

(b) From the point of production to the point of assembling the same; or,

(c) From either such point of production, primary manufacture, or assembling to a shipping point of either a rail, water, or motor transportation company, usually and generally serving the territo-

ry in which said production, manufacture, or assembling takes place.

(4) Motor vehicles used exclusively in transporting agricultural or horticultural products, supplies, [2][or] materials, including fertilizers and sprays, when delivered direct to the growers or consumers or to an association of such growers or consumers.

(5) Private motor vehicles engaged in the transportation of goods, wares, or merchandise belonging to the owner or operator of such vehicles.

(6) Motor vehicles used exclusively in transporting ice for use in the packing of agricultural or horticultural commodities for further shipment.

(7) Hearses and ambulances when operated by licensed embalmers, morticians, or ambulance service companies or their agents or employees in this state.

(8) Wreckers used to transport motor vehicles to garages and repair shops.

(9) Motor vehicles operated by an authorized manufacturer's dealer to transport heavy equipment such as tractors, wheel or track loaders, draglines, and cranes, or their engines and component parts, to and from his own garages and repair shops for servicing and repairs at the request of the owner.

(10) Motor vehicular transportation of United States mail.

(11) Dump trucks:

(a) When leased by a building construction or road building contractor from another such contractor, with drivers for such vehicles furnished by the lessor contractor and used exclusively in transporting construction aggregates to a concrete or asphalt mixing plant or to a construction site.

(b) When used in transportation of mixed road building materials from a mixing plant to the construction site of a public highway.

(c) Of 10-ton capacity or less.

(12) Nothing in this part shall be construed or applied to exempt from commission jurisdiction and control, persons operating motor vehicles transporting racehorses and polo ponies for compensation, unless both the point of origin and point of destination are within the corporate limits of the same city or town.

(13) The exemptions provided in this section shall not extend to the transportation of household goods by motor carrier, and all such transportation between all points and places shall be subject to regulation under this part and subject to commission jurisdiction and control. This subsection shall not be construed to affect persons not regularly engaged in the transportation business who sporadically and on an irregular and nonrecurring basis transport household goods as above defined.

History.—s. 30, ch. 14764, 1931; s. 1, ch. 17115, 1935; CGL 1936 Supp. 1335(29); s. 1, ch. 18028, 1937; s. 1, ch. 18029, 1937; s. 7, ch. 22858, 1945; s. 1, ch. 57-206; s. 1, ch. 59-445; s. 21, ch. 61-530; s. 1, ch. 63-279; s. 1, ch. 63-556; s. 3, ch. 63-416; s. 4, ch. 65-337; s. 1, ch. 65-394; s. 1, ch. 67-476; s. 1, ch. 70-83; s. 1, ch. 70-210; s. 3, ch. 76-168; s. 1, ch. 76-239; s. 20, ch. 77-434; s. 1, ch. 77-457; s. 133, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Bracketed word substituted for "and" by the editors.

[1]323.31 Transportation brokers.—

(1) LICENSE REQUIRED.—No person, firm, company or association shall for compensation sell or offer for sale transportation of property subject to this part or which would be subject to this part except for the exemptions provided by s. 323.29 or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person, firm, company or association holds a transportation broker's license in such transactions; provided, however, that no such person, firm, company or association shall engage in transportation subject to this part unless he holds a certificate or permit as provided in this chapter. And provided further, that the provisions of this section shall not apply to any motor carrier or to bona fide employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers or with a common carrier by railroad, express, or water.

(2) ISSUANCE OF LICENSE; HEARING; PROTEST.—A transportation brokerage license shall be issued to any applicant therefor, who is found to be qualified, as hereinafter provided, to perform the transportation brokerage services proposed in his application and who is found to have complied with the provisions of this section and the requirements, rules and regulations of the commission thereunder; otherwise, such application shall be denied. Upon the filing of the application and the payment of the fees hereinafter provided, the commission shall set a time for a public hearing and shall at the same time give written notice thereof to each transportation broker holding a license to do business anywhere in the state. At such public hearing the applicant will be required to establish by substantial evidence the statements made in his application as well as the fact that the issuance of a license to him would be consistent with public convenience and necessity. In issuing any such license the commission shall consider the effect of the proposed service upon transportation brokerage as a whole within the service area sought by the applicant. The commission may deny any such application when the need for the proposed service is not affirmatively shown.

(3) APPLICATION, FEES.—

(a) Application for such transportation brokerage license shall be in writing verified by the applicant and shall specify the name and address of applicant and the names and addresses of its officers or partners, if any, the locality or location within the state from which the applicant desires to operate and the kind of transportation which the applicant intends to sell, provide, procure, contract or arrange for. In addition, the application shall show that the applicant is qualified in the following particulars:

1. He has had a minimum of 1 year of experience in the office of a licensed transportation broker or 1 year of experience as a truck owner or driver in the field of motor transportation.

2. He has not been convicted of engaging in the business of transportation brokerage without a proper license in the past 12 months; and no legal proceedings are pending against him for violation of this section.

3. He has not been engaged as the owner, part-

ner, officer, or director of a predecessor company operating as a transportation broker within the past 12 months which has become insolvent, been adjudged as bankrupt, or has unsatisfied judgments against it.

4. He has attached to his application as a part thereof a current financial statement prepared and signed by a certified public accountant showing a minimum net worth of $5,000 and adequate financial means to operate successfully as a transportation broker.

(b) Each application shall be accompanied by a fee of $750 to be placed in the Florida Public Service Regulatory Trust Fund; provided, however, that $400 shall be refunded if the license is not issued. All licenses issued hereunder, including those licenses now in effect, shall be renewed annually by the payment of an annual license renewal fee of $350 per license which shall be due on December 31 of each year. If the fee is not paid in advance of such due date, it must be received by the commission on or before January 31 of the next year in order for the renewal of the license to be effective. All moneys received hereunder shall be deposited in the Florida Public Service Regulatory Trust Fund and disbursed pursuant to s. 350.78(2).

(c) Localities or locations from which the applicant desires to operate shall be stated as precisely as possible and if possible shall be stated by reference to a particular incorporated municipality. License shall be issued according to the localities or locations stated in the application therefor and shall authorize the applicant to do business only from the localities or locations stated. Nothing herein contained shall be interpreted as preventing any transportation broker from holding licenses to do business from more than one locality or location but a separate license shall be required for each locality or location from which business is done; provided, however, upon application to and approval by the commission, licensed transportation brokers engaged exclusively in procuring transportation for seasonal commodities, may, upon terminating seasonal operations in a given locality, move to another locality and continue such seasonal operations without procuring an additional license or licenses for such subsequent places of business.

(4) SUSPENSION OF LICENSE AND REVOCATION.—The Public Service Commission may suspend a transportation broker's license if it finds that the licensee has either:

(a) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or

(b) Made false charges for services rendered by himself or by any motor carrier which he represents; or

(c) Failed to account properly and promptly, or to make settlement with any motor carrier; or

(d) Made any false or misleading statement as to services rendered by himself or by any motor carrier which he represents; or

(e) Been guilty of a fraud in the attempt to procure or the procurement of a license; or

(f) Arranged for transportation of property subject to this part and not exempt under the provisions of s. 323.29 with other than an authorized carrier; or

(g) Become not fit, willing and able properly to perform the service authorized by his license, for any other good and sufficient reason.

(5) HEARING BEFORE PUBLIC SERVICE COMMISSION.—Before the commission shall suspend or revoke a license, it shall conduct a proceeding according to chapter 120.

(6) ASSIGNMENT OF LICENSE.—No transportation brokerage license issued under the provisions of this section may be assigned or transferred without the consent of the commission authorizing such transfer. Applications shall be filed jointly by the assignor and the assignee and shall be subject to the same provisions as to hearing and notice as original applications for licenses. Such joint applications shall be accompanied by a filing fee of $250 to be placed in the General Revenue Fund.

(7) RULES AND REGULATIONS; BOND OR OTHER SECURITY REQUIRED.—The commission shall prescribe reasonable rules and regulations for the protection of shippers by motor vehicle and motor carriers, to be observed by any person, firm, company or association holding a transportation brokerage license. No such license shall be issued or remain in force unless such person, firm, company or association shall have furnished a bond or other security approved by the commission, in such form and amount as will insure financial responsibility. Such bond shall be conditioned upon the payment of all obligations to motor carriers or shippers, and the supplying of authorized transportation in accordance with all contracts, agreements, or arrangements with both motor carriers and shippers. In no event shall the total of all recoveries exceed the amount of such bond or security.

(8) INSPECTION OF ACCOUNTS AND RECORDS.—The commission and its clerks and inspectors shall have the same authority as to accounts, reports, and records, including inspection and preservation thereof, of any person, firm, company or association holding a transportation brokerage license under the provisions of this section, that they have under this part with respect to the motor carriers subject thereto.

(9) EMERGENCY PERMITS.—On a satisfactory showing of an emergency requiring transportation brokerage services in the movement of perishable commodities, the commission may grant a temporary transportation brokerage license pending proceedings on an application for a permanent license, and said commission may also grant temporary authority to any licensed transportation broker in the state to furnish such brokerage services in the emergency area during the pendency of such emergency. Applications for such emergency permits shall be accompanied by payment of a $100 permit fee to be placed in the General Revenue Fund.

History.—s. 2, ch. 29787, 1955; s. 1, ch. 59-418; ss. 1, 2, ch. 61-388; s. 1, ch. 63-279; s. 1, ch. 63-496; s. 1, ch. 65-52; s. 11, ch. 67-319; ss. 4, 6, ch. 70-427; ss. 1, 2, ch. 75-300; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; s. 3, ch. 79-163.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.35 Penalties.**—Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures,

aids or abets in the violation of any provisions of this part, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, or who fails to observe any regulations as to maximum speed of operation or maximum weight of load, of the commission, or who procures, aides or abets any person in his failure to obey, observe or comply with any such order, maximum speed of operation, maximum weight of load, decision, rule, direction, demand, or regulation, or any part or provision thereof, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 14764, 1931; CGL 1936 Supp. 7794(2); s. 1, ch. 63-279; s. 217, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 323.30.

[1]323.36 Carriers; unlawful agreements.—

(1) Any part of any agreement, arrangement or other device entered into shall be unlawful and void which as a condition to the transportation of property requires or permits a regulated for-hire carrier of property, freight-forwarder, private carrier or other carrier or shipper or association or group of shippers to pay a charge, allowance, assessment or compensation to any person or organization if such charge, allowance, assessment or compensation is dependent or contingent upon the use of another mode of transportation in addition to motor transportation for movement of such property.

(2) Should any person, firm, partnership, organization or association of persons violate any of the provisions of this section, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of the violation of any of the provisions of this section shall constitute a separate offense.

History.—ss. 1, 2, ch. 63-92; s. 218, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

PART II

FREIGHT FORWARDERS

[1]323.51 Short title.—Part II of this chapter shall be known and may be cited as the "Freight-Forwarding Act."

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.52 Definitions.—In addition to the definitions set forth in s. 323.01 in part I of this chapter the following words when used in this part II shall have the following meanings unless otherwise clearly apparent from the context:

(1) The words "freight forwarder" mean any person, firm, or corporation, which otherwise than as a motor common carrier holds itself out to the general public as a common carrier to transport or provide transportation of property, or any class or classes of property, for compensation, and which, in the ordinary and usual course of its undertaking, assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments; and assumes responsibility for the transportation of such property from point of receipt to point of destination; and utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to regulation by the Florida Public Service Commission.

(2) The term "service subject to this part" means any or all of the service in connection with the transportation which any person undertakes to perform or provide as a freight forwarder or which such person is authorized or required by or under the authority of this part to perform or provide.

(3) Wherever reference is made to "control" (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.53 Declaration of public policy.—Upon investigation, the Legislature of this state has determined that the rates, services and operations of intrastate freight-forwarding companies are affected with the public interest and it is hereby declared to be the policy of this state to provide fair regulation of freight-forwarding companies, in the interest of

the public; to promote adequate, economical and efficient freight-forwarding service to citizens and residents of this state; to provide just and reasonable rates and charges for freight-forwarding services without unjust discrimination, undue preferences or advantages or unfair or destructive competitive practices; to encourage and promote harmony between freight-forwarding companies and certificated motor and other common carriers, and shippers and receivers of this state; and, to these ends, to vest authority in the commission to regulate freight-forwarding companies generally and their rates, services and operations in the manner and in accordance with policies set forth in this part.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.54 Certificate of public convenience and necessity; proviso; application; issuance; annual renewal fee.—

(1) No person or organization shall hereafter engage in freight-forwarding services without first obtaining from the commission a certificate that the present or future public convenience and necessity require or will require such operations.

(2) The application for such certificate of public convenience and necessity for freight-forwarding service made by any applicant shall be in writing verified by the applicant and shall specify the following matters:

(a) The name and address of applicant and the names and addresses of its officers, if any.

(b) The municipality or territory or municipalities or territories within which or between which the applicant desires to conduct such operations.

(c) The type of freight-forwarding service in which applicant intends to engage, together with a brief description of terminal facilities and each vehicle which applicant proposes to use including a description of any storage or warehouse facilities, if any, which applicant proposes to utilize in connection with such operations.

(d) The proposed schedules of operations between the municipalities or territories involved if such service is to be pursuant to schedules.

(e) An agreement on the part of the applicant to conform with and abide by all tariffs and classifications as to freight-forwarding services which may be prescribed by the commission from time to time.

(f) Any such application shall be accompanied by payment of a fee of five hundred dollars to be placed in the Florida Public Service Regulatory Trust Fund.

(3) Upon filing of said application and payment of said fee, the Florida Public Service Commission shall fix a time for hearing on said application which shall not be less than 20 days nor more than 60 days subsequent to the filing of said application, and no application shall be granted or certificate of public convenience and necessity issued without a hearing by the commission. Notice of such hearing shall be given to the applicant and to all certificated motor and rail common carriers serving any part of the route or territory proposed to be served by the applicant and to such other parties in interest as the commission may deem necessary. The commission shall also cause notice of the application to be published at least 14 days prior to the hearing in some newspaper of general circulation in the affected territory or territories.

(4) The commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may refuse to issue the same or may issue it for only partial exercise of the operation sought or may attach to the exercise of the right granted by the certificate such terms, limitations, and conditions which it deems the public interest may require. The certificate shall include a description of the territory in which the freight-forwarding operation is to be conducted, extended, operated or acquired.

(5) In determining whether a certificate shall be issued, the commission shall take into consideration, among other things, the public need for the proposed service, the suitability of the applicant to conduct the proposed operations, the financial responsibility of the applicant and the ability of the applicant to perform efficiently the operations for which authority is requested; provided, that the commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have on transportation facilities within the territory sought to be served by said applicant, and also that effect upon transportation as a whole within said territory including the effect, if any, upon certificated motor and rail common carriers.

(6) Any certificate of public convenience and necessity issued under the provisions of this section shall contain, among other things, the following:

(a) The name of the grantee.

(b) The municipality or territory in which or between which the grantee is permitted to operate.

(c) A statement of the exact terminals or territories to be served including the specific points at which the forwarding operation is to be originated and the precise points or terminals at which the distribution under such operations is to take place.

(d) Such additional terms, conditions, provisions or limitations as the commission shall deem necessary or proper in the public interest or in the interest of transportation facilities already existing in the territory sought to be served.

(7) No such certificate of public convenience and necessity may be transferred, assigned, or encumbered unless such transaction is first approved by the commission consistent with the provisions of s. 323.041.

(8) The commission may revoke, suspend, or alter any such certificate of public convenience and necessity for the violation of any provision of this part or the rules and regulations or orders of the commission made under the authority of this part or for other reasonable cause.

(9) All certificates issued hereunder, including those certificates now in effect, shall be renewed annually by the payment of an annual certificate renewal fee of $500 per certificate, which shall be due on December 31 of each year. If the fee is not paid in advance of the due date, it must be received on or before January 31 of the next year in order for the

renewal of the certificate to be effective. All moneys received hereunder shall be deposited in the Florida Public Service Regulatory Trust Fund and disbursed pursuant to s. 350.78(2).

History.—ss. 1, 2, ch. 67-358; ss. 5, 6, ch. 70-427; s. 3, ch. 76-168; s. 98, ch. 77-104; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.55 General jurisdiction of commission.—

(1) The commission shall have the power and jurisdiction to supervise and regulate every freight-forwarding operation operating within this state and its property, property rights, equipment, facilities, contracts, certificates and franchises, so far as may be necessary to carry out the purposes of this part and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. Without limiting the generality of the foregoing, the commission is authorized to adopt and enforce such reasonable rules and regulations and orders as it may deem necessary with respect to rates, charges and classifications, issuance of certificates, territory of operation, abandonment or suspension of service, adequacy of service, prevention or elimination or unjust discrimination between shippers and receivers, between freight forwarders and certificated motor and rail common carriers, financial responsibility, insurance covering personal injury and property damage, uniform system of accounts, records, reports, safety of operations and equipment, and to otherwise accomplish the purposes of this part and to implement its provisions.

(2) The commission shall, from time to time, inspect the places of business of freight forwarders and other premises and examine the records and facilities of all freight-forwarding companies to ascertain if all rules and regulations and orders of the commission have been complied with, and shall have the power to examine all officers, agents and employees of such freight-forwarding companies and all other persons, under oath and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering the provisions of this part.

(3) The commission or other aggrieved party shall have the right to institute or to intervene as a party in any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provisions of this part or of any rule, regulation or order adopted thereunder or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.56 Rates.—The commission shall prescribe just and reasonable rates, charges and classifications for the services rendered by a freight-forwarding company and the tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the commission may prescribe and shall be subject to change on such notice and in such manner as the commission may prescribe. The commission, in the exercise of its power to prescribe such just and reasonable rates, charges and classifications, may use such standards, formulas, criteria or methods as the commission may determine in order to enable the freight-forwarding company, under honest economic and efficient management, to render the service deriving a reasonable profit therefrom and at the same time give consideration to the rates, charges and classifications in effect for the account of certificated motor or rail common carriers operating in or between the territories involved.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.57 Duties of freight-forwarding companies.—

(1) Each freight-forwarding company shall provide safe and adequate service, equipment and facilities for the operation of its services.

(2) No freight-forwarding company shall demand or receive a greater or less or different compensation for providing freight-forwarding service than the rates and charges specified in the tariff in effect at the time which has been filed with and approved by the commission.

(3) All rates, charges, and classifications for the services rendered by a freight-forwarding company shall be just and reasonable, and any such rate, charge, or classification that is unjust or unreasonable is hereby declared to be unlawful. No freight-forwarding company shall make any unjust or unreasonable discrimination in rates, charges, classifications, practices, regulations, facilities, or services for or in connection with like service, directly or indirectly, by any means or device, or make or give any undue or unreasonable preference or advantage to any particular person, class of persons or locality, or subject any particular person, class of persons or locality to any undue or unreasonable prejudicial disadvantage.

(4) Every freight-forwarding company shall obey and comply with every rule and regulation and order adopted by the commission under the provisions of this part.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.58 Approval of mergers.—No freight-forwarding company shall combine, merge or consolidate with or acquire control of another forwarding company or motor common or rail carrier without first obtaining the approval of the commission, which shall be granted only after an investigation and finding that such proposed combination, merger, consolidation or acquisition is in the public interest.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.59 Agreements with other freight for-

warders.—It shall be unlawful for any freight forwarder to enter into an agreement with another freight forwarder for the joint loading of traffic between points in transportation subject to this part.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.60 Motor and rail carriers not prohibited from maintaining same rates as freight forwarders.**—Nothing in this part shall be construed to make it unlawful for motor or rail common carriers to establish and maintain assembling rates or charges and/or distribution rates or charges, and classifications, rules, and regulations with respect thereto, applicable to freight forwarders and others who employ or utilize the instrumentalities or services of such common carriers under like conditions, which differ from other rates or charges, classifications, rules, or regulations, which contemporaneously apply with respect to the employment or utilization of the same instrumentalities or services if such difference is justified by difference in the respective conditions under which such instrumentalities or services are employed or utilized. For the purposes of this section the term "assembling rates or charges" means rates or charges for the transportation of less-than-truckload or less-than-carload shipments into a point for further movement beyond as a part of a truckload or carload shipment, and the term "distribution rates or charges" means rates or charges for the transportation of less-than-truckload or less-than-carload shipments moving from a point into which such shipments have moved as a part of a truckload or carload shipment. The provisions of this section shall not be construed to authorize the establishment of assembling rates or charges or distribution rates or charges covering the line-haul transportation between the principal concentration point and the principal break-bulk point.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.61 Freight forwarders; contracts with motor carriers.**—Nothing in this part shall be construed to prevent freight forwarders subject to this part from entering into contracts with motor common carriers governing the utilization by such freight forwarders of the services and instrumentalities of such motor common carriers and the compensation to be paid therefor; provided, that in the case of line-haul transportation between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of 100 miles or more, such contracts shall not permit payment to motor common carriers of compensation which is lower than would be received under rates or charges established by such motor common carriers in tariffs filed with and approved by this commission.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.62 Freight forwarders prohibited from engaging in transportation.**—Certificates issued under this part shall not authorize the holder thereof to conduct any direct railroad, water or motor common carrier operations except motor vehicle operations in transportation which, pursuant to the provisions of this part, are considered to be motor vehicle operations within the exempt municipal territory as defined by s. 323.29.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.63 Freight forwarders prohibited from controlling motor carrier.**—It shall be unlawful for a freight forwarder or any person controlling, controlled by or under common control with a freight forwarder to acquire control of a motor common carrier subject to jurisdiction under this part.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.64 Persons not eligible to be freight forwarders.**—It shall be unlawful for any person whose principal business is that of manufacturing and selling and/or buying and selling articles or commodities, and/or warehousing such articles or commodities, and whose business operations are of such a character that services of a freight forwarder or forwarders (or similar assembling, consolidating and shipping operations performed by such person for itself) are commonly used in connection with the transportation of such articles or commodities, or for any person controlling, controlled by, or under common control with such person, to engage in service subject to this part; provided, however, that any such person who was engaged in business as a freight forwarder at the time this part becomes effective shall have the same authority to continue to engage in service subject to this part.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**323.65 Bills of lading.**—Notwithstanding any of the provisions of this part or of the rules and regulations of the commission pertaining to bills of lading, when the services of a motor common carrier are utilized by a freight forwarder for the receiving of property from a consignor in service subject to this part, such carrier may, with the consent of the freight forwarder, execute the bill of lading or shipping receipt for the freight forwarder. When the services of a motor common carrier are utilized by a freight forwarder for the delivery of property to the consignee named in the freight forwarder's bill of lading, shipping receipt, or freight bill, the property may, with the consent of the freight forwarder, be delivered on the freight bill, and receipted for on the delivery receipt of the freight forwarder.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]323.66 Allowance to shippers for transportation service.—If the owner of property transported in service subject to this part directly or indirectly renders any service connected therewith, or furnishes any instrumentality used therein, the charge and the amounts therefor, to such owner, shall be published in tariffs filed in the manner provided in this part and shall be no more than is just and reasonable, and the commission may, on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the freight forwarder or forwarders for the services so rendered, or for the use of the instrumentalities so furnished, and fix the same by appropriate order.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.67 Utilization of carrier services by freight forwarders.—It shall be unlawful, except in the performance within terminal areas which are declared to be exempt under s. 323.29 of transfer, collection or delivery services, for freight forwarders to employ or utilize the instrumentalities or services of any carriers other than certificated common carriers by rail, motor vehicle or water that are subject to the jurisdiction of this commission.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.68 Unlawful acts and penalties.—

(1) Any person who knowingly and willfully violates any provision of this part or any rule, regulation, requirement or order thereunder, or any term or condition of any certificate, for which no penalty is otherwise provided, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any freight forwarder or any officer or agent, employee or representative thereof who by any device or means shall knowingly and willfully assist or shall willingly suffer or permit any person to obtain service subject to this part at less than the rates or charges lawfully in effect shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who shall by any device or means whether with or without the consent or connivance of any freight forwarder or its officer, agent, employee or representative, knowingly and willfully obtain service subject to this part at less than the rates or charges lawfully in effect or shall knowingly and willfully, directly or indirectly, by false claim, false billing, false representation or other device or means, obtain or attempt to obtain any allowance, refund or repayment in connection with or growing out of such service whether with or without the consent or connivance of such freight forwarder, or its officer, agent, employee or representative, whereby the compensation of such forwarder for such service either before or after payment shall be less than the rates or charges lawfully in effect, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 67-358; s. 219, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 324

FINANCIAL RESPONSIBILITY

324.011 Purpose of chapter.—It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in an accident or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges.

History.—s. 1, ch. 29963, 1955; s. 5, ch. 77-468; s. 134, ch. 79-400.
Note.—Former s. 324.001.

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003(2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732(1), when the owner of such vehicle has complied with the requirements of ss. 627.730-627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case, until January 1, 1978, such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19(7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) DEPARTMENT.—The Department of Highway Safety and Motor Vehicles.

(3) OPERATOR.—Every person who is in actual physical control of a motor vehicle.

(4) PERSON.—Every natural person, firm, copartnership, association or corporation.

(5) NONRESIDENT.—Every person who is not a resident of this state.

(6) LICENSE.—Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(7) PROOF OF FINANCIAL RESPONSIBILITY.—That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle:

(a) In the amount of $10,000 because of bodily injury to, or death of, one person in any one accident;

(b) Subject to said limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident; and

(c) In the amount of $5,000 because of injury to, or destruction of, property of others in any one accident.

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by any insurance company authorized to do business in this state.

(9) OWNER.—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon per-

formance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(10) JUDGMENT.—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damage.

(11) REGISTRATION.—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 1, ch. 71-59; s. 100, ch. 71-377; s. 1, ch. 72-297; ss. 1, 2, ch. 73-180; s. 1, ch. 76-266; s. 6, ch. 76-286; s. 1, ch. 77-118; s. 6, ch. 77-468; s. 135, ch. 79-400.

324.031 Manner of proving financial responsibility.—The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) and s. 324.151, or

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7), or

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161, or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.02.

324.042 Administration.—The department shall administer and enforce the provisions of this chapter, and the department may make such rules and regulations as may be necessary for its administration.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 57-147; ss. 13, 35, ch. 69-106; s. 20, ch. 78-95.
Note.—Former s. 324.03.

324.051 Reports of accidents; suspensions of licenses and registrations.—

(1)(a) Every law enforcement officer who, in the regular course of duty either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, investigates a motor vehicle accident in which property damage exceeds $500 or in which bodily injury or death occurs shall forward a written report of the accident to the department within 24 hours of completing the investigation. However, when the investigation of an accident will take more than 7 days to complete, a preliminary copy of the accident report shall be forwarded to the department within 24 hours of the occurrence of the accident, to be followed by a final report within 24 hours after completion of the investigation. The report shall be on a form and contain information consistent with the requirements of s. 316.068.

(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the department. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the department.

(2)(a) Thirty days after receipt of notice of any accident described in paragraph (1)(a) involving a motor vehicle within this state, the department shall suspend, after due notice and opportunity to be heard, the license of each operator and all registrations of the owner of the vehicles operated by such operator whether or not involved in such accident and, in the case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall, prior to the expiration of such 30 days, be found by the department to be exempt from the operation of this chapter, based upon evidence satisfactory to the department that:

1. No injury was caused to the person or property of anyone other than such operator or owner.
2. The motor vehicle was legally parked at the time of such accident.
3. The motor vehicle was owned by the United States Government, this state, or any political subdivision of this state or any municipality therein.
4. Such operator or owner has been finally adjudicated not to be liable for damages by a civil court of competent jurisdiction.
5. Such operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and has complied with one of the provisions of s. 324.031.
6. Such operator or owner has deposited with the department security to conform with s. 324.061 when applicable and has complied with one of the provisions of s. 324.031.
7. One year has elapsed since such owner or operator was suspended pursuant to s. 324.051(4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such accident or traffic conviction an automobile liability policy with respect to all of the registered motor vehicles owned by such operator or owner.
2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident or traffic conviction an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him.
3. To such operator or owner if the liability of such operator or owner for damages resulting from

such accident is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

5. Such owner or operator was not charged with a moving traffic violation which caused or contributed to the cause of a motor vehicle accident, or such owner or operator was subsequently not found guilty of said moving traffic violation.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021(7).

(3) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in this section, shall remain suspended for a period of 3 years unless reinstated as otherwise provided in this chapter.

History.—s. 1, ch. 29963, 1955; s. 2, ch. 57-147; ss. 1, 2, ch. 65-122; s. 6, ch. 65-190; ss. 13, 24, 35, ch. 69-106; s. 2, ch. 71-59; s. 2, ch. 76-266; s. 2, ch. 77-118; s. 1, ch. 77-174; s. 7, ch. 77-468; s. 1, ch. 78-83; s. 20, ch. 78-95.
Note.—Former s. 324.04.

324.061 Security deposited with Department of Highway Safety and Motor Vehicles; release.—

(1) Security deposited pursuant to the provisions of s. 324.051(2)(a)6. with respect to claims for injuries to persons or properties resulting from an accident occurring prior to such deposit shall be in the form and amount determined by the department which, in its judgment, will be sufficient to compensate for all injuries arising out of such accident, but in no case shall the amount exceed the limits as specified in s. 324.021(7).

(2) Such security shall be deposited with the department and shall not be released except under one of the following conditions:

(a) A duly attested written statement of satisfaction by all parties shown to be injured in such accident has been received by the department, or

(b) In the event the depositor has been finally adjudicated by a court of competent jurisdiction not to be liable; or all judgments of liability against the depositor have been satisfied, or

(c) One year shall have elapsed after deposit and during such period the department has not been duly notified of any court action brought for damages.

(d) Upon receipt of an order from a court ordering that such deposit be paid to satisfy a recorded judgment, in whole or in part, resulting from an accident. If the department does not have sufficient funds on deposit to satisfy such judgment it shall forthwith call upon the judgment debtor for the balance, subject to the limits specified in s. 324.021(7). Upon failure of the judgment debtor to make the necessary deposit or to satisfy the judgment in full, the department shall revoke the driving privilege and all registrations of such judgment debtor within 10 days subsequent to notification to the judgment debtor by the department.

(e) In any case in which securities deposited under this section have remained unclaimed for 5 years or more such deposit shall be transferred by the department to the State School Fund, and all interest and income that may accrue from said deposits after the aforesaid period of time, shall belong to said fund.

(3) The department shall invest security deposits in its custody received under this section in excess of current needs in interest-bearing accounts. The interest earned from such investments shall be deposited in a department trust fund, and any security deposits remaining unclaimed after 5 years shall be transferred to the State School Fund as provided in paragraph (2)(e) above.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 57-147; ss. 13, 35, ch. 69-106; s. 3, ch. 71-59; s. 3, ch. 77-118; s. 8, ch. 77-468; s. 69, ch. 79-164.
Note.—Former s. 324.041.

324.071 Reinstatement; renewal of license; reinstatement fee.—Any operator or owner whose license or registration has been suspended pursuant to s. 324.051(2), s. 324.072, s. 324.081, or s. 324.121 may effect its reinstatement upon compliance with the provisions of s. 324.051(2)(a)4., 5., or 6., or s. 324.081(2) and (3), as the case may be, and with one of the provisions of s. 324.031 and upon payment to the department of a nonrefundable reinstatement fee of $15. Only one such fee shall be paid by any one person irrespective of the number of licenses and registrations to be then reinstated or issued to such person. All such fees shall be deposited to a department trust fund. When the reinstatement of any license or registration is effected by compliance with s. 324.051(2)(a)5. or 6., the department shall not renew the license or registration within a period of 3 years from such reinstatement, nor shall any other license or registration be issued in the name of such person, unless the operator is continuing to comply with one of the provisions of s. 324.031.

History.—s. 1, ch. 29963, 1955; s. 4, ch. 57-147; s. 6, ch. 65-190; s. 1, ch. 67-279; ss. 13, 24, 35, ch. 69-106; s. 4, ch. 71-59; s. 4, ch. 77-118; s. 9, ch. 77-468; s. 70, ch. 79-164.
Note.—Former s. 324.05.

324.072 Proof required upon certain convictions.—

(1) Upon the suspension or revocation of a license pursuant to the provisions of s. 322.26 or s. 322.27, the department shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly with another, except that it shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give, and thereafter maintain, proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(2) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until permitted under the laws of this state, and not then unless and until he shall give and thereafter maintain proof of financial responsibility as required by s. 324.071.

History.—s. 5, ch. 57-147; ss. 13, 24, 35, ch. 69-106; s. 5, ch. 77-118; s. 10, ch. 77-468; s. 2, ch. 78-83; s. 1, ch. 79-207.

324.081 Nonresident owner or operator.—

(1) The department may establish reciprocal agreements with any other states for the purpose of fulfilling the provisions of this chapter and pursuant to such agreements may suspend the license and registration of a resident of this state involved in an accident in another state.

(2) When a nonresident's operating privilege is suspended pursuant to this chapter, the department shall transmit a certified copy of the record of such action to the appropriate official of the reciprocating state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3).

(3) Upon receipt of such certification that the operating privilege of a resident of this state has been suspended or revoked in any such other reciprocating state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident if he was the operator, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security.

(4) In the event such nonresident shall at the time have in effect an insurance policy or surety bond issued by any insurance company or surety company not authorized to do business in this state, the department may reinstate such nonresident upon said company furnishing it with power of attorney to accept service of process.

History.—s. 1, ch. 29963, 1955; s. 6, ch. 57-147; ss. 13, 35, ch. 69-106; s. 6, ch. 77-118; s. 11, ch. 77-468.
Note.—Former s. 324.06.

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in an accident or conviction case within the purview of this chapter shall furnish evidence of automobile liability insurance, motor vehicle liability insurance, or surety bond within 30 days from the date of the mailing of notice of accident by the department in such form and manner as it may designate. Upon receipt of evidence that an automobile liability policy, motor vehicle liability policy, or surety bond was in effect at the time of the accident or conviction case, the department shall forward by United States mail, postage prepaid, to the insurer or surety insurer a copy of such information and shall assume that such policy or bond was in effect unless the insurer or surety insurer shall notify the department otherwise within 20 days from the mailing of the notice to the insurer or surety insurer; provided that if the department shall later ascertain that an automobile liability policy, motor vehicle liability policy, or surety bond was not in effect and did not provide coverage for both the owner and the operator, it shall at such time take such action as it is otherwise authorized to do under this chapter. Proof of mailing to the insurer or surety insurer may be made by the department by naming the insurer or surety insurer to whom such mailing was made and specifying the time, place and manner of mailing.

(2) Each insurer doing business in this state shall immediately give notice to the department of each motor vehicle liability policy when issued to effect the return of a license which has been suspended under s. 324.051(2); and said notice shall be upon such form and in such manner as the department may designate.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 65-122; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.08.

324.101 Compliance before license or registration allowed.—In case the operator or owner of a motor vehicle involved in an accident within the state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this chapter to the same extent that would be necessary, if at the time of the accident he had held a license and registration.

History.—s. 1, ch. 29963, 1955.
Note.—Former s. 324.09.

324.111 Failure to satisfy judgment; copy to department.—Whenever any person fails within 30 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of said 30 days, a certified copy of such judgment.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 5, ch. 71-59.

324.121 Suspension of license and registration.—

(1) The department, upon the receipt of a certified copy of a judgment, as provided in s. 324.111, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section, and in s. 324.141.

(2) If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the department, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or any installments thereof prescribed in s. 324.141, provided the judgment debtor furnished proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 6, ch. 71-59.

324.131 Period of suspension.—Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent of the limits stated in s. 324.021(7) and until the said person gives proof of financial respon-

sibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955.

324.141 Installment payments.—

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1), shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles, within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Each policy shall contain an optional provision for a deductible relating to property damage coverage in an amount not to exceed $500; provided, however, that such deductible provision in a policy shall not be required when the owner named in the policy specifically rejects the provision.

(b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(c) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.

(2) The provisions of this section shall not be applicable to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then only from and after the date said policy is so furnished.

History.—s. 1, ch. 29963, 1955; s. 24, ch. 57-1; s. 1, ch. 65-489; s. 1, ch. 71-325.
Note.—Former s. 324.10.

324.161 Proof of financial responsibility; surety bond or deposit.—The certificate of the department of a deposit may be obtained by depositing with it $25,000 cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of $25,000 and which deposit shall be held by the department to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.11.

324.171 Self-insurer.—Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department which may, in its discretion, upon application of such a person, issue said certificate of self-insurance, when it is satisfied that such person is possessed of a net unencumbered capital of at least $40,000. The department may require annual reports from any self-insurer which reports must continue to show at least $40,000 unencumbered net worth. Whenever the department finds that any self-insurer does not possess $40,000 of unencumbered net worth it shall revoke the certificate of self-insurance.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.12.

324.181 Cancellation of liability policies; plan for apportionment of certain applicants.— No motor vehicle liability policy which is obtained to effect the return of any operator's license or registration shall be canceled by an insurer issuing the same unless 10 days' notice of such cancellation shall be given to the department on a form prescribed by it and to the insured, except that when evidence has

been furnished of the holding of a motor vehicle liability policy, and subsequently evidence is furnished of the holding of such a policy subsequently procured, the later policy shall, on the date evidence is furnished, terminate the policy as to which evidence was previously furnished with respect to any vehicle designated in both policies.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 61-69; ss. 13, 35, ch. 69-106; s. 12, ch. 77-468.

Note.—Former s. 324.13.

324.191 Consent to cancellation; direction to return money or securities.—The department shall consent to the cancellation of any bond or certificate of insurance furnished as proof of financial responsibility pursuant to s. 324.031, or the department shall return to the person entitled thereto cash or securities deposited as proof of financial responsibility pursuant to s. 324.031:

(1) Upon substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter, or

(2) In the event of the death of the person on whose behalf the proof was filed, or the permanent incapacity of such person to operate a motor vehicle, or

(3) In the event the person who has given proof of financial responsibility surrenders his license and all registrations to the department; providing, however, that no notice of court action has been filed with the department, a judgment in which would result in claim on such proof of financial responsibility.

This section shall not apply to security as specified in s. 324.061 deposited pursuant to s. 324.051(2)(a)6.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 7, ch. 77-118.

Note.—Former s. 324.14.

324.201 Return of license or registration to department.—Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon the request of the department shall immediately return his license and registrations to the department. It shall be unlawful for any person whose license has been suspended to operate any motor vehicle or for any person whose registrations have been suspended to obtain another motor vehicle for the purpose of circumventing this chapter. If any person shall fail to return to the department the license or registrations as provided herein, the department shall issue a complaint to a court of competent jurisdiction which shall issue a warrant charging such person with a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such person shall surrender to the court his driver's license, registration and plates for delivery to the department. For the service and execution of such warrant the sheriff shall receive the arrest and other fees authorized by law.

History.—s. 1, ch. 29963, 1955; s. 7, ch. 57-147; ss. 13, 35, ch. 69-106; s. 220, ch. 71-136; s. 96, ch. 73-333.

Note.—Former s. 324.16.

cf.—s. 30.231 Sheriffs' fees.

324.211 Sale by owner during suspension; rights of conditional vendors, mortgagees and lessors.—

(1)(a) If an owner's registration has been suspended hereunder, it shall be unlawful for him to transfer such registration or to have registered in any other name the motor vehicle in respect of which such registration was issued until the department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purpose of this chapter; provided, however, that any owner within the purview of this section may file an application for permission to transfer such registration, which application shall be accompanied by an affidavit of good faith showing that such transfer is not with the intent of defeating the purpose of this chapter. The department, within 10 days subsequent to suspension of the owner's registration, upon request shall furnish proper application and affidavit forms to each such owner along with the notice of suspension, and the owner shall have 15 days from receipt thereof to file such application, which application shall be either approved or rejected by the department within 30 days from the filing thereof.

(b) In addition to the penalties otherwise provided for violation of this section the department may suspend the registration of any vehicle transferred contrary to the provisions of this section.

(2) Nothing in this section or elsewhere in this chapter contained shall affect the rights of any conditional vendor, chattel mortgagee or lessor or any successor in interest of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section; and in the event of the repossession or foreclosure of a motor vehicle by such conditional vendor, chattel mortgagee, or lessor, or any successor in interest, pursuant to the exercise of rights to such repossession under the terms of the lien instrument or contract involved, by operation of law or through legal proceedings, the lienholder or lessor repossessor shall have the right to have delivered to it the registration plates which shall have been surrendered.

History.—s. 1, ch. 29963, 1955; s. 8, ch. 57-147; ss. 13, 35, ch. 69-106; s. 7, ch. 71-59.

Note.—Former s. 324.15.

324.221 Penalties.—

(1) Any person who shall make any misstatement in or commit any forgery upon notice required to be filed hereunder or who shall make any false affidavit in connection with the transfer or proposed transfer of the registration of a motor vehicle shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who shall violate s. 324.201 or any other provision of this chapter for which no penalty is otherwise provided, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 29963, 1955; s. 9, ch. 57-147; s. 221, ch. 71-136.

Note.—Former s. 324.17.

324.241 Application of law.—This law shall not apply with respect to any accident occurring prior to the effective date of this chapter.

History.—s. 1, ch. 29963, 1955.
Note.—Former s. 324.18.

324.251 Short title.—This chapter may be cited as the "Financial Responsibility Law of 1955," and shall become effective at 12:01 a.m., October 1, 1955.

History.—ss. 1, 5, ch. 29963, 1955.

CHAPTER 325

VEHICLE SAFETY EQUIPMENT

PART I VEHICLE EQUIPMENT SAFETY COMPACT (ss. 325.01-325.10)

PART II SAFETY EQUIPMENT INSPECTION (ss. 325.11-325.33)

PART I

VEHICLE EQUIPMENT SAFETY COMPACT

325.01 Vehicle Equipment Safety Compact, execution authorized.—The Governor of this state is hereby authorized and directed to execute the following compact on behalf of this state with such other states as may enter into a compact, legally joining therein in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I

FINDINGS AND PURPOSES.—

(1) The party states find that:

(a) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(b) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to:

(a) Promote uniformity in regulation of and standards for equipment.

(b) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(c) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II

DEFINITIONS.—As used in this compact:

(1) Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) State means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) Equipment means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III

THE COMMISSION.—

(1) There is hereby created an agency of the party states to be known as the Vehicle Equipment Safety Commission hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this article.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

RESEARCH AND TESTING.—The commission shall have power to:

(1) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(2) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(4) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V

VEHICULAR EQUIPMENT.—

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall con-

tain the complete text of the rule, regulation or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

ARTICLE VI

FINANCE.—

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article III (8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under article III (8), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

CONFLICT OF INTEREST.—

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigation or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII

ADVISORY AND TECHNICAL COMMITTEES.—

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering

any of its activities.

ARTICLE IX

ENTRY INTO FORCE AND WITHDRAWAL.—

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X

CONSTRUCTION AND SEVERABILITY.—

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 63-518.

325.02 Statutory provisions relative to equipment requirements superseded by new rules and regulations.—The provisions of chapter 316, prescribing motor vehicle equipment requirements, shall continue to be of force and effect only until superseded by a rule, regulation or code adopted by the Department of Highway Safety and Motor Vehicles pursuant to the Vehicle Equipment Safety Compact. Any such rule, regulation or code shall specify the provision or provisions of existing statute being superseded in accordance with and as required by this chapter. Any such provision or provisions are hereby repealed, effective on the date when the rule, regulation or code superseding such provision or provisions becomes effective pursuant to the Vehicle Equipment Safety Compact and such other provisions of this act as may be applicable. Violation of any of the motor vehicle equipment requirements shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 63-518; ss. 24, 35, ch. 69-106; s. 222, ch. 71-136.

325.03 Rules, approval by Department of Highway Safety and Motor Vehicles.—Pursuant to article V (5) of the Vehicle Equipment Safety Compact, it is the intention of this state and it is hereby provided that no rule, regulation or code issued by the Vehicle Equipment Safety Commission in accordance with article V of the compact shall take effect until approved by the Department of Highway Safety and Motor Vehicles.

History.—s. 3, ch. 63-518; ss. 24, 35, ch. 69-106.

325.04 Commissioner on motor equipment safety; executive director of Department of Highway Safety and Motor Vehicles.—The commissioner of this state on the Vehicle Equipment Safety Commission shall be the executive director of the Department of Highway Safety and Motor Vehicles, who shall serve during his continuance as such executive director. The commissioner may designate a duly authorized representative from among the officers and employees of his agency to serve in his place and stead on the Vehicle Equipment Safety Commission. Subject to the provisions of the compact and bylaws of the Vehicle Equipment Safety Commission, the authority and responsibilities of such representative shall be as determined by the commissioner designating such representative.

History.—s. 4, ch. 63-518; ss. 24, 35, ch. 69-106.

325.05 Employees covered by State and County Retirement System.—The State and County Officers and Employees Retirement System may make an agreement with the Vehicle Equipment Safety Commission for the coverage of said commission's employees pursuant to article III (6) of the compact. Any such agreement, as nearly as may be shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History.—s. 5, ch. 63-518.

325.06 Cooperation with state agencies.—Within appropriations available therefor, the departments, agencies and officers of the government of this state may cooperate with and assist the Vehicle Equipment Safety Commission within the scope contemplated by article III (8) of the compact. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said commission.

History.—s. 6, ch. 63-518.

325.07 Filing of documents.—Filing of documents as required by article III (10) of the compact shall be with the Department of State. Any and all notices required by commission bylaws to be given pursuant to article III (10) of the compact shall be given to the commissioner of this state, or his duly authorized representative, if any.

History.—s. 7, ch. 63-518; ss. 10, 35, ch. 69-106.

325.08 Budgets.—Pursuant to article VI (1) of the compact, the Vehicle Equipment Safety Commission shall submit its budgets to the Governor, as chief budget officer of the state.

History.—s. 8, ch. 63-518; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106.

325.09 Audit.—Pursuant to article VI (5) of the compact, the Auditor General is hereby authorized and required to inspect the accounts of the Vehicle Equipment Safety Commission.

History.—s. 9, ch. 63-518; s. 8, ch. 69-82.

325.10 Governor executive head.—The term "executive head" as used in article IX (2) of the compact shall, with reference to this state, mean the Governor.

History.—s. 10, ch. 63-518.

PART II

SAFETY EQUIPMENT INSPECTION

325.11 Definitions.—The following words and phrases when used in this part shall, for the purpose of this part, have the meanings respectively ascribed to them except where the context otherwise requires:

(1) "Certificate."—An inspection certificate which when properly executed indicates that the vehicle to which it is attached has been lawfully inspected and found to meet the requirements of the safety inspection laws.

(2) "Department."—The Florida Department of Highway Safety and Motor Vehicles, with the governor and cabinet as head, and all duly authorized officers and agents as may be designated or authorized by the department.

(3) "Safe operating condition of motor vehicle equipment."—As used in this part shall mean that the condition of such equipment meets the requirements of this part and those equipment standards established by the department.

(4) "Inspection."—The safety equipment inspection of motor vehicles as required under this part.

(5) "Inspection period."—The month(s) during which the motor vehicle would normally be required to be inspected as required under this part.

(6) "Official inspector."—A person who has been duly trained and qualified to inspect vehicles in compliance with regulations established by the department in accordance with this part.

(7) "License."—The license issued by the department to operate a safety equipment inspection station.

(8) "Station."—A facility duly licensed by the department to conduct safety equipment inspections of motor vehicles as required under this part.

(9) "Inspection laws."—All of the sections relating to inspection and the rules and regulations duly approved by the department.

(10) "Suspension."—The temporary withdrawal of a license issued by the department to a safety equipment inspection station for a definite period of time.

(11) "Revocation."—The termination of a license issued by the department to a safety equipment inspection station.

(12) "Self-inspector."—Any natural person, firm, copartnership, association, corporation, county, or other governmental entity owning or operating at least five vehicles, designated by the department for the purpose of inspecting vehicles. Self-inspectors so designated of firms, persons, copartnerships, associations, or corporations may inspect only such vehicles owned or operated by them.

(13) "Motor vehicle."—Any vehicle which is self-propelled, excluding vehicles operated upon rails. "Motor vehicle" includes, but is not limited to, automobiles, trucks, motorcycles, motor-driven cycles, and all motor vehicles that are registered, or that are required to be registered by the registration laws of this state. Trailers are excluded.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 101, ch. 71-377; s. 1, ch. 76-164; s. 2, ch. 79-324.

325.12 Safety equipment inspection required; exception.—Every motor vehicle, except ancient motor vehicles licensed under s. 320.086, registered or required to be registered within the state when operated upon any street or highway within the state shall at all times display a current approved certificate which shall be placed on the vehicle as may be designated by the department, indicating that it has been inspected in accordance with the provisions of this part and has been found to comply with the standards and requirements of this part for safety equipment.

History.—s. 1, ch. 67-307; s. 1, ch. 69-16; ss. 24, 35, ch. 69-106; s. 1, ch. 78-363.

325.13 Expiration of certificate; early inspection; reinspection schedule; failure to display certificate, penalty.—

(1) Every inspection certificate issued shall be valid for not less than 1 year and shall expire at midnight on the day of the month designated on said inspection certificate. The day of expiration of said certificate shall be established by the reinspection schedule promulgated by the department. Such schedule shall provide for midmonth and end-of-month expiration dates.

(2) The owner of any motor vehicle bearing a current, valid inspection certificate may request that the automobile be inspected at any time, under the provisions of this chapter, before expiration of the certificate.

(3) Except as provided in this section and in s. 325.15, it shall be unlawful and punishable as provided in s. 316.655 to operate any motor vehicle on any street or highway until there is displayed thereon a valid current inspection certificate.

(4) If the designated day of the month falls on Saturday, Sunday, or a holiday and the inspection station is normally closed on those days, a vehicle may be presented for inspection on the first working day following the expiration date. The expired inspection certificate shall be considered valid and no delinquent fee or violation shall be charged.

(5) Any person who has been absent from the state and whose safety equipment inspection certificate for any vehicle owned by him and required to be inspected under the provisions of s. 325.12 shall have expired during such absence may operate such vehicle or allow it to be operated on the streets or highways of the state without reinspection for not more than 10 days from the date on which said person first returns to the state.

History.—s. 1, ch. 67-307; s. 2, ch. 69-16; s. 28, ch. 69-353; s. 1, ch. 72-141; s. 1, ch. 74-42; s. 45, ch. 76-31; s. 3, ch. 79-324.

325.14 Inspection certificate required for sold vehicles; exemption.—

(1) It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person engaged in the business of buying or selling new or used motor vehicles to sell at retail any used motor vehicle which does not have affixed thereto a current approved inspection certificate as required under s. 325.12.

(2) Any motor vehicle, the sale of which constitutes an occasional or private sale, shall not be driven unless the vehicle has a current valid inspection certificate; however, in the case of a motor vehicle which has been stored or otherwise unused, during which time the inspection certificate has expired, the owner shall obtain authority from the nearest highway patrol station to drive the vehicle to the inspection station. In the case of a motor vehicle which has never been registered in this state and which has no automobile tag, the owner shall obtain authority from the nearest highway patrol station to drive the vehicle to the inspection station for the purpose of obtaining the appropriate motor vehicle inspection form necessary to register the vehicle in this state, as required by s. 320.02(3), and then to drive the vehicle to the nearest tag agency for the purpose of registering the vehicle.

(3) Nothing in this chapter shall be construed to require a valid current inspection certificate for any motor vehicle owned by a motor vehicle dealer licensed under s. 320.27 and displaying a dealer tag thereon as authorized by s. 320.13(1)(a) when such vehicle is being used for demonstration purposes or when such vehicle is being driven from its point of purchase to the business location of the dealer, or between the business location of the dealer and a repair facility, or between the business location of the dealer and an inspection station.

History.—s. 1, ch. 67-307; s. 1, ch. 74-275; s. 14, ch. 75-66; s. 2, ch. 76-164; s. 45, ch. 77-357; s. 10, ch. 78-412; s. 1, ch. 79-47; s. 4, ch. 79-324.

325.15 Time limit for inspection of newly registered motor vehicles.—The purchaser of any new motor vehicle or the owner of any motor vehicle brought into this state for the first time and which is required to be registered under the provisions of chapter 320, and required to be inspected under the provisions of s. 325.12 may operate any such vehicle or allow it to be operated on the streets or highways of the state, without inspection for not more than 10 days from the date of purchase or from the date on which it was first brought into this state.

History.—s. 1, ch. 67-307.

325.16 Defective vehicles; repair procedures.—When a motor vehicle required to be inspected under this part shall upon inspection fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection shall issue an authorized receipt and statement for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator shall have such defects corrected or repaired at any place he chooses. The authorized receipt and statement shall operate as a temporary valid inspection permit for 30 days after the defect is found, during which time the operator shall not be subject to the penalty provided in s. 316.610, for the purpose of allowing the owner or operator of such vehicle to repair the defect. In any case where a part must be ordered to correct a defect and the part cannot be received and installed within the 30-day period herein provided, the authorized receipt and statement, together with a dated copy of the order for the part, shall operate as a temporary valid inspection permit until the part is received, which time period shall not exceed 90 days. The vehicle may be reinspected one time for such defects within 30 days when the owner does not have to wait on a part to be received, or within 90 days when the owner has the authorized receipt and statement together with a dated copy of the order for the part, at the safety equipment inspection station first making the inspection, without additional charge; however, upon payment of the inspection fee, the vehicle may be reinspected at another safety equipment inspection station.

History.—s. 1, ch. 67-307; s. 3, ch. 69-16; s. 4, ch. 74-338; s. 1, ch. 78-111.

325.17 Motor vehicles involved in accident and otherwise damaged.—Any motor vehicle involved in an accident and otherwise damaged so that the equipment required to be inspected in s. 325.19 has been damaged shall not be operated, except to an

official inspection station or repair shop, upon the streets and highways of this state until it has been reinspected in accordance with the provisions of this part.

History.—s. 1, ch. 67-307.

325.19 Requirements for approval before an inspection certificate may be issued for a motor vehicle.—

(1) The following articles and equipment of each vehicle shall be inspected by an approved safety equipment inspection station, as required in this part, to determine that they are in safe operating condition:

(a) Brakes;
(b) Lights;
(c) Horn;
(d) Steering mechanism;
(e) Windshield wipers;
(f) Directional signals;
(g) Tires; and
(h) Exhaust system.

(2) A tire shall be considered unsafe if it has:

(a) Any ply or cord exposed;

(b) Any bump, bulge, or knot affecting the tire structure;

(c) Any break repaired with a boot;

(d) A tread depth of less than $\frac{2}{32}$ of an inch measured in any two tread grooves at three locations equally spaced around the circumference of the tire, or, for those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two tread grooves at three locations equally spaced around the circumference of the tire;

(e) A marking "not for highway use," or "for racing purposes only"; or

(f) Such other conditions as may be reasonably demonstrated to render it unsafe.

(3) The inspection requirement herein provided for shall not exceed the standards provided for in this part or the standards set for steering mechanism by the department for such equipment.

(4) If a vehicle is rejected because its headlights are out of alignment, and if the headlights could be adjusted without the removal or replacement of parts, if requested by the owner, then all inspection stations shall make such adjustment at the time of the inspection and at no expense to the owner or operator of the vehicle. Such rejection shall be recorded on the form furnished by the department with a notation that such adjustment was made at the inspection station.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 1, ch. 70-351; s. 1, ch. 71-242; s. 1, ch. 71-285; s. 2, ch. 72-39; s. 2, ch. 72-141; s. 1, ch. 73-48; s. 44, ch. 77-357; s. 12, ch. 77-468; s. 3, ch. 78-183; s. 71, ch. 79-164; s. 5, ch. 79-324.

cf.—ss. 316.272 and 403.061 Regulation of exhaust system noise.

325.195 Inspection of metal license plates.— Every metal license plate shall be inspected for proper display, damage, legibility, and retroreflectivity; and every validation sticker shall be inspected for legibility. Failure of a license plate or sticker to meet any of these requirements shall not be cause for rejection; however, the inspector shall give written notice of the failure to the owner or operator, which notice shall require that the plate or sticker be replaced within 14 days. The owner shall present the notice to the tax collector or tag agency and shall be issued a replacement plate at no charge as provided in s. 320.06(5)(b). The tax collector or tag agent shall certify on the notice that the replacement plate or sticker was issued, and the owner shall return the certified notice to the inspection station by mail or by person.

History.—s. 6, ch. 79-324.

325.20 Privately operated safety equipment inspection stations; appointment by department.—

(1) Each firm, person or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

(a) Good character and a good reputation for honesty;

(b) Adequate knowledge of the equipment requirements for motor vehicles as required under the laws of Florida;

(c) Ability to conduct satisfactorily the mechanical inspection required by this part;

(d) Adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein; and

(e) A general knowledge of motor vehicles, sufficient to recognize a mechanical condition which is not safe.

(2) Any person, firm, or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the department on forms provided by it. The department shall cause an investigation of the application to be made to determine that the requirements in subsection (1) are met and that adequate and proper facilities to accommodate the public will be provided. Upon satisfactory proof of same, the department shall issue a certificate of appointment to such person, firm, or agency as a safety equipment inspection station. Such appointment shall be issued without charge and for a period of not more than 7 years, and such appointment shall be effective for the period for which issued unless canceled by request of the inspection station or unless suspended or revoked for cause following a hearing by the department. The certificate of appointment shall not be transferable without the department's approval. If, as a result of the cancellation or revocation of a certificate of appointment, no authorized private safety equipment inspection stations are available in a county, the department may license the county to operate safety equipment inspection stations as authorized in s. 325.27.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 7, ch. 79-324.

325.21 Self-inspectors.—The department may designate any governmental entity, person, firm or corporation as a self-inspector to carry out the provisions of s. 325.11(12) of this part.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106.

325.22 Supervision of safety equipment inspection stations.—

(1) The supervision of safety equipment inspection stations as authorized in this section shall be by

the Division of Motor Vehicles. The uniformed members of the Florida Highway Patrol who are supervising the inspection program on July 1, 1979, shall assist the division in performing its duties until January 1, 1980, at which time the transition shall be complete. Those uniformed members shall be reassigned by the Florida Highway Patrol to other duties authorized in chapter 321. Sufficient replacement civilian personnel shall be employed by the department to allow regularly scheduled audits of each inspection station at approximately 30-day intervals.

(2) When a person, firm, agency, or county is designated as a safety equipment inspection station, the department shall record such appointment and shall cause periodic checks to be made to determine that inspections are being conducted in accordance with this part, and shall cause investigations to be made of bona fide complaints received regarding any such inspection stations.

(3) Beginning July 1, 1980, and at no longer than 3-year intervals thereafter, the department shall evaluate all privately operated and county-operated inspection facilities to determine whether such facilities are adequate to accommodate the public. The department shall evaluate such facilities based on standards which shall include quantitative criteria for the determination of the necessary number of inspection lanes, access lanes, and personnel. If the evaluation reveals that the facilities are inadequate, the operator shall have a maximum of 12 months in which to provide the necessary improvements or to submit evidence of a specific plan of action, subject to division approval, to correct the deficiency. Failure of a county to take the required corrective action within 12 months shall result in permanent revocation of the county's license and the appointment of qualified private inspection stations in that county. Such failure on the part of a privately operated station within 12 months shall result in the permanent revocation of the inspection license.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 8, ch. 79-324.

325.23 Department shall establish procedures.—The department shall establish procedures for the control, distribution, sale, refund, and display of certificates and for the accounting for proceeds of their sale, consistent with this part. It shall be unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, to possess, affix, transfer, or remove an inspection certificate, except by direction of the department under the terms of this part. The department shall establish such rules and regulations necessary to train and qualify official inspectors under this part, and no person shall be qualified to inspect a motor vehicle under this part until approved by the department.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 46, ch. 76-31; s. 3, ch. 76-164.

325.24 Fees to be charged by safety equipment inspection station.—

(1) All inspection stations, except self-inspectors as designated herein, shall charge a fee of $3 (self-inspectors shall be prohibited from charging any fee) for inspecting a motor vehicle to determine compliance with this part and shall give the operator a receipt indicating the articles and equipment approved or disapproved and fee paid. When said vehicle is approved, upon payment to the inspection station of the fee, the inspection station shall affix a valid inspection certificate to said motor vehicle, and said inspection station shall maintain a record of the motor vehicles inspected which shall be available for 12 months. Such records shall be maintained in a manner that permits rapid reference to the previous certificate number, the vehicle identification number, and the name of the owner. Orders for inspection certificates must be placed with the Department of Highway Safety and Motor Vehicles, Neil Kirkman Building, Tallahassee, and shall be accompanied by proper remittance in the amount of 40 cents for each certificate ordered. However, when any vehicle is inspected subsequent to the time required by this chapter, an additional delinquent fee of $1 shall be paid. The delinquent fee shall be forwarded to the department and shall be credited against the 40-cent remittance required by this section. Said fee shall not be applicable to state agencies. Inspection certificates may be ordered only by licensed safety equipment inspection stations and self-inspectors as may be duly appointed from the department. Any order for inspection certificates placed in person at the department must be accompanied by written authorization upon forms furnished by the department from the station to which the certificates are to be issued. If order is placed by a person other than the person in whose name the station is licensed, or if authorization is not presented, the certificates will be delivered in a manner to be determined by the department. Orders received by mail will be filled and delivered to the requesting inspection station in a manner to be determined by the department. Licensed inspection stations and self-inspectors will, upon request, be furnished forms required to be used by this part. All licensed stations are required to keep an adequate supply of inspection certificates on hand at all times.

(2) All funds received by the department for inspection certificates shall be deposited in the General Revenue Fund of the state through the Treasurer.

History.—s. 1, ch. 67-307; s. 4, ch. 69-16; ss. 24, 35, ch. 69-106; s. 1, ch. 74-381; s. 4, ch. 78-183; s. 9, ch. 79-324.

325.25 Budget; administration.—The department shall submit a budget of the cost of administration of this part to the Governor as chief budget officer for approval by the Legislature; however, said budget shall not exceed the funds derived from the sale of inspection certificates. The Legislature shall advance such funds as may be necessary for the implementation of this part.

History.—s. 1, ch. 67-307; ss. 2, 3, ch. 67-371; ss. 24, 31, 35, ch. 69-106; s. 10, ch. 79-324.

325.26 Department to issue rules.—It is hereby declared to be the express intent of the Legislature that the provisions of this part shall be carried out by the department for the safety and convenience of the motoring public. The department shall have authority to promulgate rules which are rea-

sonably necessary for carrying out the provisions of this inspection program.

History.—s. 1, ch. 67-307; ss. 24, 35, ch. 69-106; s. 1, ch. 75-265; s. 11, ch. 79-324.

325.27 Operation of inspection stations by counties.—Whenever any county of this state shall make application through its duly elected county officials for a license to operate inspection stations as authorized in s. 325.20(2), the department shall cause an investigation of said application to determine that the requirements of s. 325.20(1) except paragraph (a) will be met and provided for by said county and that adequate and proper facilities to accommodate the public will be provided. Upon satisfactory proof of same, the department shall issue to said county a license to operate inspection stations within its boundaries until same shall be revoked for cause as provided for in this part; provided, however, that such jurisdiction within the confines of any county shall not apply to any approved self-inspector meeting the requirements of this part. Any county licensed to operate inspection stations on July 1, 1979, shall continue to have exclusive rights of operation within its boundaries unless such license is revoked for cause. Any county or municipality to which has been issued a license to operate inspection stations within its boundaries is hereby authorized to pledge its share of inspection fees for the purpose of issuing revenue certificates for the purchase and construction of adequate and proper facilities for the purpose of this part. The revenue certificates authorized herein may be issued under the provisions of chapter 159, or other appropriate special or general legislation.

History.—s. 1, ch. 67-307; s. 1, ch. 68-37; ss. 24, 35, ch. 69-106; s. 12, ch. 79-324.

325.272 Inspection stations; days and hours of operation.—Inspection stations shall be operated for the convenience of the motoring public. The schedule of operation of all inspection stations shall be subject to approval by the department and shall provide for evening and weekend hours of operation.

History.—s. 3, ch. 78-363; s. 13, ch. 79-324.

325.28 Inspection stickers of other states and carriers certificated by the Interstate Commerce Commission or Florida Public Service Commission.—Every law enforcement officer of this state shall recognize any current official inspection sticker affixed to any motor vehicle from another state, except that any motor vehicle registered in Florida, or required to be registered by the registration laws of Florida, shall display a valid, current, approved, Florida official inspection certificate. Vehicles operating under certificate of the Interstate Commerce Commission or Florida Public Service Commission subject to United States Department of Transportation Safety Regulations are exempt from displaying a Florida official inspection sticker if they have attached or display a valid certificate number issued by the Interstate Commerce Commission or Florida Public Service Commission.

History.—s. 1, ch. 67-307; s. 6, ch. 69-16; s. 4, ch. 76-164.

325.29 Inspection not to constitute a warranty of mechanical condition.—The inspection of any motor vehicle and the issuance of an inspection certificate of such inspection under the provisions of this part shall not be construed in any court as a warranty of the mechanical condition of such motor vehicle. No inspector or inspection station inspecting a motor vehicle and issuing an inspection certificate of such inspection under the provisions of this part shall be liable in damages for any defect in or failure or improper functioning of any item of equipment on such motor vehicle occurring subsequent to such inspection.

History.—s. 1, ch. 67-307.

325.30 Prohibited inspection certificates.—It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person, firm, or corporation to issue an inspection certificate for any vehicle which has not actually been inspected under the provisions of this part.

History.—s. 1, ch. 67-307; s. 5, ch. 76-164.

325.31 Violations; penalty.—Violation of any provision of this part shall, upon conviction, be punishable as provided in s. 316.655, except when a penalty for violation of such provision is specifically provided therefor.

History.—s. 1, ch. 67-307; s. 47, ch. 76-31; s. 6, ch. 76-164.

325.33 Forged certificates, unauthorized sale and unauthorized supply; penalty.—

(1) It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a Florida inspection certificate unless authorized by the department.

(2) It is unlawful for any person knowingly to have in his possession any forged, counterfeit, or imitation Florida inspection certificate, or a reproduction of a certificate, unless possession by such person has been duly authorized by the department.

(3) It is unlawful for any person to barter, trade, sell, or give away any inspection certificate, or to conspire to barter, trade, sell, or give away any inspection certificate, unless said person has been duly authorized to issue the certificate by the department, as provided in this part, or the adopted rules and regulations of the department.

(4) It is unlawful for any person to agree to supply, or to aid in supplying, any person with an inspection certificate by any means whatsoever not in accordance with the provisions of this part.

(5) Any person who violates any of the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 7, ch. 76-164.

TITLE XXIV

AERONAUTICS

CHAPTER 329

AIRCRAFT, GENERALLY

329.01 Recording instruments affecting civil aircraft.—No instrument which affects the title to or interest in any civil aircraft of the United States, or any portion thereof, shall be valid in respect to such aircraft or portion thereof, against any person other than the person by whom the instrument is made or given, his heirs or devisee, and any person having actual notice thereof, until such instrument is recorded in the office of the Civil Aeronautics Administrator of the United States, or such other office as is designated by the laws of the United States as the one in which such instruments should be filed. Every such instrument so recorded in such office shall be valid as to all persons without further recordation in any office of this state. Any instrument, recordation of which is required by the provisions of this section, shall take effect from the date of its recordation and not from the date of its execution.

History.—s. 1, ch. 22673, 1945.

CHAPTER 330

REGULATION OF AIRCRAFT AND PILOTS

330.01 Definitions.—In this chapter "aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. "Operating aircraft" means performing the services of aircraft pilot.

History.—s. 1, ch. 14642, 1931; CGL 1936 Supp. 4109(1).

330.04 Pilot required to have license in his possession.—The pilot's license required shall be kept in the personal possession of the licensee when he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state upon which he shall land.

History.—s. 4, ch. 14642, 1931; CGL 1936 Supp. 4109(4).

330.05 Penalties.—A person who violates any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, acts or omissions made unlawful by this chapter shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States, but it shall not be necessary to allege or prove, as part of the case for the state, that the defendant is not amenable, on account of the alleged violation, to prosecution under laws of the United States. That he is amenable to such prosecution shall be a matter of defense, unless it affirmatively appears from the evidence adduced by the state.

History.—s. 5, ch. 14642, 1931; CGL 1936 Supp. 8135(3); s. 223, ch. 71-136.

330.17 Municipalities may not impose registration fees on aircraft.—It shall be unlawful for any municipality of this state to collect any license or registration fee or tax on any aircraft or glider in this state.

History.—s. 12, ch. 24045, 1947.

330.261 Aviation; Division of Planning and Programming and Division of Public Transportation Operations of the Department of Transportation; powers and duties defined.—

(1) DIVISION OF PLANNING AND PROGRAMMING.—It shall be the duty, function and responsibility of the Division of Planning and Programming to plan airport systems in this state. In carrying out this duty and responsibility, the division may assist and advise, cooperate, and coordinate with the federal, state, local or private organizations and individuals in planning such systems of airports.

(2) DIVISION OF PUBLIC TRANSPORTATION OPERATIONS.—It shall be the duty, function, and responsibility of the Division of Public Transportation Operations to promote the further development and improvement of air routes, airport facilities, and landing fields and protect their approaches and to stimulate the development of aviation commerce and air facilities. In carrying out this duty and responsibility, the division may advise and cooperate with municipalities, counties, regional authorities, state agencies, appropriate federal agencies, and interested private individuals and groups. However, it is not the intent of this section to transfer any of the planning duties relating to aviation away from the Division of Planning and Programming.

History.—s. 3, ch. 29788, 1955; s. 3, ch. 22821, 1945; s. 11, ch. 29788, 1955; s. 3, ch. 65-178; ss. 23, 35, ch. 69-106; s. 3, ch. 72-186; s. 1, ch. 77-273.

Note.—Subsection (1) former s. 288.03(16); (2) former ss. 288.15(8), 420.06.

330.27 Definitions, when used in ss. 330.28-330.36, 330.38, 330.39.—

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft powerplants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment,

construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any motor vehicle or contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(4) "Division" means the Division of Public Transportation Operations of the Department of Transportation.

(5) "State" or "this state" means the State of Florida.

(6) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(7) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(8) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves the capacity of aircraft dispatcher, or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(9) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(10) "Municipality" means any county, city, town, village, borough, authority, district or other political subdivision or public corporation of this state. "Municipal" means pertaining to a municipality as herein defined.

(11) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

History.—s. 1, ch. 24046, 1947; s. 24, ch. 57-1; s. 2, ch. 65-178; ss. 23, 35, ch. 69-106; s. 103, ch. 71-377; s. 2, ch. 73-326; s. 1, ch. 75-16; s. 1, ch. 77-273.

330.28 Declaration as to aeronautical progress.—It is hereby declared that the purpose of ss. 330.28-330.36, 330.38, 330.39 is to further the public interest and aeronautical progress:

(1) By providing for the protection and promotion of safety in aeronautics;

(2) By cooperating in effecting uniformity of the laws and regulations relating to the establishment and development of airports in the several states consistent with Federal Aeronautics Laws and Regulations;

(3) By granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to airports, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics;

(4) By establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(5) By providing for cooperation with the federal authorities in the development of a national system of airports and for coordination of the aeronautical activities of those authorities and the authorities of this state.

History.—s. 2, ch. 24046, 1947.

330.29 Rules, regulations, standards.—

(1) POWER TO ISSUE.—The division may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable general or special rules, regulations and procedures, and establish such minimum standards, consistent with the provisions of ss. 330.27-330.36, 330.38 and 330.39 as it shall deem necessary to carry out the provisions of ss. 330.27-330.36, 330.38 and 330.39, and to perform its duties thereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule or regulation of the division shall apply to airports or air navigation facilities owned or operated by the United States.

(2) CONFORMITY TO FEDERAL LEGISLATION AND RULES.—All rules and regulations prescribed by the division under the authority of ss. 330.27-330.36, 330.38 and 330.39 shall be kept in conformity, as nearly as may be, with the then current federal legislation governing airports and the rules, regulations and standards duly issued thereunder.

(3) DISTRIBUTION.—The division shall provide for the publication and general distribution of all its orders, rules, and regulations and procedures having general effect.

History.—s. 3, ch. 24046, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 65-178; ss. 10, 23, 35, ch. 69-106; s. 56, ch. 78-95.

[1]330.30 Licensing of airports.—

(1) SITE APPROVALS; REGULATIONS, ISSUANCE OF CERTIFICATES, FEES, STANDARDS.—Except as provided in subsection (4), the division is authorized to provide for the approval of airport sites and the issuance of certificates of such approvals. A charge not to exceed $50 shall be made for any such approval, and certificates of such an approval may be issued to all persons requesting them. Upon the promulgation of a rule or regulation providing for such approvals, any municipality or person desiring or planning to construct or establish an airport shall, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the division for approval of the site. The division shall grant approval of a site if it is satisfied:

(a) That the site is adequate for the proposed airport;

(b) That such proposed airport, if constructed or established, will conform to minimum standards of safety; and

(c) That safe air-traffic patterns could be worked out for such proposed airport and for all existing airports and approved airport sites in its vicinity.

(2) SAME; EFFECTIVE PERIOD, REVOCATION, EXISTING AIRPORTS.—An approval of a site may be granted subject to any reasonable conditions which the division may deem necessary to effectuate the purposes of this section and shall remain in effect, unless sooner revoked by the division, until a license for an airport located on the approved site has been issued pursuant to subsection (3). The division may revoke such approval when it shall reasonably determine:

(a) That there has been an abandonment of the site as an airport site;

(b) That there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval, or

(c) That because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted. No approval shall be required for the site of any existing airport.

(3) LICENSES; REGULATIONS, ISSUANCE, RENEWALS, FEES, STANDARDS, REVOCATION, UNLAWFUL OPERATION.—

(a) Except as provided in subsection (4), the division is authorized to provide for the licensing of airports and the annual renewal of such licenses. It may charge license fees not exceeding $50 for each original license and not exceeding $50 for each renewal thereof. Upon the promulgation of a rule or regulation providing for such licensing, the division shall with reasonable dispatch, upon receipt of an application for an original license and the payment of the duly required fee therefor, issue an appropriate license if it is satisfied that the airport conforms to minimum standards of safety and that safe air-traffic patterns can be worked out for such airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the division may deem necessary to effectuate the purposes of this section. The division may revoke any license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine:

1. That there has been an abandonment of the airport as such;

2. That there has been a failure to comply with the conditions of the license or renewal thereof; or

3. That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued.

(4) EXEMPTIONS.—The provisions of this section shall not apply to airports owned or operated by the United States. The division may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under this section or from any requirement of such a rule or regulation, if it finds that the application of such a rule, regulation, or requirement would be an undue burden on such class and is not required in the interest of public safety. The division shall make no charge to any municipality for a certificate of approval or for a license and the annual renewal of such license in connection with any municipally owned airport.

History.—s. 4, ch. 24046, 1947; s. 1, ch. 61-215; s. 2, ch. 65-178; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 56, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

330.31 Federal-state joint hearings, reciprocal services.—

(1) JOINT HEARINGS.—The division is authorized to confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under ss. 330.27-330.36, 330.38 and 330.39 or relating to the safe development of airports.

(2) RECIPROCAL SERVICES.—The division is authorized to avail itself of the cooperation, services, records and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of ss. 330.27-330.36, 330.38 and 330.39. The division shall furnish to the agencies of the United States its cooperation, services, records and facilities, insofar as may be practicable.

History.—s. 5, ch. 24046, 1947; s. 2, ch. 65-178; s. 23, 35, ch. 69-106.

330.33 Penalties.—Any person violating any of the provisions of ss. 330.28-330.36, 330.38, 330.39 or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 24046, 1947; s. 230, ch. 71-136.

330.35 Airport zoning, approach zone protection.—

(1) Nothing in ss. 330.28-330.36, 330.38, and 330.39 shall be construed to limit any right, power, or authority of the state or a municipality to regulate airport hazards by zoning.

(2) Airports licensed for general public use under the provisions of s. 330.30 are eligible for approach

zone protection, and the procedure shall be the same as is prescribed in chapter 333.

(3) The division is hereby granted all powers conferred upon political subdivisions of this state by chapter 333 to regulate airport hazards at state-owned airports. The procedure shall be to form a joint zoning board with the political subdivision of the state in which the state-owned airport is located as prescribed in chapter 333.

History.—s. 9, ch. 24046, 1947; s. 2, ch. 65-178; ss. 23, 35, ch. 69-106.

330.36 Prohibition against municipal licensing of airports.—No municipality of this state shall license airports or control their location except by municipal zoning requirements. All applicants for site approval and licensing under ss. 330.28-330.36, 330.38, and 330.39 must show evidence of compliance with municipal zoning requirements and evidence of notification to municipalities in the immediate territory of intent to file such application. The determination of suitable sites and standards of safety for airports shall be in accordance with the provisions of ss. 330.28-330.36, 330.38, and 330.39 without duplication of licensing and approval by municipalities. Nothing in ss. 330.28-330.36, 330.38, and 330.39 shall be interpreted as prohibiting a municipality from issuing occupational licenses to operators of airports.

History.—s. 10, ch. 24046, 1947.

330.38 Construction of this law.—Nothing in ss. 330.28-330.36, 330.38, and 330.39 shall apply to or confer division jurisdiction or control over any county aviation authority, county port authority or municipal authority or any airports under their control.

History.—s. 11a, ch. 24046, 1947; s. 2, ch. 65-178; ss. 23, 35, ch. 69-106.

330.39 Short title.—Sections 330.27-330.36, 330.38, and 330.39 may be cited as the "State Airport Licensing Law."

History.—s. 13, ch. 24046, 1947.

[1]**330.45 Purpose.**—The purpose of ss. 330.45-330.53 is to provide regulation of air carriers within the state, in order that low cost, high volume air transportation may be established between the major areas of this state.

History.—s. 1, ch. 72-374; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**330.46 Definitions.**—The following words, terms and phrases shall in ss. 330.45-330.53 have the meanings herein given, unless otherwise specifically defined, other intention clearly appears, or the context otherwise requires:

(1) The term "air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier in the transportation of persons or property for compensation or hire only between points within this state, which person or corporation is not engaged in air transportation within the meaning of s. 101 of the Federal Aviation Act of 1958, or any legislation successor thereto, under a certificate or certificates issued by the Civil Aeronautics Board pursuant to s. 401 of the Federal Aviation Act of 1958, or any legislation successor thereto.

(2) The term "aircraft" means any motor vehicle now known, or hereafter invented, used or designed for navigation of or flight in the air. For the purposes of ss. 330.45-330.53, aircraft shall be divided into four classes:

(a) *Class 1.*—Aircraft seating in excess of 99 passengers.

(b) *Class 2.*—Aircraft seating between 50 and 99 passengers.

(c) *Class 3.*—Aircraft seating not more than 49 passengers.

(d) *Class 4.*—Aircraft which do not carry passengers.

(3) The term "airport" means any area of land or water which is designed, or intended for use, for the landing and takeoff of aircraft.

(4) The term "airway" means a route in the navigable airspace above the lands and waters of this state designated by the federal government or the state as a route suitable for air navigation.

(5) The term "commission" means the Florida Public Service Commission.

(6) The term "certificate" means a certificate of public convenience and necessity issued by the commission.

(7) The term "operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(8) The term "passenger" or any abbreviation thereof means any person flying in an aircraft but shall not include the pilot, copilot, flight engineer, steward or stewardess, or other member of the crew necessary for the operation of the aircraft.

(9) The term "person" means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representatives thereof.

(10) The term "state" or "this state" means the State of Florida.

History.—s. 2, ch. 72-374; ss. 1-3, ch. 75-290; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**330.47 Regulation by the state.**—No air carrier shall operate aircraft except in accordance with the provisions of ss. 330.45-330.53 and without first obtaining a certificate that the present and future public convenience and necessity requires, or will require, such operations, as provided herein.

History.—s. 3, ch. 72-374; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**330.48 Responsibility and authority of the commission.—**

(1) The commission shall supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, freight, advertising, and passenger convenience and comfort.

(2) The commission shall approve all rates and schedules for passengers and shippers, classifications, and the rules of each such air carrier, taking into consideration the public interest.

(3) The commission shall regulate the accounts of each such air carrier and require the filing of annual and other reports and of other data by such air carriers.

(4) The commission shall have the authority to promulgate any rules and regulations consistent with the authority provided by ss. 330.45-330.53 and its practices pursuant hereto that it deems necessary to implement the provisions hereof.

History.—s. 4, ch. 72-374; s. 4, ch. 75-290; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.49 Certification, procedures and fees.—

(1) The application for a certificate of public convenience and necessity, or an application for an extension of an existing certificate, made by any applicant shall be in writing, verified by the applicant, and shall specify the following matters:

(a) The name and address of applicant and the names and addresses of its officers, if any;

(b) The airports between which applicant intends to conduct such operations;

(c) The type of air carrier service in which the applicant intends to engage, together with a description of the class of aircraft which applicant proposes to utilize in connection with such operations;

(d) The proposed rates and schedules for operations between the airports involved; and

(e) An agreement on the part of the applicant to conform with and abide by all rules, tariffs, and classifications as to air carrier services which may be prescribed by the commission after proper hearing.

(2) Any such application shall be accompanied by a payment of a fee of $1,000 to be placed in the Florida Public Service Regulatory Trust Fund, except that an application for extension of a certificate of public convenience and necessity issued pursuant to this chapter shall be accompanied by a payment of a fee of $100 for each extension of authority permitting direct service from a currently authorized airport to each airport sought to be served, but in no event shall the fee for such extension exceed $500.

(3) The commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may issue it for only partial exercise of the operation sought, or may attach to the exercise of the right granted by the certificate such terms, limitations, and conditions as it deems the public interest to require.

(4) All certificates issued hereunder shall be renewed annually by application therefor and payment of an annual certificate renewal fee of $500 per certificate, which shall be due on December 31 of each year. If the fee is not paid in advance of the due date, it must be received on or before January 31 of the next year in order for the renewal of the certificate to be effective. All moneys received pursuant to this section shall be deposited in the Florida Public Service Regulatory Trust Fund.

(5) Upon the filing of any application and payment of the required fee, the commission shall fix a time for hearing on said application, which shall be not less than 20 days nor more than 60 days subsequent to the filing of said application, and no application shall be granted or certificate of public convenience and necessity issued without a hearing. Notice of such hearing shall be served upon the applicant; all persons serving airports involved in said application who hold or have applied for a certificate under ss. 330.45-330.53; all persons engaged in air transportation between points in this state under a certificate or certificates issued by the Civil Aeronautics Board pursuant to s. 401 of the Federal Aviation Act of 1958 or any legislation successor thereto, serving airports involved in said application; the Florida Department of Transportation; and such other interested parties as the commission may require. The commission shall also cause notice of the filing of the application and the date of hearing to be published at least 14 days prior to the hearing in some newspaper of general circulation in the areas affected.

(6) In determining whether a certificate shall be issued, the commission shall take into consideration, among other things:

(a) The business experience of the applicant air carrier in the field of air operations;

(b) The financial stability of the air carrier;

(c) The insurance coverage of the air carrier;

(d) The type of aircraft which the air carrier would employ;

(e) Proposed routes and minimum schedules to be established;

(f) Whether the air carrier could economically give adequate service to the communities involved;

(g) The need for such service and its effect on any regional or statewide transportation plan;

(h) The experience of commission-and Civil Aeronautics Board-certificated air carriers operating over the same or parallel routes; and

(i) Any other factors which may affect the public convenience and necessity.

(7) At the time specified in said notice, or at such time as may be fixed by the commission, a public hearing upon said application shall be held by the commission. At or after such hearing the commission may:

(a) Issue a certificate of public convenience and necessity as prayed for.

(b) Refuse to issue the same.

(c) Issue the same with modifications or upon such terms and conditions as, in its judgment, the public convenience and necessity may require.

When any application for a certificate of public convenience and necessity has been heard by the commission and denied, the commission shall not entertain any further application covering the identical or similar routes, schedules, or service until after the expiration of 6 months from the date of such denial.

(8) Any certificate of public convenience and necessity issued under the provisions of ss. 330.45-330.53 shall contain, among other things, the following:

(a) The name of the grantee;

(b) The airports between which the grantee is permitted to operate and the class of aircraft to be employed; and

(c) Such additional terms, conditions, provisions, or limitations as the commission shall deem necessary or proper in the public interest or in the interest of the air carriers already operating between said

airports sought to be served.

(9) The commission may require all air carriers to procure and maintain a minimum amount of insurance in such amounts as the commission may determine, consistent with the requirements for air taxis and similar air carriers by the Civil Aeronautics Board.

History.—s. 5, ch. 72-374; ss. 5-12, ch. 75-290; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.491 Filing of rates and charges; subsequent changes and variations thereof.—

(1) Every air carrier holding a certificate of public convenience and necessity for common carriage shall maintain on file with the commission a schedule of the rates, fares, charges, and classifications, if any, and a time schedule of all routes under such certificate. The commission shall require each such air carrier to keep open for public inspection at designated offices so much of said schedules, rates, fares, charges, and classifications, if any, as well as time schedules, as it deems necessary for the public information. All rate applications filed under this part shall be accompanied by a filing fee of $500, and all tariff filings required or permitted under this part shall be accompanied by a filing fee of $10 to be placed in the Florida Public Service Regulatory Trust Fund.

(2) Whenever such rates or fares or time schedules are found to be unreasonable, the commission, on its own motion or upon complaint, shall, upon hearing, prescribe reasonable rates and time schedules to take the place of those found unreasonable, and such new rates shall be filed in place of the rates and schedules superseded. No rates or time schedules filed with the commission shall be changed by any such air carrier except as provided by rules and regulations adopted under this section by the commission. The commission may adopt rules and regulations governing the filing of tariffs, rates, and schedules and the method whereby changes in such tariffs, rates, and schedules may be made effective. The commission may grant, without a public hearing, any proposed tariff changes on an interim basis. No general rate increases may be made permanent, however, without a public hearing. It is unlawful for any air carrier to collect or receive, for any service rendered by it, a greater or lesser rate or charge than the charge shown in the schedules on file with the commission, and no new rates shall take effect until the date specified in the schedule as filed or as approved by the commission.

History.—s. 13, ch. 75-290; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.492 Transfer of certificate; modification.—

(1) No certificate of public convenience and necessity authorizing air common carriage may be sold, assigned, or transferred by the holder to another, until the same has been approved by the commission, as herein provided. This section shall apply with like effect to the transfer of control of a corporate certificate holder through transfer of stock ownership or otherwise.

(2) When any such certificate is proposed to be sold, assigned, or transferred, or when stock of a corporate certificate holder is proposed to be assigned, sold, transferred, or purchased and such will effect a transfer of control of the corporation, all of the parties, nominal and actual, to such transaction shall jointly file an application with the commission upon forms and according to rules governing form and substance thereof adopted by such commission. Such application shall set forth:

(a) The details of the transaction, specifying the consideration and method of payment.

(b) The date such assignment, sale, or transfer is desired to be consummated.

(c) The financial statement of the transferee.

(d) The certificate authority, if any, held by the transferee from any regulatory commission of this state, the United States, or any state or district of the United States.

(e) Any other pertinent facts.

Such application shall be accompanied by payment of a filing fee of $500 to be placed in the Florida Public Service Regulatory Trust Fund. In such application the proposed transferee shall, as a condition precedent to such approval, agree to pay all taxes, assessments, and obligations which may be due or owing to this state by the transferor to the date of the entry of the order by the commission approving such transfer. Upon the filing of such petition, the commission shall issue and serve upon all air carriers certificated by the commission a written notice, which notice shall contain the general pertinent facts of such application. Said notice shall require any objections or protests to such transfer to be filed in writing with the commission by a date to be fixed in such notice, and the same shall be accompanied by a filing fee of $300.

(3) Any objection or protest filed shall state fully the basis therefor. In the event no such written protest is filed with the commission within the time fixed in such notice, the commission may consider said petition and act upon the same as an ex-parte matter without the necessity of a public hearing, and, for the purpose of such consideration, the commission may require either or both of the parties to such proposed transfer to appear before it for the purpose of giving testimony or to produce any such records or information as the commission may direct and find it necessary to consider in passing upon said petition. If no protests or objections are filed within the time fixed in such notice, there shall be refunded to the applicants the sum of $300. In the event protests or objections are filed and hearings held, as above provided, and such protests or objections are found by the commission to be valid and the application for transfer is denied, the $300 filing fee shall be refunded to the protestant or protestants; however, should the commission, after hearing, find that such protests or objections are so lacking in merit as to render them invalid and the application is granted, the sum of $300 shall be refunded to the applicants, and the filing fee of protestants or objectors shall be retained by the commission and placed in the Florida Public Service Regulatory Trust Fund.

(4) In the event one or more written protests stat-

ing grounds therefor are filed with the commission, as herein provided, within the time fixed by the commission, the commission shall cause a proceeding to be held in accordance with chapter 120 and shall issue and serve upon the applicants and all persons who have filed such protests a notice of such proceeding, containing the general pertinent facts of such application and the date of such proceeding, to be not less than 15 days following the date of such notice. If the commission finds and determines that such sale, assignment, or transfer is not contrary to the public interest and that the certificate has not been dormant for more than 6 months, it may enter an appropriate order in the premises. The commission shall have no power or authority, directly or indirectly, to grant or issue any temporary or interim approval of a sale, assignment, or transfer as aforesaid, but shall have power only to approve or disapprove same, finally, and after hearing if protests are filed as aforesaid and hearing is requested.

(5) A certificate may be divided as to routes and parts thereof transferred, sold, or assigned, provided the commission finds that such routes are clearly severable and the division thereof does not permit the creation of duplicate operating rights and is not contrary to the public interest.

(6) When the transfer of any certificate, or the sale of capital stock of a corporate certificate holder, as herein provided, is approved by the commission, the commission is hereby empowered to reasonably alter, restrict, or modify the terms and provisions of such certificate or impose restrictions on such transfer when the public interest may be best served thereby or the existing transportation facilities within the territory or on the route involved may be safeguarded or improved in the public interest.

(7) The order of the commission approving any sale, assignment, or transfer shall direct immediate cancellation of the certificate and reissuance thereof to the transferee unless alterations, restrictions, or modifications of the terms and provisions of such certificate are imposed in conjunction with such approval. In such latter event, the commission order of approval shall require the transferee to notify it in writing, within a period of time fixed by the commission, whether or not it will accept the certificate as so altered or restricted. If such notification is not given, or if given in the negative, the commission shall enter its order canceling and revoking its approval; otherwise, the commission shall thereafter cancel the certificate and reissue it to the transferee.

(8) Notwithstanding any of the provisions hereof, any executor, administrator, receiver, trustee in bankruptcy or in reorganization, or other court officer shall be entitled, as judicial assignee, to operate the business of the certificate holder without the approval of the commission, upon filing with the commission a certified copy of this order of appointment, but any sale, transfer, or assignment by any judicial officer shall be subject to the terms and conditions hereof.

History.—s. 14, ch. 75-290; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.50 Exemptions.—

(1) Notwithstanding any other provisions in ss. 330.45-330.53, upon receipt of an application and the required fee therefor, filed within 90 days after this act becomes effective, the commission shall issue a certificate to any air carrier operating between any areas in this state to which such air carrier was actually operating at least one scheduled flight per week as of October 1, 1972, and continuously thereafter, at the fares and rates then charged. Such certificate shall permit such air carrier, with the approval of the commission, to increase or decrease the number of flights, or change the schedules or rates and fares therefor, should such air carrier continue to operate at least one flight per week between the areas serviced under such certificate. Certificates issued under ss. 330.45-330.53 shall be limited to that class of aircraft being utilized by said air carrier as of October 1, 1972, and shall not be effective to grant any rights to such air carrier as to any other class of aircraft.

(2) Upon application by an air carrier or other interested party, the commission may, following a determination of necessity, exempt the air carrier from the certificate provisions of ss. 330.45-330.53. If the commission finds that such provisions impose an undue burden upon the air carrier or a community or area because of the immediate need for service, including, but not limited to, conditions of national emergency, natural disaster, or cessation of existing service by another carrier and that enforcement of such provisions would be contrary to the public interest, it may grant an exemption, except that the commission shall not exempt any person from the certificate provisions of ss. 330.45-330.53 on account of a cessation of any existing air carrier service rendered pursuant to a certificate or certificates issued by either the commission or the Civil Aeronautics Board when such cessation is caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum of 90 days and may be renewed for the same or a lesser period.

History.—s. 6, ch. 72-374; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.51 Prohibited acts.—

(1) It is prohibited, unless such relationship existed on October 1, 1972, or unless otherwise authorized by the commission:

(a) For any interstate or intrastate air carrier to have or retain an officer or director who is an officer, director, or member of, or who as a stockholder holds a controlling interest in, any other air carrier.

(b) For any interstate or intrastate air carrier, knowingly and willingly, to have or retain an officer or director who has a representative or nominee who represents such officer or director or member as an officer, director, or member of, or as a stockholder holding a controlling interest in, any other air carrier.

(c) For any person who is an officer or director of an interstate or intrastate air carrier to hold the position of officer, director, or member, or to have a stockholder holding a controlling interest in, or to

have a representative or nominee who represents such person holding the position of an officer, director, or member of, or holding as a stockholder a controlling interest in, any air carrier.

(2) Without the express authorization of the commission, no certificate of public convenience and necessity issued to one air carrier under the provisions of ss. 330.45-330.53 shall be combined, united, or consolidated with another such certificate issued to or possessed by another such carrier, so as to permit through service between any point or points served by one carrier, on the one hand, and any point or points served by another such carrier, on the other hand.

History.—s. 7, ch. 72-374; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]330.52 Revocation and suspension of certificate; fines; enforcement; procedures.—

(1) Whenever any air carrier is found to be violating the provisions of this part or any of the rules or regulations prescribed by the commission or any of the laws of the state touching air carrier operation, the commission may, upon complaint or upon its own motion, issue its orders to the said air carrier notifying it to appear before the commission at a fixed time and place, at which time and place the commission shall conduct a proceeding according to chapter 120. If it shall be satisfied after such hearing that said air carrier has violated or refused to observe the laws of this state touching air carrier operations or any of the terms of the certificate issued to such air carrier or any of the commission's orders, rules, or regulations, the commission may suspend, revoke, alter, or amend any certificate issued to such air carrier, or said commission may, in its discretion, impose a penalty for each such offense of not more than $5,000. One or more of such impositions may be imposed alternately or cumulatively, which penalty shall constitute a lien upon real and personal property of said air carrier, prior to all other liens except those for taxes due the state, enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited to the credit of the commission to be used in the administration of this chapter; however, the holder of said certificate shall have the right to review by the Supreme Court upon filing therewith a petition for issuance of a writ of certiorari in the manner and within the time prescribed by the Florida Appellate Rules. Whenever it shall appear that any air carrier holding a certificate of public convenience and necessity under this chapter has failed to operate over any route or schedule or to any point or airport for a period of 6 months without prior formal approval of suspension by order of the commission, such certificate is hereby declared to be dormant and abandoned, and the commission, upon its own motion or upon the petition of any existing certificate holder, shall, after reasonable notice pursuant to chapter 120, enter an order confirming the cancellation and revocation of such certificate, or the part thereof covering the route, territory, or terminals involved.

(2) The commission shall have the power to suspend and enforce the suspension of certificates of public convenience and necessity upon a finding by any agency of the federal government that an air carrier is operating in violation of any federal safety law or regulation.

(3) Upon application for suspension or deletion of any certificated route or airport thereon, the commission may authorize a special temporary suspension. Such suspension when authorized shall be effective 15 days after the filing of said application, but shall only remain effective pending decision on the application if an interested person or party so requests. The special temporary suspension may be ordered for a maximum 90-day period if such additional time is required to complete the proceedings before the commission, except that a stay of the commission's decision, on its own motion or by the Supreme Court, will serve to continue the special temporary suspension until 10 days after termination of a review proceeding. Application to the commission for formal approval of suspension of operation shall be accompanied by a filing fee of $100 to be placed in the Florida Public Service Regulatory Trust Fund.

(4) When the commission, upon complaint or its own motion, has reason to believe that any aircraft is being operated without a certificate of public convenience and necessity, as required by ss. 330.45-330.53, that ss. 330.45-330.53 are being violated, or that an air carrier is engaging in any other illegal activity, the commission shall investigate such activity and may make its order requiring the owner or operator of the aircraft to cease and desist from any such unlawful activity. The commission shall enforce compliance with such order under the powers vested in it by law. The commission may adopt rules and regulations applicable to any and all such air carriers, exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction. Any air carrier who operates within this state without first having obtained from the commission a certificate or who violates any of the provisions of this part or any order, decision, rule, regulation, direction, demand, or requirement of the commission in relation thereto, or any part or provision thereof, may be enjoined by the courts of this state from any such violation or such unlawful or unauthorized operation within this state, at the instance of the commission.

(5) The rules of evidence applicable to hearings shall be the general rules applied in the circuit courts of this state, except as otherwise provided by the commission's rules governing practice and procedure. Testimony taken at the hearings shall be reported and transcribed by a stenographer to be designated by the commission.

(6) Any person aggrieved by the action of the commission may, within 15 days after receiving notification of such action, request in writing a reconsideration. Any person who is aggrieved by the decision of the commission upon such reconsideration may apply to the Supreme Court of Florida for a review of the commission decision by filing a petition for a writ of certiorari within the time and in the manner prescribed by the Florida Appellate Rules and the

statutes of this state not superseded by or in conflict with said rules.

History.—s. 8, ch. 72-374; ss. 15-19, ch. 75-290; s. 3, ch. 76-168; s. 99, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**330.53 Approval of rate, fare, and schedule changes.**—The commission is empowered to disapprove any change in a rate, fare, or schedule between points in this state of a person engaged in air transportation pursuant to a certificate or certificates issued by the Civil Aeronautics Board pursuant to s. 401 of the Federal Aviation Act of 1958, or any legislation successor thereto, if such change would impose an undue economic burden on state-certificated air carriers operating between the same points. The commission shall adopt rules and regulations requiring such persons to file notice of such changes with the commission on the effective date thereof, and the commission shall cause notice thereof promptly to be delivered to every state-certificated air carrier. A notice of hearing shall be issued within 30 days after such effective date upon complaint of any state-certificated air carrier, and the hearing may be held 30 days after service of such notice of hearing upon the person making such change in a rate, fare, or schedule. Notwithstanding any other provision of ss. 330.45-330.53, except as provided in this section, nothing herein shall be construed as giving the commission any jurisdiction over, or as authorizing the commission to supervise or regulate, any routes, rates, fares, ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, tariffs, schedules, services, practices, or operations or any other phase of the business of persons engaged in air transportation within the meaning of s. 101 of the Federal Aviation Act of 1958 or any legislation successor thereto under a certificate or certificates issued by the Civil Aeronautics Board pursuant to s. 401 of the Federal Aviation Act of 1958 or any successor legislation, irrespective of whether such transportation is between points in this state or constitutes interstate, overseas, or foreign air transportation; and no person engaged in such air transportation pursuant to such Civil Aeronautics Board certificate or certificates shall be required to apply for or secure or hold any certificate or other license from the commission.

History.—s. 9, ch. 72-374; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 331

AIRPORTS AND AIR COMMERCE

331.10 Eminent domain granted those engaged in air commerce.—All persons engaged in air commerce in the transportation of mail, freight, express and passengers by aircraft between fixed termini and on fixed schedules are hereby delegated authority to exercise the right and power of eminent domain, that is, the right to appropriate property, except state or federal, for the purpose of securing land for airports, air terminals, seaplane bases and landing fields in the state; and the fee simple title to all property so taken and acquired shall vest in such person unless such person seeks to condemn a particular right or estate in such property. The procedure in acquiring said property shall be that prescribed and set forth in chapter 73.

History.—s. 1, ch. 15862, 1933; CGL 1936 Supp. 1977(100).
cf.—s. 1.01 Definition of person.

331.15 Auto transportation between county airports; exceptions.—

(1) The term "motor carrier" as used in this section shall mean any person, firm, corporation or partnership, which is engaged in the business of transporting passengers for hire by motor propelled vehicles, including, but not limited to, buses and sedan automobiles.

(2) The board of county commissioners of every county owning and operating an airport shall have the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for hire between such airport or airports and designated points within such county, and the Florida Public Service Commission shall thereupon, and as a matter of right and without a hearing, issue to every such motor carrier a certificate of public convenience and necessity as a contract carrier without charter rights, which shall be valid during the term of said contract or contracts authorizing such motor carrier to transport passengers for hire over the roads, streets and highways of such county between such airport and the point or points designated in such contract or contracts, provided however nothing herein shall release such motor carrier from otherwise complying with the provisions of chapter 323.

(3) Provided, however, this section shall not be applicable in any county owning or operating an airport which said airport is geographically located so as to be separated from the mainland of the state by any bay, ocean, sea, river, or other body of water, and further provided that the provisions of the section shall not apply to counties having a population between 150,000 and 200,000.

History.—ss. 1-3, ch. 26512, 1951; s. 1, ch. 63-279; s. 2, ch. 63-496; s. 1, ch. 65-52.

CHAPTER 332

AIRPORT LAW OF 1945

332.01 Airports and air navigation; definitions.—The following words, terms and phrases shall in this law have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) "Municipality" means any county, city, village, or town of this state.

(2) "Airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes.

(3) "Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving and discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established.

(4) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, or restricted landing area, and any combination of any or all of such facilities.

(5) "Air navigation" means the operation or navigation of aircraft in the airspace over this state, or upon any airport or restricted landing area within this state.

(6) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

History.—s. 1, ch. 22846, 1945.

332.02 Acquisition of real property for airports.—

(1) Every municipality is hereby authorized through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits, as specified in and including all the powers, rights, and privileges of chapters 73 and 74. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in fee simple, absolute and unqualified in any way, or any lesser interest therein. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage. Notwithstanding the provisions of this or any other statute or the provisions of any charter, the municipality may take possession of any such property so to be acquired at any time after the filing of the petition describing the same in condemnation proceedings, as provided in chapter 74. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

(3) In the event any exercise of power under any section of this chapter by a municipality requires the removal, relocation or reconstruction of any structure located in, on, under or across any private property, public street or highway, or other public or private places, then such municipality shall reim-

burse the owner of such structure for the estimated or actual expense of said removal, relocation or reconstruction prior to the incurring of such expense by such owner.

History.—s. 2, ch. 22846, 1945.

332.03 Establishment of airports, etc., declared public power.—The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall be and are hereby declared to be acquired and used for public, governmental and municipal purposes and as a matter of public necessity.

History.—s. 3, ch. 22846, 1945.

332.04 Acquisition of property for airports validated.—Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

History.—s. 4, ch. 22846, 1945.

332.06 Preliminary costs and expenses.—

(1) The cost of investigation, surveying, planning, acquiring, establishing, constructing, enlarging, or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter, may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine.

(2) The word "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease, and also includes amounts paid to utility companies for relocation of their wires, poles and other facilities.

(3) Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally; provided, however, that any bonds issued by any municipality under authority of this chapter shall be self-liquidating bonds and shall not be a lien against the general taxing powers of the municipality.

History.—s. 6, ch. 22846, 1945.

332.07 Appropriations.—The governing bodies having power to appropriate moneys within the municipalities in this state acquiring, establishing, constructing, enlarging, improving, maintaining, equipping, or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities moneys sufficient to carry out therein the provisions of this chapter.

History.—s. 7, ch. 22846, 1945.

332.08 Additional powers.—In addition to the general powers in this chapter conferred and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality.

(2)(a) To adopt and amend all needful rules, regulations and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of said rules, regulations and ordinances, and enforce said penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the municipality are enforced.

(b) Provided, where a county operates one or more airports, its regulations for the government thereof shall be by resolution of the board of county commissioners, shall be recorded in the minutes of the board and promulgated by posting a copy at the courthouse and at every such airport for 4 consecutive weeks or by publication once a week in a newspaper published in the county for the same period. Such regulations shall be enforced as are the criminal laws. Violation thereof shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) To lease for a term not exceeding 30 years such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; to lease or assign for a term not exceeding 30 years to private parties, any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment on such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or the United States or any department or instrumentality

thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities; provided, that in each case in so doing the public is not deprived of its rightful equal and uniform use thereof.

(4) To sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property.

(5) To exercise all powers necessarily incidental to the exercise of the general and special powers herein granted, and is specifically authorized to assess and shall assess against and collect from the owner or operator of each and every airplane using such airports a sufficient fee or service charge to cover the cost of the service furnished airplanes using such airports, including the liquidation of bonds or other indebtedness for construction and improvements.

History.—s. 8, ch. 22846, 1945; s. 1, ch. 28164, 1953; s. 231, ch. 71-136.

332.09 Federal funds and aid.—A municipality is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

History.—s. 9, ch. 22846, 1945.

332.10 Airports on water bottoms.—The powers herein granted to a municipality to establish and maintain such airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which, before the artificial making or reclamation thereof, constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport; and all the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land.

History.—s. 10, ch. 22846, 1945.

332.11 Cooperation of authorities.—It shall be lawful for and full power and authority is hereby conferred upon municipalities in any area of the state to cooperate in the exercise of the powers and authorities conferred upon municipalities under the provisions of this chapter, and such municipalities shall share in such exercise of power and authority equally or upon such other terms as may be mutually agreed upon between said municipalities.

History.—s. 11, ch. 22846, 1945.

332.12 Short title.—This chapter may be cited as the "Airport Law of 1945."

History.—s. 13, ch. 22846, 1945.

CHAPTER 333

AIRPORT ZONING

333.01 Definitions.—For the purpose of this chapter, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 CFR ss. 77.21, 77.23 and 77.25 (revised March 4, 1972) and which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(6) "Political subdivision" means any county, city, town, village, or other subdivision or agency thereof, or any district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(7) "Structure" means any object, constructed or installed by man, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, and overhead transmission lines.

(8) "Tree" includes any plant of the vegetable kingdom.

History.—s. 1, ch. 23079, 1945; s. 2, ch. 75-16.

333.02 Airport hazards contrary to public interest.—

(1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(c) That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(2) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein, or air rights thereover.

History.—s. 2, ch. 23079, 1945.

333.025 Permit required for structures exceeding federal obstruction standards.—

(1) In order to prevent the erection of structures dangerous to air navigation, subject to the provisions of subsections (2), (3), and (4), each person shall secure from the Department of Transportation a permit for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 CFR s. 77, specifically 14 CFR ss. 77.21, 77.23 and 77.25 (revised March 4, 1972). However, permits from the Department of Transportation will be required only within an airport hazard area where federal standards are exceeded and if the proposed construction is within:

(a) A 10-nautical mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use which has a published instrument approach procedure;

(b) A 6-nautical mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use which has no published instrument approach procedure and has runways in excess of 3,200 feet in length; or

(c) A 2.5-nautical mile radius of the geographical

center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use which has no published instrument approach and has runways 3,200 feet or less in length.

(2) Affected airports will be considered as having those facilities which are programmed in the Federal Aviation Administration's Southern Region Aviation System Plan—FAA—1975-1984, and will be so protected.

(3) Permit requirements of subsection (1) shall not apply to projects which received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards prior to May 20, 1975; nor shall it apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures, so long as the height and location is unchanged.

(4) When political subdivisions have adopted adequate airspace protection in compliance with s. 333.03, a permit for such structure shall not be required from the Department of Transportation.

(5) The Department of Transportation shall, within 30 days of the receipt of an application for a permit, issue or deny a permit for the erection, alteration, or modification of any structure the result of which would exceed federal obstruction standards as contained in 14 CFR s. 77, specifically 14 CFR ss. 77.21, 77.23 and 77.25 (revised March 4, 1972).

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The nature of the terrain and height of existing structures.

(b) Public and private interests and investments.

(c) The character of flying operations and planned developments of airports.

(d) Federal airways as designated by the Federal Aviation Administration that lie within the radii described in subsection (1)(a)-(c).

(e) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

(f) Technological advances.

(g) The safety of persons on the ground and in the air.

(h) Land use density.

History.—s. 3, ch. 75-16.

333.03 Power to adopt airport zoning regulations.—

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits shall, by October 1, 1977, adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located, shall either:

(a) By interlocal agreement, in accordance with the provisions of chapter 163, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question; or

(b) By ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested in subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed. However, the airport manager or managers of the affected political subdivisions shall serve on the board in a nonvoting capacity.

(3) Airport zoning regulations adopted under subsections (1) and (2) shall, as a minimum, require a variance for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 CFR s. 77, specifically 14 CFR ss. 77.21, 77.23 and 77.25 (revised March 4, 1972).

(4) The procedures outlined herein for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.

(5) The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances thereto, shall be filed with the department.

(6) The department shall issue copies of the federal obstruction standards as contained in 14 CFR s. 77, specifically 14 CFR ss. 77.21, 77.23 and 77.25 (revised March 4, 1972) to each political subdivision having airport hazard areas, and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients.

History.—s. 3, ch. 23079, 1945; s. 4, ch. 75-16.

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or

any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History.—s. 4, ch. 23079, 1945.

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided in s. 333.03(2) by the bodies therein provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning of any airport hazard area under this chapter the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take any action until it has received the final report of such commission, and at least fifteen days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History.—s. 5, ch. 23079, 1945.

333.06 Airport zoning requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) NONCONFORMING USES.—No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

History.—s. 6, ch. 23079, 1945.

333.07 Permits and variances.—

(1) PERMITS.—

(a) Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and, whether application is made for a permit under this subsection or not, the said agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or his agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85.

(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.

(2) VARIANCES.—Any persons desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of the airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforce-

ment of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) HAZARD MARKING AND LIGHTING.—In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable, to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain thereon, such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History.—s. 7, ch. 23079, 1945.

333.08 Appeals.—

(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals, as the agency involved may elect.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

History.—s. 8, ch. 23079, 1945.

333.09 Administration of airport zoning regulations.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under s. 333.07(1), deciding all matters under s. 333.07(3), as they pertain to such agency, and all other matters under this chapter applying to said agency, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History.—s. 9, ch. 23079, 1945.

333.10 Board of adjustment.—

(1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in s. 333.08.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under s. 333.07(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of 3 years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and due notice and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the said board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall

keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History.—s. 10, ch. 23079, 1945.

333.11 Judicial review.—

(1) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board, or of any administrative agency hereunder, which is of the opinion that a decision of a board of adjustment is illegal, may present to the circuit court, in the circuit in which the decision occurs, a verified petition for the issuance of a writ of certiorari setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court in the manner and within the time provided by the Florida Appellate Rules.

(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(6) No appeal shall be or is permitted under this section, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder.

History.—s. 11, ch. 23079, 1945; s. 43, ch. 63-512.

333.12 Acquisition of air rights.—In any case which: it is desired to remove, lower or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition of the same by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

History.—s. 12, ch. 23079, 1945.

333.13 Enforcement and remedies.—

(1) Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist shall constitute a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The Department of Transportation may institute a civil action for injunctive relief in the appro-

priate circuit court to prevent violation of any provision of this chapter.

History.—s. 13, ch. 23079, 1945; s. 232, ch. 71-136; s. 5, ch. 75-16.

333.14 Short title.—This chapter shall be known and may be cited as the "Airport Zoning Law of 1945."

History.—s. 15, ch. 23079, 1945.

TITLE XXV

PUBLIC TRANSPORTATION

CHAPTER 334

TRANSPORTATION ADMINISTRATION

334.01 Short title.—Chapters 334-339 and 341 may be cited as the "Florida Transportation Code".

History.—s. 168, ch. 29965, 1955; s. 1, ch. 73-59; s. 72, ch. 79-164.

334.02 Declaration of legislative intent.—Recognizing that safe and efficient transportation is a matter of important interest to all the people of the state, the Legislature hereby determines and declares that:

(1) The development of a balanced and efficient transportation system adequate to meet the current and future transportation needs of the state is essential to the commercial life and general welfare of the people of the state and to the national defense;

(2) Present transportation facilities, transportation planning, and transportation development are inadequate to meet the minimum current and future transportation needs of the people of the state;

(3) The preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreation assets, and the strengthening of long-range land-use planning are vital to the health and welfare of the people of Florida, and the planning and development of transportation facilities should be consistent with these goals;

(4) Systematic and coordinated planning and development of balanced transportation facilities within and between all regions of Florida must be encouraged and should be vigorously pursued as provided in this chapter;

(5) To this end, it is the intent of the Legislature to make the Department of Transportation the custodian of the state highway and transportation systems and to provide sufficiently broad authority to enable the department to function adequately and efficiently in all areas of appropriate jurisdiction, subject to the limitations of the Constitution and the legislative mandate hereinafter imposed.

(6) The Legislature intends to declare, in general terms, the powers and duties of the Department of Transportation, leaving specific details to be determined by reasonable rules and regulations which the department may promulgate. The Legislature intends, by a general grant of authority to the Department of Transportation, to delegate sufficient power and authority to enable the department to carry out the broad objectives stated above.

(7) It is the further intent of the Legislature to bestow upon local officials adequate authority with respect to the transportation facilities under their jurisdiction. The efficient management, operation, and control of our county roads, city streets, other public thoroughfares and transportation facilities are likewise a matter of vital public interest.

(8) The problem of establishing and maintaining adequate roads and streets, eliminating congestion, reducing accident frequency, providing parking facilities and taking all necessary steps to ensure safe and convenient transportation on these public ways is no less urgent.

(9) The Legislature, recognizing the necessity of fixing responsibility for the construction, maintenance, and operation of the several systems of highways and other means of public transportation, intends that the state shall have an integrated bal-

anced system of roads connecting urban streets and other transportation facilities to provide safe and efficient transportation throughout the state. The authority hereinafter granted to the department and to counties and municipalities to assist and cooperate with each other and to coordinate their activities is therefore essential.

(10) The Legislature hereby finds, determines, and declares that this code is necessary for the preservation of the public safety, the promotion of the general welfare, the improvement and development of transportation facilities in the state, including the most effective utilization of parkways, scenic drives, residential streets and roads, elimination of hazards at grade intersections, and other related purposes, and as a contribution to the national defense.

History.—s. 1, ch. 29965, 1955; ss. 23, 35, ch. 69-106; ss. 5, 6, ch. 70-239.

334.021 Integrated balanced state highway system; definitions.—

(1) Every state agency, county, city, public body, authority, special district, expressway authority presently existing under chapter 348 or chapter 349, and any other authority created by special or general law of local application which has authority to expend funds for public transportation or for the maintenance, construction, or development of public roads, streets, bridges, highways, and other ways open to travel by the public is authorized to expend the same for the general purpose of developing an integrated, efficient, and well-balanced transportation system in this state, restrictive provisions of any statutes or other governmental ordinances and regulations to the contrary notwithstanding.

(2) Nothing in the broad authorization set forth in subsection (1) shall be construed to permit the expenditure of public funds in such manner or for such projects as would violate the state constitution or the trust indenture of any bond issue or which would cause the state to lose any federal aid funds for highway or transportation purposes; and the provisions of this section shall be applied in a manner to avoid such result.

(3) Each expressway authority or transportation, mass transit, or other similar authority existing under law or hereafter created shall submit overall design and construction plans to the Department of Transportation prior to any construction for purposes of correlation with, or incorporation into, the existing state transportation system. The construction of any transportation facility shall be approved by the department prior to the commencement of construction if it:

(a) Requires maintenance through either the utilization of Department of Transportation personnel or the use of primary road funds, or

(b) Entails the substantial use of any gas tax funds other than primary.

However, if no determination is made by the department within 90 days after receiving the plans, they shall become effective.

(4) To assist and aid in the implementation of the Department of Transportation's development of an integrated and balanced transportation system, the following words and phrases shall, for the purposes of attaining this goal, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(a) "Mass transit facility" means all forms of transportation located on land, water, or air for the mass transportation of people.

(b) "Roads" include streets, sidewalks, alleys, highways, and other ways open to travel by the public, including the roadbed, right-of-way, and all culverts, drain sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, and all ferries used in connection therewith. For purposes of public expenditures the term "road" or "roads" also includes all means for the transportation of people and property from place to place constructed, operated, or maintained in whole or in part from public funds.

(c) "Transportation facility" or "transportation facilities" means the property or property rights, both real and personal, of a type used for the establishment of public transportation systems which have heretofore or may hereafter be established by public bodies for the transportation of people and property from place to place.

History.—ss. 1, 4, ch. 70-239; s. 1, ch. 72-38.
Note.—Former s. 334.022.

334.03 Definitions of words and phrases.— The following words and phrases when used in this code shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Commissioners."—Board of county commissioners.

(2) "Department."—The Department of Transportation.

(3) "Freeway."—An expressway with full control of access.

(4) "Limited access facility."—A street or highway especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(5) "Municipal connecting links."—City and town streets and roads, or portions thereof, including structures, that constitute routes between, or extensions of said roads in the state highway system and feeder roads from bypassed areas.

(6) "Person."—Any person, firm, partnership, association, corporation, cooperation, organization or business trust.

(7) "Road."—The term "road" shall be construed to include streets, sidewalks, alleys, highways, and other ways open to travel by the public, including the roadbed, right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

(8) "Right of access."—The right of ingress to a

highway from abutting land and egress from a highway to abutting land.

(9) "Right-of-way."—Land in which the state, the department, a county or a municipality owns the fee or has an easement devoted to or required for the use as a public road.

(10) "State park road system."—Roads embraced in boundaries of state parks and state roads leading to state parks other than roads of the state highway system, county roads, or municipal roads.

(11) "State roads."—All streets, roads, highways and other public ways open to travel by the public generally and dedicated to the public use, according to law or by prescription and designated by the department as provided by law as parts of the state highway system, including the roadbed, right-of-way, embankments, slopes, retaining walls, sidewalks, bridges, tunnels and viaducts necessary for the maintenance of travel thereon and all ferries in connection therewith.

(12) "Structures."—Bridges, viaducts, tunnels, causeways, approaches, ferry slips, culverts, tollhouses and gates, and other similar facilities used in connection with roads.

(13) "Sufficiency rating."—The objective rating of a road or section of a road for the purpose of determining its capability to serve properly the actual or anticipated volume of traffic using the road.

(14) "Functional classification."—The assignment of roads into systems according to the character of service they provide in relation to the total road network. Basic functional categories include arterial, collector, and local roads which may be subdivided into principal, major, or minor levels. Those levels may be additionally divided into rural and urban categories.

(15) "Arterial road."—A route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, all United States numbered highways shall be arterial roads.

(16) "Collector road."—A route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. These routes also collect and distribute traffic between local roads or arterial roads and serve as a linkage between land access and mobility needs.

(17) "Local road."—A route providing service which is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property.

(18) "Urban area."—A geographical region comprising as a minimum the United States Census defined boundary of an urban place of 5,000 population, expanded to include adjacent areas as provided for by federal highway administration regulations.

(19) "Urbanized area."—An urban area having a central city or twin cities of more than 50,000 population.

(20) "Urban principal arterial roads."—Routes which generally serve the major centers of activity of an urban area, the highest traffic volume corridors, and the longest trip purpose and carry a high proportion of the total urban area travel on a minimum of mileage. The routes are integrated, both internally and between major rural connections.

(21) "Urban minor arterial roads."—Routes which generally interconnect with, and augment, urban principal arterial routes and provide service to trips of shorter length and a lower level of travel mobility. Minor arterial routes include all arterials not classified as principal and contain facilities that place more emphasis on land access than the higher system.

(22) The state highway system shall consist of the following:

(a) The interstate system;

(b) All rural arterial routes and their extensions into and through urban areas;

(c) All urban principal arterial routes; and

(d) Those urban minor arterial routes on the existing primary road system as of July 1, 1977.

However, not less than 2 percent of the public road mileage of each urbanized area shall be included as minor arterials in the state highway system. Urbanized areas not meeting the above minimum requirement shall have transferred to the state highway system additional minor arterials of the highest significance, in which case the total minor arterials in the state highway system from any urbanized area shall not exceed 2.5 percent of said area's total public urban road mileage. Excluding the interstate system, the state highway system shall be limited to 11,300 miles.

(23) "County road system."—The county road system of each county shall consist of all collector roads in the unincorporated areas and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterials not in the state highway system.

(24) "City street system."—The city street system of each municipality shall consist of all local roads within that municipality, and all collector roads inside that municipality, which are not in the county road system.

(25) "Routine maintenance."—Pavement patching, shoulder repair, cleaning and repair of drainage ditches and structures, mowing, bridge inspection and maintenance, pavement striping, litter cleanup, and such other similar activities of a minor scope as are necessary to maintain a safe and efficient transportation system.

(26) "Periodic maintenance."—Activities which are large in scope and require a major work effort to restore deteriorated components of the transportation system to a safe and serviceable condition, including, but not limited to, the repair of large bridge structures, major repairs to bridges and bridge systems, and the mineral sealing of lengthy sections of roadway. Within the meaning of s. 9, Art. XII of the State Constitution, major resurfacing, widening, and reconstruction of roads shall be considered construction.

History.—s. 2, ch. 29965, 1955; ss. 1, 2, ch. 57-318; ss. 1, 2, ch. 63-27; s. 1, ch. 67-43; ss. 23, 35, ch. 69-106; s. 105, ch. 71-377; ss. 5, 17, ch. 77-165; s. 1, ch. 79-357; s. 136, ch. 79-400.

cf.—s. 335.01 State roads defined.
s. 338.01 Definition of limited access facilities.

334.05 Headquarters of department; rental of office room, etc.—The headquarters and general office of the department shall be located at the state capital. The department may purchase, build, rent or lease suitable buildings or rooms for its headquarters, general office, branch offices or division offices and for maintenance yards and rooms for equipment and supplies in other cities and towns of this state as the business of the department may necessitate or require, and payment for the purchase, construction, rental or lease of such offices shall be made from any funds provided for the maintenance of the department. The department may condemn property if necessary for the construction of its headquarters in Tallahassee.

History.—s. 4, ch. 29965, 1955; s. 1, ch. 63-330.

334.063 Department of Transportation; statistical studies.—The Department of Transportation shall include in the criteria for the planning, construction, and maintenance of state roads statistical studies of accidents and fatalities as well as traffic count.

History.—s. 1, ch. 69-66; ss. 23, 35, ch. 69-106.

334.11 Coordination of highway program; duties of department.—The Department of Transportation shall have the authority and responsibility for the coordination of the total highway and road program within the state, including the designation of systems and the development of construction standards as hereinafter provided for, and shall review the annual program for each of the major systems to insure coordination of planning and general conformity with the law. Local authorities are hereby authorized to cooperate with it.

History.—s. 10, ch. 29965, 1955; s. 4, ch. 67-461; ss. 23, 35, ch. 69-106.

334.131 Department of Transportation; employees' benefit fund.—The Department of Transportation is authorized to adopt regulations authorizing the creation and operation of an employees' benefit fund for employees of the department. The proceeds of the vending machines located in buildings owned by the department, or such portions thereof as the department by regulation may provide, shall be paid into such fund, to be used for such benefits and purposes as the department by regulation may provide.

History.—s. 1, ch. 69-387; ss. 23, 35, ch. 69-106.

334.14 State highway engineer, deputy and assistants; compensation and duties.—

(1) The department shall employ a state highway engineer who shall be a competent highway engineer, certified by a [1]State Board of Professional Engineers and Land Surveyors, with at least 10 years' experience in highway engineering. He shall be required to give bond in the amount of $100,000, payable to the governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as shall be required by law or prescribed by the department and be responsible for the efficient operation and administration of the engineering functions of the department.

(2) The department shall employ a deputy state highway engineer who shall be a competent highway engineer, certified by a [1]State Board of Professional Engineers and Land Surveyors, with at least 10 years' experience in highway engineering. He shall be required to give bond in the amount of $50,000, payable to the governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as may be prescribed by law or by regulation of the department or the direction of the state highway engineer.

(3) The department shall employ an assistant state highway engineer of planning, an assistant state highway engineer of construction, an assistant state highway engineer of structures and an assistant state highway engineer of maintenance, whose duties shall be determined by the department and who shall be responsible for the efficient operation and administration of their respective divisions.

(4) The department shall employ one district engineer for each of the six respective transportation districts whose duties shall be fixed by the department and who shall be responsible for the efficient operation and administration of their respective districts.

History.—s. 13, ch. 29965, 1955; s. 5, ch. 57-318; s. 5, ch. 67-461; ss. 12, 23, 35, ch. 69-106; s. 2, ch. 72-29; ss. 2, 3, ch. 73-58; s. 2, ch. 78-90.

[1]Note.—See ch. 79-243, which repealed provisions relating to the Florida State Board of Professional Engineers and Land Surveyors and created separate boards, entitled the Board of Engineers and the Board of Land Surveyors.
cf.—s. 113.07 Bonds of state officials.

334.17 Engineering consulting services.—The Department of Transportation is authorized to provide consulting engineering services, upon request, to any governmental unit on such terms as may be mutually agreed upon.

History.—s. 16, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

334.171 State to assist counties and municipalities; procedure.—

(1) In all cases where the commissioners request the advice and assistance of the Division of Road Operations of the department in the construction or repair of roads, the division shall, when practicable, send the state highway engineer or any assistant engineer into such county and render all assistance practicable, without expense to the county, except that the actual and necessary expenses that such engineer or assistant may incur in complying with the request shall be paid to the department by the commissioners when properly certified to by the division.

(2) The department is authorized to enter into contracts and to make such regulations as may be necessary for such road construction and maintenance as may by law or by resolution of any board of county commissioners or board of bond trustees of

any county, or district or other subdivision of any county, be placed under its supervision and control, together with all powers for the exercise of the right of eminent domain.

(3) The Division of Road Operations may prepare plans and specifications for all such proposed work, other than maintenance work of a regular or routine nature, and advertise for bids on same at least once a week for not less than 2 consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located; and the department may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to perform the work with convict labor or free labor, and may purchase such equipment and supplies as may be necessary for the efficient and economical prosecution of the work.

(4)(a) In all cases where counties or municipalities request legal assistance of the Division of Administration of the department in connection with matters relating to state roads, including acquisition of rights-of-way, agreements, proposed agreements, road bond issues, or proposed road bond issues, such legal assistance shall be furnished by the resident attorney of the department, who shall assign an assistant attorney to render such legal assistance as the county or municipality may require. Said legal assistance shall be without expense to the county or municipality except that the actual and necessary expenses incurred in complying with the request shall be paid to the department.

(b) Where disagreement arises as to the existence, interpretation, or operation of any agreement or alleged agreement between the county or municipality and the department, or as to any bond issue, or as to secondary road funds, or if in the opinion of the resident attorney there is a conflict between the interest of the department and said county or municipality, the Department of Legal Affairs, at the request of the county or municipality, is authorized to furnish the above described legal assistance; and shall be reimbursed only for actual and necessary expenses incurred in complying with the request of the county or municipality.

(c) In cases in which there appears to be a failure of the department, to abide by agreements with the county or municipality, the Department of Legal Affairs, upon request of the county or municipality, shall, at its discretion, take whatever action is necessary to determine the nature of the agreement and the terms thereof and to enforce compliance therewith.

(d) No agreement between a county or a municipality and the department shall be binding unless said agreement be reduced to writing. Suits at law or in equity for the enforcement of an agreement so recorded may be maintained in the manner provided in s. 337.19.

History.—s. 53, ch. 29965, 1955; s. 1, ch. 61-431; s. 5, ch. 67-461; ss. 11, 23, 35, ch. 69-106.

334.18 Department to employ legal counsel.—The department may employ a resident attorney and as many assistant attorneys as it deems necessary to advise and represent the department in all highway matters. The resident attorney and all assistant attorneys shall be employed on a full-time basis and shall be directly responsible to the department. The Department of Legal Affairs shall represent the department in all matters of litigation. The salaries of all such attorneys shall be fixed by the department. The department may utilize the services of the various county attorneys for acquisition of rights-of-way and pay therefor such sums as the department shall determine is reasonable.

History.—s. 17, ch. 29965, 1955; s. 8, ch. 57-318; s. 6, ch. 67-461; ss. 11, 23, 35, ch. 69-106.

334.19 Employment of comptroller and internal auditor; duties; financial records and accounts; and bond for comptroller.—

(1) The department shall employ a comptroller whose special duty it shall be to examine into and supervise the methods of bookkeeping and accounting of the department and all similar matters relating to its management. He shall be required to give bond in the amount of $100,000, payable to the governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department.

(2) The department shall by regulation provide for the maintenance of records and accounts of the department, by the comptroller, relating to financial transactions, as will afford a full and complete check against improper payment of bills, and provide a system for the prompt payment of the just obligations of the department, which records shall at all times disclose:

(a) The several appropriations available for the use of the department;

(b) The specific amounts of each such appropriation budgeted by the department for each improvement or purpose;

(c) The apportionment or division of all such appropriations among the several counties and districts, where such apportionment or division is made;

(d) The amount or portion of each such apportionment against general contractual and other liabilities then created;

(e) The amount expended and still to be expended in connection with each contractual and other obligation of the department;

(f) The expense and operating costs of the various activities of the department;

(g) The receipts accruing to the department, and the distribution thereof;

(h) The assets, investments and liabilities of the department.

(3) The comptroller shall act under the general supervision and control of the department and shall perform such other related duties as may be designated by the department.

(4) The comptroller shall maintain a separate account for each county for each of the gas tax proceeds referred to in s. 339.08(3) and (4). Upon request, the comptroller shall certify to any county the balance remaining in either or both of its accounts, after all expenditures duly authorized by its board of county commissioners to be made therefrom, have been met.

(5) The department shall employ an internal au-

ditor whose duties shall include, but not be restricted to, reviewing and appraising policies, plans, procedures, accounting, financial and other operations of the department, and recommending changes for the improvement thereof. He shall have access at all times to any records, data, or other information of the department necessary to carry out his duties.

(6) The internal auditor shall act under the general supervision and control of the department, and shall perform such other related duties as may be designated by the department.

History.—s. 18, ch. 29965, 1955; s. 1, ch. 61-229; s. 2, ch. 61-492; s. 1, ch. 63-87; s. 5, ch. 67-461; ss. 12, 23, 35, ch. 69-106.

334.20 Expenditures.—All expenditures by the department shall be made upon vouchers issued and certified by the department in such manner as the department may by regulation provide and paid by warrants issued by the State Comptroller upon the State Treasurer.

History.—s. 19, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

334.21 Budgets; preparation; adoption; execution; and amendment.—

(1) FISCAL YEAR.—The fiscal year of the department shall begin July 1 of each year and end on June 30 of each succeeding year. Such fiscal year shall constitute a budget year of all operating funds of the department.

(2) FILING OF BUDGETS.—The department shall file all budgets in the manner required by chapter 216, except that the right-of-way, construction, and maintenance plan expenditures and all grants and aids of the department shall be set forth only in total in said budget, together with sufficient annotation indicating the project numbers and amounts to be spent for unfinished projects for which payments will be made during the fiscal year and indicating the total dollar amount for anticipated expenditures during the fiscal year of funds any portion of which is intended to be encumbered on projects currently to be commenced, with the details being set forth in the annual program budget of the department. Notwithstanding any other provisions of law, the information required under this subsection shall be transmitted to the Ways and Means Committee of the Senate and the Appropriations Committee of the House not less than 30 days prior to the start of each regular legislative session.

(3) ANNUAL PROGRAM BUDGET.—The department shall prepare an annual program budget pursuant to the budgets submitted and approved as provided by chapter 216. Notwithstanding any other provisions of law, the information required under this subsection shall be transmitted to the Ways and Means Committee of the Senate and the Appropriations Committee of the House not less than 30 days prior to the start of each regular legislative session.

(4) NATURE AND SCOPE OF THE ANNUAL PROGRAM BUDGET.—

(a) The annual program budget required by subsection (3) shall present a complete balanced financial plan for the state road fund and the restricted road funds.

(b) The receipt side of said budget shall set forth all anticipated fund balances to be brought forward at the beginning of the budget year. The fund balance shall be the difference between the current assets and current liabilities and reserves, as commonly defined in accounting terminology, of each fund enumerated herein. It shall set forth all estimated revenues and receipts by source anticipated to be available during the ensuing year for which the budget is prepared, except that no anticipated receipts estimated to be received from various federal aid Acts of Congress shall be budgeted in excess of the amount which may be earned by the amount of state receipts set aside to match such federal aid, and the state funds thus set aside to match federal aid funds shall be used only for said matching purposes. The department shall, prior to the preparation of the budget, ascertain the amount of apportionments of federal aid funds which shall be or which are estimated to be available to the department for expenditure in the fiscal year for which the budget is prepared, and shall budget sufficient funds for matching purposes.

(c) The expenditure side of the annual program budget shall set forth the proposed expenditures of the department as classified by major program categories to accomplish the department's objectives.

(d) The annual program budgets for the state road fund and restricted funds, unless otherwise provided by law, shall be so planned as to exhaust the estimated resources of each fund for the year, with the exception of an emergency reserve, in such amount as the department may deem necessary, for the purpose of doing emergency work which may be found to be necessary to be done during the year in order to prevent the stoppage of travel over any road over which the department has jurisdiction and control, and the reserve required in subsection (8)(b). At any time during the last 2 months of the fiscal year, the emergency work reserve or any portion of it may be appropriated for road purposes provided for herein.

(e) The budget must include sufficient data within it to identify the projects currently in progress and the estimated amounts to be spent in the current fiscal year for construction and maintenance work when funds have been encumbered in prior years as such is required to be set forth in total in subsection (2). The program budget must also include the amounts of those funds that will be encumbered and the amounts of such funds encumbered that will be actually spent in the current fiscal year.

(5) FUNDING AND DEVELOPING A ROAD CONSTRUCTION PLAN.—

(a)1. A road construction plan of work to be undertaken during the ensuing budget year shall be prepared for the state road fund and each restricted fund, unless otherwise provided by law or regulation, setting forth all construction projects, hereinafter referred to as projects, to be undertaken during said budget year. For the budget year beginning July 1, 1970, and each year thereafter, the road construction plan of said annual program budget shall be for the ensuing five years and referred to as the 5-year construction plan. The total amount of the 5-year construction plan in each fiscal year shall not exceed an amount that would prevent the department from meeting the expenditure requirements for the projects set forth therein.

2. Projects shall not be undertaken unless the same are listed in the annual construction plan. However, in case any road project listed in said plan cannot be undertaken during that year for any justifiable reason, then another project listed in order of priority in the 5-year construction plan may be undertaken. This provision shall not apply to unforeseen emergency projects as approved by the department or to projects estimated to cost less than $20,000 approved by the department which must be undertaken to protect a highway investment or to prevent the closing of an important state road.

(b) In addition to the projects included in the 5-year construction plan of the department, beginning with the budget year which starts on or after July 1, 1970, and each year thereafter, each county, municipality, and other governmental unit responsible for the construction and maintenance of roads and streets shall submit to the appropriate district engineer, with a copy to the department, a plan of work for the construction and maintenance of roads and streets within its jurisdiction for the ensuing 5 years, listing the estimated amounts to be expended on each project during each budget year. The local plan of work for roads and streets as herein provided shall be prepared by the county or city engineer or superintendent of roads for the local authority and approved by the governing body of the political subdivision responsible for the construction and maintenance of said roads and streets.

(c) Prior to the annual adoption of the 5-year construction plan, the department shall hold public hearings in each of the transportation districts to give consideration to the necessity of making any changes to projects included or to be included in said 5-year construction plan and to hear requests for new projects to be added to, or existing projects to be deleted from, said 5-year construction plan.

(6) PUBLICATION OF THE ANNUAL PROGRAM BUDGET.—

(a) The department shall appoint a time and place for the public hearing on the proposed annual program budget and 5-year construction plan prepared for the state road fund and restricted funds as required herein, at which time it shall hear all questions, suggestions, or other comments offered by the public in regard to such budget.

(b) At least 5 days prior to the date set for said hearing there shall be published once in one of the newspapers of general circulation in the state in each of the transportation districts a notice of the time and place of the public meeting for considering such proposed annual program budget together with a notice that the said budget and the 5-year road construction plan of the department are available for inspection by the public at the office of the Clerk of the Circuit Court or chairman of the board of county commissioners.

(c) Five copies of the proposed annual program budget and 5-year construction plan shall be forwarded to the office of the chairman of each board of county commissioners and another copy shall be furnished to each Clerk of the Circuit Court, together with a notice of the public hearing referred to above. Said clerk shall post at the front door of the courthouse a copy of the public hearing notice at least 5 days prior to the date of the hearing, along with a notice that the proposed annual program budget and 5-year road construction plan of the department are available for inspection of the public during his regular office hours.

(7) ADOPTION OF THE ANNUAL PROGRAM BUDGET OF THE DEPARTMENT.—Upon completion of such hearing provided for in subsection (6), the department shall, prior to the beginning of the fiscal year, decide upon and make up a final program budget for the ensuing year and 5-year construction plan in accordance with the foregoing requirements.

(8) EXECUTION OF THE BUDGET.—

(a) The department shall not, during any fiscal year, expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money shall be paid thereon. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for a period exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the department in excess of $25,000 and having a term for a period of more than 1 year.

(b) In the operation of its state road fund, the department shall have on hand at the close of business, which closing shall not be later than the tenth calendar day of the month following the end of each quarter of the fiscal year, an available cash balance, which shall include cash on deposit with the treasury, short term investments of the department, and reimbursements due from the federal government equivalent to not less than 5 percent of the unpaid balance of all primary fund obligations at the close of such quarter. In the event this cash position is not maintained, no further state road or restricted fund construction contracts or other fund commitments shall be approved, entered into, awarded, or executed until the cash balance, as defined above, has been regained.

(9) AMENDMENT OF THE ANNUAL PROGRAM BUDGET.—The department shall have the authority to amend its annual program budget and its 5-year construction plan at any time during the fiscal year as follows. It may:

(a) Transfer within the same fund any unencumbered budget item, or any portion thereof, from one activity to another;

(b) Transfer between the state road fund and the restricted funds or between restricted funds, within the provisions of the restrictions by law or by agreement as to the expenditure of said funds, any unencumbered funds;

(c) Budget in the proper fund and expend any receipts not anticipated in the adoption of the budget

or receipts in excess of the total anticipated receipts in the adopted budget, and;

(d) Substitute a project in any fund to the extent provided herein.

History.—s. 20, ch. 29965, 1955; s. 9, ch. 57-318; s. 1, ch. 61-80; ss. 2, 3, ch. 67-371; s. 1, ch. 69-396; ss. 23, 35, ch. 69-106; ss. 1, 2, ch. 70-996; s. 1, ch. 72-66; ss. 2, 3, ch. 73-58; s. 1, ch. 75-3.

334.2105 Working Capital Trust Fund created; expenditure of such funds, etc.—There is hereby created a Working Capital Trust Fund, into which fund shall be deposited an amount deemed necessary by the Department of Transportation and approved by the Executive Office of the Governor for the efficient operation of the Department of Transportation. Such amount may be obtained from any trust fund or funds under the control and custody of the Department of Transportation. The Working Capital Trust Fund may be used to pay any and all bills of the department; provided, however, in the succeeding month, the appropriate trust fund shall reimburse the Working Capital Trust Fund for all expenditures properly attributable to such reimbursing trust fund; and provided the use of such unexpended trust funds shall not delay or impair a county project of any county contributing to the fund.

History.—s. 1, ch. 72-67; s. 117, ch. 79-190.

334.211 Transportation planning.—

(1) PURPOSES.—For the purposes of this chapter, the following definitions shall be employed:

(a) *Local governmental body.*—The term "local governmental body" means the governing body of the city, town, municipality, county, or other local governing unit in the area in which the transportation facility will be located.

(b) *Major transportation facility.*—The term "major transportation facility" means:

1. Any facility primarily designed to rapidly and efficiently transport goods and passengers between distant points, including, but not limited to, air transport facilities, railroads, bus services, terminals, freeways, expressways, major arterial highways, belt highways, and port facilities; or

2. Any facility utilized in providing a mass transit system for a standard metropolitan statistical area.

(c) *Standard metropolitan statistical area.* —The term "standard metropolitan statistical area" means a county or group of contiguous counties which contain at least one central city of 50,000 inhabitants or more or "twin cities" with a combined population of at least 50,000 or such other population estimate as may be provided by law.

(d) *Urban area.*—The term "urban area" means an area including and adjacent to a municipality and other urban centers having a population of 5,000 or more as determined by the latest available federal census or such other population estimates as may be provided by law within boundaries to be fixed by the State Department of Transportation.

(e) *Transportation corridor.*—The term "transportation corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(2) DUTIES OF DEPARTMENT; COMPREHENSIVE PLANS REQUIRED.—Comprehensive plans shall be developed by the department in conjunction with appropriate local governmental bodies and regional planning agencies, if any, for all standard metropolitan statistical areas and those areas which the department determines, based upon population projections, will become a standard metropolitan statistical area by 1980. Comprehensive plans for other urban areas shall be made when deemed necessary by the department. Priority for developing comprehensive plans shall be given to areas in which immediate construction of major transportation facilities is anticipated. In developing comprehensive plans, the department shall take into account:

(a) Future as well as present needs;

(b) All possible alternative modes of transportation;

(c) The joint use of transportation corridors and major transportation facilities for alternate transportation and community uses;

(d) The integration of any proposed system into all other types of transportation facilities in the community;

(e) The coordination with other development plans in the community so as to facilitate and synchronize growth; and

(f) The total environment of the community and region including land use, entrepreneurial decisions, population, travel patterns, traffic control features, ecology, pollution effects, aesthetics, safety, and social and community values.

(3) COORDINATION WITH OTHER GOVERNMENTAL BODIES.—

(a) In order to insure an integrated transportation system, the location of transportation facilities in urban areas shall be coordinated with the planning agency of the affected local governmental bodies.

(b) In order to insure that the plan includes consideration of the convenience, safety, comfort, aesthetics, and ecology of the state and the community in which the facilities are to be located, the department shall cooperate and consult with the U. S. Department of Transportation and with appropriate departments of state government prior to determining the location of any major transportation facility.

(4) REGIONAL OR LOCAL TRANSPORTATION PLANS.—

(a) The department may adopt local or regional transportation plans as part of, or in lieu of, the department's plans.

(b) Upon request by local governmental bodies, the department may in its discretion develop and design arterial and collector streets, vehicular parking areas, and other support facilities which are consistent with the department's plans for major transportation facilities. The department may render to local governmental bodies or their planning agencies such technical assistance and services as are necessary so that local plans and facilities are coordinated with the department's plans and facilities.

(5) SYSTEMATIC TECHNIQUES FOR PLANNING.—The department shall develop systematic techniques for considering those factors to be used in developing comprehensive plans pursuant to subsec-

tion (2) so that any major transportation facility is so planned that it will function as an integral part of the overall plan for community and state development as portrayed in the comprehensive plans.

(6) PROCEDURES FOR PUBLIC PARTICIPATION IN TRANSPORTATION PLANNING.—

(a) The department shall, pursuant to its rules and regulations, hold hearings for standard metropolitan statistical areas and areas projected by the department to become standard metropolitan statistical areas by 1980 as follows:

1. A planning hearing, at which time the factors included in subsection (2) shall be presented for discussion and comment. However, a hearing held on a metropolitan urban area transit study or on an equivalent comprehensive planning study shall satisfy the planning hearing requirement if it is so stated in the public notice of the study hearing.

2. A facility and site or corridor hearing, at a time prior to the selection of the type or types of major transportation facility or facilities to be constructed and prior to the selection of the site or corridor of the proposed facility;

3. A design hearing, at a time after the selection and prior to the department's commitment to a specific design proposal for the facility or facilities.

(b) These public hearings shall be so conducted as to provide an opportunity for effective participation by interested persons in the process of transportation planning and site and route selection and in the specific location and design of transportation facilities. The various factors involved in the decision or decisions and any alternative proposals shall be clearly presented so that the persons attending the hearing may present their views relating to the decision or decisions which will be made.

(c) Opportunity for public hearings:

1. The department, prior to holding a design or planning hearing, shall duly notice all affected property owners of record, as recorded in the property appraiser's office, by mail at least 20 days prior to the date set for said hearing. The affected property owners shall be:

a. Those whose property lies in whole or in part within 300 feet on either side of the center line of the proposed facility.

b. Those who the department determines will be substantially affected environmentally, economically, socially, or safetywise.

2. For all subsequent hearings, the department shall daily publish notices at least 14 days immediately prior to the hearing date in a newspaper of general circulation for the area affected.

3. A copy of the notice of opportunity for public hearing shall be furnished to the U. S. Department of Transportation and to the appropriate departments of the state government at the time of publication.

4. The opportunity for another public hearing shall be afforded in any case when proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect.

5. The opportunity for a public hearing shall be afforded in each case in which the department is in doubt as to whether a public hearing is required.

(7) RULES AND REGULATIONS.—The Department of Transportation shall promulgate any rules and regulations consistent with its practices that it deems necessary in order to implement the provisions of this section.

History.—s. 3, ch. 70-996; s. 1, ch. 73-355; s. 1, ch. 77-102.
cf.—s. 11.031 Official census.

334.212 Coordination of Central Florida Corridor planning.—All future studies and planning for the Central Florida Corridor shall be coordinated with the legislative transportation committees, local government, and technical advisory committees which shall be recognized as the official policy and technical committees for the Central Florida Corridor project.

History.—s. 4, ch. 75-30.

334.215 Transportation planning organization.—

(1) There shall be a metropolitan planning organization, hereinafter referred to as the "M.P.O.," established within each urbanized area where a planning organization is necessary to meet federal requirements for obtaining and expending federal transportation funds. The M.P.O., a composite local governmental entity, or any successor thereto, shall be so designated by the Governor in any area where an M.P.O. is required by federal law or regulation.

(2) The voting membership of the M.P.O. shall consist of not less than 5 nor more than 15 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, except that in no case shall the county commission members be less than 33⅓ percent of the M.P.O. membership. All voting members shall be elected officials of general purpose government, except local governing bodies having two or more members on the M.P.O. may appoint, as one of their apportioned voting members, a member of a statutorily authorized planning board, transportation or expressway authority, aviation authority, or port authority. In urbanized areas where authorities or other agencies have been, or may be, created by law to perform transportation functions that are not under the jurisdiction of local elected officials, they may be considered by the Governor for one voting membership on the M.P.O. The M.P.O. shall be created under this section and operated under the provisions of s. 163.01, the Florida Interlocal Cooperation Act of 1969. The signatories to the interlocal agreement shall be the governmental entities designated by the Governor for membership in the M.P.O. and the Department of Transportation, hereinafter referred to as the department. In the event there is a conflict between the provisions of this section and s. 163.01, the provisions of this section shall prevail.

(3) The Governor shall apportion the membership among the various governmental entities within the area on the basis of equitable population ratio and geographic factors. The governing body of each governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting members of the M.P.O. Nonvoting advisors may be appointed by the M.P.O. as

deemed necessary. The Governor shall reapportion the M.P.O. membership at least every 5 years. Metropolitan planning organization members shall serve 4-year terms. Membership shall terminate upon the member leaving his elective or appointive office for any reason, or by a majority vote of the total membership of a county or city governing body represented by the member. Vacancies shall be filled by the original appointing body. Members may be reappointed for one or more additional 4-year terms.

(4) If any municipality or county fails to fill an assigned appointment to the M.P.O. within 60 days after notification by the Governor of its duty to appoint, that appointment shall be made by the Governor from the eligible representatives of said municipality or county.

(5) The authority and responsibility of the M.P.O. is for the management of a continuing, cooperative, and comprehensive transportation planning process that results in the development of plans and programs consistent with the comprehensively planned development of the urbanized area. The M.P.O. shall be the forum for cooperative decision-making by principal elected officials of general purpose local government.

(6) The M.P.O. shall be responsible for initiating federally aided transportation facilities and improvements within its urbanized area in accordance with existing and subsequent federal and state laws and rules and regulations related thereto.

(7) The department shall be responsible for initiating federally aided urban extension and interstate system projects. Subsequent to July 1, 1979, an urban extension or interstate system project, which is part of the approved long-range transportation plan for the urbanized area, shall be initiated by the department and included in the Transportation Improvement Program with the approval of the M.P.O. When such a project has advanced either to the point of acquisition of right-of-way or after completion of all design plans, it can be removed from the Transportation Improvement Program only by joint action of the M.P.O. and the department.

(8) Major federal aid projects in the Transportation Improvement Program, and included in the first 2 years of the department's 5-year construction work program, which must be rescheduled by the department, shall require notification to the M.P.O. at the time such changes are made.

(9) The M.P.O. shall be responsible for transportation-related air, noise, and water quality planning within the urbanized area as assigned to it by federal or state laws or rules or regulations.

(10) The powers, privileges, and authority of the M.P.O. are those specified in this section and incorporated in the interlocal agreement authorized under s. 163.01. The duties of the M.P.O. are described as those required by federal and state laws and rules and regulations, now and subsequently applicable, necessary to qualify the urbanized areas of the state to receive all federal aid transportation funds for which they are legally eligible as a consequence of the proper exercise of such duties. Such duties shall include, in cooperation with the department, the following functions, and as these functions may subsequently be amended or expanded by federal and state laws and rules and regulations:

(a) Development of:

1. A multiyear planning program.

2. A transportation plan, consisting of a long-range element and a transportation systems management element.

3. An annual unified planning work program.

4. An annually updated Transportation Improvement Program, which shall consist of improvements recommended from the transportation systems management and long-range elements of the transportation plan, and shall:

a. Identify transportation improvements recommended for advancement during the program period.

b. Indicate the area's priorities.

c. Group improvements of similar urgency and anticipated staging into appropriate staging periods.

d. Include realistic estimates of total costs and revenues for the program period.

e. Include a discussion of how improvements recommended from the long-range element and the transportation systems management element were merged into the program.

(b) Recommendation to the department and local county and city governments regarding transportation plans, programs, and projects to better insure their compatibility with the long-range plans and programs of the M.P.O.

(c) Representation of all the jurisdictional areas within the approved urbanized limits in the formulation of those transportation plans and programs defined herein, and otherwise authorized by state and federal laws and rules and regulations.

(d) Performance of other duties delegated to it by federal and state laws or rules or regulations.

(11) The M.P.O. is to be responsible, in cooperation with the department, for transportation modes under the control of the Federal Highway Administration and the Federal Urban Mass Transportation Administration or any successor agency. Other modes such as, but not limited to, air, intercity rail, water, and pipelines can materially impact on the future land use and transportation accessibility of urbanized areas. It is the intent of this section that an M.P.O. should be involved in planning and programming for such facilities to the extent permitted by federal and state laws, rules, regulations, and available funds.

(12) There shall be a written agreement between the M.P.O. and the department clearly establishing a cooperative relationship essential to accomplish the transportation planning requirements of the applicable federal regulations, this section, and other controlling state statutes, including s. 334.02 and ss. 163.3161-163.3211, the Local Government Comprehensive Planning Act. This agreement shall clearly define the procedures for cooperatively carrying out the continuing, cooperative, and comprehensive transportation planning process for the urbanized area.

(13) The M.P.O. shall execute and maintain an agreement with the metropolitan and regional A-95 agencies serving the urbanized area. Said agreement shall describe the means by which activities will be coordinated and specify how transportation plan-

ning and programming will be part of the comprehensive planned development of the urbanized area.

(14) The M.P.O. shall execute and maintain an agreement with publicly owned operators of mass transportation services which specifies interaction essential to an effective consideration of mass transit usage within the urbanized area.

(15) Federal and state laws and rules and regulations presently existing or subsequently enacted requiring other agreements shall be initiated by the M.P.O. if required to enable it to properly accomplish its functions.

(16) The M.P.O. shall appoint a citizens' advisory committee whose members shall serve at its pleasure. The citizens' advisory committee shall be selected to provide a broad cross section of citizens with an interest in the development of an efficient, safe, and cost-effective transportation system. Minorities, the elderly, and the handicapped shall be adequately represented. However, the M.P.O. may, with department and federal concurrence, adopt an alternate program or mechanism which will insure adequate citizen involvement in the transportation planning process.

(17) The M.P.O., in cooperation with the department, shall appoint a technical advisory committee which shall include the professional and technical planners, engineers, and other appropriate disciplines employed by, or residing in, the signatory agencies of the interlocal agreement.

(18) Each M.P.O. shall receive its proportionate share of federal planning funds for the purpose of carrying out transportation planning and programming.

(19) Each M.P.O. may employ personnel or may enter into contracts with other local and state agencies, as well as private planning and engineering firms, to carry out the urban transportation planning process required by 23 U.S.C. s. 134 and by chapter 334.

(20) Any other provisions of this section to the contrary notwithstanding, any county chartered under s. 6(e), Art. VIII of the State Constitution may elect to have its duly elected officials serve as the M.P.O. if the area represented is wholly contained within such chartered county. Any chartered county electing to exercise the provisions of this section shall notify the Governor in writing. Upon receipt of such notification, the Governor shall forthwith designate the elected officials of such chartered county as the M.P.O. and shall appoint the nonvoting representatives of the department in accordance with existing agreements between the M.P.O. and the department or as deemed necessary in the absence of such an agreement. This subsection shall supersede the provisions of subsections (2) and (3) which, in whole or in part, are in conflict herewith.

(21) Each existing M.P.O. shall continue to function until an M.P.O. for that urbanized area can be established under this section, but in no case shall the existing entities continue to function after January 1, 1980.

(22) All agreements, contracts, and other commitments which are in force at the time that the existing M.P.O. is replaced by the M.P.O. established under this section shall remain in force. Provisions for amending or canceling existing agreements, contracts, and other commitments, contained within each such document, may be exercised by the M.P.O. after it has been legally designated.

(23) Upon notification by an agency of the Federal Government that any provision herein conflicts with federal laws or regulations, the federal laws or regulations shall take precedence to the extent of the conflict and until it is resolved, and such actions as are necessary to be taken to comply with federal laws and regulations in order to receive federal funds shall be permitted.

(24) Metropolitan planning organizations required under this section shall be fully operative no later than January 1, 1980.

History.—s. 1, ch. 79-219.

334.22 Annual reports.—

(1) The department shall report to the Governor not later than 60 days before the meeting of each session of the Legislature such changes in the laws as the department may determine as being expedient to secure the best results in road construction and repair work.

(2) The department shall also file with the Governor not later than 60 days prior to such meeting of each session of the Legislature a report covering the operation of the department for the preceding fiscal year, which shall include a summary statement of the financial operations of the department and any other fiscal information that the Governor may request.

History.—s. 21, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 1, ch. 73-311.

334.23 Annual audit by Auditor General.— The Auditor General shall make an audit of the books and accounts of the department not less than once each year. The department is authorized to reimburse the Auditor General for the expense of the annual audit. A copy of the annual audit shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives for the use and benefit of the members of the Legislature.

History.—s. 22, ch. 29965, 1955; s. 8, ch. 69-82; ss. 23, 35, ch. 69-106.

334.24 Road appraisal reports; research studies.—

(1) The Division of Road Operations of the Department of Transportation shall:

(a) Collect data and information as to all roads in the state, and where practicable have maps and plats thereof made;

(b) Investigate and collect data and information as to the best methods and materials for road building and repair;

(c) Investigate and gather information as to road building and repairing in the different localities in this state;

(d) Compile all such data and information, and furnish the same free, upon request, to the boards of county commissioners of the several counties;

(e) Keep on file at the division headquarters copies of same as a public record.

(2) The division is hereby authorized to enter into contracts from time to time with the universities of higher learning within the state for the training of engineers, making of engineering research

studies and the furnishing of data concerning same in the fields of soil stabilization, properties of concrete and concrete aggregate, bituminous wearing surfaces and pavements, and other highway research fields which are needful and beneficial in the planning, construction and improvement of public highways. The division is authorized to pay for such services out of the State Transportation Trust Fund.

History.—s. 23, ch. 29965, 1955; s. 1, ch. 63-174; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57.

334.25 Seal of department.—The Department of Transportation shall adopt and use a common seal, and a certificate under seal and signed as provided by regulation of the department, shall constitute sufficient evidence of the action of the department.

History.—s. 24, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

CHAPTER 335

STATE HIGHWAY SYSTEM

335.01 Designation and systemization of public roads.—

(1) All roads open to travel by the public generally and dedicated to the public use, according to law or by prescription, and roads which are constructed out of public funds and dedicated for general public usage, and all extensions thereof and connections thereto, are hereby designated and declared to be, and are established as, public roads.

(2) Public roads shall be divided into four systems:

(a) The state highway system;
(b) The state park road system;
(c) The county road systems; and
(d) The city street systems.

History.—s. 25, ch. 29965, 1955; s. 6, ch. 77-165.
cf.—s. 334.03 State roads defined.

335.02 Authority to designate roads and delineate rights-of-way for proposed roads of the state highway system.—

(1) The Department of Transportation shall have authority to locate and designate certain roads as state roads in the state highway system and construct and maintain the same with funds which are now or which may hereafter become available from the state or from the state and federal government. No such federal or state roads shall be redesignated or relocated until after a public hearing held thereon by the department in each county affected after reasonable notice published in a newspaper of such county, in addition to any other notice required by law, and for opportunity to any interested party to be heard either in person or by counsel and to introduce testimony in their behalf at a public hearing to be held for that purpose. Such roads when so located and designated shall become the property of the state and shall be under the jurisdiction and control of the department.

(2) The department may determine and fix the lines and locations of such roads between the cities and places thereon. The Division of Road Operations of the department may survey and locate the line or route of any road or section of any road designated as part of the state highway system. Whenever such survey and location shall be made and adopted by the department, a map or plat of such survey and location, certified by the department, shall be filed in the office of the clerk of the circuit court of each county through which such state road, or section thereof, so surveyed and located, shall run.

(3) The Department of Transportation shall purchase all rights-of-way and may prepare maps for any roads designated as state roads in the state highway system or the interstate system. Any such maps shall delineate the limits of proposed rights-of-way for the eventual widening of an existing road or shall delineate the limits of proposed rights-of-way for the initial construction of a road. Before approving or disapproving such map, the appropriate local government shall advertise and hold a public hearing and shall notify all affected property owners of record, as recorded in the property appraiser's office, by mail at least 20 days prior to the date set for the hearing. If the map is approved by the appropriate local government authority, the circuit court clerk of a county shall forthwith record the map in the public land records of the county. Upon recording, such map shall establish:

(a) A building setback line from the centerline of any road existing as of the date of such recording, and no permits shall be granted by the appropriate governmental authority for new construction of any type or for renovations of existing commercial structures that exceed 20 percent of the appraised value of the structure. No restriction shall be placed on renovation or improvement of existing residential structures, as long as they continue to be used as private residences.

(b) An area of proposed highway construction within which permits for new construction shall not issue for a period of 5 years from the date of recording such a map.

(4) Upon petition by an affected property owner alleging that such property regulation is unreasonable or arbitrary and its effect is to deny a substantial portion of the beneficial use of such property, the Department of Transportation shall hold an administrative hearing in accordance with the provisions

of chapter 120. When such a hearing results in an order finding in favor of the petitioning property owner, the department shall have 90 days from the date of such order to acquire such property or file appropriate proceedings. Appellate review by either party may be resorted to, but shall not affect the 90-day limitation when such appeal is taken by the department unless execution of such order is stayed by the appellate court having jurisdiction. Upon failure by the department to acquire such property or initiate acquisition proceedings, the appropriate local government authority may issue any permit in accordance with its established procedures.

History.—s. 26, ch. 29965, 1955; s. 1, ch. 59-224; ss. 23, 35, ch. 69-106; s. 1, ch. 69-188; s. 2, ch. 77-416; s. 56, ch. 78-95; s. 137, ch. 79-400.
cf.—s. 335.06 State park road system.

335.03 Interstate highways; designation.—

(1) The Department of Transportation shall have the powers and authority to select, in cooperation with the state highway departments of adjoining states, routes of the national system of interstate highways.

(2) The department shall have the authority to make necessary special rules and regulations to enable and assure expeditious planning and construction of the federal interstate system of highways in Florida and to take full advantage of the Federal Highway Act of 1956, and amendments thereto. Such regulations, to apply only to the federal interstate system of highways, may provide for the budgeting and expenditure of any funds now or to be available for the purpose including all necessary state matching funds.

History.—s. 27, ch. 29965, 1955; s. 1, ch. 57-85; ss. 23, 35, ch. 69-106.

335.04 Functional classification plan for roads; responsibilities of department.—

(1) No later than October 1, 1977, the department shall adopt, pursuant to chapter 120, a plan based upon functional classification of roads and shall begin to implement an orderly phase-in of such plan by no later than January 1, 1978. All transfers of responsibility between the state and local governments required by said plan shall be completed no later than July 1, 1982, on which date all transfers provided for in the classification plan which have not been effected shall automatically occur, except as herein provided. Any road for which responsibility is being transferred from the department to counties and municipalities shall be brought to a physical condition commensurate with contemporary roads of like age and existing functional classification within the county or city. However, if said road has not been resurfaced within 12 years prior to the date of the proposed transfer, or if the condition of said road, when analyzed in accordance with the standards of measurement of pavement conditions utilized by the department as of January 1, 1977, indicates the need for resurfacing, and if the county requests a resurfacing, the road shall be resurfaced prior to transfer. If the county and department are unable to agree on the need for resurfacing, the county shall have the right to administrative and judicial review as provided in chapter 120. Notwithstanding the time limitations otherwise provided in this chapter for the transfer of roads, no road which has been finally determined to need resurfacing shall be transferred to the county until it has been resurfaced. In cases of transfers between the state and local governments, federal assistance shall be utilized, when feasible, for this purpose. This requirement relating to physical conditions of roads at the time of transfer may be waived upon mutual consent.

(2) The department is authorized to match all federal aid highway funds and shall have the administrative responsibility for planning, programming, and contracting for all such federal aid projects in cooperation with local officials in accordance with federal regulations and state law.

(3) The department shall have the responsibility for continuing data collection and functional evaluation of public roads as is deemed necessary for planning and reclassification purposes. Beginning July 1, 1982, the department shall conduct a program that will insure that the classification of every public road shall be considered and evaluated at least once every 5 years. Such evaluation shall utilize quantitative criteria which shall have been adopted pursuant to chapter 120. The department shall hold a full public hearing in the county affected as an integral part of its evaluation procedures in order to receive public input prior to making any determination of classification. When the department makes a determination that a public road has changed function, the department shall within 30 days notify in writing the governmental entities concerned. Each year the department shall publish a report summarizing all such classification changes in that year and shall deliver such report to the President of the Senate and Speaker of the House by February 1. Transfer of responsibility shall be accomplished on a schedule mutually agreed upon by said governmental entities; however, said transfer shall occur no later than 3 years after the date the governmental entities are notified. After July 1, 1982, the department, if requested by cities or counties, shall, within a reasonable period not to exceed 1 year, perform functional evaluations of specific roads utilizing the quantitative criteria referred to in this subsection, and the transfers resulting from such evaluations shall be accomplished as provided in this subsection. All obligations of the department, a county, or a city, under any maintenance, utility, or railroad crossing agreement or other such agreements, relating to any specific road to be transferred, shall be transferred at the same time and in the same manner as jurisdictional responsibility.

(4) The department and counties, cities, and other political subdivisions shall have the responsibility for the operation and maintenance of the roads under their respective jurisdiction, except as otherwise provided by law. Operation and maintenance responsibility of a county for any roads under its jurisdiction which extend into and through any incorporated area shall be limited to the roadbed, curbs, culverts, drains, and other drainage appurtenances and shall not include sidewalks and any other ways in existence at the time of transfer that are open to the public within the right-of-way of the road. The department and counties, cities, and other political subdivisions may enter into such agreements as are

deemed necessary and convenient for the proper exercise of their responsibilities provided herein; however, the department shall discontinue maintaining, through contractual agreements, those facilities off the state highway system by July 1, 1980.

(5) The counties and cities shall sign an agreement with the Department of Transportation which requires the counties and cities to maintain in accordance with federal standards any road or portion thereof under their jurisdiction which was constructed with federal assistance and is in a federal aid system.

(6) Any toll facility administered by the department shall remain under department administration pursuant to the terms of the trust indenture. Toll facilities administered by cities or counties shall be transferred to another jurisdiction only upon mutual agreement of the concerned parties.

History.—s. 28, ch. 29965, 1955; s. 1, ch. 57-407; s. 1, ch. 59-165; s. 1, ch. 67-245; s. 29, ch. 69-353; ss. 23, 35, ch. 69-106; s. 1, ch. 70-446; s. 95, ch. 71-355; ss. 1, 2, ch. 72-50; s. 7, ch. 77-165; s. 3, ch. 77-416; s. 1, ch. 78-285; s. 138, ch. 79-400.

cf.—s. 349.07 Jacksonville Expressway as part of state road system.

335.05 Certain streets designated as municipal connecting link roads.—

(1) City and town streets, roads, and structures, or portions thereof, that constitute the route of connection between, or extension of, state roads in the state highway system, including feeder roads from bypassed areas and designated by the Department of Transportation as municipal connecting links or feeder roads shall be designated by the department as a part of the state highway system.

(2) The Division of Road Operations of the department shall keep a record of such municipal connecting links and feeder roads designated as part of the state highway system and shall furnish, as soon as practicable, to each affected community and county a list of such roads.

(3) The division is authorized and required to maintain under its control and supervision such designated municipal connecting links and feeder roads; and is authorized to enter into any and all contracts, inclusive of agreements with cities and towns, and with any federal agency of the United States, for such purposes; provided, nothing herein contained shall require the division to sweep, sprinkle or light said municipal connecting links or feeder roads.

(4) The division, whenever it constructs or reconstructs any state road in the state highway system which enters or passes through any city or town, shall construct or reconstruct the municipal connecting link of such road to conform to the standards of construction approved by the department. Provided, however, that whenever any such municipal connecting link is constructed or reconstructed, no obligation shall rest upon the division to remove or relay any public utility.

(5) The department is authorized to provide and maintain signs and markers for the regulation of traffic and shall prescribe regulations for traffic, including traffic signal lighting, minimum and maximum speeds, and parking upon such roads. Notice of such regulations shall be published in a newspaper published and having a general circulation in such city or town or posted at the city hall when there is no such newspaper, in addition to any other notice required by law, and shall supersede any and all regulations relating to such traffic made by such city or town or any laws regulating traffic upon such roads. Such regulations shall have the force and effect of law, and violation of any of said regulations shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such regulations shall be enforced by all law enforcement officers.

(6) Before any person shall enter upon such roads, or the rights-of-way thereof, for the purpose of laying conduits, pipes, poles or wires, or making any obstruction, or any excavation, which necessitates any change in the condition or structure thereof, a permit for any such purpose must be secured from the department with the concurrence of the affected city or town where such city or town is not itself making the application for the permit; and the department is hereby authorized to prescribe rules and regulations under which such permits will be issued, and to require indemnity for any damage occasioned by the issuance of any such permit.

History.—s. 29, ch. 29965, 1955; s. 10, ch. 57-318; s. 1, ch. 59-141; ss. 23, 35, ch. 69-106; s. 233, ch. 71-136; s. 56, ch. 78-95.

cf.—s. 334.03 Municipal connecting links defined.

335.06 State park road system.—

(1) The department is authorized to expend state road funds to construct, reconstruct, and maintain roads within the boundaries of any lands embraced within the state park system.

(2) The department is authorized to provide suitable roads leading to any lands or other property embraced within the state park system.

(3) Such roads shall be located, relocated, constructed, reconstructed, and maintained, numbered, marked and regulated in such manner as shall be agreed upon between the department and the Division of Recreation and Parks of the Department of Natural Resources, and both departments are authorized to enter into such agreements.

(4) Such roads shall not be included in the state highway system unless so designated by the department.

History.—s. 30, ch. 29965, 1955; ss. 23, 25, 35, ch. 69-106.

335.065 Bicycle trails and footpaths along state roads.—

(1)(a) Bicycle trails and footpaths shall be established in conjunction with the construction, reconstruction, or other change of any state road or any portion of the state highway system at such locations as shall be determined by the Department of Transportation in cooperation with the Division of Recreation and Parks of the Department of Natural Resources.

(b) Notwithstanding the provision of paragraph (a), bicycle trails and footpaths are not required to be established:

1. Where the establishment of such trails and paths would be contrary to public safety.

2. If the cost of establishing such trails and paths would be excessively disproportionate to the need or probable use.

3. Where other available ways or other factors

indicate an absence of any need for such trails and paths.

(2) The Department of Transportation shall establish construction standards for bicycle trails and footpaths, provide a uniform system of signing bicycle trails and footpaths pursuant to this act, and adopt reasonable rules and regulations necessary for the maintenance and use of such bicycle trails and footpaths. The Department of Transportation, in cooperation with the Division of Recreation and Parks of the Department of Natural Resources, shall establish a statewide integrated system of bicycle trails and footpaths in such a manner as to take full advantage of any bicycle trails or footpaths which are maintained by any municipality within the state. To this end, the Department of Transportation and the Division of Recreation and Parks shall cooperate with any such municipality in the development of a comprehensive statewide integrated bicycle trail and footpath system.

(3) It is the legislative intent of this act that bicycle trails and footpaths are and shall be public ways open to travel by the public generally and dedicated to the public use as defined in ss. 334.021 and 334.03(9) and (15).

History.—ss. 1, 2, 4, 5, ch. 73-339.

335.07 Sufficiency rating of roads.—

(1) The department is authorized and required to adopt a system of sufficiency rating of roads in the state highway system.

(2) Such system shall include, but shall not be limited to, the consideration of the following factors:

(a) Structural adequacy;

(b) Safety; and

(c) Service.

(3) The determination of rating accorded to such factors shall take into consideration the volume of traffic using the roads, and the minimum engineering standards required to safely accommodate such volume of traffic; age of roads; width of pavement and shoulders; number and degree of curves, both horizontal and vertical; ridability; and maintenance economy. In addition to the factors and considerations herein required, the department may prescribe by regulation other factors or considerations to be used in obtaining sufficiency rating.

History.—s. 31, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

335.075 Uniform minimum standards for design, construction, etc.; advisory committees.—

(1) The Department of Transportation shall develop and adopt uniform minimum standards and criteria for the design, construction, and maintenance of all public streets, roads, highways, bridges, sidewalks, curbs and curb ramps, crosswalks, where feasible, bicycle trails, underpasses, and overpasses used by the public for vehicular and pedestrian traffic. The minimum standards adopted shall include a requirement that permanent curb ramps be provided at crosswalks at all intersections where curbs and sidewalks are constructed in order to give handicapped persons and persons in wheelchairs safe access to crosswalks.

(2) An advisory committee of professional engineers employed by any city or any county in each transportation district to aid in the development of such standards shall be appointed by the Secretary of Transportation. Such committee shall be composed of: One member representing an urban center within each district; one member representing a rural area within each district; and one member employed by the Department of Transportation for each district.

(3) Notwithstanding the provisions of any general or special law to the contrary, all plans and specifications for the construction of public streets and roads by any municipality or county shall provide for permanent curb ramps at crosswalks at all intersections where curbs and sidewalks are constructed in order to give handicapped persons and persons in wheelchairs safe access to crosswalks.

(4) Each county shall have a professional engineer who is registered in Florida certify that all design, construction, and maintenance for each project is in substantial conformance with the standards established pursuant to subsection (1) that are then in effect.

History.—s. 1, ch. 72-328; ss. 2, 3, ch. 73-58; ss. 1, 2, ch. 74-242; s. 8, ch. 77-165; s. 1, ch. 78-398.

335.08 Numbering roads of state highway system.—

(1) The department is authorized to number and renumber the roads of the state highway system, and to reduce the total numbers of same as far as practicable.

(2) The department may establish a systematic numbering plan, giving even numbers to roads extending in the general direction of east and west, and odd numbers to roads extending in the general direction of north and south.

History.—s. 32, ch. 29965, 1955; s. 11, ch. 57-318; ss. 23, 35, ch. 69-106.

335.09 Uniform marking and erection of signs; historical points of interest.—

(1) The Division of Road Operations of the department shall erect suitable road signs indicating the distance between cities and towns, and markers showing the numbers assigned to each road in the state highway system. Such system of marking shall correlate with, and, as far as possible, shall conform to the recommendations of the manual on traffic control devices as adopted by the American Association of State Highway Officials.

(2) The division may erect and maintain along the state highway system signs indicating the historical points of interest.

(3) On state-maintained roads outside municipalities where no sidewalks are provided, the division shall, where practicable, erect signs warning pedestrians to walk on the left side of the road facing traffic.

History.—s. 33, ch. 29965, 1955; s. 2, ch. 59-96; ss. 23, 35, ch. 69-106.

335.091 Blue Star Memorial Highway designation.—

(1) The secretary of the department, in cooperation with the Florida Federation of Garden Clubs, Inc., is hereby authorized to designate certain roads and highways in Florida as "Blue Star Memorial Highway."

(2) It shall be the duty of the executive board of the Florida Federation of Garden Clubs, Inc., to sub-

mit to the secretary routes on certain roads and highways in the state to be designated Blue Star Memorial Highway. Upon such designation, member clubs of the Florida Federation of Garden Clubs, Inc., may, with the advice, cooperation and approval of the Division of Road Operations, erect suitable markers and beautify said memorial highway.

(3) The Division of Road Operations shall file with the Department of State a record of such roads and highways so designated as Blue Star Memorial Highway.

History.—ss. 1-3, ch. 59-77; s. 5, ch. 67-461; ss. 10, 23, 35, ch. 69-106.

335.092 Everglades Parkway scenic highway.—

(1) The following terms, when used in this section, shall have the meanings ascribed herein:

(a) "Parkway" means the Everglades Parkway, which is a portion of State Road 84 commonly known as "Alligator Alley," in Collier and Broward Counties.

(b) "Owner" means a person or legal entity vested with title to an advertising structure or advertising sign.

(c) "Advertisement," "advertising structure," "advertising sign," "state," "highway," "person," "post," "real property," and "adjacent" mean the same as are defined or hereafter are defined by s. 479.01.

(2) The Everglades Parkway is hereby designated and declared to be an official scenic highway of the state. No advertising sign shall be erected or maintained within 500 feet of either side of the right-of-way of the parkway situate between the easternmost and westernmost tollgates, with the following exceptions:

(a) Official road signs erected by the Division of Road Operations of the Department of Transportation or erected by a political subdivision of the state;

(b) Signs advertising the sale or lease of the property upon which they are located, if they do not exceed 4 square feet in area;

(c) Signs advertising only the name or nature of the business being conducted on or the products, facilities, goods or services being sold, supplied, or distributed on or from the premises on which the signs are located, if such signs are within 500 feet of said business; and

(d) Signs erected and maintained by a public utility for the purpose of giving warning of the location of an underground cable or other installation.

(3)(a) Any advertising sign lawfully erected within 500 feet of either side of the right-of-way of the Everglades Parkway prior to July 3, 1969, shall be removed by the owner thereof prior to July 3, 1976, except that in the event said owner is the lessee of said sign, it shall be removed at the termination of the existing lease period, whichever event occurs first;

(b) Any advertisement which is constructed, erected, operated, used, maintained, posted, or displayed in violation of this section is hereby declared to be a public and private nuisance and shall be forthwith removed, obliterated, or abated by the secretary or his representatives, and for that purpose they may enter upon private property without incurring any liability therefor. However, if the owner holds an unexpired license issued under s. 479.04, the provisions of s. 479.17, shall apply;

(c) Any person violating any provision of this section, whether as principal, agent, or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $300. Such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed, continued, or permitted. The existence of any advertising copy or any outdoor advertising structure, outdoor advertising sign, or advertisement shall constitute prima facie evidence that the said outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained, or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

(4) Wherever the provisions of this section are inconsistent with the provisions of chapter 479, the provisions of this section shall prevail except where otherwise specifically provided in this section.

History.—ss. 1-4, ch. 69-371; ss. 23, 35, ch. 69-106.

335.10 Regulation of use of state roads; civil liability for injury thereto.—

(1) The Division of Road Operations shall prevent use of, and traffic on, the state highway system and the state park road systems that might injure or destroy the same.

(2) Any person shall be civilly liable to the department for the actual damage to a road in such systems by reason of his wrongful act, which damage may be recovered by suit, and when collected shall be paid into the state treasury to the credit of the state transportation trust fund.

History.—s. 34, ch. 29965, 1955; s. 2, ch. 61-119; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57.

335.11 Determination of speed.—The Department of Transportation with respect to the state highway and the state park road system shall conduct an investigation and determine safe speed limits as provided under chapter 316.

History.—s. 35, ch. 29965, 1955; s. 12, ch. 57-318; ss. 23, 35, ch. 69-106.

335.12 Vehicle size and weight controlled.— The Department of Transportation, with respect to the state highway and state park road systems may:

(1) Limit the use of highways and enforce limitations as to weight, load and size of vehicles as provided for under chapters 316, 320, 323, and 861.

(2) Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for in s. 316.550.

(3) Prohibit the operation or impose restrictions on vehicular use of certain highways because of hazardous conditions existing thereon as provided for under s. 316.555.

History.—s. 36, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 48, ch. 76-31.

335.13 Regulation of advertising signs.—

(1) No person shall erect any billboard or advertisement adjacent to the right-of-way of the state highway system, outside the corporate limits of any

city or town, except as provided for in chapter 479.

(2) No person shall erect any billboard, advertisement, advertising sign, advertising structure or light within the right-of-way limits of any road in the state road system, the state park road system or the county road system or any municipal connecting link thereof, provided the Department of Transportation is authorized to adopt rules and regulations concerning the placement of signs, canopies and other overhanging encroachments along and over all state roads which are within corporate limits of municipalities, or which are of curb and gutter construction outside corporate limits, provided that no supports are located within the right-of-way. The department shall have the authority to direct immediate removal of any violations of the above section. However, in the event the value of the billboard, advertisement, advertising sign, advertising structure or light is greater than $500 and bears thereon the name of the owner, no such billboard, advertisement, advertising sign, advertising structure or light shall be removed until the owner thereof, as shown thereon, shall have received a 30-day notice as provided by chapter 479. The Division of Road Operations of the department may not authorize the erection of signs prohibited by any municipality.

(3)(a) The provisions of subsections (1) and (2) shall not apply to benches or transit shelters, or advertising thereon, on the right-of-way of any municipal, county, or state road, except limited-access highways, erected for the safety, comfort, or convenience of schoolchildren and the general public or at designated stops on official bus routes, provided that written permission has been secured from the pertinent political subdivision and that such benches or transit shelters do not interfere with right-of-way preservation and maintenance.

(b) The department shall have the authority to direct immediate relocation or removal of any bench or transit shelter which would endanger life or property.

(c) It is the intent of the Legislature that no bench or transit shelter, or advertising thereon, shall be erected or so placed on the right-of-way of any road which would conflict with the requirements of federal law, regulations, or safety standards, thereby causing the state or any political subdivision loss of federal funds.

History.—s. 37, ch. 29965, 1955; s. 1, ch. 63-501; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 1, ch. 71-38; s. 1, ch. 74-79; s. 9, ch. 78-412.

335.14 Traffic devices on state highway system.—The Department of Transportation shall designate and prescribe the location, form and character of informational, regulatory and warning sign, curb and pavement or other markings and traffic signals installed or placed by any public authority, or other agency, upon any road in the state highway or state park road systems. No such sign, marking or signal shall be located or placed without the approval of the department, and, if a federal aid road, the additional concurrence of the United States Commissioner of Public Roads. Any sign, marking or signal placed without the approval of the department with concurrence of the United States Commissioner of Public Roads where required may be removed, without payment to the erecting authority, if, upon request of the department said erecting authority refuses to remove such sign, marking or signal.

History.—s. 38, ch. 29965, 1955; s. 13, ch. 57-318; ss. 23, 35, ch. 69-106.

335.145 General motorist services signs, fee schedules.—The department may, by rule pursuant to chapter 120, establish a fee schedule to be charged for the costs of placing general motorist services signs on the right-of-way of limited access highways outside urban or urbanized areas in accord with the Manual of Uniform Traffic Control Devices, 1971. Such costs shall be limited to sign materials and installation.

History.—s. 6, ch. 75-202.

335.15 Detour roads.—

(1) Whenever any road or structure in the state highway system shall be repaired, reconstructed, relocated or in anywise altered, in such a manner as necessitates the closing of such road or structure to use by the public, the Division of Road Operations of the department shall provide a detour road to afford a safe means of travel around such road or structure so closed. The division may use as a part of such detour road any other existing road. The length of the detour route shall be as short as may be practicable.

(2) The provision of subsection (1) shall not be construed to prevent the department from adopting regulations for one-way travel for a distance not in excess of 1 mile.

(3) The provisions of this section shall be applicable in all cases, whether the work provided for in subsection (1) shall be done by the Division of Road Operations, or at its direction or under its supervision.

(4) The provisions of this section shall not apply where the same would be contrary to the regulations or requirements of any federal agency providing all or a part of the funds for any such work.

(5) This section shall not apply in cases of emergency highway work caused by act of God or other sudden, unexpected event.

History.—s. 39, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

335.16 Wayside parks and access roads to public waters.—

(1) The Department of Transportation is authorized to adopt regulations and to expend state road funds for the establishment, construction, reconstruction, and maintenance of wayside parks, boat ramps and other park facilities on and near the edge of public waters or along the state highway system.

(2) The department is authorized to adopt regulations and to expend state road funds for the establishment, construction, reconstruction and maintenance of those access roads which extend from a state road to a wayside park, boat ramp or other park facilities which are contiguous to said state road.

(3) The department is authorized to acquire such rights-of-way for the above purposes as the department may deem necessary by gift or purchase, but not by condemnation.

(4) Such access roads leading to public waters, as described in subsection (2), shall be included in the appropriate state road system as determined by the department.

History.—s. 40, ch. 29965, 1955; s. 1, ch. 59-227; ss. 23, 35, ch. 69-106.

335.17 State highway construction; use of noise-control methods.—

(1) The Department of Transportation, hereinafter referred to as "department," shall make use of noise-control methods in the construction of all new state highways, especially those highways located in or near urban-residential developments which abut new state highway rights-of-way.

(2) The department shall use natural or artificial means of abating highway-related noise, but shall make maximum feasible use of vegetative barriers for noise control along new highways abutting urban-residential development. Vegetative noise control shall include, but not be limited to, the following types of vegetation: Trees, shrubs, grasses, and other plants of any species. Consideration shall be given, not only to the physical reduction of noise experienced through vegetative barriers, but also to aesthetics, the psychological effects on roadside residents, and the cost savings realized from the reduction of roadside maintenance operations due to the planting of vegetation within highway rights-of-way.

(3) The department shall consult and cooperate with the Division of Forestry of the Department of Agriculture and Consumer Services and the Department of Environmental Regulation in its study and use of vegetative barriers for highway noise abatement and said Department of Agriculture and Consumer Services and the Department of Environmental Regulation shall likewise cooperate with and assist the Department of Transportation.

(4) The department shall, where feasible, expand the maximum amount of federal matching funds provided for new highway construction for the purpose of carrying out the provisions of this section.

History.—s. 1, ch. 74-371; s. 29, ch. 79-65.

335.18 Regulation of connections.—

(1) It is the intent of the Legislature that the Department of Transportation regulate connections to roads in the state highway system, as such connections are a significant contributor to vehicular accidents, congestion, and reduction in traffic-carrying capacity. If the traffic patterns, points of connection, roadway geometrics, or traffic-control devices are causing undue disruption of traffic or creating safety hazards at existing connections, or are expected to cause such disruption or hazards at proposed connections, the department shall have the authority to deny or require redesign of a proposed connection at a specific location or require redesign of an existing connection.

(2) As used in this section, "connections" means driveways, streets, turnouts, or other means of providing for movement of vehicles to or from roads in the state highway system.

(3) The department shall promulgate rules pursuant to chapter 120 for the regulation of connections which shall be based on immediate and anticipated traffic volumes and shall provide for location standards, safety factors, design and construction standards, traffic-control devices, and effective maintenance of the roads.

(4) A permit shall be required from the department prior to the construction or alteration of any connection. The department shall have the authority to deny access to a road in the state highway system at the location specified in the permit if the permittee fails to construct or alter the connection in accordance with the permit requirements.

(5) The cost of construction or alteration of a connection shall be borne by the permittee except for alterations made at the request of and for the convenience of the department. The permittee, however, shall bear the cost of alteration of a connection required by the department due to increased or altered traffic flows generated by changes made by the permittee in the facilities or nature of business conducted at the location specified in the permit.

History.—s. 1, ch. 75-157.

CHAPTER 336

COUNTY ROAD SYSTEM

336.01 Designation of county road system.—The county road system shall be as defined in s. 334.03(23).

History.—s. 41, ch. 29965, 1955; s. 10, ch. 77-165.

336.02 Responsibility for county road system.—The county commissioners are invested with the general superintendence and control of the county roads and structures within their respective counties, and may establish new roads, change and discontinue old roads, and keep the same in good repair in the manner herein provided. They shall be responsible for establishing the width and grade of

such roads and structures in their respective counties.

History.—s. 42, ch. 29965, 1955; s. 1, ch. 57-776.
cf.—s. 861.11 Width of county roads.

336.021 County transportation system; levy of tax on motor fuels and special fuels.—

(1) Any county in the state may, in the discretion of its governing body and subject to a referendum, impose, in addition to all other taxes required by law, a 1-cent tax upon every gallon of motor fuel and special fuel sold in such county and taxed under the provisions of chapter 206, for the purpose of paying the costs and expenses of establishing, operating, and maintaining a transportation system and related facilities and the cost of acquisition, construction, reconstruction, and maintenance of roads and streets. The governing body of the county may provide that the referendum be worded to limit the number of years such tax will remain in effect. Such tax shall be collected in the same manner as all other gas taxes pursuant to chapter 206 and be returned to the county where collected. The provisions of ss. 206.29, 206.50, 206.625, and 206.64 shall be applicable to the tax herein levied.

(2) The additional gas tax collected pursuant to subsection (1) shall be transferred to a "local transportation gas tax trust fund," which fund is created for distribution as provided for in subsection (1).

(3) It is expressly recognized and declared by the Legislature that the establishment, operation, and maintenance of a transportation system and related facilities and the acquisition, construction, reconstruction, and maintenance of roads and streets fulfills a county purpose and that payment of the costs and expenses therefor may be made from county general funds, special taxing district funds, or such other funds as may be authorized by special or general law. Counties are authorized to expend the funds received under this section in conjunction with the state or federal government in joint projects.

History.—ss. 1-3, ch. 72-384; s. 1, ch. 77-390.

336.03 County engineer; duties and compensation.—

(1) The commissioners may employ a county engineer whenever, in the judgment of the commissioners, the work and affairs of the county require the attention and services of such an engineer. The county engineer shall be a registered professional engineer or engineering firm qualified to do business in the state. A single individual or firm may be employed as county engineer of more than one county. The county engineer shall have general supervision and control of all road work of the county, subject only to the order of the board of county commissioners.

(2)(a) The compensation of the engineer shall be fixed by the county commissioners and shall be payable out of the county general fund or county transportation trust fund except as provided in paragraph (b).

(b) In those specific counties where full-time county engineers are employed and such engineers furnish professional engineering advice on road programs in the county, the department shall reimburse the county general fund or county transportation trust fund on October 1 of each calendar year, out of the funds accruing to the county under s. 206.60 or any other available funds, the sum of $20,000 or the salary of the engineer, whichever is the lesser. Counties that do not employ full-time engineers may employ part-time engineers, and the department may reimburse such counties up to $10,000 or the salary of the engineer, whichever is the lesser. Boards of county commissioners shall include their intended allocation of funds for this purpose in their annual secondary road budget resolution.

(3) The provisions of subsection (1) requiring the county engineer to be a registered professional engineer or engineering firm qualified to do business in this state shall not apply to any county engineer who:

(a) Was employed on or before June 30, 1967;

(b) Was employed on less than a full-time basis; and

(c) Was not employed to furnish professional engineering advice on road programs in the county.

History.—s. 43, ch. 29965, 1955; s. 26, ch. 63-572; ss. 1, 2, ch. 67-267; s. 1, ch. 67-535; s. 1, ch. 70-253; s. 139, ch. 79-400.

336.04 Superintendent of county roads; duties and compensation.—The commissioners may appoint an experienced and competent road builder, who shall be known as the superintendent of public roads. All work on the public roads of the county, outside of cities and towns, shall be under the supervision of such superintendent, who shall be responsible to and subject to the direction of the commissioners. The compensation of the superintendent shall be fixed by the commissioners.

History.—s. 44, ch. 29965, 1955.

336.05 Naming of county roads; recording.—

(1) The commissioners are authorized to name and rename streets and roads, except state roads designated by number by the department, lying outside the boundaries of any incorporated municipality.

(2) The commissioners are authorized to refuse to approve for recording any map or plat of a subdivision when recording of such plat would result in duplication of names of streets or roads or when said plat, in the opinion of said commissioners, will not provide adequate and safe access or drainage.

History.—s. 45, ch. 29965, 1955; s. 2, ch. 57-776.

336.06 Signboards to be placed at public road crossings.—

(1) The commissioners may cause mileposts, traffic control and directional signal signs to be erected on all public roads under their jurisdiction, and may place at all crossings and intersections a signboard with proper indicating marks pointing in each direction to the city, town, village or community which such roads enter; giving the number of miles in each direction; with lettering in black color on a white background, the letters and figures to be not less than 3 inches high.

(2) On county-maintained roads outside municipalities where no sidewalks are provided, the respective boards of county commissioners shall, where

practicable, erect signs warning pedestrians to walk on the left side of the road facing traffic.

History.—s. 46, ch. 29965, 1955; s. 3, ch. 57-776; s. 3, ch. 59-96.

336.08 Relocation or change of roads.—The board of county commissioners may establish, locate, change or discontinue public county roads, by resolution.

History.—s. 48, ch. 29965, 1955; s. 5, ch. 57-776.

336.09 Closing and abandonment of roads; authority.—

(1) The commissioners, with respect to property under their control may in their own discretion, and of their own motion, or upon the request of any agency of the state, or of the federal government, or upon petition of any person or persons, are hereby authorized and empowered to:

(a) Vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway, and to renounce and disclaim any right of the county and the public in and to any land in connection therewith;

(b) Renounce and disclaim any right of the county and the public in and to any land, or interest therein, acquired by purchase, gift, devise, dedication or prescription for street, alleyway, road or highway purposes, other than lands acquired for state and federal highway; and

(c) Renounce and disclaim any right of the county and the public in and to land, other than land constituting, or acquired for, a state or federal highway, delineated on any recorded map or plat as a street, alleyway, road or highway.

(2) The commissioners, upon such motion, request, or petition, may adopt a resolution declaring that at a definite time and place a public hearing will be held to consider the advisability of exercising the authority granted in this section.

History.—s. 49, ch. 29965, 1955.

336.10 Closing and abandonment of roads; publication of notice.—Before any such road shall be closed and vacated, or before any right or interest of the county or public in any land delineated on any recorded map or plat as a road shall be renounced and disclaimed, the commissioners shall hold a public hearing, and shall publish notice thereof, one time, in a newspaper of general circulation in such county at least 2 weeks prior to the date stated therein for such hearing. After such public hearing, any action of the commissioners, as herein authorized, shall be evidenced by a resolution duly adopted and entered upon the minutes of the commissioners. The request of any agency of the state, or of the United States, or of any person, to the commissioners to take such action shall be in writing and shall be spread upon the minutes of the commissioners; provided, however, that the commissioners of their own motion and discretion, may take action for the purposes hereof. Notice of the adoption of such a resolution by the commissioners shall be published one time, within 30 days following its adoption, in one issue of a newspaper of general circulation published in the county. The proof of publication of notice of public hearing, the resolution as adopted, and the proof of publication of the notice of the adoption of such resolution shall be recorded in the deed records of the county.

History.—s. 50, ch. 29965, 1955.

336.11 Closing and abandonment of roads; ratification of prior actions.—The actions by the commissioners, heretofore taken, closing, vacating, or abandoning any road as herein described, and appearing in the minutes of such commissioners, are hereby ratified, approved and confirmed in all respects, and such roads are declared closed, vacated and abandoned, consistent with the provisions of the resolution or other action of such commissioners, as shown by their minutes.

History.—s. 51, ch. 29965, 1955.

336.12 Closing and abandonment of roads; termination of easement; conveyance of fee.—The act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, shall abrogate the easement theretofore owned, held, claimed or used by or on behalf of the public and the title of fee owners shall be freed and released therefrom; and if the fee of road space has been vested in the county, same will be thereby surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.

History.—s. 52, ch. 29965, 1955.

336.14 County road districts.—Each county commissioner's district is declared a county road district, and the roads of the county road system in such districts shall be under the supervision of the commissioners in each county.

History.—s. 54, ch. 29965, 1955.

336.15 Special tax road districts; establishment; election.—

(1) All county road districts levying a road district tax shall be designated special tax road districts.

(2) The commissioners shall order an election to be held in any county road district to determine whether such district shall become a special tax road district for the purpose of levying and collecting a district road tax for the exclusive use of the public roads within the district, and to elect trustees, whenever one-fourth of the electors, qualified as herein prescribed, shall petition for such election.

(3) The election shall be ordered and held on a day not earlier than 30 days, nor later than 60 days, from the day of presentation of the petition to the commissioners in regular session, and the election shall be held at the regular polling places within the district.

(4) The three persons receiving the highest number of votes at such election shall be declared road trustees of the district, and shall serve for the next ensuing 2 years. A majority of the ballots cast shall determine:

(a) Whether the road district shall become a special tax road district;

(b) The number of mills of district tax not to ex-

ceed 5 mills, to be levied and collected annually for the 2 succeeding years.

History.—s. 55, ch. 29965, 1955.

336.16 Notice of election to be published.—The commissioners shall cause a notice of such election to be published once a week for 4 consecutive weeks, prior thereto, in a newspaper of general circulation published in the county; and if no newspaper be published in such county, then they shall cause written or printed notices of the election to be posted in five public places within the district. The commissioners shall appoint inspectors and clerks for the election, whose duties shall be the same as similar officers in general elections, except as herein stated.

History.—s. 56, ch. 29965, 1955.

336.17 Ballot.—

(1) The ballot used at any election under this law shall be written or printed in black ink on plain white paper, and shall be substantially of the following form:

For (or against) Special Tax Road District .....

Road trustees (stating their names) .....

.....

.....

Maximum tax levy ..... Mills .....

(2) In counties where the use of voting machines is authorized by law, the requirements of this section shall be adapted to the use of such voting machines.

History.—s. 57, ch. 29965, 1955.

336.18 Commissioners to canvass returns.—The commissioners shall canvass the returns of election at their next regular meeting or at a special meeting called for that purpose, and declare the results of election at that meeting.

History.—s. 58, ch. 29965, 1955.

336.19 Qualification of electors.—All qualified electors residing within the road district sought to be made a special tax road district who pay a tax on real or personal property, shall be entitled to vote in such election. The cost of the publication of the notice of such election, and of the election itself shall be paid by the commissioners out of the first money collected from the special tax district.

History.—s. 59, ch. 29965, 1955.

336.20 Elections held biennially.—Elections shall be held biennially in each special tax road district, as near as practicable upon the anniversary of the original election, under the direction of the commissioners, to determine who shall be trustees for the succeeding 2 years, and the number of mills of district road tax to be levied and collected for each of such years. The election shall be held under the same rules and regulations, and qualifications of electors shall be the same as prescribed for those voting in the original election creating a special tax road district.

History.—s. 60, ch. 29965, 1955.

336.21 Districts to continue until abolished.—Special tax road districts created shall continue until abolished or changed by like proceedings as those by which they were created.

History.—s. 61, ch. 29965, 1955.

336.22 Election governed by general election laws.—All special tax road district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as otherwise provided herein, and the supervisor of elections of any county shall, upon payment for said service, furnish to the commissioners on demand, a certified list of the qualified electors for the year next preceding any such special tax election.

History.—s. 62, ch. 29965, 1955; s. 2, ch. 65-60.
cf.—Ch. 100 General, special, bond, and referendum elections.

336.23 Control of roads in special tax road districts.—All county roads within a special tax road district shall be under the direction and control of the commissioners as in other districts, and subject to the same laws, rules and regulations prescribed for the construction, maintenance and repair of other public roads.

History.—s. 63, ch. 29965, 1955.
cf.—ss. 336.02, 336.14 Control of roads.

336.24 Trustees to have supervision of all district roads.—

(1) Whenever a special tax road district is created and trustees are elected, they shall have the supervision of all the county roads within such district. The powers of trustees shall not be those of control, but of supervision only, and shall extend to all the county roads within the special tax road district.

(2) Any trustee failing to discharge the duties of the position shall be removed, after due notice to said trustee, by the commissioners, and all vacancies occurring in the board of trustees, from any cause, shall be filled, for the unexpired term, by the commissioners by appointment of a trustee or trustees from among the qualified electors of such special tax road district.

History.—s. 64, ch. 29965, 1955.

336.25 Duty of trustees.—

(1) The trustees, on or before June 1 in each year, shall prepare an itemized estimate, showing the amount of money necessary and likely to be raised for the next ensuing fiscal year, and certify therein the rate of millage voted to be assessed and collected upon the taxable property within the special tax road district for that year. It shall also state the number of miles of railroad track and telegraph lines within the territorial limits of the special tax road district.

(2) This itemized estimate shall be made in duplicate, one copy to be filed with the clerk of the commissioners and one copy with the Department of Revenue.

(3) The commissioners shall order the property appraiser to assess, and the collector to collect, the amount legally assessed upon the property of the special tax road district, at the rate of millage designated by the board of trustees, and pay the same to the county depository.

(4) The Department of Revenue shall assess all of

the railroads and railroad property, together with the telegraph lines and telegraph property situated within such special tax road district, and collect the taxes thereon and remit the same to the depositories of the county.

(5) All special funds collected within a special tax road district shall be disbursed upon the recommendation of the board of trustees, solely for road purposes within the district in which collected, and as near as practicable, in the year in which the tax is collected.

(6) The trustees shall make no contract with any one of their members embracing any monetary consideration.

History.—s. 65, ch. 29965, 1955; ss. 21, 35, ch. 69-106; s. 1, ch. 77-102.

336.26 Trustees a corporation.—The trustees of any special tax road district shall be a corporation, and may hold property, sue and be sued, and perform other corporate functions; provided, that no debt shall be created without the approval of the commissioners.

History.—s. 66, ch. 29965, 1955.

336.27 Bridge approaches; special powers of bond trustees in small counties.—

(1) All county boards of bond trustees, having administrative duties, in all counties with a population of 20,000 or less, according to the immediately preceding federal census, are hereby authorized and empowered to expend any or all funds now or hereafter available from any source, including sinking funds, for bridge approaches or expendable for bridge approaches, for or upon the improvement of any rights-of-way, roads or streets, including the acquisition of rights-of-way, now existing, or hereafter existing, or now or hereafter proposed, as state or federal highways, and however designated, and within or without the corporate limits of any municipality, provided any such right-of-way, road or street is within a radius of 1 mile of the terminus of any bridge mentioned herein.

(2) All rights-of-way, roads and streets now or hereafter existing or now or hereafter proposed, and which are now, or which may hereafter be, designated as state roads, by statute, or by the Department of Transportation or otherwise, and which are within a radius of 1 mile from the terminus of any bridge mentioned above are severally declared to be approaches to any bridge mentioned above and any moneys now or hereafter provided by law to be expendable for bridge approaches of any such bridge, shall be, and the same are hereby made available for the improvement of such roads and streets including the acquisition of rights-of-way.

History.—s. 67, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

336.28 County special road and bridge districts; establishing procedure.—Whenever residents of any territory embraced wholly, or in part, in one or more road districts, or embraced wholly, or in part, in one or more special road and bridge districts, in any county, desire to have such territory constituted into a special road and bridge district, and to have permanent roads and bridges constructed or reconstructed therein, they shall present to the commissioners of that county a petition signed by not less than 25 percent of the duly registered electors, who are freeholders residing within the territory which it is proposed to create into a special road and bridge district, which petition shall include:

(1) A description of the territory by metes and bounds or other accurate description;

(2) A description and the proposed location of the roads and bridges to be constructed or reconstructed;

(3) The amount estimated as being necessary to pay for such construction; and

(4) A statement as to whether the cost of such construction is to be paid for by the issuance and sale of bonds, or by the levy and collection of a special road and bridge tax upon the taxable property within the district, as hereinafter provided.

History.—s. 68, ch. 29965, 1955.

336.29 Commissioners to order election; qualification of electors.—

(1) At their first meeting after the receipt of the petition, the commissioners shall investigate the facts, and find and determine whether such petition has been duly signed by the requisite number of registered electors who are freeholders residing within such territory.

(2) If the petition is determined sufficient, such determination shall be regarded for all purposes as conclusive, and the commissioners shall order an election to determine whether or not such territory shall be constituted into a special road and bridge district, and the proposed roads and bridges constructed or reconstructed, and paid for, as specified in the petition.

(3) Only duly qualified electors who are freeholders residing in the territory to be included in such district shall be entitled to vote at such election.

History.—s. 69, ch. 29965, 1955.

336.30 Notice of election; laws applicable; appointment of inspectors; certification conclusive.—

(1) The commissioners shall have a notice of the election published for not less than 30 days next preceding the date of the election, which notice shall set out:

(a) The territory proposed to be included in the special road and bridge district;

(b) A general description of the roads and bridges proposed to be constructed or reconstructed;

(c) The estimated cost of such construction; and

(d) The manner in which payment for the construction is to be made.

(2) The election shall be held in substantial conformity to the laws applicable to general elections.

(3) The inspectors for such election shall be appointed by, and the ballots to be voted shall be prepared and furnished by the commissioners.

(4) The inspectors shall make returns to the commissioners immediately after the election, and the commissioners shall hold a special meeting as soon thereafter as practicable, for the purpose of canvassing the election returns and certifying to the result thereof. After 20 days have elapsed following such

certification, the determination shall be regarded for all purposes as conclusive.

History.—s. 70, ch. 29965, 1955.

cf.—Ch. 100 General, special, primary, and referendum elections.

336.31 Election limitation; order creating district; use of special taxes; bond election required.—

(1) If the commissioners shall find and determine that the result of the election is adverse to the proposition of constituting the special road and bridge district, no other election for the same purpose shall be held within 1 year thereafter.

(2) If a majority of the votes cast at such special election shall be in favor of the proposition to create a special road and bridge district, the commissioners shall enter an order constituting such territory into a special road and bridge district and designate the district by name or number, and declare and publish the boundaries thereof.

(3) Special taxes assessed and collected upon the taxable property within such district, because of such election, shall be applied solely to:

(a) The construction, reconstruction, repair and maintenance of the roads and bridges specified and approved by the election; or

(b) The payment of the interest and sinking fund of bonds that have been issued for the construction of such roads and bridges.

(4) No bonds shall be issued under the provisions of this law until approved at an election in compliance with the provisions of s. 12, Art. VII of the State Constitution.

History.—s. 71, ch. 29965, 1955; s. 15, ch. 69-216.

336.32 Prospective and retroactive validation of districts.—All special road and bridge districts created and constituted of territory lying wholly, or in part, in one or more special road and bridge districts, are hereby validated, confirmed and declared to be legally constituted in all respects and shall not be adjudged or decreed by any court of law or of equity to be illegally constituted and created because of any reconstruction or rebuilding either in whole, or in part, of the roads and bridges therein, or because of being in or consisting of part or parts of one or more special road and bridge districts. The provisions of this section shall have not only a prospective force and effect, but a retroactive force and effect, and are applicable alike to special road and bridge districts theretofore created, now being created or hereafter created under the authority of this law.

History.—s. 72, ch. 29965, 1955.

336.33 Advertising for bids; awarding contracts; provisos.—

(1) As soon as practicable after constituting a special road and bridge district, the commissioners shall have proper plans and specifications prepared for the authorized construction or reconstruction of roads and bridges.

(2) If the contract price for such work does not exceed the estimated amount voted for at the special election, the commissioners shall award the contract for such construction or reconstruction to the lowest responsible bidder, after advertising for bids in the manner prescribed by law.

(3) The commissioners may, within their discretion, reject any and all bids received and readvertise the contract until a satisfactory bid is received and accepted.

(4) When it shall become apparent to the commissioners that the estimates for the improvements in the district are too low, then the commissioners shall have a new estimate made for the additional amount necessary to complete the program as laid out in the original petition. They shall call an election in the district in the same manner as in the original election, based on the original petition, which, if carried, shall authorize them to issue additional bonds of the same denomination and running for the same number of years and bearing the same interest as the original bonds voted for the carrying out of the original program in the said special road and bridge district.

History.—s. 73, ch. 29965, 1955.

336.34 Supervision of construction under commissioners; condemning land and material for work; roads in municipalities.—

(1) The construction, repair and maintenance of the roads and bridges in special road and bridge districts shall at all times be subject to the supervision and control of the commissioners.

(2) The commissioners may exercise the right of eminent domain for the purpose of obtaining land and materials to be used in the construction, repair or maintenance of the roads and bridges provided for in this law.

(3) Whenever any of the roads or bridges proposed to be constructed, are located within the territorial boundaries of any incorporated city or town, the commissioners shall have the right of eminent domain and control over such streets or territory within such municipality as may be necessary for such construction.

History.—s. 74, ch. 29965, 1955.

336.35 Construction of additional roads and bridges.—After the construction of the improvements provided by the special election, creating any special road and bridge district, the residents of such special district may at any future time provide for the construction of additional roads and bridges by presenting to the commissioners a petition calling for a special election to provide for such improvements; and the same procedure shall be had, as is provided for creating special road and bridge districts and for the construction of roads and bridges therein, provided, however, that such roads and bridges and connecting or service roads may be reconstructed, repaired or replaced as maintenance costs of such roads.

History.—s. 75, ch. 29965, 1955; s. 6, ch. 57-776.

336.36 Abolition of districts; restriction.—

(1) Any special road and bridge district may be abolished by a majority vote at an election called by the commissioners of the county for such purpose, after publication of such notice as is required to create such special road and bridge district, at which election the qualification of electors shall be the same as those prescribed in s. 336.62(2).

(2) No special road and bridge district shall be abolished while it has outstanding indebtedness, without first making provision for the liquidation of such outstanding indebtedness.

History.—s. 76, ch. 29965, 1955; s. 1, ch. 72-385.

336.37 Special road, bridge and ferry districts; petition; law applicable.—

(1) Whenever residents of any territory embraced wholly, or in part, in one or more road district, or embraced wholly, or in part, in one or more special road and bridge district, in any county of this state, desire to have such territory constituted into a special road, bridge and ferry district, and to have permanent roads and bridges constructed and free public ferries constructed and maintained and operated therein, they shall present to the commissioners of that county a petition signed by not less than 25 percent of the duly registered electors, who are freeholders, residing within the territory which it is proposed to create into a special road, bridge and ferry district. The petition shall describe:

(a) The said territory, by metes and bounds, or other proper and accurate description;

(b) The proposed location of the roads, bridges and ferries to be constructed, maintained and operated;

(c) The amount estimated as being necessary to pay for the construction, maintenance and operation of same; and

(d) Whether the cost of such construction, maintenance and operation is to be paid for by the issuance and sale of bonds, or by a levy and collection of a special road and bridge tax upon the taxable property within said special road, bridge and ferry district.

(2) The provisions applicable to special road and bridge districts shall apply to special road, bridge and ferry districts created herein.

History.—s. 77, ch. 29965, 1955.

336.38 Election to be called.—After the petition has been determined sufficient, the commissioners shall call an election to determine whether the territory shall be constituted into a special road, bridge and ferry district and the proposed roads, bridges and ferries constructed, maintained and operated and paid for as specified in the petition, in like manner as is now provided for the establishment of special road and bridge districts.

History.—s. 78, ch. 29965, 1955.

336.39 Contracts for ferries; bids; bonding.— Upon the creation of a special road, bridge and ferry district, the commissioners shall award contracts for the construction of suitable ferry boats to be operated on all ferries in the district, and award contracts for the operation of such ferries for a period of 4 years. Such contracts shall be awarded upon bids. Any persons to whom any contract is awarded shall be required to furnish bond for the faithful performance of such contract in such sums as the commissioners shall require.

History.—s. 79, ch. 29965, 1955.

336.40 County commissioners may acquire necessary materials; procedure.—

(1) The commissioners in the construction of roads and highways may appropriate and use any material which may be necessary to the proper construction, maintenance and repairing of the roads and highways in their several counties. Before using such material, they shall endeavor to purchase or obtain the same from the respective owners thereof. Should the commissioners and owners of the materials or land be unable to agree on the price to be paid, then the commissioners may proceed to condemn the land upon which such material is located, and have damages awarded to the owner thereof, in the same manner as is now provided for the condemnation of lands for roads and highways.

(2) The commissioners may agree with the owner of any tract of land for the purchase of any road materials on his land, on such terms as are satisfactory to such commissioners and the owner. If such owner and the commissioners fail to agree upon terms, the chairman of the commissioners shall issue his writ ad quod damnum, directed to the sheriff, ordering him to summon a jury of 12 men, registered electors, freeholders, in the vicinity of such road. The jury, upon actual view of the land in question, shall certify to the commissioners what damage will accrue to the owner of such land by reason of the contemplated action. The sheriff or other officer shall return the certification, signed by all the jury, to the next meeting of the commissioners. The commissioners shall order the damages so assessed to be paid out of the county treasury from the road fund.

History.—s. 85, ch. 29965, 1955.

336.41 Counties; employing labor and providing road equipment; definitions.—

(1) The commissioners may employ labor and provide equipment as may be necessary, except as provided in subsection (3), for constructing and opening of new roads or bridges and repair and maintenance of any existing roads and bridges.

(2) It shall be the duty of all persons to whom the commissioners deliver equipment and supplies for road and bridge purposes to make a strict accounting of the same to the commissioners.

(3) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80 percent portion of the surplus of the second gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations; and

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80 percent portion of the second gas tax or $50,000, whichever is greater,

for which the county may utilize its own forces. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing

in this section shall prevent the county from performing routine maintenance as authorized by law.

History.—s. 86, ch. 29965, 1955; s. 1, ch. 57-783; ss. 23, 35, ch. 69-106; s. 11, ch. 77-165.

336.42 County convicts may be put to labor.—The commissioners may employ all persons in the jail of their respective counties under sentence upon conviction for crime, to labor upon the roads, bridges, or other public works of the county where they are so imprisoned.

History.—s. 87, ch. 29965, 1955.
Note.—Former s. 337.08.

336.43 Counties; guards for convicts.—The commissioners shall appoint such guards as may be needed to take charge of the convict road force. The compensation for such guards shall be paid by the commissioners out of the county road fund.

History.—s. 88, ch. 29965, 1955.

336.44 Counties; contracts for construction of roads; procedure; contractor's bond.—

(1) The commissioners shall let the work on roads out on contract, in accordance with s. 336.41(3).

(2) Such contracts shall be let to the lowest competent bidder, after publication of notice for bids containing specifications furnished by the commissioners in a newspaper published in the county where such contract is made, for a period of 2 weeks prior to the making of such contract.

(3) Upon accepting a satisfactory bid, the commissioners shall enter into a contract with the party whose bid has been accepted. Such contract shall contain the specifications of the work to be done or material furnished, the time limit in which the construction is to be completed or material delivered, the time and amounts in which payments are to be made upon the contract, and a penalty to be paid by the contractor for the failure to comply with the terms of such contract.

(4) The successful bidder shall enter into a good and sufficient bond with the commissioners for the faithful execution of the contract; the amount of the bond to be fixed by the commissioners, and the sufficiency of said bond to be likewise approved by the commissioners.

(5) The commissioners may reject any or all bids and require new bids to be made.

History.—s. 102, ch. 29965, 1955; s. 12, ch. 77-165.

336.45 Counties; joint construction of bridges with railroads.—The commissioners may make contracts with railway companies for the joint construction and maintenance of bridges on the county road system in their respective counties, and for the construction and maintenance of railway tracks over such bridges.

History.—s. 103, ch. 29965, 1955.

336.46 County commissioners, power of eminent domain; purchase agreements; payment.—

(1) The commissioners are given the power of eminent domain to acquire land for rights-of-way for county roads within their respective counties, and to condemn lands for borrow pits, drainage ditches, and other materials and property necessary for building such roads.

(2) The commissioners are authorized to enter into agreements with landowners for the purchase of land and materials for road purposes. If the commissioners and the landowner cannot agree upon the price for such land or materials, then the commissioners shall exercise the power of eminent domain or other authority vested in the commissioners for such purposes. Title to any land so acquired shall be taken in the name of the county.

(3) Payment for any land acquired under this section shall be made from funds set aside for county road purposes.

History.—s. 109, ch. 29965, 1955.

336.47 County bridges, authority to construct, acquire; joint bridges; double-decking bridges.—

(1) The commissioners may construct, control and operate bridges on county roads over and across water in and bounding their respective counties.

(2) The commissioners may acquire any bridge, crossway, passageway, wharf, dock, viaduct, or structure in, upon, along, over, across or approaching any water in, or bounding, their respective counties and adjacent land for approaches thereto, by condemnation or otherwise, and pay therefor as herein provided.

(3) The commissioners may make contracts with electric and other passenger railway companies for the joint construction and maintenance of bridges along the county roads in their respective counties, and for the construction and maintenance of railway tracks over such bridges.

(4) The commissioners are authorized to double-deck or parallel a bridge, on the county road systems and shall have the right to use the whole or any part of any such bridge, and approaches thereto, in double-decking or paralleling the same.

(5) The provisions of this section shall not be construed to authorize the construction of any bridge across any navigable stream in this state, without first obtaining the approval of the Federal Government as to its location and construction.

History.—s. 120, ch. 29965, 1955.

336.48 County bridges built under special law.—Nothing in this law shall apply or be construed to affect the construction or building of bridges constructed or built under the provisions of any special law, where bonds are issued for such building and construction by virtue of an election held for such purpose.

History.—s. 121, ch. 29965, 1955.

336.49 Counties; special road and bridge district bonds.—

(1) After a special road and bridge district has been constituted pursuant to the provisions of this law, and before awarding the contract or contracts for the construction of the roads and bridges provided for by the special election, if by such election it was provided that the construction of the improvements was to be paid for by the issue and sale of bonds, the commissioners shall, as soon as practicable, issue and sell special road and bridge bonds for

the amount provided for by such special election.

(2) After any special road and bridge district shall have been organized as authorized by this law, a petition signed by not less than 25 percent of the duly registered electors, who are freeholders residing within the territorial limits of the district, may be presented to the commissioners for the purpose of authorizing additional construction, and the issuance of additional bonds.

(a) Such petition shall briefly describe the proposed road or bridge construction, and the amount of money necessary for such construction, and that it is desired that bonds of the district be issued in the amount so named to pay for such work of construction, in addition to warrants or bonds of the district that may then have been already issued, and praying that a special election within such district be called to determine whether such bonds should be issued for such purpose.

(b) The commissioners, after being satisfied that the petition in all respects complies with the requirements of law, shall order a special election to be held in the district to determine whether or not such bonds should be issued as specified in the petition.

(c) The other requirements of this law relating to: The calling and holding of an election; giving of notice, making, canvassing and certifying the returns of such election; issuing of bonds; and levying taxes to pay the principal and interest of the bonds, shall be followed and apply to the issuance of such bonds referred to in the petition, as nearly as the same can be conveniently made adaptable and applicable thereto. The commissioners may prescribe and determine all other necessary details as to the procedure connected with or leading up to the issuance of such bonds.

(d) All of the provisions of this law shall have not only a prospective force and effect, but also a retrospective force and effect, so that bonds of any special road and bridge district proposed to be issued before this law shall have gone into effect, shall be regarded as valid and effective if in fact before the adoption of this law there had been a substantial compliance with the requirements herein.

(3) In issuing and selling such bonds and in disbursing the proceeds thereof, the commissioners shall act in substantial conformity with the provisions of these statutes applicable to the issue and sale of bonds for the purpose of constructing hard-surfaced roads and public buildings.

(a) The tax for the payment of interest to provide a sinking fund for the payment of the bonds shall be assessed and collected only upon the taxable property within the boundaries of the special road and bridge district.

(b) The bond trustees shall be selected by the commissioners and shall be resident freeholders of the special road and bridge district.

History.—s. 144, ch. 29965, 1955.

336.50 Assessment of tax for sinking fund and interest.—Whenever any special road and bridge district has been constituted and special road and bridge bonds issued by the commissioners, as provided in this law, the commissioners shall assess annually, a tax upon all real and personal property, railroads, telegraph and telephone lines, owned or situated within the special road and bridge district, to realize a sum sufficient to pay the interest upon such bonds as it may become due, and to create a sinking fund for the payment of the principal of such bonds at the maturity of same, which sinking fund shall be provided by resolution of the commissioners before issuing such bonds.

History.—s. 145, ch. 29965, 1955.

336.51 Use of surplus of proceeds of bonds.—Should there remain any of the proceeds of the sale of such special road and bridge bonds after paying for the construction of the improvement for which the bonds were issued, such surplus shall be held by the bond trustees and paid out by them, upon order of the commissioners, for the repair and maintenance of the roads and bridges within the special district.

History.—s. 146, ch. 29965, 1955.

336.52 Time warrants.—

(1) If the approved bond issue of a special road and bridge district proves insufficient to complete the authorized construction, necessitating further funds for the completion of such construction, the commissioners shall be authorized to issue time warrants of such district.

(2) The amount of such time warrants shall not exceed 10 percent of the amount of bonds originally voted for such construction. The time warrants shall bear interest at the rate of 8 percent per annum from their issuance and shall mature in not more than 10 years from their issuance.

(3) Such time warrants may be either sold and the proceeds thereof used to pay for the completion of the roads and bridges, or such warrants may be delivered in payment of such work.

(4) No such warrants may be issued more than 3 years from the date of the original bonds. Where such time warrants shall come within the purview of s. 12, Art. VII, of the Constitution, the same shall be issued only after they have been approved in an election called and held in the said district in the manner hereinabove provided for the original election.

(5) The commissioners shall levy an annual tax on all taxable property, real and personal, in any such district sufficient to pay the interest on such warrants, and to provide a sinking fund for the payment thereof at maturity.

History.—s. 147, ch. 29965, 1955.

336.53 Payments for construction by special road and bridge tax; issuing warrants; amounts of warrants.—

(1) If, in the election providing for the special road and bridge district and the construction of the roads and bridges therein, it was provided that the cost of such improvements was to be paid for by a special road and bridge tax, instead of special road and bridge bonds; then, after letting the contract or contracts for the construction of the roads and bridges provided for by such special election, the commissioners shall pay for the construction of such improvements by issuing warrants on the county depository for such sum or sums, as may be due from time to time upon such contract or contracts.

(2) Such warrants shall be paid only from the

funds collected from the special road and bridge tax as hereinafter provided for, and when such warrants are paid, they shall be charged against the special road and bridge fund for that special district. In no instance shall the total amount of warrants issued against the special road and bridge fund of any special district exceed the total amount authorized at the election held to authorize the construction of such roads and bridges.

History.—s. 148, ch. 29965, 1955.

336.54 Annual assessment and collection of taxes.—

(1) After letting of the contract for the improvements voted for at the special election, and until the same have been fully paid for, there shall be annually assessed and collected upon all real and personal property, railroad, telegraph and telephone lines owned or situated within the special road and bridge district, a special road and bridge tax, not exceeding 20 mills on the dollar in any one year. Such special tax shall be in addition to the county road tax and other taxes levied and assessed for state and county purposes.

(2) Upon collection, such tax shall be kept in a separate fund to be known as the special road and bridge fund of the special district in which such improvements were made. Disbursements from such fund shall be made by the commissioners only in liquidation of warrants issued in payment for the construction of roads and bridges as provided for by the special election held in the special road and bridge district.

History.—s. 149, ch. 29965, 1955.

336.55 Method of assessment, equalization and collection of taxes.—

(1) All special road and bridge district taxes shall be assessed, equalized and collected upon the taxable property within the special road and bridge district, by the same officers and in the same manner as is provided by law for the assessment, equalization and collection of other county taxes.

(2) The commissioners shall assess and have collected from all taxable property within the special road and bridge district the special road and bridge district tax, as herein provided, until all warrants issued in payment for the roads and bridges authorized by the special election, have been paid and canceled. The Department of Revenue shall assess all railroads and railroad property, together with telegraph lines and telegraph property situated in such special road and bridge district and shall collect the taxes thereon in the same manner as required by law to assess and collect taxes for state and county purposes, and shall remit the same to depositories of the counties to the credit of each special road and bridge district fund and to be paid out as provided by law.

History.—s. 150, ch. 29965, 1955; ss. 21, 35, ch. 69-106.

336.56 Special maintenance tax.—After the construction of the roads and bridges authorized by the special election, the commissioners shall estimate from year to year, the amount necessary to keep in repair and maintain the roads and bridges within such district; and shall assess annually all taxable property within the district, a tax not exceeding 10 mills on the dollar, which tax shall be collected and paid into the special road and bridge fund of that special district, and used solely by the commissioners for the repair and maintenance of the roads and bridges within the district.

History.—s. 151, ch. 29965, 1955.

336.57 Proportion of general tax to special district.—Any special road and bridge district created under authority of this law shall be entitled to receive for the repair and maintenance of the roads and bridges in such district, its due proportion of the county tax levied and collected upon the taxable property of the county for general road purposes. The special tax provided for herein shall be levied and collected on the taxable property in the special district, only for such repair and maintenance of the roads and bridges in the special district that cannot be paid for from its proportion of the general county road tax.

History.—s. 152, ch. 29965, 1955.

336.58 Validation of bonds.—

(1) Whenever the commissioners, in behalf of any special road and bridge district organized under the provisions of this law shall have authorized the issuance of bonds pursuant to any of the provisions of this law, such commissioners may, if they shall so elect, cause such bonds to be validated in accordance, as nearly as it is practicable to apply the same, with the provisions of law relating to the validating of bonds issued by counties and municipalities.

(2) In the event of the exercise of such election by the commissioners, all the provisions of law relating to the validating of bonds issued by counties and municipalities shall be held also to include and apply to bonds issued by special road and bridge districts.

(3) The decree of validation that shall be entered by the court shall have the same conclusive force and effect as the law now relates to bonds issued by counties and municipalities.

(4) This provision as to validation proceedings shall not be construed as being compulsory upon, but only optional, with the commissioners.

History.—s. 153, ch. 29965, 1955.

336.59 Levy of tax for road and bridge purposes; proportion to municipalities.—

(1) The commissioners shall levy a tax not to exceed 10 mills on a dollar on all property in their county each year for road and bridge purposes. Such tax, when collected, shall be paid over to the county depository and kept in a separate fund, which fund shall not be expended for any other purpose than for work on the public roads and bridges in the county, and for the payment of the salaries of employees engaged in road and bridge work, and in providing the necessary tools, materials, implements and equipment and for the necessary work on such roads and bridges.

(2) One-half the amount realized from such special tax on the property in incorporated cities and towns shall be turned over to such cities, urban service districts, and towns, in accordance with the

schedule required in s. 197.016, to be used in constructing, repairing, and maintaining the roads, streets, and bridges thereof, as may be provided by the ordinances of such cities and towns.

History.—s. 154, ch. 29965, 1955; s. 1, ch. 76-145; s. 1, ch. 77-451; s. 73, ch. 79-164.

336.60 Gates across county roads; permit.—

(1) The commissioners may permit the construction of gates across the county roads of their respective counties whenever, in their opinion, the same will not unnecessarily interfere with the public travel, and shall prescribe the place where such gate shall be placed and the manner of the construction and maintenance thereof.

(2) The commissioners may rescind any such permit whenever they shall deem it necessary for the public good. At least 30 days previous notice shall be given the party to whom such permit shall have been granted before the same shall be rescinded.

History.—s. 157, ch. 29965, 1955.

336.61 Definitions.—

(1) Whenever the term "person," "voter," or "elector" is referred to in ss. 336.62-336.67 it shall be deemed to mean any entity owning legal title to real property within the district, whether residing within the district or not, and any person residing within the district who is eligible to vote in any general or special election.

(2) Whenever the term "lot" is referred to in said sections it shall be deemed to mean 1 acre or fraction thereof. However if the proposed district is divided into lots, parcels, or units of similar size, the term lot shall mean that division of land.

History.—s. 1, ch. 72-385.

336.62 Alternative method of establishing special road and bridge districts.—

(1)(a) As an alternative method of establishing a road and bridge district, a petition signed by persons having not less than 25 percent of the votes as defined herein within the boundaries of the proposed district may be filed with the board of county commissioners of the county in which said district is to be located.

(b) Said petition shall describe the territory to be included in said proposed district, the name of the district if there is one, and the general purpose for which the district is being established.

(c) Said petition shall request the board of county commissioners to call and provide for a referendum election to determine whether such district shall be created and also to call for an election of the first board of commissioners for said district.

(d) Within 30 days after the petition is received by the commission, the commission shall determine from information provided by the property appraiser and the supervisor of elections whether such petition has been duly signed by persons having the requisite number of eligible votes within the boundaries of the proposed district. If there is a sufficient number of valid signatures representing 25 percent of the votes in the proposed district, the board of county commissioners shall hold an election within 60 days to determine whether the district shall be created. The board of county commissioners shall have notice of such election published once a week for 4 successive weeks in a newspaper of general circulation within the area of the proposed district. Said notice shall describe the purpose for which the district is to be established and the territory proposed to be included in the district. If there is no such newspaper, then notice may be posted on the courthouse door and in five conspicuous places within the proposed district.

(2)(a) At the same time the board of county commissioners fixes the date for an election to determine whether a district shall be established, it shall also call an election for five persons to serve as commissioners of the proposed district. The county commissioners shall also advertise in the same manner that an election is to be held for five commissioners of the proposed district and shall set out in the notice the qualifications of candidates to qualify by petition for election to said office as provided in paragraph (g). The board of county commissioners shall cause to be printed on the ballot for the district referendum the names of any persons qualified as candidates for the office of member of the board of commissioners of the district who have filed with the board of county commissioners a petition signed by persons having not less than 25 percent of the votes within the district. The candidate's petition shall be filed with the board of county commissioners not less than 14 days prior to said election with a qualifying fee in the amount of $250, payable to the board of county commissioners. Said fee shall be used to defray the expense of the election. Should the qualifying fees exceed the cost of the election, the surplus shall be returned to the candidates in equal shares. Any deficit in defraying the cost of the election shall be advanced by the petitioners and reimbursed by the district if it is created.

(b) The supervisor of elections and the property appraiser shall assist the board of county commissioners in preparing a list of eligible electors and the number of votes for each within the proposed district, and the supervisor shall further assist the board of county commissioners with such other administrative matters pertaining to the conduct of the election as the county commission deems appropriate.

(c) The ballot to be used at said election shall be in substantially the following form:

OFFICIAL BALLOT

..... ROAD AND BRIDGE DISTRICT

..... COUNTY, FLORIDA

SPECIAL ELECTION (insert date)

1. Shall ..... Road and Bridge District ..... County, Florida, be created?

..... Yes
..... No

2. Make a cross mark (X) before the names of the candidates of your choice.

FOR COMMISSIONERS OF
ROAD AND BRIDGE DISTRICT

VOTE FOR FIVE	WRITE-IN VOTES
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Blank lines shall be placed on the ballot so that the name of any person who did not file a petition and who is otherwise qualified may be written in, in the form of an irregular or write-in vote. The inspectors and clerks for said election shall be appointed by the board of county commissioners. The ballots shall be furnished by the board of county commissioners. The board of county commissioners shall designate an appropriate polling place or polling places where said election shall be held. The inspectors and clerks shall make returns to the board of county commissioners and said board of county commissioners shall canvass said election returns and declare the results thereof at the next ensuing regular or special meeting of the board of county commissioners.

(d) Said district shall be established upon a favorable vote in person or by proxy of persons having 75 percent of the votes within the district, and the five persons receiving the highest number of votes cast for candidates shall be elected commissioners of the district until their successors are elected. Upon expiration of 20 days after the declaration of the result of said election by the board of county commissioners, such declaration of the results shall be regarded for all purposes as conclusive. Each elector within the district at the time the election for creation of district is called shall be given written notice by the petitioners of the proposed election; any such elector shall have the right to be excluded from the district upon written notice to the commissioners of the district, provided such notice is furnished in writing within 1 year after the date of the creation of the district.

(e) At all elections held pursuant to this section, qualified electors shall be persons who reside within the district that are qualified to vote in any general or special election or who are owners of land within the district, whether said owners reside within the district or not. Owners of land shall be entitled to cast one vote for each lot or fractional part thereof belonging to such owner, except that only one vote may be cast for each such lot or fractional part thereof regardless of whether the legal title thereto is held in single or multiple ownership. Any person who is a resident of the district and qualified to vote in any general or special election and who is also a lot owner shall be entitled to only one vote; however, this does not preclude a resident lot owner from casting more than one vote if he owns additional lots on which he does not reside. In defining these voter qualifications it is intended that all persons either directly or indirectly affected by any tax and improvements derived therefrom be granted a voice. Such vote shall be in person or by proxy. No proxy shall be effective unless acknowledged by a notary public. If the board of county commissioners shall find and determine that the result of said election is adverse to the proposition of creating a district, no other election for the same purpose shall be held within 1 year thereafter.

(f) If a requisite number of votes at such special election shall favor the creation of such a district, then said board of county commissioners shall enter an order constituting the territory in which said special election was held as a district, and the commissioners of said district shall have, as to the district roads and bridges, all the powers granted to county commissioners relative to special road and bridge district by this chapter, and no other powers.

(g) Commissioners of the road and bridge district shall be registered electors in some county of the State of Florida, at least two of whom shall be registered electors of the county in which the district is located or in an adjacent county.

(3) Beginning with the next general election following the creation of the district, and in the general election each 4 years thereafter, the said district commissioners shall qualify by petition and be elected in the same manner as provided for the initial election. The five persons receiving the highest number of votes cast in the general election shall serve 4 years and shall take office at the same time as do other county officers, on the first Tuesday after the first Monday in January next after their election, and serve on the same cycle as do other constitutional county officers. Any commissioner whose qualifications for election as contained in this act terminate shall thereafter be disqualified as a commissioner, and the vacancy shall be filled as provided below.

(4) In the event of a vacancy due to any cause in any board of district commissioners, the same shall be filled by appointment by a majority of the remaining members of the board of district commissioners, until such vacancy is filled by the Governor, whose appointee shall hold office until the next general election or special election. Such election shall be for the remainder of the unfilled term.

(5)(a) As soon as practicable after such district commissioners have been elected and have qualified, they shall meet and organize by election from among their number a chairman, a secretary, and a treasurer. The secretary need not be a commissioner. Three members of the board shall constitute a quorum. The vote of three members shall be necessary to transact business.

(b) Each commissioner, before he assumes office, shall be required to give the Governor a good and sufficient surety bond in the sum of $10,000, the cost thereof being borne by the district, conditioned on the faithful performance of the duties of his office, said bond to be approved and filed in the same manner as is that of the board of county commissioners. The failure of any person to make and file this bond within ten days after his election shall create a vacancy on said board.

(6) The powers and duties of the district commissioners as to district roads and bridges shall be the same as those of county commissioners supervising districts created pursuant to s. 336.28.

(7) Members of the board of commissioners shall serve without compensation. Said members shall be

reimbursed for traveling expenses incurred in the performance of their duties as provided in s. 112.061. All boards of commissioners shall hold regular quarterly meetings, and special meetings as needed, in the courthouse or in an appropriate place within the district.

(8) Persons having not less than 50 percent of the votes within any proposed or established road and bridge district may petition for a referendum calling for two or more districts which are contiguous to be combined and be supervised by a single board elected as hereinabove described. However, if the board of county commissioners shall deem such a combination to be reasonably necessary for the purpose of providing the improvements authorized by this chapter, it may approve the combination, subject to referendum requirements, notwithstanding that the territories to be combined and included in the new district are not contiguous. Said referendum shall be conducted separately in substantially the same manner as a referendum to create a single district. Districts shall be combined only by a majority favorable vote in each district.

History.—s. 1, ch. 72-385; s. 97, ch. 73-333; s. 3, ch. 76-148; s. 1, ch. 77-102; s. 1, ch. 77-174.

336.63 District board; powers.—The district board for and on behalf of any district created hereunder in addition to and supplementing other powers granted in this law is authorized and empowered:

(1) To make rules and regulations for its own government and proceedings and to adopt an official seal for the district.

(2) To employ engineers, attorneys, accountants, financial or other experts, and such other agents and employees as said district board may require or deem necessary to effectuate the purposes of this law or to contract for any such services.

(3)(a) To construct, install, erect, acquire, operate, maintain, improve, extend or enlarge, or reconstruct a road and bridge system within said district and to have the exclusive control and jurisdiction thereof; to issue its general obligation bonds, revenue bonds, or assessment bonds, or any combination of the foregoing; and to pay all or part of the cost of such construction, reconstruction, erection, maintenance, acquisition, or installation of such system. The procedure for issuing such revenue or assessment bonds or the levying of special assessments shall be in the manner provided in chapters 159 and 170, respectively, except that:

1. Any such special assessments may bear interest at the rate allowed by law for special assessment bonds of the district; and

2. Such special assessments and assessment bonds may be made payable over a period equal to the life of the systems or the period for which general obligation bonds are permitted by law to be issued, whichever is less.

(b) Notwithstanding the provisions of this chapter or any other statutory limitations, the district board of any district which initially financed and completed the improvements authorized by the issuance of general obligation bonds pursuant to this section may, at any time, provide an additional method of payment of such general obligation bonds through the levy and collection of special assessments on the abutting, adjoining, contiguous, or other specifically benefited property within the district, such method to be in lieu of, or in combination with, the levying of ad valorem taxes, as provided in this chapter. In the levying of such special assessments, the district shall follow the procedure provided in chapter 170 to the extent that such procedures are not inconsistent with the provisions or intent of this section. Such assessments may, notwithstanding any other statute to the contrary, be made payable in equal annual installments over a period not to exceed the remainder of the period over which such general obligation bonds are payable.

(4) To levy and assess ad valorem taxes within such limitations of amount or rate as may be otherwise authorized or imposed by law, for the purpose of paying the principal of and interest on any general obligation bonds which may be issued for the purposes of this law.

(5) To acquire in the name of the district, by purchase or gift, such lands and rights and interest therein, including lands under water and riparian rights; to acquire such personal property as it may deem necessary in connection with the construction, reconstruction, improvement, extension, installation, erection, or operation and maintenance of any road and bridge system; and to hold and dispose of all real and personal property under its control. However, nothing contained herein shall authorize the power of eminent domain.

(6) To exercise exclusive jurisdiction, control, and supervision over any road and bridge system or any part thereof owned, operated, and maintained by the district and to make and enforce such rules and regulations for the maintenance and operation of any road and bridge system as may be, in the judgment of the district board, necessary or desirable for the efficient operation of any such systems or improvements in accomplishing the purposes of this law.

(7) To restrain, enjoin or otherwise prevent the violation of this law or of any resolution, rule, or regulation adopted pursuant to the powers granted by this law.

(8) To join with any other district or districts, cities, towns, counties, or other political subdivisions, public agencies, or authorities in the exercise of common powers.

(9) To accomplish construction by holding hearings, advertising for construction bids, and letting contracts for all or any part or parts of the construction of any road and bridge system to the lowest responsible bidder or bidders or rejecting any and all bids at its discretion. The district may purchase supplies, material, and equipment as well as expend for construction work in an amount not to exceed $1,000 total cost of each transaction without advertising or receiving bids.

(10) Subject to such provisions and restrictions as may be set forth in the resolution authorizing or securing any bonds or other obligations issued under the provisions of this law, to enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any county, municipality, district, authority or political subdivision, private corporation, partnership, associa-

tion, or individual, providing for or relating to the matters relevant hereto or otherwise necessary to effect the purposes of this law; to receive and accept from any federal agency, grants or loans for, or in aid of, the planning, construction, reconstruction, or financing of any road and bridge system; and to receive and accept aid or contributions or loans from any other source of either money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such grants, contributions or loans may be made.

History.—s. 1, ch. 72-385; s. 2, ch. 77-327; s. 140, ch. 79-400.

336.64 Special road tax.—

(1) After letting of the contract for the improvements voted for at the special election, and until the same have been fully paid for, there shall be annually assessed and collected upon all real and personal property, railroad, telegraph and telephone lines owned or situated within the special road and bridge district, a special road tax. Such special tax shall be in addition to the county road tax and other taxes levied and assessed for state and county purposes and shall be approved by a favorable vote, in person or by proxy, of the electors within the district.

(2) Upon collection, such tax shall be kept in a separate fund to be known as the special road and bridge fund of the special district in which such improvements were made. Disbursements from such fund shall be made by the commissioners only in liquidation of warrants issued in payment for the construction of roads and bridges as provided for by the special election held in the special road and bridge district.

History.—s. 1, ch. 72-385.

336.65 Repair and maintenance of roads and bridges; special assessment.—After the construction of the roads and bridges authorized by the special election, the commissioners shall estimate from year to year the amount necessary to keep in repair and maintain the roads and bridges within such district, and shall assess annually all taxable property within the district. The tax shall be collected and paid into the special road and bridge fund of that special district and used solely by the commissioners for the repair and maintenance of the roads and bridges within the district.

History.—s. 1, ch. 72-385.

336.66 Method of abolition of district.—At any time subsequent to the expiration of 8 years from the creation of a road and bridge district, or after completion of all improvements for which said district was originally created, whichever shall occur first, the board of county commissioners may abolish such district upon a majority vote. However, by such action, the board of county commissioners shall assume all liabilities, obligations, and responsibilities of such road and bridge district.

History.—s. 1, ch. 72-385; s. 1, ch. 77-327.

336.67 Provisions of sections applicable.—All provisions of ss. 336.36, 336.45, 336.48, 336.49, 336.50, 336.51, 336.52, 336.53, 336.55 and 336.58, shall be applicable to the road and bridge districts created under ss. 336.61-336.67.

History.—s. 1, ch. 72-385.

CHAPTER 337

DEPARTMENT OF TRANSPORTATION; ACQUISITION AND DISPOSAL OF PROPERTY

337.01 Authority of department to acquire equipment.—The Department of Transportation shall have the authority to purchase, lease or acquire, as it deems necessary, all road material, road machinery, tools, equipment and supplies necessary for the execution of its duties and responsibilities, under its maintenance budget.

History.—s. 80, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

337.02 Purchases subject to competitive bids; advertisement; emergency purchases.—

(1) No purchase of road material, machinery, tools, equipment or supplies in excess of $3,000 shall be made by the Department of Transportation unless made upon competitive bids received, after advertising therefor in a newspaper of general circulation, at least once a week for not less than 2 consecutive weeks, prior to the date on which bids are to be received. The department may at its discretion, award a contract to the lowest responsible bidder or it may reject all bids and proceed to readvertise.

(2) If the secretary shall determine that a real emergency exists in regard to the purchase of road material, machinery, tools, equipment, or supplies, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, the provisions for competitive bidding shall not apply and the secretary may authorize or make purchases of such road material, machinery, tools, equipment, or supplies, without giving opportunity for competitive bidding thereon. The secretary shall, within 10 days after such determination and purchase, file with the head of the Department of General Services a written statement of the road material, machinery, tools, equipment, or supplies purchased and a certificate as to the conditions and circumstances constituting such emergency.

History.—s. 81, ch. 29965, 1955; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 112, ch. 71-377.

337.03 Department authorized to purchase surplus properties.—

(1) The Department of Transportation is authorized to purchase from the federal government any supplies, material, equipment, appliances or other property at such price and upon such terms as may in the judgment of the department be proper, without first advertising for bids, regardless of the value of, or the price paid for such property; provided, however, that the price paid for such supplies, materials, equipment, appliances or other property shall not exceed the price for which such property may be purchased upon the open market.

(2) Payment of the cost of all supplies, material, equipment, appliances or other property purchased pursuant to the authority given in subsection (1) shall be made upon vouchers issued and certified to by the secretary and paid by warrant issued by the state comptroller upon the state treasurer out of any funds that may be apportioned and set aside for the maintenance of the department.

History.—s. 82, ch. 29965, 1955; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 113, ch. 71-377; s. 100, ch. 77-104.

337.04 Unlawful for certain persons to be financially interested in purchase; penalty.—It is unlawful for any employee of the Department of Transportation, or any company, corporation or firm in which any employee of the department is in any way financially interested, to bid on or enter into or be in any way personally interested in the purchase

or the furnishing of any materials or supplies to be used in the work of the state or any county of the state. Any person upon the conviction thereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be removed from office by the governor.

History.—s. 83, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 234, ch. 71-136.

337.045 Conflict of interest; solicitation prohibited.—

(1) No state officer or employee with the Department of Transportation shall directly or indirectly solicit or accept funds from any person who has, maintains, or seeks business relations with the Department of Transportation.

(2) The provisions of this section shall not be construed to include within its terms the solicitation of funds for charitable purposes, including, but not limited to, such organizations as the United Fund, Heart Fund or American Red Cross.

(3) Violation of the terms of this section shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall subject the officer or employee violating its provisions to removal from his office or employment.

History.—s. 1, ch. 70-123; s. 235, ch. 71-136.

337.05 Sale of obsolescent highway equipment.—

(1) The Department of Transportation shall be authorized to sell, exchange or otherwise dispose of all obsolescent road machinery, equipment, and material no longer needed for highway purposes.

(2) Whenever the value of any such property, as appraised by the department, exceeds $500, the department shall advertise for bids in a newspaper of general circulation, at least once a week for not less than 2 consecutive weeks in the county where the property is located. The department may at its discretion sell such property to the highest bidder or it may reject all bids and proceed to readvertise.

(3) The department is authorized to sell any such property to a municipality or county of the state without advertising for bids, provided such county or municipality agrees not to resell such property except to the department. In emergencies the department may sell other materials and supplies to such counties or municipalities.

(4) Any funds or money derived from the sale of such property shall be credited to the funds from which such purchase was made originally.

History.—s. 84, ch. 29965, 1955; s. 1, ch. 61-149; ss. 23, 35, ch. 69-106.

337.106 Professional liability insurance required.—Any person or firm rendering technical, legal, architectural, engineering, or other professional services to the Department of Transportation shall have and maintain during the period the services are rendered a professional liability insurance policy or policies with a company or companies authorized to do business in the state, affording professional liability coverage for the professional services rendered, in an amount deemed sufficient by the department, if such insurance coverage is available in the area.

History.—s. 3, ch. 70-168.

337.11 Authority of department to contract; advertise; acquire rights-of-way; option; preservation of records.—

(1) The Department of Transportation shall have authority to:

(a) Enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System or State Park Road System. However, no such contract shall create any third party beneficiary rights in any person not a party to the contract; and

(b) Enter into contracts for such road construction and maintenance as may be placed under its supervision by law, or by resolution of the commissioners, board of bond trustees, district, or other subdivision of any county.

(2) The divisions of the department shall advertise for bids on all work at least once a week for not less than 2 consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located. The first publication shall be not less than 14 days prior to the date on which bids are to be received and the second publication shall be not less than 7 days prior to the date on which bids are to be received. No advertisement for bids shall be published until title to all necessary rights-of-way for the construction of the project covered by such advertisement shall have been vested in the state for the use and benefit of the Division of Road Operations, and all railroad crossing and utility agreements have been executed. Provided that title to all necessary rights-of-way shall be deemed to have been vested in the State of Florida where such title has been dedicated to the public or acquired by prescription.

(3) The department may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to readvertise or perform the work with convict labor or free labor.

(4)(a) The department shall make rules and regulations to permit the use of written supplemental agreements and written change orders to any contract entered into by the department. Any supplemental agreement shall be reduced to written contract form, approved by the contractor's surety, and executed by the contractor and the department. Any supplemental agreement modifying any item in the original contract must be approved by the secretary of the department and executed by the appropriate person designated by the secretary.

(b) Supplemental agreements shall be used to clarify the plans and specifications of a contract; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; and to make the project functionally operational in accordance with the intent of the original contract. Supplemental agreements may exceed the physical limits of an original contract or project in excess of $100,000 by a maximum of 10 percent of the original

contract price for such purposes.

(c) Written change orders may be issued by the department and accepted by the contractor covering minor changes in the plans, specifications, or quantities of work, within the scope of a contract, when prices for the items of work affected are previously established in the contract, but in no event shall such change orders extend the physical limits of the work. In addition, no combination of change orders shall increase a contract by more than $25,000 or 1 percent of the original contract price, whichever is greater.

(d) For the purpose of this section, physical limits shall mean the length or width of any project and shall specifically include drainage facilities not running parallel to the project. The length and width of temporary connections affected by such supplemental agreements shall be established in accordance with current engineering practice. Any supplemental agreement in violation of this section shall be null and void, and no money shall be paid thereon.

(e) Upon completion of the improvement by the contractor in accordance with the plans, specifications, special provisions, proposals, and contract, the department, upon final inspection of the work, may accept said improvement if it is in substantial compliance with the plans, specifications, special provisions, proposals and contract and if a proper adjustment in the contract price is made.

(5) The Division of Road Operations shall preserve all records which reflect the quantities of materials used in the construction of any road project supervised by the division for a period of 3 years. This requirement shall be equally binding where materials are purchased by prime or subcontractors.

(6) Every contract let by the department for the performance of work shall contain a provision requiring the prime contractor, prior to receipt of any periodic payment under the provisions of said contract, to certify that all subcontractors having an interest in the contract have received their pro rata share of the payment, out of previous periodic payments to the prime contractor, for all work completed and materials furnished in the previous period as approved by the department for payment. The department shall not make any such periodic payment prior to receipt of said certification.

History.—s. 90, ch. 29965, 1955; s. 1, ch. 61-432; s. 1, ch. 61-443; s. 1, ch. 61-222; s. 1, ch. 65-4; s. 5, ch. 67-461; s. 1, ch. 69-315; s. 1, ch. 69-392; ss. 23, 35, ch. 69-106; s. 1, ch. 70-325; s. 114, ch. 71-377; s. 1, ch. 72-88; s. 1, ch. 75-6; s. 3, ch. 76-85.

337.12 Unlawful for certain persons to be financially interested in contracts; penalty.—

(1) It is unlawful for any employee of the department, or any company, corporation or firm in which any employee of the department is in any way financially interested, to bid on, or enter into or be in any way interested in a contract for the working or building of any state road or for the performance of any other work in which the department may be concerned.

(2) Any person upon conviction thereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall be removed from office by the Governor.

History.—s. 91, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 236, ch. 71-136.

337.14 Application for qualification; certificate of qualification; restriction.—

(1) Any person desiring to bid for the performance of any contract in excess of $100,000 which the Department of Transportation proposes to let must first be certified by the department as qualified pursuant to law and regulations of the department. The department shall adopt regulations for the qualification of persons to bid on contracts in excess of $100,000, which regulations shall include requirements with respect to the equipment, past record, experience, and organizational personnel of the applicant. Each applicant seeking qualification to bid on contracts in excess of $100,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information with respect to his financial resources, equipment, past record, experience, and organizational personnel, together with such other information as the department may deem necessary. Each application for certification shall be accompanied by a financial statement of the applicant, which financial statement shall reflect the financial condition of the applicant as of a date not more than 120 days prior to the date of filing the application. No applicant may be certified as qualified to bid on such contracts unless his financial statement is accompanied by an opinion of a certified public accountant or public accountant approved by the department. The information required by this subsection shall be confidential and exempt from the provisions of s. 119.07(1). The department shall act upon the application for qualification within 30 days after the same is presented.

(2) No certification shall be necessary to bid on contracts of $100,000 or less or for the construction of buildings. However, the successful bidder on any such contract shall furnish a contract bond prior to the award of the contract.

(3) Upon the receipt of an application for certification, the department shall cause the same to be examined, and the statements therein to be verified as deemed necessary, and shall determine whether the applicant is competent, responsible, and possesses the necessary financial resources.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him a certificate of qualification which, unless thereafter revoked by the department for cause, shall be valid for a period of 15 months from the date of the applicant's financial statement or such shorter period as the department may prescribe.

(5) The certificate of qualification shall contain a statement fixing the actual amount of work, in terms of estimated cost, which the applicant will be permitted to have on contract with the department and not completed at any one time, and may contain a statement by the department limiting such bidder to the submission of bids upon a certain class of work.

(6) Subject to such restrictions, the certificate of qualification shall authorize the holder to bid on all work on which bids are taken by the department during the period of time therein specified.

History.—s. 93, ch. 29965, 1955; s. 14, ch. 57-318; s. 1, ch. 61-501; s. 1, ch. 69-314; ss. 23, 35, ch. 69-106; s. 1, ch. 76-85; s. 1, ch. 78-316.

337.141 Payment of contracts.—

(1) As used in this section, the terms "dispute" or "pending claim" refer to a dispute or pending claim between the prime contractor and the department.

(2) Each contract for construction or maintenance entered into pursuant to this chapter shall provide for final payment within 90 days of receipt by the final estimate engineer in Tallahassee of all documents which are required by the contract from the contractor, with the exception of the acceptance letter and a consent by the contractor's surety for release of payment of the retained percentage and final estimate to the contractor. Should the contractor, due to his own actions, fail to return the acceptance letter and the surety's consent to the final estimate engineer in Tallahassee within 60 days of the above-established date, then payment shall be made within 30 days of receipt by the final estimate engineer of said documents. Final payment shall not be so made as to any amount which is in dispute or the subject of a pending claim, but shall be so made as to that portion of a contract or those amounts which are not in dispute or the subject of a pending claim. However, such partial payment shall not constitute any bar, admission, or estoppel or have any other effect as to those payments that are in dispute or the subject of a pending claim.

(3) For each day after 90 days, or 30 days after settlement of a claim, the department shall pay to the contractor interest at the rate of 6 percent per annum on the unpaid balance, not to exceed $300 per day.

History.—ss. 1, 2, ch. 70-168; s. 1, ch. 77-79.

337.143 Adjustment of contract price for bituminous material; providing legislative intent.—

(1) Recognizing that the unprecedented increase in the cost of petroleum products seriously affects a vital segment of the construction industry, legislative intent was, and is, to protect, by this act, said industry from irreparable economic harm and injury. It was not, and is not, legislative intent that any single contractor or group of contractors should receive excess or windfall profits to the detriment of the taxpayers, and the department shall take immediate steps to recoup any excess payments made since July 1, 1974.

(2) The Department of Transportation shall adjust the contract unit price for bituminous material included in any contract for roadway construction for which bids were received by the department prior to April 1, 1974, in accordance with the following:

(3)(a) The adjustment shall be calculated separately for each month during which bituminous material is incorporated into a project, using the following formula: Pa=Id plus 5 cents, where:

1. Pa=The adjusted unit price for bituminous material; and

2. Id=The department's Asphalt Price Index in effect during the month in which the material is incorporated into the project.

(b) The department shall determine the Asphalt Price Index by averaging quotations in effect on the first day of each month at terminals which could reasonably be expected to furnish bituminous materials to road construction projects in the state. However, the department shall require documentation of actual costs paid prior to making any adjustments.

(4) The department shall not make any adjustment under subsection (3)(a) when "Pa" exceeds:

(a) The actual unit price paid by the contractor plus 5 cents; or

(b) The bid price plus the difference in the Asphalt Price Index on December 1, 1973, and the Asphalt Price Index at the time of application.

The department shall use the lesser of subsection (4)(a) or (b) as the basis for adjustment if the provision of subsection (3)(a) does not apply.

(5) No adjustment shall be made for bituminous material used prior to December 1, 1973.

(6) No price adjustment reflecting any further increases in the cost of bituminous material shall be made for any month after expiration of the allowable contract time, including any extensions that may be granted.

(7) The department shall adopt rules to implement payment of this adjustment.

(8) No adjustment shall be made to the contract unit price for bituminous material on any applicable contract unless a contractor agrees to the application of this adjustment for all applicable contracts he holds with the department. The department shall notify each contractor in writing by registered mail of his right to have this section apply to his contracts with the department. If a contractor fails to respond within 15 calendar days of such notice, no adjustment provided for in this section shall be made to any applicable contract.

(9) Any contractor receiving additional compensation under this section shall, if applicable, pay the entire amount of such additional compensation to the subcontractor who performed the asphalt work on the project.

History.—ss. 1, 2, ch. 74-262; s. 1, ch. 76-174.

337.15 Rehearing.—Any applicant for a certificate of qualification aggrieved by the action of the State Highway Engineer may, within 10 days after receiving notification of such action, request in writing a reconsideration by the department of his application, and may submit additional evidence bearing on his qualifications. The department shall thereupon reconsider the application, and may adhere to, modify, or reverse the action of the State Highway Engineer. The department shall act upon any request for reconsideration within 30 days after the filing thereof and shall immediately notify the applicant of the action taken.

History.—s. 94, ch. 29965, 1955; s. 15, ch. 57-318; s. 15, ch. 63-512; ss. 23, 35, ch. 69-106; s. 56, ch. 78-95.

337.16 Delinquent bidding, suspension and revocation of certificate; hearing.—

(1) No contractor shall be qualified to bid when an investigation by the highway engineer discloses

that such contractor is delinquent on a previously awarded contract, and in such case his certificate of qualification shall be suspended or revoked.

(2) The department may suspend, for a specified period of time, or revoke for good cause any certificate of qualification.

History.—s. 95, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 56, ch. 78-95.

337.17 Bid guaranty.—The department shall require guaranty with each bid in an amount to be specified by the department which shall not exceed 10 percent of the preliminary estimate of the cost of the work. The guaranty may, in the discretion of the bidder, be in the form of a cashier's check, bank money order, bank draft of any national or state bank, certified check, or surety bond, payable to the Governor and his successors in office. The surety on any bid bond shall be a company recognized to execute bid bonds for contracts of the federal government.

History.—s. 96, ch. 29965, 1955; s. 16, ch. 57-318; ss. 23, 35, ch. 69-106; s. 1, ch. 77-174.

337.18 Surety bonds required; defaults; damage assessments.—

(1) A bond shall be required in every instance, of the successful bidder in an amount equal to the contract price, the contract price being understood to mean the estimated cost of the particular contract let. The surety on such bond shall be a surety company authorized to do business in the state. All bonds shall be payable to the Governor and his successors in office and conditioned for the prompt, faithful, and efficient performance of the contract according to plans and specifications and within the time period specified, and for the prompt payment of all persons furnishing labor, material, equipment, and supplies therefor; however, wherever an improvement, demolition, or removal contract price is $25,000 or less, the security may, in the discretion of the bidder, be in the form of a cashier's check, bank money order, of any state or national bank, certified check or postal money order.

(2) The department shall adopt regulations for the determination of default on the part of any contractor for cause attributable to such contractor. Every contract let by the department for the performance of work shall contain a provision for payment to the department by the contractor of liquidated damages for any such default. Such liquidated damages shall be one-quarter of 1 percent of the total amount of the contract for each day of such default, but shall not exceed $300 per day for each day such contractor is in default. Any such liquidated damages paid to the department shall be deposited to the credit of the fund from which payment for the work contracted was authorized.

(3) Such bonds shall be subject to the additional obligation that the principal and surety executing the same shall be liable to the state in a civil action instituted by the department or any officer of the state authorized in such cases, for double any amount in money or property the state may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the contractor, his agent, or employees.

History.—s. 97, ch. 29965, 1955; s. 1, ch. 65-40; ss. 23, 35, ch. 69-106; s. 1, ch. 71-40; s. 2, ch. 78-316.

cf.—s. 255.05 Bond of contractor constructing public buildings; suit by materialmen, etc.

337.19 Suits by and against department; limitation of actions; forum.—

(1) Suits at law and in equity may be brought and maintained by and against the department on any claim under contract for work done; provided, that no suit sounding in tort shall be maintained against the department.

(2) Suits against the department under this section can only be commenced within 2 years from and after the time of the completion of the work done.

(3) All actions and suits brought against the department after July 9, 1969, shall be brought in the county or counties where the cause of action accrued or in Leon County.

History.—s. 98, ch. 29965, 1955; ss. 1, 2, ch. 69-391.

337.20 Service of process upon department.—Service of process in suits against the department shall be made upon the secretary of the department.

History.—s. 99, ch. 29965, 1955; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106.

337.21 Agency of the state.—The department shall be an agency of the state for the purpose of carrying out its duties and responsibilities under the law, and as such may sue and be sued in the manner provided by law.

History.—s. 100, ch. 29965, 1955.

337.22 Bid specifications on supplies.—When the department advertises for bids on a contract for supplies, materials, equipment or other items needed by the department, specifications shall be drafted in such manner as shall afford adequate protection to the state as to quality and performance, but no specifications shall be drafted in any manner which shall preclude competition in bidding.

History.—s. 101, ch. 29965, 1955.

337.25 Acquisition, lease and disposal of real and personal property.—

(1) The Department of Transportation may purchase, lease, or otherwise acquire any land or buildings or other improvements, including personal property within such buildings or on such lands, necessary to carry out its duties and functions in acquiring rights-of-way or easements for the construction and maintenance of all roads under the department's jurisdiction, and such property shall be held in the name of the state. A complete inventory shall be made of all real or personal property immediately upon possession or acquisition, and such inventory shall include an itemized listing of all appliances, fixtures, and other severable items; a statement of the location or site of each piece of realty, structure, or severable item; and the serial number assigned to each. Copies of each inventory shall be filed both in the state office and in the district office in which the property is located. Such inventory shall be carried forward to show the final disposition of each item of property, both real and personal.

(2) The department may sell, lease, or convey, in

the name of the state, any land, buildings, or other property, real or personal, which shall have been acquired under the provisions of subsection (1) and which shall not be necessary for the construction of the contemplated road. In disposing of properties as authorized under this section, the department may authorize the proper administrative official to negotiate for the sale of such properties, real or personal, when the value of such properties is less than $100. Properties acquired under subsection (1) which shall not be necessary for construction of the contemplated road, and the value of which shall exceed $100, shall be sold by receipt of sealed competitive bids, after due advertisement, or by public auction held at the site of the improvement which is being sold. However, properties acquired under subsection (1) which shall not be necessary for construction of the contemplated road may be sold by negotiation to the owner holding title to all privately owned abutting properties, or to the owner of the only abutting land between which and the road the property being sold lies, at not less than the appraised value of the properties being sold, where in the discretion of the department public sale would be inequitable. Sales of houses and other structures as provided hereby shall first be made in single units; thereafter, sales in bulk may be made as herein provided. Removal of houses and other structures, when sales are made under bulk sale provisions as herein provided, shall not be permitted until all houses and structures sold in single units have been removed from the site. "Due advertisement" under this section shall be advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which public auction is to be held.

(3) The department shall supply consecutively numbered receipts for each item sold. Such receipts shall contain the purchase price and the inventory serial number assigned to the item sold. A copy of such receipt shall be attached to the appropriate inventory and filed in the state office.

(4) Whenever any property has been donated to the state for road purposes and the road for which the property was donated has not been constructed for a period of at least 2 years and no plans have been prepared for the construction of said road, the department may authorize reconveyance of the donated property for no consideration to the original donor, his heirs, successors, assigns, or representatives.

(5) In addition to the options otherwise available to the department, property held by the department which is no longer used or needed may be conveyed without consideration to a county, municipality, or other unit of local government to be used for a public purpose. In the case of property acquired for use as a borrow pit but which is no longer needed, the department may sell such property to the owner of the parcel of abutting land from which the borrow pit was originally acquired, provided the sale shall be at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which is paid by the owner of such abutting land.

(6) In the case of property originally acquired specifically to provide replacement housing for persons displaced by federally assisted transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive no less than its investment in such properties or fair market value, whichever is lower. It is expressly intended that this benefit be extended only to those persons actually displaced by such project. Disposition to any other persons must be for fair market value.

History.—s. 104, ch. 29965, 1955; s. 1, ch. 61-430; s. 1, ch. 65-48; s. 1, ch. 65-33; ss. 23, 35, ch. 69-106; s. 2, ch. 77-44; s. 1, ch. 77-244; s. 1, ch. 78-282; s. 141, ch. 79-400.

337.26 Execution and effect of instruments; no warranties.—

(1) An instrument of sale, lease or conveyance executed in the name of the department, and signed by the proper administrative official with the corporate seal of the department affixed thereto, certified to by the secretary, shall be effective to pass the title or interest of the state in the property conveyed.

(2) No instrument of conveyance by the department shall warrant the title to any property sold, leased or conveyed.

History.—s. 105, ch. 29965, 1955; s. 17, ch. 57-318; ss. 23, 35, ch. 69-106.

337.27 Rights-of-way acquired by Division of Administration; eminent domain; procedure; title; cost.—

(1) The power of eminent domain is vested in the Division of Administration of the Department of Transportation to condemn all necessary lands and property for the purpose of securing rights-of-way, borrow pits and drainage ditches for existing, proposed or anticipated roads in the State Highway System or State Park Road System. The division shall also have the power to condemn any material and property necessary for such purposes.

(2) Such condemnation proceedings shall be maintained in the name of the division, and the same rights and powers shall accrue to the division as accrue to the counties under the procedure defined and set forth in chapters 73 and 74 and ss. 127.01 and 127.02.

(3) Title to any land acquired in the name of the division shall vest in the state.

(4) The Division of Administration is authorized to pay the judgment or compensation, including deposits required, awarded in any such proceedings out of any funds coming into the hands of the department for the maintenance or construction of any road on the State Highway or State Park Road System.

History.—s. 106, ch. 29965, 1955; s. 18, ch. 57-318; ss. 23, 35, ch. 69-106.
cf.—Chs. 73, 74, 127 Eminent domain.

337.28 Rights-of-way furnished by counties; eminent domain; contracts with department; bond.—

(1) The several counties shall be authorized to acquire rights-of-way and other necessary land incident thereto for the roads of the state secondary system within their respective counties.

(2) The several counties may furnish, at their own expense, rights-of-way for any road in the State Primary System or State Park Road System provided the same shall be first surveyed and located in the county by the Division of Road Operations.

(3) Condemnation proceedings for the acquisi-

tion of rights-of-way, and other necessary land, as herein provided, shall be brought by the commissioners and prosecuted as prescribed in chapters 73 and 74; and title to such land shall vest in the state.

(4) The various counties may enter into contracts with the Division of Administration to furnish rights-of-way, borrow pits, drainage ditches and material and property necessary and useful for road building purposes.

(5) Upon request of the Division of Administration the county shall furnish a bond, with sufficient sureties, conditioned to indemnify the department against expenses and liabilities incurred by reason of any breach of such contract by the county.

(6) The counties may use any road funds coming into their hands for the purpose of acquiring by purchase or condemnation any such lands required for rights-of-way for roads of the State Highway or State Park Road System.

History.—s. 107, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

337.29 Title to roads in State Highway, County Road, City Street, and State Park Road Systems; recording deeds and maps.—

(1) Title to all roads designated in the state highway system or State Park Road System shall be in the state, unless otherwise provided herein.

(2) Upon the vesting of title to any lands for highway purposes in the state, the commissioners or public municipal authorities, as the case may be, shall forthwith issue a deed or right-of-way map to the state covering said lands, which shall be duly recorded. Recordation of deeds or right-of-way maps shall also be effected upon acquisition of any lands by the Division of Administration.

(3) Title to all roads transferred in accordance with the provisions of s. 335.04 shall be in the governmental entity to which said roads have been transferred, upon the recording of a right-of-way map by the appropriate governmental entity in the public land records of the county or counties in which such rights-of-way are located. Liability for torts shall be in the governmental entity having operation and maintenance responsibility as provided in s. 335.04(4). Except as otherwise provided by law, a municipality shall have the same governmental, corporate, and proprietary powers with relation to any public road or right-of-way within the municipality which has been transferred to another governmental entity pursuant to s. 335.04 that the municipality has with relation to other public roads and rights-of-way within the municipality.

History.—s. 108, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 16, ch. 77-165; s. 5, ch. 77-416; s. 2, ch. 78-285.

337.32 State Road Arbitration Board.—

(1) It is hereby declared to be the public policy of the State of Florida that it is necessary and essential in the public interest to facilitate the prompt, peaceful, and just settlement of conflicts and disputes arising out of contracts between the Road Operations Division of the department and the various contractors with whom it transacts business, and to that end the Legislature does hereby establish the State Road Arbitration Board, hereinafter referred to in this section as the board.

(2) The State Road Board of Arbitration shall be composed of three members, one to be appointed by the Secretary of the Department of Transportation, and one to be elected by those construction companies who, as of July 5, 1969, are under contract with the department. As to each subsequent election only those companies under contract at the time of the election shall be eligible to cast their vote. The third member shall be chosen by agreement of the other two. Each shall serve for a 2-year term at which time the secretary of the department or the construction companies may either retain their representative or choose to appoint or elect another member.

(3) The arbitration board shall elect a chairman. It may be called into session by the secretary of the department or by a contractor who has a dispute with the division which, under the rules of the board, may be the subject of arbitration. The party requesting the board's consideration shall give notice of the same to each member. The board shall have jurisdiction to hear matters concerning $25,000 or less.

(4) A quorum of two members shall be necessary to conduct a meeting. Upon being called into session, the board shall promptly proceed to a determination of the issue or issues in dispute.

(5) When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the board shall have power only to determine the proper interpretation and application of the contract provisions which are involved. Any investigation made by less than the whole membership of the board shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the board as part of the record of its proceedings.

(6) The board of arbitration shall hand down its order within 60 days after it is called into session. However, the Governor may for good cause extend said period for not to exceed an additional 30 days. If all three members of the board do not agree, the order of the majority shall constitute the order of the board.

(7) The members of the board shall receive no compensation for the performance of their duties hereunder, but they shall be reimbursed for expenses as provided in s. 112.061, when they attend a meeting or perform a service in conformity with the requirements of this section.

History.—s. 1, ch. 69-351; ss. 23, 35, ch. 69-106; s. 1, ch. 70-186; s. 56, ch. 78-95.

337.33 Qualifications of professional consultants; finding by the department.—Prior to the employment by the Department of Transportation of any professional consultant, the department shall make a finding, evidenced by an entry in its minutes, that the person or firm to be employed is fully qualified to render the desired service. Among the factors to be considered in making this finding are the professional status and the past record and experience of the candidate and the adequacy of the personnel making up his organization.

History.—s. 1, ch. 70-64.

337.34 Completion of interstate highway system.—

(1) The Department of Transportation is expedi-

tiously to complete the construction of the Interstate Highway System.

(2) The department is authorized and directed to make repayment of any funds which may be appropriated to the department from the General Revenue Fund for interstate highway purposes upon application for and receipt of funds acquired under s. 115 of Title 23 of the U.S. Code as amended. No General Revenue funds appropriated for interstate highway purposes may be expended until an agreement has been signed with the federal government, providing for repayment of such funds on a 90-10 matching basis. Full reimbursement of the federal share of the loan shall be made by the federal government upon completion of the interstate highway system in Florida.

History.—ss. 1, 2, ch. 73-309; s. 2, ch. 75-283.

CHAPTER 338

LIMITED ACCESS, BRIDGE, AND TOLL FACILITIES; UTILITIES

338.01 Authority to establish limited access facilities.—

(1) The highway authorities of the state, counties, cities, towns, and villages, acting alone or in cooperation with each other or with any federal, state, or local agency of any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within incorporated cities and towns such authority shall be subject to municipal consent; provided further, such consent shall not be necessary when such limited access facility shall be or become a part or link of a municipal connecting-link road as defined in this code.

(2) If the jurisdiction or control of either the department or the commissioners over any public highway or highways is jointly involved or would be affected by the exercise of such authority, their joint action or agreement shall be necessary to make such exercise of authority hereunder effective.

(3) Such action shall be taken by appropriate resolution or ordinance of the highway authority or authorities, and notice of such action shall be given by publication in a newspaper of general circulation in the locality affected at least 15 days before such authority shall become effective, and appropriate traffic signs and markers shall be erected along the facility affected to give due notice to public travel of the action taken hereunder.

(4) The highway authorities of the state, counties, cities, villages, and towns, in addition to the specific powers granted in this law shall also have and may exercise, relative to limited access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Such units may regulate, restrict, or prohibit the use of such limited access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a limited access facility as contained in this law.

(5) Except to the extent authorized by law for turnpike projects, no automotive service station or other commercial establishment for serving motor vehicle users, except public utility facilities, shall be constructed or located within the right-of-way of, or on publicly owned or publicly leased land acquired or used for, or in connection with, a controlled access facility; provided that nothing in this section shall apply to any right-of-way extending to any mean high waterline of any body of water.

History.—s. 111, ch. 29965, 1955; s. 1, ch. 61-435; ss. 23, 35, ch. 69-106.
cf.—s. 334.03 Definition of limited access facilities.

338.02 Designation; new and existing facilities; grade crossing eliminations.—

(1) The highway authority of the state, county, city, town, or village may designate and establish limited access highways as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility.

(2) The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of limited access facilities with existing state and county roads, and city and town or village streets, by grade separation or service road, or by closing of such roads and streets at the right-of-way boundary line of such limited access facility; and after the establishment of any limited access facility no highway or street which is not part of said facility shall intersect the same at grade. No city, town, or village street, county or state highway or other public way shall be opened into or connected with any such limited access facility without the consent and previous approval of the highway authority in the state, county, city, town or village having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby.

History.—s. 112, ch. 29965, 1955.

338.03 Design of limited access facility.—

(1) The highway authorities of the state, county, city, town and village are authorized to so design any limited access facility and to so regulate, restrict, or

prohibit access as to best serve the traffic for which such facility is intended; and its determination of such design shall be final. In this connection such highway authorities are authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing section, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices.

(2) No person shall have any right of ingress or egress to, from or across limited access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

History.—s. 113, ch. 29965, 1955.

338.04 Acquisition of property and property rights for limited access facility.—

(1) For the purposes of this law, the highway authorities of the state, county, city, town, or village may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions.

(2) All property rights acquired under the provisions of this law shall be in fee simple.

(3) In connection with the acquisition of property or property rights for any limited access facility or portion thereof, or service road in connection therewith, the state, county, city, town, or village highway authority may, in its discretion acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right-of-way proper.

History.—s. 114, ch. 29965, 1955.

338.05 Authority of local units to consent.— The highway authorities of the state, city, county, town, and village are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of limited access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this law.

History.—s. 115, ch. 29965, 1955.

338.06 Local service roads.—In connection with the development of any limited access facility the state, county, city, town, or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over limited access facilities under the terms of this law, if in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the limited access facility proper by means of all devices designated as necessary or desirable by the proper authority.

History.—s. 116, ch. 29965, 1955.

338.07 State bridges, authority to erect; procedure.—

(1) The Division of Road Operations is authorized to enter into contracts for, and to make regulations for the construction and maintenance of bridges on roads designated as part of the state highway system or state park road system, and other bridges as may be placed under its supervision and control by law, or by resolution of the commissioners or board of bond trustees of any county, or district, or other subdivision of any county.

(2) The Division of Road Operations shall prepare plans and specifications for all such proposed work, other than maintenance work of a regular or routine nature, and advertise for bids on same at least once a week for not less than 2 consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located.

(3) The department may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to readvertise or perform the work with convict labor or free labor.

History.—s. 117, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

338.071 Safety inspection of bridges.—

(1) For the purposes of this section, the word "bridge" means a publicly owned structure, including supports, erected over a depression or an obstruction such as water or a highway or railway, having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches or extreme ends of openings for multiple boxes; it may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(2) Prior to October 1, 1977, and at regular intervals thereafter not to exceed 2 years, each bridge on a public highway, road, or street shall be inspected as to the structural soundness and safety thereof for the passage of traffic thereon. The thoroughness with which bridges are to be inspected shall depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The jurisdictional authority or owner shall be responsible for having inspections performed and reports prepared in accordance with the provisions contained herein.

(3)(a) Each structure defined as a bridge under subsection (1) and being used by the public is required to be inspected by a qualified bridge inspector as defined herein as to its safe load-carrying capacity and traffic safety.

(b) All inspections are to be reported on a format designated by the Department of Transportation and forwarded to the department at intervals pursuant to subsection (2). Data on newly completed structures, or any modification of existing structures, which would alter previously recorded data on the inspection reports shall be submitted to the depart-

ment within 90 days by the jurisdictional authority or owner.

(c) The Department of Transportation shall maintain inspection reports and an inventory of bridges reported pursuant to this section.

(4)(a) Individuals inspecting bridges and completing reports required by this section shall possess the following minimum qualifications:

1. Be a registered professional engineer; or

2. Have a minimum of 5 years' experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course approved by the department.

(b) Individuals executing reports required by this section shall be registered professional engineers.

(5) Within 6 months following the respective dates specified in subsection (2), the department shall prepare a report of its findings with respect to each such bridge or other structure whereon significant structural deficiencies were discovered and file such report with the Governor and the presiding officer of each house of the Legislature. A copy of the report shall be furnished by the department to each member of the Legislature requesting it.

History.—ss. 1-3, ch. 69-271; ss. 23, 35, ch. 69-106; s. 1, ch. 75-137; s. 1, ch. 77-174.

338.08 Cooperation with adjoining states as to connecting bridges.—

(1) The Division of Road Operations may, whenever it deems it practicable and to the best interests of the state, cooperate with any highway department of an adjoining state, or any political subdivision or other duly authorized agency therein, in the construction, building, or by participation in the cost of purchase, of any bridge, which extends from each adjoining state so that such bridge or one of its approaches physically connects, or when constructed will physically connect, any designated and established road of the state highway system of Florida, to the extent of 50 percent of the construction cost or purchase price of any such bridge.

(2) The expense of constructing or acquiring any such bridge shall be paid from funds provided for use of the department for state road purposes.

(3) Nothing in this section is intended to contravene the paramount power of the Congress to regulate and control interstate bridges, or bridges over navigable waters, and the authority hereby granted the department shall be exercised in conformity with permissive acts of the Congress.

History.—s. 118, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

338.12 Toll facilities; contracts for construction; franchises; construction supervised by Division of Road Operations.—

(1) The Division of Road Operations may contract for the construction, ownership, maintenance and operation of toll bridges, tunnels, viaducts, fills, roads, or trestle structures, and approaches thereto, used in connection with the roads and bridges of the state highway or state park road system.

(2) For this purpose the division may grant an exclusive franchise to run for a period of 30 years or until such structures shall be acquired by the state. Any person granted a franchise under the authority herein shall comply with the terms and conditions hereinafter set forth. No franchise shall be granted until the same has been approved by the commissioners of each county affected.

(3) The provisions of s. 337.29 shall not apply to such toll facilities, and title shall not vest in the state until any bonded indebtedness is retired.

(4) The division shall approve the fairness and equity of the tolls, or the schedule of tolls, submitted by the person contracting for any such toll facility; and no tolls or schedules of tolls shall be put in force and operation until so approved. The division may from time to time change and revise such tolls and schedules.

(5) So long as any such toll facility and approaches thereto shall remain the property of the contractor, or his assigns, neither the state, nor the division nor any subdivision of the state, shall permit the construction or operation of any other bridge, viaduct, road, fill or trestle structure which shall conflict in any way with the terms of the contract entered into for the construction of such toll facility and approaches thereto between the contracting person and the division, nor shall the state or any subdivision thereof interfere in any manner with the contracting person, or his assigns, in the maintenance or operation of any such toll facility and approaches thereto, except as may be necessary for the public safety or for the compelling compliance with the contract between the division and such contracting person.

(6) Every such toll facility and approaches thereto to be constructed and erected by any contracting person shall be constructed under the supervision of the Division of Road Operations, and according to plans and specifications made or approved by the division, and the cost thereof to be approved by the division.

History.—s. 122, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

338.13 Toll facilities; purchase, lease, rent, or termination of.—

(1) The Division of Road Operations is authorized to purchase, lease or rent annually any ferry and any toll bridge or road, for use in connection with the roads of the state highway system or state park road system.

(2) The division shall have the exclusive right and privilege at any time after 30 years from the completion of any such toll facility and approaches thereto, to purchase and acquire the same from the owner, which option shall be retained by the terms and conditions of the contract between the contracting person and the division when the original contract is made.

(3) The division shall have the right at any time after the completion of any such toll facility and approaches thereto, to lease or rent annually the same from the owner, subject to the terms and conditions provided for in the contract between the contracting person and the division. Upon so entering into any lease or rental of any such toll facility and approaches thereto, the division may provide for a necessary sinking fund to retire the principal value and cost of construction of such facility and approaches thereto. The division shall also have the right to lease and rent annually any toll bridges and roads heretofore constructed on, or connecting any

road of the state highway or state park road system subject to the provisions of this section with respect to the amount of annual rental which may be paid. Any moneys used for any of the purposes provided by this section shall come from funds allocated in the annual budget of the division for such purposes.

(4) The division may, at any time after the completion of any such toll facility, purchase and acquire the same from the owner subject to terms and conditions provided in the contract between the contracting person and the division, and may also purchase and acquire any toll road or bridge constructed under the laws of Florida. In no case shall the division be permitted to take over by purchase any such facility subject to bonded or mortgaged indebtedness, unless such bonded or mortgaged indebtedness shall have been created in favor of an agency of the Federal Government, in which event said purchase is expressly authorized, and providing further, however, that any moneys used for the purposes herein provided shall come from funds allocated in the annual budget of the division.

(5) When, through the construction of roads or bridges, a reasonable alternative route is provided for users of a ferry operated by the State of Florida, and when all legal requirements or bond covenants relating to the operation of such ferry are satisfied, the operation of the ferry shall be terminated by the state.

History.—s. 123, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 2, ch. 78-378.

338.14 Division of Road Operations may contract with public project owners.—

(1) The Division of Road Operations is authorized to enter into agreements with any municipal corporation, county, district authority, or any political subdivision, or any agency or commission of the state, each of which is hereafter referred to as the public project owner which has heretofore acquired or constructed any toll revenue-producing bridge, causeway, tunnel, ferry, toll road or any combination thereof hereafter referred to as the project or which has adopted, or may hereafter adopt proceedings pursuant to which such public project owner is to acquire or construct any toll revenue-producing bridge, causeway, tunnel, ferry, road, toll road or any combination thereof hereinafter referred to as the project, for the purpose of doing or agreeing to do any one or more of the following:

(a) Leasing from any public project owner any project or part thereof for such period of years and under such terms and provisions, including provisions for the operation and maintenance thereof either by the public project owner or by the division, as may be considered desirable and be specified in the lease or leases.

(b) Purchasing from any public project owner any project or part thereof under such terms and provisions, including provisions for the operation and maintenance thereof either by the public project owner or by the division, as may be specified in the purchase contract or contracts.

(c) Paying the cost or any part of the cost of the operation and maintenance of any project for such period as may be fixed in such agreement. The payment of such cost may be made a charge upon the general revenues of the division or may be made a charge solely on certain specified revenues, including revenues derived from the state gasoline tax, or may be made a charge partly upon such general gasoline tax revenues, and a charge partly upon such certain specified revenues.

(d) Entering into such agreements with the federal government and any of its branches or agencies and doing such things as may be necessary to secure federal aid money, and assistance in the acquisition, construction, improvement, repair, maintenance and operation of any project or part thereof.

(e) Constructing, improving, repairing, maintaining or operating any project or part of project.

(f) Making to the public project owner any grant of funds, materials, property, easements, or rights-of-way for use in the acquisition, construction, improvement, repair, maintenance or operation of any project or part thereof.

(g) Operating or maintaining any project or part thereof as a road of the state highway or state park road system or part thereof, and this in spite of the fact that title to such project or part thereof remains in the public project owner. The provisions of any existing law requiring title to the state roads to be vested in the state shall not be operative as to projects or parts of projects made roads of the state highway or state park road system or maintained and operated as such roads under the provisions of this section.

(h) Making available to any public project owner, for paying the cost or part of the cost of constructing, repairing, improving, maintaining or operating any project, any federal aid funds or any other funds under the control of the division which may properly be used for such purposes.

(2) Any such public project owner is hereby authorized to enter into an agreement or agreements with the department for the purpose of accomplishing any one or more of the purposes set out in subsection (1) and any such public project owner may use any funds available to it by authority of law for use on any such project to accomplish any such purposes covered by any such agreement or agreements, and the division is hereby authorized to use federal aid or any state funds appropriated or allocated to it for state road purposes to carry out said agreements with public project owners. Any public project owner which is a county may use any county road and bridge funds from whatever source derived for accomplishing any of said purposes for any such project which is a county purpose.

(3) The division may make any project, or part thereof, a part of the state highway or state park road system, and may make any road of which any project comprises a part, a road of the state highway or state park road system, and may do so either without the vesting of title to such project in the state or under such provision for the later vesting of title in the state as may be considered advisable by the division.

(4) When any agreement shall have been entered into or made under the provisions of this law, any public project owner which is a party thereto or the division shall be entitled and are hereby empowered to enforce the provisions of such agreement through

appropriate action in any court of competent jurisdiction.

(5) Whenever any agreement is made for operation of any project or part thereof by the division under the provisions of this law, the division may either operate such project or part thereof free from tolls or may fix and collect such tolls for the use thereof as it may from time to time see fit as may be provided in such agreement, and if tolls are so charged and collected the division may dispose of such tolls for any purpose and in any manner which it may deem fit and which may be provided in such agreement.

History.—s. 124, ch. 29965, 1955; ss. 23, 35, ch. 69-106.
cf.—s. 337.29 Title to roads in state highway and state park systems.

338.15 Division of Road Operations may lease or rent toll bridges of counties and municipalities; exception.—

(1) When any toll bridge on the state highway or state park road system has been or may be constructed by or for any county or municipality, which county or municipality has issued its bonds or other obligations to pay all or a part of the costs of construction of such bridge, and which bridge is authorized by law to be operated by said county as a toll bridge only for the purpose of paying off the obligations of such county or municipality for the cost of construction of such bridge, upon which event the said bridge will by provision of law become the property of the state, the Division of Road Operations shall have the right and privilege to rent or lease from such county or municipality and to take over, maintain and operate free of tolls such bridge upon paying to said county annually as rental therefor such sum as may be agreed upon between the division and the commissioners of such county or the governing body of such municipality, not to exceed the sum which shall be necessary to pay the interest and meet the requirements of the sinking fund created to retire the obligations of the county incurred in the construction of such bridge, and which rentals shall be applied to that purpose and no other; and which rentals the division may contract for and pay. Any moneys used by the division for the purposes of this section shall be paid out of funds allocated in the annual budget of the division to the district in which the bridge so rented or leased is located.

(2) The provisions of this section shall not apply to any toll bridge constructed by or for any county where the freeholders or qualified electors of such county or municipality shall have voted within 2 years prior to June 5, 1933, at any referendum election, however called or held, to retain tolls for any general or special county purpose; nor to toll bridges located wholly within the corporate limits of any city or town situated in any county having a population of more than 100,000 according to the last federal census.

History.—s. 125, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

338.16 Certain toll bridges and toll roads prohibited.—

(1) No person shall establish, build or complete any toll bridge over any stream or body of water on that state road extending from the Georgia state line, at a point on the St. Mary's River known as Wild's Landing, to Orlando, via Yulee, Jacksonville, Orange Park, Green Cove Springs, Palatka, East Palatka, Crescent City, DeLand, and Sanford heretofore declared, designated and established as a road of the state highway system by the department; nor shall any person establish, build or complete as a toll road any part of the aforesaid state road.

(2) No person shall charge toll for passage over any such toll bridge or toll road on such state road.

(3) In any case where a toll bridge may be established, built or completed by any person at a point not directly on such state road but near thereto, and such bridge shall not be on any public road leading to any community not reached by such state road, but is on a road or way which is in fact only a detour from the state road to furnish passage for travel using such state road, it is unlawful to connect such toll bridge by any road or way leading from such bridge to such state road, and the Division of Road Operations shall prevent such connection from being made, by placing and maintaining a fence or barrier on the right-of-way of such state road across such connecting way or road, and the division may resort to a court of equity to enjoin anyone violating or attempting to violate the provisions of this section.

(4) Nothing contained in this section shall be construed to apply to toll roads or toll bridges heretofore or hereafter established or built on any road or roads which connect with such state road and lead to or serve any community, city or town in the state; and the provisions of this section shall not be construed to repeal or limit in any way any special act of the Legislature providing for or governing the construction and operation of any toll road or bridge.

(5) The terms of this section shall apply in any case where the stream or body of water spanned by the bridge lies partly within the boundary of this state and partly within the boundary of an adjoining state, as well as in case the stream or body of water lies wholly within this state.

(6) Anyone who violates any of the terms of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 126, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 237, ch. 71-136.

338.17 Use of right-of-way for utilities subject to regulation; permit.—

(1) The Division of Road Operations, commissioners, and authorities of municipalities or special districts hereinafter referred to as the authority having jurisdiction and control of public roads are authorized to prescribe and enforce reasonable regulations with reference to the placing and maintaining along, across, or on any road under their respective jurisdictions any electric transmission, telephone or telegraph lines, pole lines, poles, railways, ditches, sewers, water, heat, or gas mains, pipelines, fences, gasoline tanks and pumps, or other structures hereinafter referred to as the utility.

(2) The authority may grant to any person, who is a resident of this state, or to any corporation organized under the laws of this state, or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such regulations as the authority may adopt. No utility shall be in-

stalled, located, or relocated unless authorized by a written permit issued by the authority. Such permit shall be required when inspection or repair of the utility interferes with the normal flow of traffic.

(3) Nothing herein shall restrict the action of public authorities in extraordinary emergencies. And nothing in this law shall be construed as modifying or abridging the powers conferred upon the Florida Public Service Commission in Title XXVI, the intent of this section being that the power hereby granted to the authorities shall be exercised only in such manner as not to conflict with the valid exercise of powers granted to such commission.

History.—s. 127, ch. 29965, 1955; s. 1, ch. 63-279; s. 1, ch. 65-52; ss. 23, 35, ch. 69-106.
cf.—Ch. 362 Utilities along roads.

338.18 Damage to road caused by utility.—When any public road is damaged or impaired in any way because of the installation, inspection or repair of any utility located thereon, the owner of the utility shall, at his own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the authority is authorized to do so and charge the cost thereof against the owner under the provisions of s. 338.20.

History.—s. 128, ch. 29965, 1955.
cf.—Ch. 362 Utilities along roads.

338.19 Relocation of utility; expenses.—

(1) Any utility heretofore or hereafter placed upon, under, over or along any public road that is found by the state or other authority to be unreasonably interfering in any way with the convenient, safe, or continuous use or maintenance, improvement, extension or expansion of such public road shall, upon 30 days' written notice to the utility or its agent, by the state or other authority be removed or relocated by such utility at its own expense; provided, however, that if the relocation of utility facilities, as referred to in s. 111 of the Federal Aid Highway Act of 1956, Public Law 627 of the Eighty-Fourth Congress, is necessitated by the construction of a project on the Federal Aid Interstate System, including extensions thereof within urban areas, and the cost of such project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall relocate same upon order of the Division of Road Operations, and the state shall pay the entire expense properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(2) If such removal or relocation is incidental to work to be done on such road, the notice shall be given at the same time the contract for the work is advertised for bids, or 30 days prior to the commencement of such work by the authority.

(3) Whenever an order of the authority requires such removal or change in the location of any utility from the right-of-way of a public road, and the owner thereof fails to remove or change the same at his own expense to conform to the order within the time stated in the notice, the authority shall proceed to cause the utility to be removed. The expense thereby incurred shall be paid out of any money available therefor, and shall, except in those cases where the state is required by subsection (1) to pay the expense, be charged against the owner and levied and collected and paid into the fund from which the expense of such relocation was paid.

History.—s. 129, ch. 29965, 1955; s. 1, ch. 57-135; s. 1, ch. 57-1978; ss. 23, 35, ch. 69-106.
cf.—Ch. 362 Utilities along roads.

338.20 Removal or relocation of utility facilities; notice and order; court review.—

(1) Whenever it shall become necessary for the authority to remove or relocate any utility as provided in the preceding section, the owner of the utility, or his chief agent, shall be given notice of such removal or relocation and an order requiring the payment of the cost thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days, in which to appear before the authority to contest the reasonableness of the order. Should the owner or his representative not appear, the determination of the cost to the owner shall be final. Authorities considered agencies for the purposes of chapter 120 shall adjudicate removal or relocation of utilities pursuant to chapter 120.

(2) A final order of the authority shall constitute a lien on any property of the owner and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the owner's property is located.

(3) The owner may obtain judicial review of the final order of the authority within the time and in the manner provided by the Florida Appellate Rules by filing in the circuit court of the county in which the utility was relocated a petition for a writ of certiorari in the manner prescribed by said rules or in the manner provided by chapter 120 when the respondent is an agency for purposes of chapter 120.

History.—s. 130, ch. 29965, 1955; s. 16, ch. 63-512; s. 1, ch. 69-267; ss. 23, 35, ch. 69-106; s. 56, ch. 78-95.

338.21 Elimination of railway-highway crossing hazards.—

(1) The Department of Transportation, in cooperation with the several railroad companies operating in the state, shall determine and adopt a program for the expenditure of moneys now available, and of the moneys to become available, for the construction cost of projects for the elimination of hazards of railway-highway crossings.

(2) Every railroad company maintaining a railway-highway crossing shall, upon reasonable demand and notice from the department, install, maintain, and operate at such crossing an automatic flashing light signal and ringing bell, the design of which shall be approved by the department, so that it will give to the users of such road reasonable warning of the approach of trains or cars on the tracks of said railroad company, the cost of such signals and the expense of installation to be paid from the moneys described in subsection (1).

(3) The department shall have regulatory authority over all public railroad crossings in the state, including the authority to issue a permit for the opening and closing of such crossings.

(4) The department is authorized to regulate the speed limits of railroad traffic on a municipal, coun-

ty, regional, or statewide basis.

(5) Jurisdiction to enforce rules and regulations so adopted shall be as provided in s. [1]316.640, and any penalty for violation of a rule and regulation so adopted shall be imposed upon the railroad company. Nothing herein shall prevent a city, county, or other public authority from passing an ordinance relating to the blocking of a crossing as provided in chapter 351.

History.—s. 131, ch. 29965, 1955; s. 1, ch. 63-88; ss. 23, 35, ch. 69-106; s. 1, ch. 72-165; s. 49, ch. 76-31; s. 56, ch. 78-95.

[1]**Note.**—See s. 3, ch. 78-88 concerning jurisdiction over railroad safety.

CHAPTER 339

TRANSPORTATION FINANCE AND MISCELLANEOUS PROVISIONS

339.04 Disposition of proceeds of sale or lease of realty by Division of Administration.—Any money derived from the sale, lease or conveyance of any property by the Division of Administration shall be deposited in the state treasury and placed in the state transportation trust fund.

History.—s. 135, ch. 29965, 1955; s. 2, ch. 61-119; ss. 23, 35, ch. 69-106; s. 1, ch. 71-39; ss. 2, 3, ch. 73-57.

339.05 Assent to federal aid given.—The state hereby assents to the provisions of the Act of Congress approved July 11, 1916, known as the Federal Aid Law, which Act of Congress is entitled, "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," and assents to all subsequent amendments to such Act of Congress and any other act heretofore passed or that may be hereafter passed providing for federal aid to the states for the construction of highways and other related projects. The Division of Road Operations is authorized to make application for the advancement of federal funds and to make all contracts and do all things necessary to cooperate with the United States Government in the construction of roads under the provisions of said Acts of Congress and all amendments thereto.

History.—s. 136, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

339.06 Division of Road Operations may amortize advancements from United States.—The Division of Road Operations may set aside, from any revenues allocated to it by law, such sums as are necessary and sufficient to properly amortize any amount advanced under Act of Congress, and to make suitable provision from year to year in its annual budget for such amortization.

History.—s. 137, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

339.07 National aid expended under supervision of Division of Road Operations.—All funds and all road building equipment, supplies and materials that have heretofore or may hereafter be apportioned to this state by Congress to aid and assist in road building shall be expended and used under the control and supervision of the Division of Road Operations, and any and all expenses necessary to secure such equipment, supplies and materials for the use of the state to be used on the roads under the supervision of the division, are authorized to be paid out of the state transportation trust fund.

History.—s. 138, ch. 29965, 1955; s. 24, ch. 57-1; s. 2, ch. 61-119; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57.

339.08 Use of gas tax revenue by department.—

(1) The department shall by regulation provide for the expenditure of the proceeds of the first gas tax accruing to the Division of Road Operations, in accordance with its annual budget.

(2) Such regulations shall provide that the use of the first gas tax be restricted to the following purposes:

(a) To pay administrative expenses of the department, including administrative expenses incurred by the several state road districts.

(b) To pay the cost of construction of the state highway system and state park road system, including amounts necessary to match federal aid funds for such purposes. The department shall also match federal aid highway funds allocated to the county road and city street systems.

(c) To pay the cost of maintaining the state highway system and state park road system.

(d) To make such other lawful expenditures of the department for the payment of which no other funds may be specified, including the payment of

compensation to employees of the Division of Road Operations except those employees whose jobs are designated as "J" in the official Florida merit system pay plan for overtime work in excess of 40 hours per week or other accepted standard work week, in cash or by way of compensatory time as may be prescribed by regulation of the department. Any other laws in conflict herewith are hereby repealed.

(e) To pay the cost of maintaining state roads which were classified or maintained as primary roads on January 1, 1956, and not included by the road board in the state primary highway system when said system was reclassified by the road board in June, 1956, pursuant to the provisions of this code.

(3)(a) The department may use available funds for the preparation of preliminary engineering plans with valid cost estimates, which plans and estimates shall be completed prior to the issuance of any bonds on all revenue-producing transportation projects. However, the department shall be reimbursed for the costs incurred for such preparation from the proceeds of the bond issue.

(b) The department shall not use or pledge the proceeds of the first gas tax on any revenue-producing transportation project without legislative approval. This limitation on pledging the proceeds of the first gas tax shall in no way impair the ability of the department or the counties to enter into covenants to complete transportation projects from all other legally available funds.

(c) No state bonds shall be sold for any revenue-producing transportation project if the proceedings authorizing such bonds include a covenant to complete by the department from the proceeds of the first gas tax until the department shall have made cost estimates based on the most current information available after approval of the final environmental impact statement for such project and shall have determined based on such estimates that the projected available funds for any such project, excluding the use of any proceeds from the first gas tax pursuant to a covenant to complete, are sufficient to pay for such project. No additions shall be made to any revenue-producing project for which a covenant to complete from the first gas tax has been made which would expand the scope of such project unless such additions are specifically approved by the Legislature. For the purposes of this subsection, "project scope" shall mean the terminal points, the number of interchanges, and grade separations as approved by the Legislature. No contingency funds in the construction trust fund for any revenue-producing project for which a covenant to complete from the first gas tax has been made shall be expended for any purpose other than such project until the completion of such project; however, such funds may be expended for other purposes if permitted by the proceedings authorizing such bonds and if the department certifies to the Executive Office of the Governor that such contingency funds are not required for the completion of the project and are available and sufficient for such other purposes and the Executive Office of the Governor approves such certification in writing to the department.

(d) In any lease-purchase agreement, which includes a covenant to complete by the department from the proceeds of the first gas tax, the department shall provide for the expeditious repayment of any and all costs incurred by the department as a result of the covenant to complete the transportation project. Such agreement shall provide for such repayment from excess tolls or second gas tax proceeds not required for payment of principal, interest, reserves, and other required deposits for the bonds and for the annual reimbursement from tolls or other local moneys or both, to the extent legally available, of all operating and maintenance costs of the facilities, as provided by the applicable provisions of the State Constitution and the bond proceedings.

(e) The provisions of subsections (c) and (d) shall not apply to any revenue-producing project approved by the Legislature prior to July 1, 1978.

(4)(a) Beginning July 1, 1977, the department shall develop and implement a phased transfer of the administrative responsibility for construction programs financed by the 80 percent portion of the second gas tax to the respective counties. In counties of over 100,000 population, this transfer of responsibility shall be made at the rate of not less than 20 percent per year and shall be completed by July 1, 1980. In counties having less than 100,000 population, there shall be an orderly transfer of responsibility, but in no case shall the transfer extend beyond July 1, 1980.

(b) All projects let to construction contract on or before June 30, 1977, shall be completed by the department. If requested by a county, the department may undertake or complete all stages of a project if it can be completed through the construction stage by July 1, 1980. Adequate arrangements shall be agreed to between the counties and the department to ensure that the department has sufficient funds to complete its projects as previously indicated.

(c) The Department of Transportation shall, until July 1, 1980, lend its assistance, advice, and counsel to the counties, when requested, in order to assist in the development of a program for the management of the county road program. This assistance may include such areas as consultant procurement, right-of-way acquisition, specifications, and construction inspection.

(5) The department is required to maintain on deposit with the State Board of Administration all proceeds of the 80 percent surplus of the second gas tax. The department shall by regulation provide for the transfer of the proceeds of the 80 percent surplus of the second gas tax in each county's account necessary to meet the current expenditures of the several counties. No county shall submit a voucher for transfer of funds unless such funds are to reimburse a prior expenditure or to maintain sufficient funds to meet anticipated expenditures for the next 60 days. Such transfers shall be processed by the department within 3 working days of receipt of the county's voucher. Such regulations shall not provide for department approval or control over county expenditures, but are to provide for routine processing of transfer vouchers from the State Board of Administration to the counties and for the investment of said second gas tax funds so as to maximize investment earnings to the counties. The department shall not charge any fees or allocate department overhead to

the counties for these services.

(6) The department is authorized to advance second gas tax trust funds to the Working Capital Trust Fund in an amount not to exceed $22,500,000. However, nothing herein contained shall in any way impair the present county road and bridge district bonds, revenue certificates, or other valid obligations of the respective counties. The department shall replace the second gas tax funds in the Working Capital Trust Fund by July 1, 1983.

History.—s. 139, ch. 29965, 1955; s. 1, ch. 31416, 1956; s. 19, ch. 57-318; s. 1, ch. 63-219; ss. 23, 35, ch. 69-106; s. 13, ch. 77-165; s. 4, ch. 77-416; s. 1, ch. 78-286; s. 118, ch. 79-190.

339.081 State Transportation Trust Fund; accounts.—

(1) The State Comptroller shall maintain within the State Transportation Trust Fund the following accounts:

(a) The restricted state roads moneys account to which shall be credited the proceeds of the gas taxes referred to in s. 339.08 (3) and (4). No moneys shall be paid out or transferred from this account except pursuant to a duly adopted resolution of the appropriate board of county commissioners which resolution shall be filed with the Comptroller; provided, however, nothing herein shall prohibit transfers made pursuant to s. 215.18.

(b) The unrestricted state roads moneys account to which shall be credited all other funds accruing to the Division of Road Operations which are not otherwise required to be maintained in separate accounts.

(c) Such other accounts as may be authorized by bond resolutions or agreements with any other public bodies or agencies.

(2) The unrestricted state road moneys may be used on the secondary roads of any county only on such terms and conditions as shall be prescribed by the Division of Road Operations and entered in its records.

(3) No engineering shall be furnished or charged to the Secondary Road Trust Fund except upon request by resolution of the board of county commissioners.

History.—s. 1, ch. 61-492; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57.

339.083 County transportation trust fund; controls and administrative remedies.—

(1) Each county shall establish and maintain a transportation trust fund for all transportation-related revenues and expenditures. All funds received by a county for transportation shall be deposited into this fund. No expenditures other than transportation expenditures authorized by law shall be made from said fund. Each county shall use a uniform accounts classification system approved by the State Comptroller.

(2) The Auditor General shall conduct an audit of each such special trust fund at such intervals of time as practicable and in accordance with s. 11.45, to assure that the surplus of the second gas tax distributed to each county is being expended in accordance with law. If, as a result of an audit, the Auditor General determines that a county has violated the constitutional or statutory requirements for expenditure of transportation funds, he shall immediately notify the county. The county shall have an opportunity to respond to the auditor's report within 30 days after the date of written notification to the county. If the Auditor General refuses to modify or repeal his findings, the county may have such findings reviewed pursuant to the provisions of the Administrative Procedure Act, chapter 120. If the findings of the Auditor General are upheld after exhaustion of all administrative and legal remedies of the county, no further surplus second gas tax funds in excess of funds for committed projects shall be distributed to the violating county until the county corrects the matters cited by the Auditor General and such corrections have been certified by the Auditor General as having been completed.

History.—s. 14, ch. 77-165.

339.089 Use by counties of the surplus from the second gas tax.—

(1) Any county which has agreed prior to July 1, 1977, by resolution, to use the surplus of the second gas tax to provide a connecting road to a planned interchange on the interstate system shall provide such connecting road.

(2) Any surplus which is not otherwise used to provide connecting roads pursuant to subsection (1) shall be used on the county road system, as defined in s. 334.03(23).

History.—s. 9, ch. 77-165; s. 2, ch. 79-357.

339.09 Use of gasoline tax revenues restricted.—

(1) Funds available to the Division of Road Operations of the Department of Transportation or to any county from any gasoline tax revenues shall not be used for any nontransportation purposes. However, the division shall construct and maintain roads, parking areas, and other transportation facilities adjacent to and within the grounds of state institutions, public community colleges, farmers' markets, and wayside parks or state park roads upon request of the proper authorities.

(2) When funds are needed for welcome stations, the cost of such improvements shall be budgeted by the Division of Economic Development of the Department of Commerce and be subject to legislative approval and appropriation from the proper fund.

(3) Such improvements as provided in (2) shall be made by the Division of Road Operations, or pursuant to contract under its supervision, at the expense of the Division of Economic Development of the Department of Commerce on the basis of the cost of such improvements.

(4) The Division of Road Operations may, in cooperation with the Federal Government, expend gasoline tax revenue pursuant to regulations adopted by the department, for undesirable rodent control, relocation assistance, and moving costs to persons displaced by highway construction to the extent, but only to the extent, required by Federal Law to be undertaken by the state to continue to be eligible for federal highway funds.

(5) The Department of Transportation may expend gasoline tax revenues or any other available funds, pursuant to regulations adopted by the department, on nonfederal aid projects which shall include relocation assistance and moving costs to persons displaced by transportation facilities or other

related projects. Such regulations shall, in no case, exceed the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970. The department shall have the authority to carry out its responsibilities under this act; however, such authority shall not extend to the power of eminent domain. Whenever possible such costs shall be financed out of funds used for the principal project.

History.—s. 140, ch. 29965, 1955; s. 1, ch. 63-385; s. 1, ch. 69-233; ss. 17, 23, 35, ch. 69-106; s. 7, ch. 70-239; s. 1, ch. 72-208; s. 70, ch. 72-221; s. 1, ch. 73-283; s. 1, ch. 77-174.

339.091 Declaration of legislative intent.—It is the intent of the Legislature to recognize that safe and efficient transportation is a matter of important interest to all the people of the state, and it determines and declares that:

(1) It is in the interest of the state to have a continuing program within the designated boundaries of urban areas designed to reduce traffic congestion and to facilitate the flow of traffic, and that it is necessary to provide funds for such purposes.

(2) Programs such as "Urban Traffic Operation Program for Increasing Capacity and Safety," referred to herein as TOPICS, are cooperative programs to be financed by the federal, state, and local governments.

History.—s. 1, ch. 71-216.

339.092 Use of gas revenues; state roads money.—

(1) It shall be permissible for the Department of Transportation to expend both restricted and unrestricted state roads moneys and gas tax revenues to match federal funds for planning, design, construction of streets, highway signalization, and lighting, which are not on the state highway system. However, the local government shall agree in writing to provide its pro rata share of matching funds, if such is required, and to maintain the project or projects after same have been completed.

(2) Nothing in s. 339.08, s. 339.081, or s. 339.09 shall be construed to prevent the carrying out of the provisions of subsection (1).

(3) Nothing in the authorization set forth in this section or s. 339.091 shall be construed to permit the expenditure of public funds in such manner or for such projects as would violate the State Constitution, or the trust indenture of any bond issue or which would cause the state to lose any federal aid funds for highway or transportation purposes. The provisions of this section and s. 339.091 shall be applied in a manner to avoid such result.

History.—s. 2, ch. 71-216.

339.10 Confirming advances of first gas tax funds to counties; authorizing advances in the future.—

(1) The action of the department in making advances of first gas tax funds to certain of the counties which were financially unable to supply the necessary funds for the acquisition of state road rights-of-way and for the construction of sections of state roads in the county to be repaid from future gasoline tax surpluses accruing to such counties, be and the same is hereby confirmed and approved.

(2) The department, whenever it deems it advisable and in the best interest of the state because of the financial inability of a county to provide the necessary funds or in order to anticipate future surplus gasoline tax funds accruing to the county, may make advances of first gas tax funds to a county for the acquisition of rights-of-way for roads of the state primary highway system therein or for the construction of road projects of the state primary highway system therein to be repaid out of any future accruals to the county of gasoline tax funds to be expended therein by the county or by the department.

(3) Any such advance shall be made the subject of a written agreement between the Division of Road Operations and the commissioners, and a copy thereof shall be furnished the State Comptroller and the State Board of Administration. The agreement shall provide that all right-of-way acquisitions by the county shall be under the supervision of the Division of Administration of the Department of Transportation and the advanced funds shall be paid directly for right-of-way parcels purchased or condemned upon requisitions of said division, which are audited and approved by the State Comptroller and for which state warrants are drawn by the State Comptroller, countersigned by the Governor. All construction fund advances shall be expended under construction contracts let and supervised by the Division of Road Operations. Such agreement shall provide for the repayment of such advance out of any gasoline taxes accruing to the county or to the Division of Road Operations for expenditure therein.

(4) The department shall adopt and promulgate appropriate rules and regulations to effectuate the provisions of this section.

(5) This section shall be cumulative and is not intended to repeal any existing authority conferred upon the department and the several counties with reference to the subjects dealt with herein.

History.—s. 141, ch. 29965, 1955; s. 2, ch. 61-119; ss. 23, 35, ch. 69-106.
cf.—s. 339.08 Use of gas tax revenues by department.

339.12 Contributions by state and county units; bond transfers; federal aid.—

(1) Any department of this state, and any county, or any special road and bridge district in this state, may aid in the construction or maintenance of any state road, by contributions to the Division of Road Operations of cash, bonds, time warrants, or other things of value in the construction or maintenance of roads.

(2) The division may accept and receive such aid and any such contributions and dispose and use the same in the construction or maintenance of such road.

(3) In case any such aid or contribution is given or made by any county or special road and bridge district, such aid or contribution shall be used by the Division of Road Operations only in the construction or maintenance of such state roads in the county or special road and bridge district as shall be designated and agreed upon by the division and the officials of such county or special road and bridge district.

(4) Upon accepting the contribution of road bonds, the division shall enter into agreements with the commissioners of the county in which such road bonds have been voted by the people, for the construction of the roads and bridges in accordance with

specifications agreed upon between the division and the commissioners of such county. The division shall receive from such county in consideration thereof, the net proceeds of the sale of the bonds so voted, after deducting expenses and commission on the sale and administration of such bonds. The division in no instance is to receive from such county an amount in excess of the actual cost of the construction of such roads.

(5) In case any county or special road and bridge district shall transfer and deliver to the division, any county or special road and bridge district road bonds or time warrants under the terms herein provided, such transfer and delivery shall be taken and construed as a sale and delivery of such bonds or time warrants at par or face value thereof.

(a) The division shall agree in writing to expend as much or more than the par or face value of such bonds or time warrants in the construction or maintenance of state roads in the county or special road and bridge district as shall be designated and agreed upon by the division and the officials of the county or special road and bridge district.

(b) The terms herein provided shall apply in any case where such bonds or time warrants have been voted or authorized to be issued.

(6) Trustees, who shall be qualified to act in behalf of any county or special road and bridge district, when such bond issue is transferred to the division, under the provisions of this law, shall be entitled to receive the same compensation, payable in the same manner, as if the bond issue had been sold for cash and the proceeds thereof disbursed by such trustees.

(7) The provisions of this law shall not be construed to require either the commissioners of any county, or the officials of any special road and bridge district, or the Division of Road Operations to enter into an agreement for the transfer of such bonds or time warrants as are mentioned herein, but such transfer and assignment shall at all times be within the discretion of the division and such county and district officials.

(8) The division may propose and obtain the designation of any of the said roads and bridges so to be constructed, as federal aid projects, and obtain from the United States payment on account of such construction in accordance with existing regulations.

(9) The federal aid money obtained under subsection (8) of this section shall first be applied to the completion of the roads for which said bonds have been voted, if the money from the bonds is not sufficient therefor, and any residue shall be expended in the construction of any state road that the division and the commissioners of the county may agree upon.

History.—s. 143, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 1, ch. 75-146; s. 2, ch. 78-286.

339.24 Beautification of roads by department, counties, and cities; wayside parks; rules and regulations; enforcement; penalty.—

(1) The department, the commissioners of the several counties, and all municipal corporations may include as a part of their programs of road and street construction and maintenance, the conservation of the natural roadside growths and scenery, and the beautification of roads or streets by the restoration, planting, replanting, seeding and reseeding, of grasses, plants, shrubs, rootstocks or trees, and the maintenance of same along the roadside of all roads or streets.

(2) Expenditures for such purposes shall be considered proper expenditures for highway construction or maintenance.

(3) The department is authorized to expend first gas tax funds to acquire, by donation or purchase, and to lay out, develop, improve, operate, and maintain, appropriate roadside or wayside parks, rest areas, boat ramps, and similar facilities under its jurisdiction at sites selected by the department.

(4) The department is authorized to adopt rules regulating the use of wayside parks, rest areas, boat ramps, and similar facilities under its jurisdiction.

(5) Any person who violates any provision of this section or any rule or regulation adopted pursuant thereto after having been duly warned by department personnel, law enforcement officers, or properly erected posted signs shall be deemed guilty of trespass and shall be punished as provided in s. 810.08, s. 810.09, or s. 810.10.

History.—s. 155, ch. 29965, 1955; s. 2, ch. 61-119; ss. 23, 35, ch. 69-106; s. 1, ch. 73-189; s. 101, ch. 77-104; s. 56, ch. 78-95.
cf.—s. 335.16 Wayside parks and access roads to public waters.

339.241 Florida Junkyard Control Law.—

(1) SHORT TITLE.—This section shall be known as the "Florida Junkyard Control Law."

(2) DEFINITIONS.—Wherever used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(b) "Junk," "junkyard," and "scrap metal processing facility" means the same as described in paragraphs 205.371(1)(a), (b), and (e).

(c) "Areas zoned for industrial use" means all areas zoned for industrial use by municipal or county governmental units within the state or an unzoned industrial area as defined by the department and approved by the secretary of transportation. Such areas must be based upon the existence of at least one industrial activity other than the junkyard or scrap metal processing plant.

(d) "Distance from edge of right-of-way" means the distance presently defined in subsection (g), section 136, title 23, United States Code.

(e) "Fence" means an enclosure so constructed or planted and maintained as to obscure the junkyard from ordinary view to those persons passing upon the highways in this state.

(f) "Interstate highway" means the system presently defined in subsection (e), section 103, title 23, United States Code.

(g) "Federal aid primary highway" means any highway within that portion of the state highway system as included and maintained under chapter 335, including extensions of such system within municipalities, which has been approved by the Secretary of Transportation pursuant to subsection (b), section 103, title 23, United States Code.

(h) "Person" means any individual, firm, agency,

company, association, partnership, business trust, joint stock company, or corporation.

(i) "Department" means the Department of Transportation of the state.

(3) RESTRICTIONS AS TO LOCATION.—No junk, junkyard, automobile graveyard, or scrap metal processing facility shall be operated or maintained within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

(a) Junkyards which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the highway or otherwise removed from sight.

(b) Junkyards or scrap metal processing facilities which are located in areas which are zoned for industrial use.

(c) Junkyards or scrap metal processing facilities which are not visible from the main traveled way of any interstate or primary highway.

Any junkyard in existence on December 8, 1971 which the secretary determines cannot be screened because of topography and elevation shall not be required under this section to be removed, relocated, or disposed of until federal funds are available.

(4) REQUIREMENTS AS TO FENCES; RULES AND REGULATIONS; EXPENDITURE OF FUNDS.—

(a) A fence constructed under the provisions of this section shall be kept in good order and repair, and any advertisement thereon shall be regulated by applicable state law.

(b) The department shall have the power to promulgate rules and regulations governing the location, construction, plantings, and materials of said fence, living or otherwise.

(c) The department is authorized to spend such funds as are necessary to obtain federal-aid funds for the purposes described in this subsection.

(5) EMINENT DOMAIN.—The power of eminent domain is vested in the department to condemn such interests in land as the department shall determine are required for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. Such condemnation proceedings shall be maintained in the name of the department under the procedure defined and set forth in chapters 73 and 74. Such relocation, removal, or disposal, for which compensation shall be paid, shall be restricted to those projects wherein federal participation is available.

(6) ENFORCEMENT.—It is the function and duty of the department to administer and enforce the provisions of this section. In addition to the power of eminent domain, negotiation, and compensation, the department or any public official may apply to the circuit court or other court of competent jurisdiction of the county in which said junkyard or scrap metal processing facility may be located for an injunction to abate such nuisance.

(7) PENALTY.—Any person violating any provision of this section shall be subject to fine of not less than $50 or more than $200. Each day during any portion of which such violation occurs constitutes a continuing separate offense.

History.—ss. 1-6, ch. 71-338; ss. 1-7, ch. 71-972.

339.25 Trees and shrubbery; removal or damage; penalty.—

(1) The removal or cutting or marring or defacing or destruction of any trees or shrubbery which are either planted or natural growths within the rights-of-way of roads of the state highway or state park road system, and which are maintained by the Division of Road Operations as a part of its highway beautification program is prohibited.

(2) It is unlawful for any person to remove, cut, mar, deface or destroy any of said trees or shrubbery without first securing the written permission of the division.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 156, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 238, ch. 71-136.
cf.—s. 861.11 Penalty for cutting or destroying shade trees along public roads.

339.27 Fishing from state road bridges; walkways authorized.—

(1) The department is authorized to investigate and determine whether it is detrimental to traffic safety and dangerous to human life for any person to fish from any state road bridge. When the department, after due investigation, so determines that it is dangerous for persons to fish from any such bridge, the Division of Road Operations shall thereupon post appropriate signs on such bridge stating that fishing therefrom is prohibited.

(2) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to fish from any bridge which the department has determined is dangerous to fish therefrom and has posted signs as provided in subsection (1).

(3) All enforcement officers, including Florida Highway Patrol officers, shall enforce the provisions of this section.

(4) This section shall be cumulative and is not intended to repeal special laws making it unlawful to fish from any bridge.

(5) Any state, county or municipal agency or authority charged with the maintenance and construction of public roads and bridges is authorized to construct and maintain pedestrian walkways, fishing walks or fishing bays on public bridges under its jurisdiction whenever it is deemed necessary to do so in the interest of safety.

History.—s. 158, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 239, ch. 71-136.

339.28 Injuring boundary marks, guideposts, etc.—Whoever willfully and maliciously damages, removes or destroys any milestone, mileboard or guideboard erected upon a highway or other public way, or willfully and maliciously defaces or alters the inscription on any such marker, or extinguishes any lamp, or breaks or removes any lamp or lamppost or railing or post erected on any bridge, sidewalk, street, or highway, shall be guilty of a misde-

meanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 159, ch. 29965, 1955; s. 240, ch. 71-136.

339.281 Marine accident report required for damage to bridge or highway facility; investigative authorities; adoption of rules; penalties.—

(1) Whenever any vessel has caused damage to any bridge or highway facility, the managing owner, agent, or master of such vessel shall immediately, or as soon thereafter as possible, report the same to the nearest Florida Marine Patrol, the sheriff of the county wherein such accident occurred, the Game and Fresh Water Fish Commission, or the Florida Highway Patrol, who shall immediately go to the scene of the accident and, if necessary, board the vessel subsequent to the accident in pursuance of its investigation.

(2) The department shall make, adopt, promulgate, amend, or repeal rules and regulations necessary for carrying out the functions, duties, and responsibilities imposed by this section.

(3) Any person violating any of the provisions of this section or rules and regulations adopted pursuant thereto shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 73-187.

339.30 Unlawful use of limited access facilities; penalties.—

(1) On limited access facilities it shall be unlawful for any person:

(a) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line.

(b) To make a left turn, a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line.

(c) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line.

(d) To drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the limited access facility proper.

(e) To go on foot upon the expressway or ramps connecting an expressway to any other street or highway; provided that this paragraph shall not apply to maintenance personnel of the department or any governmental subdivision.

(f) To operate upon an expressway any vehicle which by its design or condition is incompatible with the safe and expedient movement of traffic, including but not limited to bicycles, motor-driven cycles, or animal-drawn vehicles. It is unlawful for any person to ride any horse, mule, or other animal upon the expressway or its shoulders.

(g) To park, stand, or stop a vehicle on the paved roadway of the expressway or on the paved portion of any ramp connecting such expressway to any other street or highway, or upon the shoulder of any expressway; provided that disabled vehicles, and vehicles in improper condition to be driven due to mechanical failure or accident may be parked on such shoulders for a period not to exceed 6 hours. This section shall not be applicable to vehicles stopping to render aid to injured persons, assistance to disabled vehicles in obedience to the directions of law officers, or in compliance with applicable traffic laws.

(h) To stop or decrease the speed of a vehicle for the purpose of receiving or depositing passengers on the paved roadway of the expressway, on the paved portion of any ramp connecting such expressway to any other street or highway, or upon the shoulder of any expressway. This paragraph shall not be applicable to vehicles stopped to render aid to injured persons or assistance to disabled vehicles or in obedience to directions of law officers.

(2) For purposes of this section, motor-driven cycles includes every motorcycle, motor scooter or motor bicycle capable of producing not more than 5-brake horsepower.

(3) Any person who violates any of the provisions of this section shall be punished in accordance with s. 316.655.

History.—s. 161, ch. 29965, 1955; s. 1, ch. 63-90; s. 1, ch. 67-37; s. 1, ch. 67-79; ss. 23, 35, ch. 69-106; s. 241, ch. 71-136; s. 7, ch. 74-377; s. 50, ch. 76-31.

339.301 Unlawful commercial use of state-maintained road right-of-way; penalties.—

(1) Except when otherwise authorized by law or by the rules and regulations of the department, it is unlawful to make any commercial use of the right-of-way of any state-maintained road, including appendages thereto, and also including, but not limited to, rest areas, wayside parks, boat-launching ramps, weigh stations, and scenic easements. Such prohibited uses include, but are not limited to, the sale, or the display for sale, of any merchandise, the servicing or repairing of any vehicle except the rendering of emergency service, the storage of vehicles being serviced or repaired on abutting property or elsewhere, the solicitation for the sale of goods, property, or services or for charitable purposes, and the display of advertising of any sort, except that any portion of a state-maintained road may be used for an art festival, parade, fair, [1]or other special event if controlled or permitted by the appropriate governing body or authority. No activity or event authorized by this subsection shall take place unless written approval has been obtained from the Department of Transportation. Nothing in this subsection shall be construed to authorize such activities on the interstate highway system.

(2) Persons holding valid peddlers' licenses issued by appropriate governmental agencies may make sales from vehicles standing on the right-of-way to occupants of abutting property only.

(3) The Department of Highway Safety and Motor Vehicles and police officers in general are authorized and directed to enforce this statute.

(4) Violation of any provision of this section or any rule and regulation promulgated by the department pursuant to this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a

violation continues to exist shall constitute a separate offense.

History.—s. 1, ch. 73-188; s. 1, ch. 79-30.
[1]Note.—The word "or" was substituted for "and" by the editors.

339.305 Payment of toll on toll facilities required; exemptions.—No persons except employees of the agency operating the toll project when using the toll facility on official state business, state military personnel as defined in s. 347.19 and persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, shall be permitted to use any toll facility operated by the department without payment of tolls; and failure to pay the prescribed toll shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-70; ss. 23, 35, ch. 69-106; s. 243, ch. 71-136; s. 102, ch. 77-104.
Note.—Former s. 340.121.

339.31 Obstructing highway.—Whoever obstructs any public road or established highway by fencing across or into the same, or by willfully causing any other obstruction in or to such road or highway, or any part thereof, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and the judgment of the court shall also be that the obstruction be removed.

History.—s. 162, ch. 29965, 1955; s. 242, ch. 71-136.
cf.—s. 861.01 Obstructing highways.

339.32 Microfilming of records by department.—The department is authorized to photograph, microphotograph or reproduce on film, whereby each page will be exposed in exact conformity with the original, all its documents, records, maps, data and information of a permanent character, including its personnel records, payrolls, maps, designs and drawings, periodic reports, data of cost and type histories of roads, its data of studies and research, its historical road data, right-of-way deeds, easements and releases, agreements covering roads and bridges, condemnation judgments, all contracts and agreements extending over a period of years, permits issued utilities and others, agreements with U. S. Bureau of Public Roads, Public Roads Administration, counties, cities and other governmental subdivisions and agencies, road board minute records, fiscal data of a permanent character that should be preserved as records and such other documents, data and records as it may in its discretion select. The department is authorized to destroy any documents after they have been photographed and filed except the original minutes of the meetings of the board and such title deeds, easements, leases and releases relating to the right-of-way of state roads and other property owned or leased by the department, which it deems should be preserved in original form. Photographs or microphotographs in the form of film or print of any records made in compliance with the provisions of this section shall have the same force and effect as the originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with original photographs or microphotographs.

History.—s. 163, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 1, ch. 73-305.

339.33 Road signs may be manufactured at state prison.—All signs used by the Division of Road Operations to designate and mark highways and all signs used as warning and traffic signs may be manufactured by the state convicts at the state prison, provided that the cost of manufacturing these signs does not exceed the cost of an outside manufacturer. The division will use these signs upon their being proved to be equal in quality to signs manufactured by outside concerns.

History.—s. 164, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

339.34 Copy of laws to be furnished to department.—The Department of State shall furnish to the Department of Transportation, without charge, a copy of the laws of the state in like manner as said laws are furnished to other state officials.

History.—s. 165, ch. 29965, 1955; ss. 10, 23, 35, ch. 69-106.

339.35 Prior contracts validated.—Nothing contained in this law shall affect any contract or instrument validly executed prior to the effective date of this law.

History.—s. 166, ch. 29965, 1955.

CHAPTER 340

TURNPIKE PROJECTS

340.01 Short title.—This chapter shall be known and may be cited as "Florida Turnpike Law."

History.—s. 1, ch. 28128, 1953.

340.011 Definitions.—As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) "Department" means the Department of Transportation.

(2) "Project" or "turnpike project" shall mean any limited access express highway acquired or constructed or to be acquired or constructed under the provisions of this chapter, at the locations herein established or established by the department pursuant to the provisions of this chapter, or at such other locations as may be hereafter established by law, having center divisions, ample shoulder widths, long-sight distances, lanes in each direction and grade separations at intersections with public roads and at intersections with all railroads, and shall include, but not be limited to, all bridges, causeways, tunnels, overpasses, underpasses, traffic circles, interchanges, feeder roads, landscaping, entrance plazas, approaches, tollhouses, service areas, communication facilities, such facilities for motor fuel and food as the department may deem necessary or desirable, and administration, storage and other buildings which the department may deem necessary for the operation of such project, together with all land, rights-of-way, property, rights, easements and interests which may be acquired by the department in or for the acquisition, construction or the operation of such project.

(3) "Cost" as applied to a turnpike project shall embrace the cost of acquisition, the cost of construction, the cost of acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the department for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and, for such period after completion of construction as shall be determined by the department, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project, administrative expenses, and such other expenses as may be necessary or incident to the acquisition or construction of a project, the financing of such acquisition or construction and the placing of the project in operation.

(4) "Owner" shall include all individuals, copartnerships, associations or corporations and all counties, political subdivisions, municipalities and all public agencies and officers of the state having any title or interest in any property, rights, easements and interests authorized to be acquired by this chapter.

(5) "Bonds" or "revenue bonds" shall mean bonds of the department authorized under the provisions of this chapter.

(6) "Feeder road" shall mean any road which in the opinion of the department is necessary to create or facilitate access to a project.

(7) "Public roads" shall include all public highways, roads and streets in the state, whether maintained by the state, county, other political subdivision, city, or town.

(8) "Revenues" shall mean all tolls, charges, rentals, gifts, grants, moneys, and all other funds coming into the possession or under the control of the department by virtue of the provisions hereof, except the proceeds from the sale of bonds issued under this chapter.

History.—s. 4, ch. 28128, 1953; s. 1, ch. 59-69; s. 1, ch. 65-469; ss. 5, 9, ch. 67-359; ss. 23, 35, ch. 69-106; s. 99, ch. 71-355; s. 116, ch. 71-377; s. 99, ch. 73-333.
Note.—Former s. 340.04.

340.02 Purpose.—The purpose of this chapter is to facilitate vehicular traffic, diminish the present handicaps and hazards and promote safety on the congested highways in Florida, make possible the acquisition and construction of modern express highways, and to carry out said purpose the Department of Transportation is hereby authorized and empowered to acquire, construct, maintain, repair and operate turnpike projects (as hereinafter defined) at the location herein established, and at such other locations as may be hereafter established by law, and to issue turnpike revenue bonds of said department, payable solely from revenues, to pay the cost of such projects. It is the further purpose of this chapter to prohibit the acquisition, construction, maintenance, repair or operation of any toll turnpike project by any subdivision of the government of the state subsequent to the enactment of this law, except upon specific authorization of the Legislature.

History.—s. 2, ch. 28128, 1953; s. 1, ch. 67-359; ss. 23, 35, ch. 69-106.

340.03 Turnpike routes; study of proposed projects.—

(1) The Legislature hereby approves as the general route for a turnpike project, a route extending from a point in Dade County or Broward County in a general northerly direction to a point in Duval County, and any turnpike project or part or parts thereof constructed in accordance with said route shall be known as the Sunshine State Parkway; provided, however, that unless and until the Legislature shall determine otherwise, any other provision of this section to the contrary notwithstanding, the department is authorized hereby to construct, maintain, repair and operate a turnpike project, and such project is hereby established only at the following location or such part or parts thereof as the department may determine to be suitable for a project as contemplated by this section: Beginning at a point in Dade County or Broward County, and adhering to the aforesaid route, thence in a general northerly direction for a distance not exceeding 110 miles from the point of beginning; provided further, however, that the exact route and termini shall be determined as provided by s. 340.06(6). The general northerly direction in this section referred to shall mean either an east coast or central Florida route, and thorough study shall be made of both routes.

(2) The department is hereby authorized and empowered to construct, maintain, repair and operate an additional turnpike project and such project is hereby established at the following location or such part or parts thereof as the department may determine to be suitable for a project as contemplated by this section: Beginning at a point in St. Lucie County, thence in a generally northwesterly direction to a point in Lake County, thence in a generally northerly direction through Marion County, to a point in Duval County in the vicinity of the metropolitan area of the City of Jacksonville; provided however, that the exact route and termini shall be as provided in s. 340.06(6).

(3) The department is hereby directed to immediately obtain engineering and traffic and other expert studies of the costs, feasibility and practicability of a turnpike project from a point in Hillsborough or Pinellas County, extending in a general northeasterly direction connecting with the additional turnpike project authorized by subsection (2). If found economically feasible the department shall construct, maintain, repair and operate such turnpike project at the location herein established; provided, however, that the exact route and termini shall be determined as provided by s. 340.06(6).

(4) The department is authorized hereby to obtain engineering, traffic and other expert studies for the location, costs, feasibility and practicability of a turnpike project from a point on the additional turnpike project authorized by subsection (2) northwesterly or westerly to a point in Escambia County or to a point of juncture at the boundary between the States of Alabama and Florida with any turnpike projected, authorized, or constructed in the State of Alabama, or any part thereof; provided, however, that no project may be acquired or constructed from the present terminus near Wildwood which will cross, intersect or join U.S. 19 (SR55) without specific legislative approval; such studies to be financed under the provisions of s. 340.27, but only out of funds reimbursed to the Department of Transportation by funds generated by turnpike projects. If found economically feasible the department shall construct, maintain, repair and operate such turnpike project at the location herein established; provided, however, that the exact route and termini shall be determined as provided by s. 340.06(6).

History.—s. 3, ch. 28128, 1953; s. 1, ch. 29634, 1955; s. 2, ch. 67-359; ss. 23, 35, ch. 69-106; s. 117, ch. 71-377.

340.031 Proposed new turnpike project.— The department is hereby authorized and empowered to obtain engineering and traffic and other expert studies for the location and costs, feasibility and practicability of a turnpike project at the following location or such part or parts thereof as the department may determine to be suitable for a project as contemplated by this section: Beginning at a point in Hillsborough County, thence in a generally southerly direction to a point in Manatee County, thence in a generally southerly direction to a point in Sarasota County, thence in a generally southerly direction to a point in Charlotte County, thence generally in a southeasterly direction to a point in Lee County, thence in a southeasterly direction to a point in Collier County, thence in a southeasterly direction to a point in Dade County; and if found economically feasible shall construct, maintain, repair and operate such turnpike project or part or parts thereof as the department may determine to be feasible and suitable at the location herein established, provided, however, the exact route and termini shall be as provided in s. 340.06(6).

History.—s. 1, ch. 61-220; ss. 23, 35, ch. 69-106.

340.032 Proposed new turnpike projects in Brevard, Indian River, Lake, Orange, Osceola, and Seminole Counties.—

(1) The department is hereby authorized and empowered to obtain engineering, traffic and other expert studies for the location, cost, feasibility and practicability of one or more turnpike projects or any part or parts thereof, at such location or locations in Brevard County, Indian River County, Lake

County, Orange County, Osceola County, and Seminole County as the department may determine to be suitable for a project or projects as contemplated by this section; such studies to be financed under the provisions of s. 340.27, but only out of funds reimbursed to the Department of Transportation by funds generated by turnpike projects or out of any funds of the department available for such a purpose, as the department may determine. If any such turnpike project or projects or any part or parts thereof be found economically feasible, the department shall acquire, construct, maintain, repair and operate such turnpike project or projects or any part or parts thereof as the department may determine to be feasible and suitable at the location or locations herein established by the department within the aforesaid counties; provided, however, the exact route or routes and termini shall be as provided by s. 340.06(6).

(2) Any turnpike project established pursuant to subsection (1) may include as part of the route thereof all or any part of the Orlando-Orange County Expressway System of the Orlando-Orange County Expressway Authority, and the department is hereby authorized and empowered to acquire in its name all or any part or parts of the Orlando-Orange County Expressway System upon such terms and conditions as the department and the Orlando-Orange County Expressway Authority may agree upon. The Orlando-Orange County Expressway Authority is hereby authorized and empowered to sell, grant and convey to the department all of its right, title and interest in and to the Orlando-Orange County Expressway System or any part or parts thereof upon receipt by it of funds sufficient in amount, together with any other funds available for such purpose, to provide for the payment and retirement of the bonds in accordance with the provisions of the trust indenture under which the bonds of the Orlando-Orange County Expressway Authority were issued for the purpose of financing the Orlando-Orange County Expressway System. The department is hereby authorized and empowered to join with the Orlando-Orange County Expressway Authority in the execution and delivery of such deeds, documents and conveyances as shall be necessary to vest title in the department. All moneys paid by the department to the Orlando-Orange County Expressway System or any part or parts thereof shall be deemed a part of the cost of the turnpike project containing such Orlando-Orange County Expressway System or any part or parts thereof in its route.

(3) Any turnpike project established pursuant to subsection (1) herein may include as part of the route thereof the Canaveral Causeway of the Division of Bond Finance of the Department of General Services and the department is hereby authorized and empowered to acquire in its name the Canaveral Causeway upon such terms and conditions as the department and the Division of Bond Finance with the approval of the State Board of Administration may agree upon. The division is hereby authorized and empowered to sell, grant and convey to the department all of its right, title and interest in and to the Canaveral Causeway upon receipt by the State Board of Administration on its behalf of funds sufficient in amount, together with any other funds available for such purpose, to provide for the payment and retirement of the bonds in accordance with the provisions of the resolution under which the bonds of the division were issued on behalf of the Canaveral Causeway Special Road and Bridge District for the purpose of financing the Canaveral Causeway. The Department of Transportation and the State Board of Administration are hereby authorized and empowered to join with the division in the execution and delivery of such deeds, documents and conveyances as shall be necessary to vest title in the department. All moneys paid by the department to the division as consideration for the sale, grant and conveyance to it of the Canaveral Causeway shall be deemed a part of the cost of the turnpike project containing the Canaveral Causeway in its route.

(4) Any county, political subdivision, city, town, village, road and bridge district or other public agency having any right, title or interest in and to any expressway system, causeway, turnpike project or other facility authorized to be acquired by the department pursuant to this section, notwithstanding any contrary provision of law, is hereby authorized and empowered to sell, grant and convey to the department all of its right, title and interest in and to any such expressway system, causeway, turnpike project or other facility, or any part or parts thereof, upon such terms and conditions as the department and the county, political subdivision, city, town, village, road and bridge district or other public agency may agree upon, and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the officials concerned and the execution and delivery of such deeds, conveyances and documents as shall be necessary to vest title in the department.

History.—s. 3, ch. 67-359; ss. 22, 23, 35, ch. 69-106; s. 118, ch. 71-377.

340.033 Proposed new turnpike projects in Broward, Collier, Dade, and Monroe Counties.—The department is hereby authorized and empowered to obtain engineering, traffic, and other expert studies for the location, cost, feasibility and practicability of a turnpike project or projects or any part or parts thereof, at such location or locations in Broward County, Collier County, Dade County and Monroe County as the authority may determine to be suitable for a project or projects as contemplated by this section; such studies to be financed under the provisions of s. 340.27, but only out of funds reimbursed to the Department of Transportation from funds generated by turnpike projects or out of any funds of the department available for such a purpose, as the department may determine; and, if any such turnpike project or projects or any part or parts thereof be found economically feasible, the department shall construct, maintain, repair and operate such turnpike project or projects or any part or parts thereof as the department may determine to be feasible and suitable at the location or locations herein established by the department within the aforesaid counties; provided, however, the exact route or routes and termini shall be as provided by s. 340.06(6); and provided, further, that, with regard to any turnpike project or projects authorized by this

section located wholly within one county, the exact route or routes and termini shall be subject to the approval of the county commissioners of such county.

History.—s. 4, ch. 67-359; ss. 23, 35, ch. 69-106; s. 119, ch. 71-377.

340.06 General powers.—The department shall have the following powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal;

(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name;

(5) To acquire, construct, maintain, repair and operate turnpike projects;

(6) To determine the exact route and exact termini of turnpike projects;

(7) To issue turnpike revenue bonds of the department, payable solely from revenues, and to refund its bonds, as provided in this chapter;

(8) To fix and revise from time to time and charge and collect tolls or other charges for transit over or use of any project;

(9) To establish rules and regulations for the use of any project;

(10) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter;

(11) To acquire in the name of the department by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land and other property which it may determine is reasonably necessary for any project or for the relocation or reconstruction of any public road by the department under the provisions of this chapter or for the construction of any feeder road as defined herein, and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, roads or parkways, owned by or in which any county, political subdivision, city, town, village, public agency or officer of the state has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect turnpike projects;

(12) To sell, exchange, or otherwise dispose of any real property not necessary for its corporate purpose or whenever the department shall determine that it is in the best interest of the authority;

(13) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. When the cost under such contract or agreement, other than compensation for personal services, involves an expenditure of more than $2,000 the department shall make a written contract with the lowest and best bidder after advertisement for not less than 2 consecutive weeks in a newspaper of general circulation and in such other publications as the department may determine. Such notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The department may reject any and all bids. A bond with good and sufficient surety as shall be approved by the department shall be required of all contractors in an amount equal to 100 percent of the contract price, conditioned upon the faithful performance of the contract;

(14) To locate and designate, and to establish, limit and control such points of ingress to and egress from each project as may be necessary or desirable in the judgment of the department to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(15) To construct, maintain, repair and operate any feeder road which in the opinion of the department will increase the use of a project or projects, to take over for maintenance, repair and operation any existing public road as a feeder road, and to realign any such existing public road and build additional sections or road over new realignment in connection with such existing public road;

(16) To receive and accept from any federal agency, subject to the approval of the Governor, grants for or in aid of the construction of any project, and to receive and accept aid or contributions from any source, of either money, property or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made; providing, however, that no federal funds now received by the state may be diverted to or received or accepted by the department;

(17) To employ a general counsel, such engineers, full-time salaried attorneys, nationally recognized bond counsel, accountants, construction and financial experts, superintendents, managers and other employees and agents as the department deems advisable and as may be necessary in its judgment and to fix their compensation; and

(18) To do all acts and things necessary or convenient to carry out the powers and duties expressly granted in this chapter.

History.—s. 6, ch. 28128, 1953; s. 1, ch. 61-250; s. 1, ch. 65-157; s. 6, ch. 67-359; ss. 23, 35, ch. 69-106.

340.07 Incidental powers.—

(1) The department shall have the power to construct and reconstruct traffic circles, interchanges and grade separations at intersections of any project with public roads, grade separations at intersections with railroads, and to change and adjust the lines and grades of such public roads so as to accommodate the same to the design of such grade separation. The cost of such construction and any damage incurred in changing and adjusting the lines and grades of such roads shall be ascertained and paid by the department as a part of the cost of such project. The department shall not interrupt the flow of traffic on any established state highway; and any approaches, underpasses or overpasses necessary to avoid the interruption of the flow of such traffic shall be con-

structed at the expense of the department.

(2) If the department shall find it necessary in connection with any project to change the location of any portion of any public road, it shall cause the same to be reconstructed at such location as the department shall deem most favorable and of substantially the same type and in as good condition as the original road. The cost of such reconstruction and any damage incurred in changing the location of any such road shall be ascertained and paid by the department as a part of the cost of such project.

(3) If the discontinuance or vacation of any public road is required by the construction of any project, such discontinuance or vacation may be effected on application of the department in the manner now provided by the applicable statutes of the state and where such statutes provide for damage, any damages awarded on account thereof shall be paid by the department as a part of the cost of such project; provided, that where vacation only is desired of any place used for travel, or portion thereof, as provided by s. 177.101, the board of county commissioners, upon request of the department, shall have the same power thereunder as if such request had been made by the United States Government.

(4) The department and its authorized agents and employees shall also have the power to enter upon any lands, waters and premises in the state for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purpose of this chapter, and such entry shall not be deemed a trespass, nor shall such entry for such purpose be deemed an entry under any eminent domain proceedings which may be then pending. The department shall make reimbursement for any actual damages resulting to such lands, waters and premises as result of such activities.

(5) The department shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, herein called public utility facilities, of any public utility in, on, along, over or under any project. Whenever the department shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over or under any project should be relocated in such project, or should be removed from such project, the public utility owning or operating such facility shall relocate or remove the same in accordance with the order of the department provided, that the cost and expense of such relocation or removal, including the cost of installing such facilities in a new location, or new locations, and the cost of any lands, or any rights or interest in lands, or any other rights acquired to accomplish such relocation or removal, shall be ascertained and paid by the department as a part of the cost of such project, excepting, however, cases in which such public utility facilities are located within the right-of-way of existing public roads being constructed, reconstructed, improved or which will become a part of any project under the provisions of this act, provided, however, that the above exception shall not apply to public utility facilities owned by a city, county or subdivision thereof. Providing that no rural electric cooperative or any communications company or any private or public utility shall be required to pay any of the costs and expenses of removing or relocating any facilities or installations belonging to any rural electric cooperative or communications company or private or public utility from or on any rights-of-way provided for in this chapter, and the department created by this law shall relocate or remove same and shall pay the costs and expenses of relocating or removing same. In case of any such relocation or removal of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

(6) The department shall construct or provide underpasses or overpasses for the passage of livestock and vehicles under said turnpike at such intervals as it may deem necessary.

History.—s. 7, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.08 Cooperation of counties, etc., with department.—All counties, political subdivisions, cities, towns, villages, and all public agencies and officers of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the department, upon its request and upon such terms and conditions as the department and the proper officials of such counties, political subdivisions, cities, towns, villages, and public agencies or officers may agree upon as reasonable and fair, and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the officials concerned and the execution of the proper instrument, any real property which may be necessary or convenient to the effectuation of the purpose of this chapter, including real property already devoted to public use.

History.—s. 8, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.09 Consent of state to use of its land.—The state hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the department to be necessary or proper for the construction or operation of any turnpike project.

History.—s. 9, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.091 Certain sales prohibited.—

(1) The Department of Transportation is specifically prohibited from granting concessions or selling any services or products along the project covered by this act or subsequent projects except the sale of motor fuel with attendant towing and maintenance facilities, the sale of food with attendant nonalcoholic beverages, and the sale of Florida citrus or goods promoting the state including information centers on the plazas but not including other advertising media. However, no exceptions as specified hereinbefore with regard to the sale of products shall be construed to permit the making of reservations for

any Florida public lodging establishment as defined in chapter 509.

(2) The Florida Department of Citrus shall act as an advisory body to the Department of Transportation in the implementation of subsection (1) with regard to the sale of citrus products. The purpose of said advisory body is to prevent a monopoly operation of the sale of citrus products on the turnpike system and in general to further bolster the public image of Florida citrus fruits and products through the sale of superior citrus goods.

(3) The department shall not permit any person, firm, or corporation the right to sell Florida citrus fruits at more than one plaza.

History.—s. 4, ch. 28128, 1953; s. 1, ch. 59-69; s. 1, ch. 65-469; s. 8, ch. 67-359; ss. 23, 29, 35, ch. 69-106; s. 99, ch. 73-333.
Note.—Former ss. 340.04 and 340.011(2)(b)-(d).

340.10 Eminent domain proceedings.—

(1) Upon the exercise of the power of eminent domain by the department, which power is hereby granted the department, eminent domain proceedings may be instituted and conducted in the name of the department and the procedure shall be the same as is prescribed by chapter 73.

(2) In any such proceeding instituted by the department, the department may file in the cause with its petition, or at any time before judgment, a declaration of taking, signed by its duly authorized agent or attorney, declaring that said lands are thereby taken for the use of the department, and thereafter the provision of ss. 74.011-74.121 shall be applicable to said cause; provided that in any proceeding authorized by this chapter, at the time of entry of the order fixing the amount of the deposit to be made and fixing the time within which, and the terms upon which, the parties in possession shall be required to surrender possession to the petitioner, the court shall by order set said cause for trial and try said cause not later than 90 days after the return date provided in chapter 73.

(3) Nothing contained in this law shall be construed to authorize the department to acquire state-owned property by the exercise of the power of eminent domain.

History.—s. 10, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.11 Taking of public road for feeder road. —Before taking over any existing public road for maintenance, repair and operation as a feeder road, the department shall obtain the consent of any officials then exercising jurisdiction over said road, which are hereby authorized to give such consent by resolution. Each feeder road or portion thereof acquired, constructed, or taken over under this section for maintenance, repair and operation, in connection with a project by the department shall for all purposes of this act be deemed to constitute a part of the project, except that no toll shall be charged for transit between points on such feeder road.

History.—s. 11, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.12 Revenues.—

(1) The department is hereby empowered to fix, revise, charge and collect tolls and charges for the use of each project and the different parts or sections thereof, to contract with any person, partnership, association or corporation desiring the use of any part thereof for the purpose of providing any of the facilities comprehended in the term "turnpike project" as defined herein, when, in the opinion of the department, such facilities are necessary or desirable, and to fix the terms, conditions, rates and charges for use; provided, that facilities for motor fuel and food shall be publicly offered for the operation thereof under rules and regulations to be established by the department. Such tolls shall not be subject to supervision or regulation by any other commission, board or agency of the state.

(2) To afford users of any turnpike project a reasonable choice of motor fuels of different brands, each gasoline service station or site therefor shall be separately offered for lease upon sealed bids for private operation and, after at least 4 weeks' notice of the offer has been published in a newspaper having general circulation in the state, each such lease shall be awarded to the highest responsible bidder therefor, who may provide for the operation of the service station by a third person; but no person shall be awarded or have the use of, nor shall motor fuel identified by the trademarks, trade names, or brands of any one supplier, distributor, or retailer of such fuel be sold at, more than one service station if the proposed lessee has control of, or if the brand of motor fuel proposed is sold at, more than 50 percent of the service stations on the turnpike project.

(3) Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls on each turnpike project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenue from such turnpike project to pay the cost of maintaining, repairing and operating such turnpike project and the principal of and the interest on such bonds as the same shall become due and payable, and to create reserve for such purposes. The tolls and all other revenues derived from each turnpike project or sections thereof in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the department shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the department irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the

department. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of this act and such regulations as the resolution authorizing the issuance of such bonds or such trust agreement may provide. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

History.—s. 12, ch. 28128, 1953; ss. 23, 35, ch. 69-106; s. 1, ch. 74-73; s. 1, ch. 77-174.

340.13 Bonds not debt or pledge of credit of state.—Turnpike revenue bonds issued under the provisions of this chapter shall not be deemed to be a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable exclusively from the fund pledged for their payment or authorized herein. All such bonds shall contain a statement on their face that the state is not obligated to pay the same or the interest thereon and that the faith and credit of the state is not pledged to the payment of the principal or interest of such bonds. The issuance of turnpike revenue bonds under the provisions of this chapter shall not, directly or indirectly or contingently, obligate the state to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. State funds shall not be used, appropriated or expended to construct, reconstruct, maintain, service, repair, purchase or lease any toll road authorized hereunder or to pay the principal or interest of any revenue certificates or other evidences of indebtedness issued for any such purpose, and the Legislature does herewith determine that any such use of state funds would violate the constitution of the state and all such bonds shall contain a statement on their face to this effect.

History.—s. 13, ch. 28128, 1953.

340.14 Pledge not to restrict certain rights of department.—The state does pledge to and agree with the holders of the bonds issued pursuant to this chapter, that the state will not limit or restrict the rights hereby vested in the department to construct, reconstruct, maintain and operate any project as defined in this law or to establish and collect such tolls or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this act or in any way impair the rights or remedies of the holders of such bonds until the bonds, together with interest thereon, are fully paid and discharged.

History.—s. 14, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.15 Turnpike revenue bonds.—

(1)(a) The department is hereby authorized to provide for the issuance at one time or from time to time, of turnpike revenue bonds of the department for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding 7½ percent per annum, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the department, and may be made redeemable before maturity, at the option of the department, at such price or prices and under such terms and conditions as may be fixed by the department prior to the issuance of the bonds. The department shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. The bonds shall be signed by the secretary of the department or shall bear his facsimile signature, and the official seal of the department or a facsimile thereof shall be impressed or imprinted thereon, and any coupons attached thereto shall bear the facsimile signature of the secretary of the department. In case any secretary whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be secretary before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all of the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or in registered form, or both, as the department may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The bonds of each issue shall be sold at public sale. However, if all bids received at the public sale are rejected as unacceptable, the department may then negotiate for the sale of the bonds at an interest rate which shall not exceed the lowest interest rate stated in the bids rejected at public sale. In no event shall the interest rate exceed 7½ percent and maximum commissions, fees, and expenses, including but not limited to legal, consultant, and management fees and printing cost, shall be made public in the offering prospectus prior to such sale.

(c) In the event said bonds are sold for less than par, the total amount of the discount shall be added to the total amount of interest to be paid over the life of the certificates at the rate of interest at which said certificates are to be sold, and the total thereof shall be considered as interest, and the interest actually to be paid by virtue of any discount shall then be computed as the average net interest cost rate under this section.

(2) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued (subject to the power to invest and reinvest trust funds as provided by s. 340.18), and shall be disbursed and used as provided by this act and in such manner and under such restrictions, if any, as the department may provide in the resolution authorizing the issuance of such bonds or in the

trust agreement hereinafter mentioned securing the same.

(3) Prior to the preparation of definitive bonds, the department may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The department may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(4) Bonds issued under the provisions of this chapter shall not be subject to the consent or approval of any other state board, commission or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

History.—s. 15, ch. 28128, 1953; s. 1, ch. 68-114; ss. 23, 35, ch. 69-106; s. 121, ch. 71-377; s. 26, ch. 73-302.

340.16 Trust agreement.—In the discretion of the department any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage a turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the department in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of a turnpike project or projects in connection with which such bonds shall have been authorized, the rates of toll to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the department. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the department may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operation of the turnpike project or projects.

History.—s. 16, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.17 Refunding bonds.—The department is hereby authorized to provide for the issuance of turnpike revenue refunding bonds of the department for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the department, for the additional purpose of constructing improvements of a turnpike project in connection with which the bonds to be refunded shall have been issued. The department is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and paying all or any part of the cost of any additional project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the department in respect of the same, shall be governed by the provisions of this chapter insofar as the same may be applicable.

History.—s. 17, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.18 Trust funds.—

(1) All moneys received by the department pursuant to this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed trust funds to be held and applied solely as provided in this law. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to the provisions of this chapter and such regulations as such resolution or trust agreement may provide.

(2) When, in the opinion of the department, all moneys in such trust funds are not immediately needed for the purpose for which such funds are provided, the trustee of such funds, upon resolution of the department specifically adopted for such purpose, is hereby authorized and empowered to temporarily invest and reinvest the amount of such funds authorized in such resolution in United States Government securities, which said securities shall be direct obligations of the United States Government; provided, that any such investment or reinvestment shall be subject to any pertinent provisions of the bond resolution or trust agreement. It is the intent of the Legislature that trust funds not be permitted to remain idle in the hands of the trustee when such funds can be put to use as aforesaid.

History.—s. 18, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.19 Remedies.—Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the depart-

ment or by any officer thereof, including the fixing, charging and collection of tolls.

History.—s. 19, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.20 Project, property, income and bonds free from taxation.—The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the department will constitute the performance of essential government functions, the department shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the department under the provisions of this chapter or upon the income therefrom, and every project and any property acquired or used by the department under the provisions of this chapter and the income therefrom, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall be exempt from taxation within the state. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 20, ch. 28128, 1953; ss. 23, 35, ch. 69-106; s. 9, ch. 73-327.

340.21 Bonds eligible for investment.—Bonds issued by the department under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the state, counties, other political subdivisions, cities or towns, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

History.—s. 21, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.22 Maintenance and repair of turnpike project; etc.—

(1) Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the department. Each such project shall have such force of toll-takers and other operating employees as the department may in its discretion employ.

(2) All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under this chapter.

History.—s. 22, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.23 Traffic control.—

(1) The department is hereby authorized to adopt and promulgate rules and regulations with respect to the use of a project, which rules and regulations shall relate to vehicular speeds, loads and sizes, safety devices, rules of the road and such other matters, including but not limited to the failure or refusal to pay the toll provided for the use of a project, as may be necessary and proper to regulate traffic in the interest of safety, the maximum convenience of the persons using the project, preservation of a project from unwarranted damage and to carry out the purpose of this chapter. Such rules and regulations shall apply according to their terms to all sections of a project under the jurisdiction of the department, their feeder roads and structures and other appurtenances. Insofar as such rules and regulations may be inconsistent with the provisions of the vehicle and traffic laws of this state, such rules and regulations shall be controlling. Violation of such rules and regulations shall be punished in accordance with s. 316.655. Notice of such rules shall be published in a newspaper of general circulation published in Dade County, and such other publications as the department may determine, in addition to the notice required pursuant to chapter 120.

(2) Members of the Florida Highway Patrol are hereby vested with the power and charged with the duty to enforce the rules and regulations of the department. The power and duty so vested and charged shall be performed and exercised as said officers perform and exercise their present duties, functions and powers. Expenses incurred by said patrol in carrying out its powers and duties under this chapter may be treated as a part of the cost of the operation of a project or projects and the Department of Highway Safety and Motor Vehicles shall be reimbursed by the department for such expenses.

History.—s. 23, ch. 28128, 1953; ss. 10, 23, 24, 35, ch. 69-106; s. 244, ch. 71-136; s. 8, ch. 74-377; s. 51, ch. 76-31; s. 56, ch. 78-95.

340.24 Cessation of tolls.—

(1) When all revenue bonds issued under the provisions of this chapter in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, the Department of Transportation in its discretion may assume the maintenance of such project or projects as part of the State Road System; provided, that in any event any such project or projects shall remain subject to sufficient tolls to pay the cost of the maintenance, repair and operation thereof.

(2) The department may, after said bonds shall have been paid or a sufficient amount for payment set aside as aforesaid, charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this chapter in connection with another turnpike project or projects which may be hereafter established by law, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal and interest on the bonds issued in connection with the first-mentioned project shall have been

paid or provision shall have been made for their payment.

(3) In the event another turnpike project or projects shall be hereafter established by law, the department may, by resolution, combine two or more projects described in such resolution, including the project specifically authorized by s. 340.03, and the projects so described shall thereafter constitute and be deemed to be one project within the meaning and for all purposes of this chapter.

History.—s. 24, ch. 28128, 1953; ss. 23, 35, ch. 69-106; s. 122, ch. 71-377.

340.25 Certificated motor carriers.—All motor common carriers and contract carriers that hold certificates of public convenience and necessity authorizing them to operate over the public roads of this state that will parallel a turnpike project or a section thereof on the date that such project is opened to the public for use, are hereby granted the right to operate their vehicles upon and over said turnpike project or such section thereof which parallels such public roads under such certificates upon compliance with the payment of the required tolls; provided, that such carriers shall comply with the provisions of this chapter and any rule and regulation of the department as to the use of such project, anything in said certificates to the contrary notwithstanding.

History.—s. 25, ch. 28128, 1953; s. 24, ch. 57-1; ss. 23, 35, ch. 69-106.

340.26 Unlawful for agents and employees to be interested in contract, etc.—Any agent or employee of the department who is interested, either directly or indirectly, in any contract of another with the department, or in the sale of any property, either real or personal, to the department, shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year.

History.—s. 26, ch. 28128, 1953; ss. 23, 35, ch. 69-106.

340.27 Preliminary and other expenses.—

(1) The Division of Planning and Programming of the Department of Transportation is hereby authorized to expend out of any funds available for the purpose such moneys as may be necessary for the study of any turnpike project or projects and to use its engineering and other forces, including other consulting engineers and other traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as it may deem expedient.

(2) All obligations and expenses incurred by the division under this section shall be paid by said division and charged to the appropriate turnpike project or projects, and the division shall keep proper records and accounts showing each amount so charged. All obligations and expenses so incurred shall be treated as part of the cost of such project or projects and shall be reimbursed to the division out of the proceeds of the bonds herein authorized.

History.—s. 27, ch. 28128, 1953; s. 123, ch. 71-377; ss. 1, 4, ch. 72-186.

340.28 State officers and employees retirement.—All employees of the department who are paid compensation for their services to the department, excepting persons employed to render special services in consultative capacities on a contract basis, shall be subject and entitled to the provisions of the State Officers and Employees Retirement Law.

History.—s. 28, ch. 28128, 1953; ss. 23, 35, ch. 69-106.
cf.—Ch. 122 State Officers and Employees Retirement System.

340.32 Additional method.—The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds, except as provided in this chapter.

History.—s. 32, ch. 28128, 1953.

340.33 Chapter liberally construed.—This chapter shall be liberally construed to effect the purposes thereof.

History.—s. 33, ch. 28128, 1953.

340.34 Advertising.—No fund heretofore or hereafter appropriated to the Division of Economic Development of the Department of Commerce or any successor thereto shall be expended for publicizing or advertising any toll turnpike constructed under the provisions of this chapter, as amended. Any incorporated city or town of Florida may maintain signboards along and upon the right-of-way of any turnpike project constructed hereunder, provided that such signs shall meet specifications as to location, frequency, construction and design as are prescribed by the department. Such signboards shall not advertise any private industry, business, or attraction, but shall advertise only the community or area placing such board upon the turnpike.

History.—s. 25, ch. 28128, 1953; s. 24, ch. 57-1; ss. 17, 23, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

340.35 Budget to be furnished Executive Office of the Governor.—

(1) The department shall submit its budget to the Governor in the manner provided for other state agencies by chapter 216; however, the department may submit its budget on a bond fiscal year rather than on the state's fiscal year. Nothing herein shall authorize or permit the Executive Office of the Governor to take any action in relation to the budgets of the department contrary to the terms and provisions of any trust heretofore entered into by the department.

(2) Conditioned on approval by the Executive Office of the Governor, the department may submit its budget on an accrual basis rather than on a cash basis.

History.—s. 3, ch. 63-257; s. 1, ch. 65-158; ss. 2, 3, ch. 67-371; ss. 23, 31, 35, ch. 69-106; s. 119, ch. 79-190.

CHAPTER 341

PUBLIC TRANSIT

341.011 Short title.—Sections 341.011-341.051 shall be known and may be cited as the "Florida Public Transit Act."

History.—s. 1, ch. 78-283.
cf.—s. 334.01 Florida Transportation Code.

341.021 Legislative intent.—It is the legislative intent of ss. 341.011-341.051 to define the role of the Department of Transportation in developing the transit element of an effective multimodal transportation system for this state. This role shall be viewed as dynamic and capable of recognizing changing developments in technology and local, state, and federal laws and policies that affect the state's total multimodal transportation system. It is further recognized by the Legislature that adequate and efficient public surface transit services are essential to the economic growth of the urban and rural communities of the state and the well-being of its people. It is in the best interests of the state to encourage and promote the development of public transit systems, embracing various modes of transport in a manner that will serve the state, including local and regional areas, in a safe, efficient, and effective manner.

History.—s. 1, ch. 78-283.

341.031 Definitions.—As used in ss. 341.011-341.051:

(1) "Public transit" means the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as "paratransit."

(2) "Public transit capital project" means a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system.

(3) "Public transit service development project" means a project undertaken by a public agency to determine whether a new or innovative technique or techniques or measures can improve or expand public transit services to its constituency. The scope of such projects shall include all items associated with the development, and the project duration shall not exceed 24 months. Public transit service development projects specifically include projects involving the utilization of new services, routes, vehicle frequencies, purchase of special transportation services, and other such techniques for increasing service to the riding public as they apply to specific localities and transit user groups.

(4) "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride" buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(5) "Ridesharing" means an arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle for transportation to such destination, or destinations. Transportation under such arrangement shall be limited to a single round trip daily, in a motor vehicle manufactured for the transportation of 15 or fewer persons. Ridesharing, as herein defined, is specifically intended to distinguish this activity from public transit services such as shared-ride programs which are provided for hire by governmentally owned or privately owned providers of such services.

History.—s. 1, ch. 78-283.

341.041 Duties and responsibilities of the department.—The department shall:

(1) Provide overall leadership and direction for public transit programs in this state.

(2) Develop a statewide plan which provides for public transit needs at least 5 years in advance and for a reasonable projection of such needs 20 years in advance. The plan shall be developed in a manner that will assure maximum use of existing facilities, and optimum integration and coordination of the various modes of transportation, both governmentally owned and privately owned resources, in the most cost-effective manner possible. The statewide plan shall incorporate plans adopted by local and regional planning agencies and shall, insofar as practical, conform to federal planning requirements.

(3) Develop, publish, and administer state standards concerning system management, performance, and safety of governmentally owned public transit systems. Such standards shall be developed jointly with representatives of affected transit systems, with full consideration given to nationwide industry norms, and shall define the minimums acceptable to this state, as well as long-range goals.

(4) Study public transit problems and provide technical and financial assistance to units of local government for resolution thereof. The department may assist public agencies who provide public transit by making department-owned transit vehicles and appurtenances available for lease to such agencies for special needs of limited duration.

(5) Receive and administer federal grants or apportionments for public transit projects in this state when necessary to further the overall statewide program.

(6) Coordinate all activities between the public

and private agencies on matters relating to public transit.

(7) Assist in the development and implementation of marketing programs for public transit services and information systems directed toward assistance of the user of public transit systems.

(8) Participate in federal research and demonstration programs relating to public transit and conduct research and demonstration projects directed to the needs of this state, including its counties and municipalities.

(9) Provide new transit services and equipment where a public need has been determined to exist pursuant to the transportation planning process and where the following conditions occur:

(a) No other governmental unit of appropriate jurisdiction exists.

(b) Service cannot be reasonably provided by a governmentally owned or privately owned public transit provider.

(c) Cost of providing service does not exceed the sum of revenues from fares charged to user, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose.

The department may buy, sell, own, lease, and otherwise encumber facilities, transit vehicles, and appurtenances thereto, as necessary to provide such services or provide service by contract with governmentally owned or privately owned service providers.

(10) Provide public transportation service where emergency service is required, provided that no other private or public transportation operation is available to provide needed service and that such service is clearly in the best interests of the people or communities being served. Such service shall be provided by contractual services or actual operation of state-owned transit equipment and facilities, or any other means deemed appropriate by the Secretary of Transportation, and shall be limited to a period not to exceed 2 years.

(11) Administer federal and state ridesharing programs and federal aid funds apportioned to the department for the purpose of developing studies, marketing, and implementing ridesharing programs. Vehicles used in such programs shall not be subject to regulation under chapter 323 or chapter 350, provided the department establishes requirements for adequate insurance based on the passenger capacity of each vehicle.

(12) Exercise such other functions, powers, and duties in connection with transit problems as may be necessary to develop an effective balanced transportation system in the state.

History.—s. 1, ch. 78-283.

341.051 Administration and financing of public transit programs and projects.—

(1) FEDERAL AID.—

(a) The department is authorized to receive federal grants or apportionments for public transit projects in this state.

(b) Local governments are authorized to receive federal grants or apportionments for public transit projects. In addition, the provisions of s. 338.19 notwithstanding, if the relocation of utility facilities is necessitated by the construction of a fixed guideway public transit project and the utilities relocation is approved as a part of the project by a participating federal agency, if eligible for federal matching reimbursement, then any county chartered under s. 6(e), Art. VIII, of the State Constitution shall pay at least 50 percent of the nonfederal share of the cost attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. The balance of the nonfederal share shall be paid by the utility.

(2) PUBLIC TRANSIT CONSTRUCTION AND IMPLEMENTATION PLAN.—

(a) The department shall prepare a 5-year public transit construction and implementation plan which shall be included in the department's 5-year construction plan prepared pursuant to s. 334.21(5). Provisions of s. 334.21 shall apply to public transit construction and implementation projects in the same manner that they apply to road construction projects, except that s. 334.21(5)(b) shall not apply to public transit projects.

(b) The public transit construction and implementation plan shall be consistent with the statewide public transit plan and local plans developed in accordance with the comprehensive transportation planning process. Projects involving funds administered by the department, and which will be undertaken and implemented by another public agency, shall be included in the public transit 5-year construction and implementation plan upon the request of that public agency, providing such project is eligible under the requirements established herein and subject to estimated availability of funds. Projects so included in the 5-year plan shall not be altered or removed from priority status without notice to the public agency or local government involved.

(3) APPROPRIATION REQUESTS.—

(a) Public transit funds shall be requested on the basis of the funding required for the public transit construction and implementation plan.

(b) Unless otherwise authorized by the Legislature, the department is prohibited from entering into any agreement or contract for any public transit project which would result in the ultimate expenditure or commitment of state funds in excess of $5 million. Any funds in excess of $5 million shall be appropriated from a revenue source other than the State Transportation Trust Fund, unless otherwise authorized by the Legislature.

(c) Appropriation requests shall identify each public transit project calling for state expenditure of $500,000 or more.

(d) No state funds shall be allocated or expended for operation deficits of public transit projects, except as specifically allowed for approved service development projects.

(e) Public transit service development projects shall be individually identified in the department's appropriation request. Such request shall show a breakdown in funds showing capital and operating expense.

(4) PROJECT ELIGIBILITY.—Any project necessary to carry out those duties and responsibilities enumerated in s. 341.041 is eligible for expenditure

of state funds in accordance with fund participation rates established herein, subject to the following conditions:

(a) Unless otherwise authorized by the Legislature, the department is prohibited from entering into any agreement or contract for any public transit project which would result in the ultimate expenditure or commitment of state funds in excess of $5 million. Any funds in excess of $5 million shall be appropriated from a revenue source other than the State Transportation Trust Fund, unless otherwise authorized by the Legislature.

(b) The project shall be for service or transportation facilities provided by the department under the provisions of this act, a public transit capital project, or a public transit service development project.

(c) The project has been approved by the department as being consistent with standards established pursuant to provisions of this act.

(5) FUND PARTICIPATION.—

(a) The department may fund up to 50 percent of the nonfederal share of the costs of any eligible public transit capital project. Department participation shall not exceed 12.5 percent of the federal participation in federally assisted projects.

(b) The department is authorized to fund up to 100 percent of the cost of any eligible project that is statewide in scope or involves more than one county where no other governmental unit or appropriate jurisdiction exists.

(c) The department is authorized to fund up to 50 percent of the net costs of public transit service development projects that are local in scope and up to 100 percent of the net costs of public transit service development projects that are statewide in scope. "Net costs" are all costs of the project less any federal funds, fares, or other sources of income to the project.

History.—s. 1, ch. 78-283.

341.101 Purchase of mass transit facilities.—

(1) The Division of Bond Finance of the Department of General Services is authorized to acquire, finance, lease, or sell, and the Department of Transportation is authorized to lease or purchase, mass transit facilities pursuant to ss. 288.23-288.30 and ss. 215.57-215.83.

(2) As used in s. 169.02, any municipal purpose shall also include any and all means for the transportation of people and property from place to place, constructed, operated, or maintained in whole or in part from public funds.

History.—ss. 2, 3, ch. 70-239.
Note.—Former s. 334.023.

CHAPTER 342

WATERWAY BEAUTIFICATION AND IMPROVEMENT

342.03 Beautification and improvement of waterways by counties and municipalities; tax.—It is declared to be a legitimate county or municipal purpose for any county or incorporated city or town in the state to improve and beautify waterways, including lakes, rivers, streams, ditches and canals, within such county or municipality, by opening such waterways and by clearing them of logs and other obstructions, including water hyacinths and other disagreeable and obnoxious vegetation, and, for all or any part of such purpose, any county or incorporated city or town in the state may levy a tax not to exceed 1 mill on the dollar of the assessed valuation of all property assessed for taxes in such county or incorporated city or town.

History.—s. 1, ch. 14651, 1931; CGL 1936 Supp. 2011(4).
cf.—s. 347.01 et seq. Ferries, toll bridges, dams, etc.

342.04 Time warrants.—Any county or incorporated city or town in the state desiring to carry on all or any part of the work mentioned in s. 342.03 may issue and sell time warrants not to exceed in amount the sum of $15,000 for any county or the sum of $5,000 for any incorporated city or town, except that time warrants shall not exceed 50 percent of the estimated revenue to be derived from the tax to be levied by virtue of s. 342.03. Such time warrants shall not be sold for less than their par value and shall not draw a rate of interest in excess of 6 percent per year. When such time warrants shall come within the purview of s. 12, Art. VII of the State Constitution, the said time warrants shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such county or city or town shall participate, which said election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by ss. 100.201-100.221, 100.241, 100.261-100.341, 100.351, and said election shall be subject to all the provisions of said chapter.

History.—s. 2, ch. 14651, 1931; CGL 1936 Supp. 2011(5); s. 24, ch. 57-1; s. 15, ch. 69-216; s. 64, ch. 77-175.

342.05 Precautions as to use of poisons.—Any county or incorporated city or town in the state, its agents, servants, employees, and contractors, may use any poisonous substance, chemical, or spray in killing water hyacinths and other disagreeable or obnoxious vegetation in the waterways mentioned in s. 342.03, provided no such poisonous substance, chemical, or spray shall be used which might injure or destroy fish life or human or other animal life without first taking sufficient precaution to prevent the same.

History.—s. 3, ch. 14651, 1931; CGL 1936 Supp. 2011(6).

342.06 Contracts and bond of contractor.—Any county or incorporated city or town in the state may contract to have carried on all or any part of the work mentioned in s. 342.03, provided such contract shall be let in the manner prescribed by law for other work of a public nature. No such contractor shall use any poisonous substance, chemical or spray in any of the waterways mentioned in s. 342.03 without first entering into a good and sufficient bond to be fixed and approved by the county or municipal authorities conditioned to indemnify any and all persons against any loss or damage for injury to livestock resulting from the use of such poisonous substance, chemical or spray.

History.—s. 4, ch. 14651, 1931; CGL 1936 Supp. 2011(7); s. 23, ch. 29615, 1955.

CHAPTER 344

COUNTY ROAD AND BRIDGE INDEBTEDNESS; BOARD OF ADMINISTRATION, ETC.

344.01 Roads, highways and bridges declared beneficial to state.—It is declared by the legislature that all roads, highways and bridges which have been constructed or built prior to June 21, 1929, in whole or in part, from the proceeds of bonds issued by the counties of the state, or from the proceeds of bonds issued by special road and bridge districts under the laws authorizing same, have been and are, and will continue to be beneficial to the state at large, and have contributed substantially to the general welfare, settlement and development of the entire state.

History.—s. 1, ch. 14486, 1929; CGL 1936 Supp. 2470(1).

344.08 Bonds to remain obligations of issuing unit.—All bonds issued by any county or special road and bridge district, and outstanding on June 21, 1929, and issued for the purpose of obtaining funds to pay for the construction of roads, or roads and bridges, and all refunding bonds which had then been issued by any county or special road and bridge district for the purpose of retiring bonds originally issued for the purpose of constructing roads, or roads and bridges, shall remain obligations of said counties or special road and bridge districts, respectively, and each of said counties or districts shall be legally liable for the full amount of its bonds, so issued by it, outstanding, together with interest thereon until paid.

History.—s. 8, ch. 14486, 1929; CGL 1936 Supp. 2470(8).

344.11 Records of indebtedness.—The clerk of the circuit court of each county shall be the official custodian of all records pertaining to outstanding indebtedness of the county, and also of all bonded indebtedness of special road and bridge districts, and shall make a complete record of each issue of such bonds outstanding on June 21, 1929, including all county bonds and special road and bridge district bonds. This record shall contain the information with relation to each issue in a well-bound book, which shall be a public record in the office of the clerk of the circuit court.

History.—s. 11, ch. 14486, 1929; CGL 1936 Supp. 2470(11); s. 27, ch. 63-572.

344.13 Apportionment of indebtedness.—If any special road and bridge district shall contain lands in more than one county, the amount of the bonded indebtedness of such special road and bridge district shall be, for the purposes of this chapter, apportioned between or among such counties in the proportion that the assessed valuation of the area of each county included within such special road and bridge district shall bear to the total assessed valuation of such special road and bridge district.

History.—s. 13, ch. 14486, 1929; CGL 1936 Supp. 2470(13); s. 1, ch. 57-749.

344.17 Depositories and investments.—All moneys received by the treasurer of the State Board of Administration, a body corporate under s. 9, Art. XII of the State Constitution, shall be deposited by him in a solvent bank or banks, to be approved and accepted for such purposes by the said board. In making such deposits he shall follow the method for the deposit of state funds. Each bank receiving any portion of the said funds shall be required to deposit with the treasurer of said board satisfactory bonds or treasury certificates of the United States, bonds of the several states, special tax school district bonds, bonds of any municipality eligible to secure state deposits as provided by law, bonds of any county or special road and bridge district of this state entitled to participate under the provisions of s. 16, Art. IX of the Constitution of 1885, as adopted by the 1968 Revised Constitution, and of s. 9, Art. XII of said revision, bonds issued under the provisions of s. 18, Art. XII, of the Constitution of 1885 as adopted by s. 9, Art. XII of the 1968 Revised Constitution, or bonds, notes or certificates issued by the Florida State Improvement Commission or its successors, the Florida Development Commission and the Division of Bond Finance of the Department of General Services, which contain a pledge of the 80 percent surplus 2 cents second gasoline tax accruing under s. 16, Art. IX of the Constitution of 1885, as adopted by the 1968 Revised Constitution, and under s. 9, Art. XII of said revision, which shall be equal to the amount deposited with said bank. Such security shall be in the possession of the treasurer of said board or the treasurer of said board is hereby authorized to accept in lieu of the actual depositing with him of such security, trust or safekeeping receipts issued by any Federal Reserve Bank, or member bank thereof, or by any bank incorporated under the laws of the United States; provided, however, that the member bank or bank incorporated under the laws of the United States shall have been previously approved and accepted for such purposes by the State Board of Administration, and provided, further, that said trust or safekeeping receipt shall be in substantially the same form as that which the

state treasurer is authorized to accept in lieu of securities given to cover deposits of state funds.

History.—s. 17, ch. 14486, 1929; CGL 1936 Supp. 2470(17); s. 1, ch. 17889, 1937; s. 2, ch. 20302, 1941; s. 1, ch. 20946, 1941; s. 7, ch. 22858, 1945; s. 2, ch. 57-749; ss. 22, 35, ch. 69-106; s. 18, ch. 69-216.

cf.—s. 18.10 Deposit of money in banks of state.

s. 518.09 Housing bonds legal investments and security.

344.20 State of Florida not obligated.—It is not the purpose or intention of this chapter or any part hereof to obligate the state, directly or indirectly or contingently, for the payment of the obligations of any counties or the obligations of any special road and bridge district, or that the state should assume the payment thereof; and this chapter is not to be construed as obligating the state to the holders of said bonds to make any payment of the same, nor shall such holders have any rights to enforce the appropriation of the moneys hereinabove provided for. Appropriations are made specifically for the benefit of the taxpayers and property owners of the state and for the purpose of rendering assistance to the various state agencies which have already performed part of the functions resting upon the state, and this chapter shall be subject to amendment, alteration or repeal at any time.

History.—s. 20, ch. 14486, 1929; CGL 1936 Supp. 2470(20).

344.21 Certain bond trustees to continue other functions.—In the case of bond trustees, who not only handle the money and funds of such county or district, but who also govern and administer the affairs of their respective county or district, including the issuance and sale of bonds and the building and construction and maintenance of the roads and bridges thereof, then the provisions of this chapter shall apply only to the interest and sinking funds thereof, and such bond trustees shall continue in office and in the performance of their duties in the administration of the affairs and business of such district as may be authorized by law.

History.—s. 21, ch. 14486, 1929; CGL 1936 Supp. 2470(21).

344.24 Disposition of excess funds in county accounts.—

(1) If in any case in which a levy of ad valorem taxes has been or may hereafter be laid and collected by or for any county or special road and bridge district, or other taxing district in this state, for the servicing of road and bridge bonded indebtedness being administered by the State Board of Administration, and the proceeds of which have been remitted to the State Board of Administration, or if on account of profits realized from investments by the State Board of Administration or its predecessor, the statutory Board of Administration, or if on account of tax redemption funds collected and remitted to the State Board of Administration or its predecessor, the statutory Board of Administration, there has been or shall hereafter be created an amount of funds in excess of the requirements for which such tax levies were or may be laid and upon which such tax redemptions may be based, or of the account for which such profits upon investments have been or may be realized, all such excess funds shall be transferred and applied as follows:

(a) If created for countywide bonds or obligations, to the credit of the county, and applied by the State Board of Administration as gasoline and other fuel tax funds are applied, as required by s. 9, Art. XII of the State Constitution.

(b) If created for special road and bridge district or other special taxing district bonds or obligations, to the credit of the interest and sinking funds of the respective districts, and applied to other district bonds or obligations being administered by the State Board of Administration; provided, that if there are no such other bonds or obligations of districts, then and in that event, such excess funds shall be transferred to the credit of the county in which such district is located, and applied as provided in paragraph (a) of this subsection.

(2) All funds transferred under the provisions of this section shall be under the control and supervision of the State Board of Administration, as are all other funds made available to and administered by it under s. 9, Art. XII of the State Constitution.

History.—ss. 1, 2, ch. 21640, 1943; s. 18, ch. 69-216.

344.25 Additional powers of State Board of Administration; judgments.—In addition to the powers conferred upon the State Board of Administration by s. 9, Art. XII of the State Constitution, said board is hereby granted the power and authority to set up and recognize as a part of the bonded indebtedness of any taxing unit entitled to participate in the funds made available to said board by said s. 16, Art. IX of the Constitution of 1885, as adopted by the 1968 Revised Constitution, and by s. 9, Art. XII of said Revision, the unpaid balance of any valid judgment rendered against such unit prior to January 1, 1943, and to refund or pay the same as in the manner provided for the payment of the obligations described in said s. 16, Art. IX of the Constitution of 1885, as adopted by the 1968 Revised Constitution, and in s. 9, Art. XII of said revision, said balance to bear interest from the date of such judgments until paid, at the rate of 5 percent per annum; provided, however, that the proceeds of ad valorem tax levies, including tax redemption funds, heretofore or hereafter laid for the purpose of paying the principal and/or interest on bonds upon which such judgments were based shall, promptly upon collection, be remitted to the State Board of Administration, to be applied to the purposes for which the same were levied; and provided, further, that nothing in this section is intended to authorize the recognition of any of such judgments as presently payable obligations entitled to participate out of gasoline or other fuel tax funds being and to be administered by the State Board of Administration, but only as entitled to participate in the distribution of such funds and to be refunded, refinanced or paid at such time or times and in such manner as said State Board of Administration may determine in the exercise of its powers under s. 9, Art. XII of the State Constitution; the purpose of this section being to relieve, so far as this legislature may, the taxing units affected of the burdens imposed by said judgments and of the corresponding duty on the part of such units to levy ad valorem taxes to pay the same, all within the spirit

and intent of said s. 9, Art. XII of the State Constitution.

History.—s. 1, ch. 21641, 1943; s. 18, ch. 69-216.

344.26 State Board of Administration; duties concerning debt service.—

(1)(a) The constitutional State Board of Administration shall take over the management, control, bond trusteeship, administration, custody, and payment of all debt service or other funds or assets now or hereafter available for all bonds or debentures issued to finance the construction or purchase of bridges, highways, or other transportation facilities which are now or hereafter leased for a term of more than one year or purchased under installment purchase agreements by the State Road Department or Department of Transportation from any public body, county, district, municipality, or other public bridge authority.

(b) Said State Board of Administration shall succeed to all the statutory powers of the respective officials of such public bodies, counties, districts, municipalities or other public authorities with regard to said bonds and debentures, including the power to issue refunding bonds for any of such bonds or debentures or interest coupons thereon, except that in case any ad valorem levies are necessary to service any of said bonds containing ad valorem tax pledges, such tax levies shall be made and collected by the taxing officials now authorized by law to levy and collect the same, who shall promptly remit such collections to the State Board of Administration.

(c) Said levies shall be made upon and by direction of appropriate and seasonable resolutions adopted by the State Board of Administration, setting forth the amounts to be levied and collected and the necessity for same.

(d) It shall be the duty of all officials of any such public body, county, district, municipality or other public authority to turn over to said State Board of Administration within 30 days after May 27, 1943, or within 30 days after the execution hereafter of any such lease or purchase agreement by Department of Transportation all moneys or other assets applicable to, or available for, the payment of said bonds or debentures, together with all records, books, documents or other papers pertaining to said bonds or debentures.

(e) Any funds or other assets which hereafter become applicable to the payment of such bonds or debentures and come into the hands of any such officials shall be immediately remitted to said State Board of Administration.

(2) The Department of Transportation shall pay all rentals or purchase installments for bridges or highways direct to the State Board of Administration for application by said board as provided under the terms of said leases or purchase agreements.

History.—ss. 1, 2, ch. 21853, 1943; ss. 23, 35, ch. 69-106; s. 8, ch. 70-239.
cf.—s. 349.16 Transfer of refunding powers to authority.

344.261 State Board of Administration; debt service; approval of bonds, etc., and plan for their retirement.—

(1) Before entering into a lease-purchase agreement with any county, road and bridge district, or any other agency covering any road, bridge, ferry, or other transportation facility or facilities, which agreement pledges rental and purchase payments by the Department of Transportation to apply on retirement of the debt incurred or to be incurred for the construction or supplying of such transportation facility, and which debt will, in consequence of s. 344.26, be administered by the State Board of Administration, the department shall first secure from the State Board of Administration a statement approving the legal and fiscal sufficiency of such bonds or debentures and the plan for their retirement.

(2) This section shall be considered as supplementing and cumulative to existing laws and shall be effective as to any agreements entered into after June 9, 1951.

History.—ss. 1, 2, ch. 26954, 1951; ss. 23, 35, ch. 69-106; s. 9, ch. 70-239.

344.29 Anticipated surplus gasoline tax; issuance of certificates of indebtedness authorized.—

(1) BY COUNTY.—

(a) Any county, by resolution of its board of county commissioners, and upon certification by the State Board of Administration of adequate anticipated revenue from 20 percent surplus gasoline tax to accrue to such county under the provisions of s. 9, Art. XII of the State Constitution, may issue and sell interest-bearing certificates of indebtedness to be paid from said 20 percent surplus gasoline tax for the sole purpose of acquiring right-of-way or constructing state or county roads within such county, or for refunding any such certificates theretofore issued. Such certificates shall mature within 30 years from date of issue but not later than the year 1992, shall bear interest at not more than 7½ percent, and shall be construed not as a general county obligation but merely as an obligation of the board of county commissioners in its representative capacity and secured only by the specified 20 percent surplus gasoline tax revenue. When approved as to fiscal sufficiency by the State Board of Administration and as to legal adequacy by the Department of Legal Affairs, such certificates shall have all the qualities of negotiable instruments under the statutes of this state and the law merchant, shall be acceptable as collateral to secure state or county fund deposits, and be eligible as investments for such funds, sinking funds and public trust funds.

(b) The proceeds of such certificates shall constitute a trust fund to be used solely for the purpose or purposes described therein but may, at the discretion of the board of county commissioners of such county, be transferred to and used by the Department of Transportation in carrying out such purpose or purposes. Any balance of such proceeds remaining after fulfillment of the purpose for which the certificates were issued shall be deposited in the sinking fund established for their payment.

(2) BY DEPARTMENT OF TRANSPORTATION.—

(a) The Department of Transportation upon certification by the State Board of Administration of adequate anticipated 80 percent surplus gasoline tax revenue to accrue to the department for use in any county in the state under provisions of s. 9, Art. XII of the State Constitution, may issue and sell interest-bearing certificates of indebtedness payable from

said 80 percent surplus gasoline tax, for the purpose of financing the acquisition of right-of-way or for the construction or reconstruction of roads and bridges on the state road system in the county where such 80 percent surplus gasoline tax accrues, or for the purpose of refunding certificates theretofore issued, but only upon resolution of the board of county commissioners of said county. Such certificates shall mature within 30 years from the date of issue, but not later than the year 1992, shall bear interest at not more than 7½ percent, and shall not be construed as an obligation of the state or of any political subdivision thereof, but merely as an obligation of the department in its representative capacity, and payable solely from the specified 80 percent surplus gasoline tax. When approved as to fiscal sufficiency by the State Board of Administration and as to legal adequacy by the Department of Legal Affairs, the certificates shall have all the qualities of negotiable instruments under the laws of the state or of the law merchant, shall be acceptable as collateral to secure deposits of state and county funds, and shall be eligible as investments for any state, county, municipal or other public trust funds.

(b) The department shall adopt policies and procedures and enter into such covenants with the certificate holders regarding the terms and conditions of such certificates covering the issuance, sale, exchange, refunding, redemption features, execution and so forth, as are in accord with sound fiscal principles and as are not inconsistent with the provisions of this section; provided, however, that the sale thereof to the general public shall be made only on the basis of duly advertised public competitive bidding, but that such certificates may be sold by negotiation to any federal, state or county agency having public funds at its disposal for investment. Said certificates shall constitute an irrevocable agreement between the department and the holders of such certificates.

(c) The State Board of Administration is hereby authorized, upon request by resolution of the Department of Transportation, to act as its agent in the issuance, sale, management, payment and refunding of such certificates of indebtedness.

(d) The proceeds of such certificates of indebtedness shall constitute a trust fund to be kept separate from other funds of the department and shall be used only for the purpose or purposes described in the face of such certificate. Any balance of such trust fund remaining after the purposes described in the certificate have been carried out shall be deposited in the sinking fund set up to retire such certificates.

(3) This section shall be considered as alternate and cumulative to any other law regarding the use of surplus gasoline tax funds accruing under the provisions of s. 9, Art. XII of the State Constitution.

History.—ss. 1, 2, ch. 59-225; s. 1, ch. 63-473; ss. 11, 23, 35, ch. 69-106; s. 18, ch. 69-216; s. 27, ch. 73-302.

CHAPTER 347

FERRIES, TOLL BRIDGES, DAMS, AND LOG DITCHES

347.01 County commissioners may grant license.—The county commissioners of the several counties may grant leave to applicants, upon the conditions provided in this chapter, to establish ferries, toll bridges, mills and dams, and log ditches, upon and across the rivers and streams of their respective counties, which license shall continue in force for a time to be specified therein by said board not exceeding ten years.

History.—s. 1, ch. 3300, 1881; RS 637; GS 910; RGS 1692; CGL 2740.

347.02 Notice of application.—Any person desiring the benefits of s. 347.01 shall advertise in a newspaper published in the county wherein the privilege is to be granted, or if there be no newspaper published in said county, in a newspaper published in the adjoining or nearest county thereto; and shall also post in three conspicuous places in said county notice of his intention to apply to the county commissioners for leave, specifying the object of his application to the commissioners aforesaid, which application shall be in writing, particularly describing the river or stream, and locality thereupon, with the width thereof, and the depth of water where he shall desire to erect or establish a mill, dam, bridge, ferry or log ditch as aforesaid.

History.—s. 2, ch. 3300, 1881; RS 638; GS 911; RGS 1693; CGL 2741.

347.03 Owner of land to have preference for ferry or toll bridge.—No such license to establish a ferry or toll bridge shall be granted to any person other than the owner of the land through which the highway adjoining the ferry or toll bridge shall run, unless such owner shall consent thereto or shall neglect to apply for such license, after notice as aforesaid.

History.—s. 3, ch. 3039, 1877; RS 639; GS 912; RGS 1694; CGL 2742.

347.04 Commissioners may regulate.—The board of county commissioners, when they shall grant any license to keep a ferry or toll bridge, shall order and direct the rates of ferriage or toll which the person licensed may charge, and may, from time to time thereafter during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry or bridge, which hours shall be at least from daylight till dark, and may direct how long persons desiring to be crossed may be detained.

History.—s. 2, ch. 3039, 1877; RS 640; GS 913; RGS 1695; CGL 2743.

347.05 Bond.—Every person applying for such license for a ferry or toll bridge, shall, before the same shall be granted, give bond in a sum to be fixed by the county commissioners, not less than $200, with such sufficient sureties as the board shall approve, conditioned to faithfully keep such bridge in good repair, or attend such ferry with such and so many safe and convenient boats, and so many men to work the same, together with such sufficient implements therefor, and to perform the duties of such ferry or toll bridge, during the several hours in each day and at such several rates as the said board shall from time to time order and direct, which bond shall be filed with the clerk of said board.

History.—s. 5, ch. 3039, 1877; RS 641; s. 5, ch. 5423, 1905; GS 914; RGS 1698; CGL 2749.

347.06 Certificate of license.—Whenever an application is granted under s. 347.01, the clerk of the board of county commissioners shall issue his certificate under seal, specifying the privileges therein granted, for which he shall receive the fees prescribed by law for like services.

History.—s. 1, ch. 3300, 1881; RS 642; GS 915; RGS 1699; CGL 2750.

347.07 License on waters between counties.—Whenever the waters over which any toll bridge or ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize the person obtaining the same to transport and pass persons, goods, wares, and merchandise and effects to and from either side of said waters; provided, that the rate of toll be fixed by the county commissioners of each county.

History.—s. 7, ch. 3039, 1877; RS 643; GS 916; RGS 1700; CGL 2751.

347.19 Militia and clergymen exempt from paying tolls.—

(1) Any person belonging to the military forces of the state going to or returning from any parade, encampment, drill, muster, or other military service or meeting which he may be required to attend, if he is in uniform, presents an order for duty, or such other proper identification to be prescribed by the adjutant general, and all persons driving automobiles or other vehicles belonging to the military department of the state used for transporting military personnel, stores and property, when properly identified shall, together with any such conveyance and military personnel and property of the state in his charge, be allowed to pass free through all tollgates and over all toll bridges and ferries in this state.

(2) Clergymen and preachers of the gospel shall

be allowed to pass free over all toll bridges and ferries in this state.

(3) A copy of this section shall be posted at each toll bridge and on each ferry.

History.—ss. 27, 28, Acts of March 5, 1842; RS 644; GS 917; RGS 1701; CGL 2752; s. 5, ch. 14761, 1931; CGL 1936 Supp. 2752(1).

347.20 Vested rights not impaired.—Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this state.

History.—s. 10, ch. 3039, 1877; RS 645; GS 918; RGS 1702; CGL 2753.

347.21 County commissioners to grant franchise.—The county commissioners of any county in this state, whenever it shall have been made to appear to them that the convenience of the public requires the maintenance of a ferry for teams and passengers operated on regular schedules at frequent intervals across any river between any two points on opposite sides of the river in the same county, shall by resolution, grant a leave, license and franchise for the establishment, maintenance and operation of such ferry by a grantee or grantees named in the resolution, from a street or a public road on one side of the river to a street or a public road on the other side of the river; which leave, license and franchise shall vest in and be enjoyed by the grantee or grantees and the heirs, successors, and assigns thereof for the terms and on the conditions as in ss. 347.22-347.25 provided. The word grantee, as used in said sections, shall include the heirs, successors and assigns of the grantee, and the word franchise shall include leave, license, and all rights and privileges pertaining to ferries.

History.—s. 1, ch. 5185, 1903; GS 919; RGS 1703; CGL 2754.

347.22 Condition under which franchise granted.—Such leave, license and franchise, for the maintenance and operation of such ferry as provided in s. 347.21, shall be given and granted by resolution upon the following terms and conditions:

(1) The grantee of such leave, license and franchise, shall before the taking effect of such leave, license and franchise, give to the county a good and sufficient bond in the sum of $5,000, to be approved by the county commissioners, conditioned for the establishment, maintenance and operation of a ferry of character to meet the reasonable necessities of the public on regular schedule at such frequent intervals from each side of the river with a ferry boat suitable and safe for the transportation of passengers, vehicles and teams during the hours and on the schedules as fixed by the provisions of the resolution of the board of county commissioners granting the franchise. The county commissioners shall in and by the resolution giving and granting such franchise fix the schedule to be observed and the rate to be charged for ferriage, and the character and capacity of boats, and make such other regulations as may to them appear to be reasonable, to be in force and effect until changed as hereinafter provided.

(2) Such franchise, unless adjudged by the courts forfeited for failure to comply with the terms and conditions thereof, shall run and continue for the full term of and period of 15 years, and thereafter until the county commissioners shall have terminated the said franchise in the manner herein provided. No leave, license or franchise shall be granted to any person for the operation of any ferry across such river from or to any point within 1 mile of either terminus of such ferry as fixed by the resolution granting the franchise, and no other ferry shall be established or maintained within 1 mile thereof; and no such leave, license or franchise shall be so given or granted as to impair or depreciate the value of any vested right or privilege of any person or corporation operating at the time of the passage of this chapter, a ferry for the transportation of passengers and teams at frequent and regular intervals across a river under the provisions of any resolutions of a board of county commissioners, granted under the provisions of existing laws.

(3) At the end of the third year after granting such leave, license or franchise, and at the end of each period of 3 years thereafter, the county commissioners and the grantee shall each have the right, by having given notice of the intention so to do 30 days prior to any such recurring period of 3 years, to have arbitrated with the other party any question or questions as to the reasonableness of any rate or rates allowed or charged, or as to the character and reasonableness or frequency of the service required or given, or as to any other matter or thing pertaining to the maintenance or operation of such ferry. For the arbitration of any such question or questions, the county commissioners shall name one arbitrator, and the grantee of the franchise shall name the other, and the two arbitrators shall, if possible, after investigation, decide the question or questions submitted to them, and render to the county commissioners and to the grantee a written decision signed by them. If the two arbitrators so named shall be unable to agree as to a proper decision on any question or questions, they shall mutually agree upon a third disinterested party, who shall investigate the contested question or questions, and the finding of two of the arbitrators shall then be a decision of the arbitrators. All parties shall be bound, and shall abide by and carry out for the ensuing 3 years the decision of the arbitrators. The county commissioners and the grantee of such franchise shall have the right at any time, without arbitration, to make by resolution of the county commissioners, approved by the grantee, any arrangement that they may deem mutually advantageous to all concerned affecting such ferry service, subject, however, to subsequent change by arbitration at the times and as herein provided.

(4)(a) The county commissioners of any county, wherein such ferry shall have been operated as herein provided, shall have the right to have submitted to the voters of the county, at the general election next preceding the expiration of the said term of 15 years, the question as to whether or not the county commissioners shall purchase the property used and operate the ferry, and if the majority of the voters voting on the subject shall have voted for the purchase and operation of the ferry by the county, then the county commissioners and the grantee of the franchise shall each name an arbitrator, and the two arbitrators so named shall name a third, a disinterested person of high standing and integrity, and the

three arbitrators, or two of them, if the three cannot agree, shall, after a thorough investigation, fix the amount to be paid by the county to the grantee; and the county commissioners shall thereupon pay to the grantee the amount fixed by the arbitrators, or a majority of them, and shall receive from the grantee a conveyance of all its property used for ferry purposes; and the county commissioners shall operate such ferry so long as its operation by them shall appear practicable, and the grantee of the franchise shall not thereafter, so long as the said ferry shall be operated by the county, operate any such ferry, and all rights of the grantee to operate such ferry shall, during the time of the operation thereof by the county, be withdrawn.

(b) Should the electors of the county at such election fail to approve the purchase and operation of such ferry, or should the county commissioners for any reason fail to make such purchase, the grantee shall have the right to continue the operation of such ferry with all the rights hereby granted and subject to all of the provisions of this chapter as to arbitration of questions of service, charges, etc., for an additional term of 10 years, and until the county shall, by vote of its electors, have determined to purchase and operate such ferry, and shall have paid to the grantee the amount fixed by arbitration in the manner above provided.

History.—s. 2, ch. 5185, 1903; GS 920; RGS 1704; CGL 2755.

347.23 No person to maintain ferry unless authorized.—No person not authorized under the provisions of this chapter shall maintain any ferry for transporting persons or property for profit across any river from any point within 1 mile of a terminus of any ferry maintained under the provisions of this chapter to any point within 1 mile of such terminus.

History.—s. 4, ch. 5185, 1903; GS 921; RGS 1705; CGL 2756.

347.24 Transporting persons for hire within 1 mile of ferry; penalty.—Any person who shall for profit or hire transport across any river from any point within 1 mile of any terminus of any ferry maintained under the provisions of law to any point within 1 mile of a terminus of any such ferry, unless duly authorized by law so to do, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, for the first offense and for each subsequent offense shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 5185, 1903; GS 3734; RGS 5759; CGL 7989; s. 245, ch. 71-136.

347.25 Maintaining illegal ferries; penalty.—Whoever maintains any ferry for transporting across any river, stream or lake, persons, goods, chattels or effects for profit or hire, unless duly authorized according to law, shall be punished by fine not exceeding $20. When any offense mentioned in this section is committed on streams dividing counties the offender may be prosecuted in either county.

History.—s. 8, ch. 3039, 1877; RS 2738; GS 3733; RGS 5758; CGL 7988.

CHAPTER 348

EXPRESSWAY AUTHORITIES

PART I BREVARD COUNTY EXPRESSWAY AUTHORITY (ss. 348.216-348.23)

PART II TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY (ss. 348.50-348.70)

PART III ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (ss. 348.751-348.765)

PART IV PASCO COUNTY EXPRESSWAY AUTHORITY (ss. 348.80-348.94)

PART V SEMINOLE COUNTY EXPRESSWAY AUTHORITY (ss. 348.95-348.963)

PART I

BREVARD COUNTY EXPRESSWAY AUTHORITY

348.216 Short title.—Part I of chapter 348 shall be known and may be cited as the "Brevard County Expressway Authority Law."

History.—s. 1, ch. 72-408.

348.217 Definitions.—As used in part I of this chapter unless the context clearly indicates otherwise:

(1) "Authority" means the body politic and corporate, an agency of the state, created by this part.

(2) "Members" means the governing body of the authority and "member" means one of the individuals constituting such governing body.

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations in either temporary or definitive form which the authority is authorized to issue pursuant to this part.

(4) "Lease-purchase agreement" means the lease-purchase agreements which the authority is authorized pursuant to this part to enter into with the Department of Transportation.

(5) "Department of Transportation" or "department" means the Department of Transportation of the state, organized and existing under and by virtue of the provisions of chapters 334-339.

(6) "County" means the County of Brevard.

(7) "State Board of Administration" means the body corporate created, organized, and existing under and by virtue of the provisions of s. 9(c)(2), Art. XII of the State Constitution.

(8) "Agency of the state" means and includes the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated or established by, the state.

(9) "Federal agency" means and includes the United States, the President of the United States, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated or established by, the United States.

(10) "Second gas tax" means and includes the 20 percent and 80 percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Brevard County under the provisions of s. 9(c)(2), Art. XII of the State Constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the Department of Transportation or the county for outstanding obligations, or all other such funds as may otherwise be provided by the constitution for use in Brevard County.

(11) "Seventh cent gas tax" means all the gasoline tax funds accruing in each year for use in Brevard County under the provisions of s. 206.60.

(12) "Limited access expressway" means a street or highway especially designed for through traffic and over, from, or to which no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(13) "Expressway" means the same as limited access expressway.

(14) "Brevard County Expressway System" and "system" mean generally a modern highway system of roads, bridges, and causeways within Brevard County or a major road, bridge, or causeway, with access limited or unlimited as the authority may determine, and such structures, appurtenances, and

facilities related thereto, including all approaches, streets, roads, bridges, and avenues of access for such system.

(15) Words importing singular number shall include the plural number in each case and vice versa, and the words importing persons shall include firms and corporations.

History.—s. 2, ch. 72-408.

348.218 Brevard County Expressway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Brevard County Expressway Authority, hereinafter referred to as "authority."

(2) The governing body of the authority shall consist of five members, one member appointed by the Board of County Commissioners of Brevard County from each of the county commission districts of Brevard County. In the alternative, the board of county commissioners, in its sole discretion, may elect to serve individually as the governing body of the authority and in the event of such election, such individual county commissioners shall possess full and complete power and authority as the governing body of said authority as specified under this part. In the event said board of county commissioners does not elect to serve individually as the governing body of the authority, two of the members who are first appointed shall serve a term of 2 years beginning on January 1 of the year of their appointment, and three of the members who are first appointed shall serve a term of 4 years beginning on January 1 of the year of their appointment. Thereafter, the term of such appointed members shall be for 4 years. Each member so appointed shall serve at the pleasure of the Board of County Commissioners of Brevard County and shall hold office until his successor has been appointed and qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term.

(3) The authority shall elect one of its members as chairman of the authority. The authority shall also elect a secretary and a treasurer, who may or may not be members of the authority. The secretary and treasurer shall hold such offices at the will of the authority. Three members of the authority shall constitute a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(4) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and such engineers and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms, or corporations, and may employ a fiscal agent or agents.

(5) The authority may avail itself of the facilities and employees of Brevard County for the purpose of carrying out any rights or duties granted or imposed on said authority by this part or any other provisions of law. Brevard County is hereby authorized to enter into agreements with the authority in order to make available its facilities and employees. Reimbursement shall be made by the authority to Brevard County should the authority, in its discretion, utilize said facilities or employees, but said reimbursement shall not exceed the actual costs to Brevard County.

(6) Members of the authority shall be entitled to receive from the authority their traveling and other necessary expenses incurred in connection with the business of the authority, as provided in s. 112.061, but they shall draw no salaries or other compensation.

History.—s. 3, ch. 72-408.

348.219 Purposes and powers.—

(1) The authority created and established by this part shall have the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Brevard County Expressway System, hereinafter referred to as "system."

(2) It is the express intention of this part that the authority, in the construction of the Brevard County Expressway System, shall be authorized to construct any extensions, additions, or improvements to said system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access, with such changes, modifications, or revisions of said project as shall be deemed desirable and proper.

(3) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded and complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this part.

(e) To enter into and make lease-purchase agreements with the Department of Transportation for terms not exceeding 40 years, or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Brevard County Expressway System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part. Such right and power may be assigned or delegated by the authority to the Department of Transportation.

(g) To borrow money and make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this part sometimes called "bonds," of the authority for the purpose of financing all or part of the improvement, extension, or construction of the Brevard County Expressway System and appurtenant facilities, including all approaches, streets, roads, bridges, and ave-

nues of access for said Brevard County Expressway System and for any other purpose authorized by this part, said bonds to mature in not exceeding 40 years from the date of issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges, including all or any portion of the second gas tax or the seventh cent gas tax, or both, and in general to provide for the security of said bonds and the rights and remedies of the holders thereof. The pledge of said second gas tax or said seventh cent gas tax, or both, and the amount and conditions of such pledge shall be first approved by the Board of County Commissioners of Brevard County. However, no portion of said second gas tax or said seventh cent gas tax, or both, shall be pledged for the construction of any project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the board of county commissioners, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when said pledge of funds shall be in effect.

1. The authority shall reimburse Brevard County for any sums expended from said gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

2. In the event the authority determines to fund or refund any bonds theretofore issued by said authority or by said commission as aforesaid prior to the maturity thereof, the proceeds of such funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and it is the express intention of this part that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this part, notwithstanding that part of such outstanding bonds will not mature or become redeemable until 10 years after the date of issuance of bonds pursuant to this part to fund or refund such outstanding bonds.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with, any federal agency, the state, any agency of the state, the County of Brevard, or any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under both chapters 73 and 74.

(k) To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the second gas tax or the seventh cent gas tax, or both, subject to the prior approval of the Board of County Commissioners of Brevard County as provided herein, as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(m) The authority is specifically authorized to construct a toll facility in Brevard County establishing a two-lane or four-lane bridge located in the southern area of Brevard County, south of the municipality of Melbourne, connecting existing U. S. Highway No. 1 with State Road A1A across the Indian River at such exact location as is determined by the authority to be economically feasible.

(4) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including the County of Brevard, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof; nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(5) Anything in this part or any other provisions of the law to the contrary notwithstanding, the consent of any municipality shall not be necessary for any project of the authority, whether or not said project lies within the boundaries of any municipality, either in whole or in part.

History.—s. 4, ch. 72-408.

348.22 Bonds of the authority.—

(1) The bonds of the authority issued pursuant to the provisions of this part, whether on original issuance or on refunding, shall be authorized by resolution of the members thereof, may be either term or serial bonds, and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, not exceeding 8 percent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, carry such registration or exchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals or other charges or receipts of the authority, including the second gas tax or the seventh cent gas tax, or both, subject to the prior approval of the Board of County Commissioners of Brevard County, as provided herein. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided such bonds bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(2) Said bonds shall be sold at public or private sale at such price or prices as the authority shall determine to be in its best interest, except that the interest cost to the authority on such bonds shall not exceed 8 percent per annum. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals, including all or any portion of the second gas tax or the seventh cent gas tax, or both, subject to the prior approval of the Board of County Commissioners of Brevard County, as provided herein, or other charges or receipts of the authority derived from the system.

(b) The completion, improvement, operation, extension, maintenance, repair, lease, or lease-purchase agreement of said system and the duties of the authority and others, including the Department of Transportation, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Brevard County Expressway System or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust, or indenture securing the bonds, or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(4) The authority may employ fiscal agents as provided by this part or the State Board of Administration may, upon request of the authority, act as fiscal agent for the authority in the issuance of any bonds which may be issued pursuant to this part, and the State Board of Administration may, upon request of the authority, take over the management, control, administration, custody, and payment of any or all debt services of funds or assets now or hereafter available for any bonds issued pursuant to this part. The authority may enter into any deeds of trust, indentures, or other agreements within or without the state, as security for such bonds, and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals or other charges, or receipts of the authority, including the second gas tax or the seventh cent gas tax, or both, subject to the prior approval of the Board of County Commissioners of Brevard County, as provided herein. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments or as the authority may authorize, including, but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of, or lease-purchase agreement relating to, the Brevard County Expressway System and the duties of the authority and others, including the Department of Transportation, with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

(5) Any of the bonds issued pursuant to this part are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the Law Merchant and the Uniform Commercial Code of the state.

History.—s. 5, ch. 72-408.

348.221 Remedies of the bondholders.—

(1) The rights and remedies herein conferred upon or granted to the bondholders shall be in addition to, and not in limitation of, any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by a lease-purchase agreement, deed of trust, indenture, or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on said bonds shall have become due, whether at maturity or upon call for redemption, or the Department of Transportation shall default in any payments under, or covenants made in, any lease-purchase agreement between the authority and the Department of Transportation, and such default shall continue for a period of 30 days, or in the event that the authority or the Department of Transportation shall fail or refuse to comply with the provisions of this part or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent, in aggregate principal amount, of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; however, such holders of 25 percent in aggregate principal amount of the bonds then outstanding must first give notice of their intention to appoint a trustee to the authority and to the Department of Transportation. Such notice shall be deemed to have been given if given in writing and deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post-office box or station, and addressed, respectively, to the chairman of the authority at the office of the authority and to the secretary of the Department of Transportation at the principal office of the Department of Transportation.

(2) Such trustee, and any trustee under any deed of trust, indenture, or other agreement, may, and upon written request of the holders of 25 percent, or such other percentage as may be specified in any deed of trust, indenture, or other agreement aforesaid, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action, or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority, to carry out

any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the Department of Transportation, including the right to require the Department of Transportation to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Brevard County second gas tax or seventh cent gas tax, or both, or other funds of the department so agreed to be paid and to require the Department of Transportation to carry out any other covenants and agreements with, or for the benefit of, the bondholders and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity require the authority or the Department of Transportation to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee, when appointed as aforesaid or acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the Brevard County Expressway System or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges, or receipts from which are, or may be, applicable to the payment of the bonds so in default, and, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the Department of Transportation, operate and maintain the same for, on behalf of, and in the name of, the authority, the Department of Transportation, and the bondholders; collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the Department of Transportation might do, and who shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustees, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues or receipts, derived from the Brevard County Expressway System, or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid, which said rates, fees, rentals, or other charges, revenues or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incidental to the representation of the bondholders in the enforcement and protection of their rights.

History.—s. 6, ch. 72-408.

348.222 Lease-purchase agreement.—

(1) In order to effectuate the purposes of this part, and as authorized by this part, the authority may enter into a lease-purchase agreement with the Department of Transportation relating to and covering the Brevard County Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Brevard County Expressway System by the authority, as lessor, to the Department of Transportation, as lessee; shall prescribe the term of such lease and the rentals to be paid thereunder; and may provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Brevard County Expressway System, as then constituted, may be transferred in accordance with law by the authority to the state, and, in such an event, the authority shall deliver to the Department of Transportation such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the Department of Transportation deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this part; the completion, extension, improvement, operation, and maintenance of the Brevard County Expressway System and the expenses and cost of operation of said authority; the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof; the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the Brevard County Expressway System, which the authority is hereby authorized to accept and apply to such purposes; the enforcement of payment and collection of rentals; and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of and full performance under such lease-purchase agreement.

(4) The Department of Transportation, as lessee under such lease-purchase agreement, is hereby authorized to pay, as rentals thereunder, any rates, fees, charges, funds, moneys, receipts, or income accruing to the Department of Transportation from the operation of the Brevard County Expressway System and the second gas tax or the seventh cent gas tax, or both, and may also pay, as rentals, any appropriations received by the Department of Transportation pursuant to any act of the legislature heretofore or hereafter enacted. However, nothing herein or in such lease-purchase agreement is intended to, nor shall this part or such lease-purchase agreement, require the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of said second gas tax or said seventh cent gas tax, or both, as rentals under such lease-purchase agreement shall be made without the

consent of Brevard County, evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in the county. Said resolution, among other things, shall provide that any excess of said pledged second gas tax or seventh cent gas tax, or both, which are not required for debt service or reserves for such debt service for any bonds issued by said authority shall be distributed annually to Brevard County as provided by law. The Department of Transportation shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of said system, and any part of the cost of completing said system, to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than the revenues derived from the operation of said system and said second gas tax or said seventh cent gas tax, or both. The Department of Transportation may also agree to make such other payments from any moneys available to Brevard County, in connection with the construction or completion of said system, as shall be deemed by the Department of Transportation to be fair and proper under any such covenants heretofore or hereafter entered into.

(6) Said system shall be a part of the state road system, and the Department of Transportation is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys and to use such of its engineering and other forces as may be necessary and desirable, in the judgment of the Department of Transportation, for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost, and other preliminary engineering and other studies.

History.—s. 7, ch. 72-408.

348.223 Department of Transportation may be appointed agent of authority for construction.—The Department of Transportation may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the Brevard County Expressway System and for the completion thereof. In such event, the authority shall provide the Department of Transportation with complete copies of all documents, agreements, resolutions, and contracts, and instruments relating thereto, and shall request the Department of Transportation to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the Brevard County Expressway System, and shall transfer to the credit of an account of the Department of Transportation in the Treasury of the state the necessary funds therefor, and the Department of Transportation shall thereupon be authorized, empowered, and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—s. 8, ch. 72-408.

348.224 Acquisition of lands and property.—(1) For the purposes of this part, the Brevard County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this part. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) In connection with the acquisition of property or property rights, as herein provided, the authority may, in its discretion, acquire an entire lot, block, or tract of land if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

(3) The authority may acquire such rights, title, interest, or easements in such lands and property as it may deem necessary.

History.—s. 9, ch. 72-408.

348.225 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual, of the state to make and enter into, with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances, and other agreements with any political subdivision, agency, or instrumentality of the state, any federal agency, or any corporation or individual for the purpose of carrying out the provisions of this part.

History.—s. 10, ch. 72-408.

348.226 Covenant of the state.—The state does hereby pledge to, and agrees with, any person, firm, or corporation or any federal or state agency subscribing to, or acquiring, the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the Department of Transportation until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affect the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree with, the United States that, in the event any federal agency shall construct, or contribute any funds for, the completion, extension, or improvement of the Brevard County Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the Department of Transportation in any manner which would be inconsistent with the continued maintenance and operation of the Brevard County Expressway System or the completion, extension, or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any federal

agency, and the authority and the Department of Transportation shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the Brevard County Expressway System or any part or portion thereof.

History.—s. 11, ch. 72-408.

348.227 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this part is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges at any time received by it.

History.—s. 12, ch. 72-408.

348.228 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds, and shall also be and constitute securities eligible for deposit and security for all state, municipal, or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—s. 13, ch. 72-408.

348.229 Pledges enforceable by bondholders.—It is the express intention of this part that any pledge by the Department of Transportation of rates, fees, revenues, Brevard County gasoline tax funds, or other funds, as rentals, to the authority, or any covenants or agreements relative thereto, may be enforceable in any court of competent jurisdiction against the authority or directly against the Department of Transportation by any holder of bonds issued by the authority.

History.—s. 14, ch. 72-408.

348.23 Part I complete and additional authority.—

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of said board and the Department of Transportation, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of the Brevard County Expressway System, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to, or necessity for compliance with, the provisions, limitations, or restrictions contained in any other general, special, or local law, and no approval of any bonds issued under this part by the qualified electors in the state, in the County of Brevard, or in any other political subdivision of the state shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify any other law or laws relating to the State Board of Administration or the Department of Transportation, but shall be deemed to, and shall, supersede such other law or laws as are inconsistent with the provisions of this part.

History.—s. 15, ch. 72-408.

PART II

TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY

348.50 Title of law.—Part II of chapter 348 shall be known and may be cited as the "Tampa-Hillsborough County Expressway Authority Law."

History.—s. 1, ch. 63-447.

348.51 Definitions.—The following terms whenever used or referred to in part II of this chapter shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Authority" shall mean the body politic, corporate, and agency of the state created by this part.

(3) "Bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form, of the authority issued pursuant to this part.

(4) "City" shall mean the City of Tampa.

(5) "County" shall mean the County of Hillsborough.

(6) "Expressway system" or "system" shall mean, generally, a modern highway system of roads, bridges, causeways, and tunnels in the metropolitan area of the city, or within any area of the county, with access limited or unlimited as the authority may determine, and such buildings and structures and appurtenances and facilities related thereto, including all approaches, streets, roads, bridges, and avenues of access for such system.

(7) "Federal agency" shall mean and include the United States, the President of the United States, and any department of, or bureau, corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(8) "Hillsborough County gasoline tax funds" shall mean all the 80 percent surplus gasoline tax funds or 20 percent surplus gasoline tax funds accruing in each year to the Department of Transportation or the county, as the case may be, for use in Hillsborough County under the provisions of s. 9, Art. XII of the State Constitution, after deduction, if and only to the extent necessary, of any amounts of said gasoline tax funds heretofore pledged by the Department of Transportation or the county for outstanding obligations.

(9) "Lease-purchase agreement" or "lease-purchase agreements" shall mean the lease-purchase agreement or agreements which the authority is authorized pursuant to this part to execute.

(10) "Members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(11) "Revenues" shall mean all tolls, revenues, rates, fees, charges, receipts, rentals, contributions and other income derived from or in connection with the operation or ownership of the expressway system, including the proceeds of any use and occupancy insurance on any portion of the system but excluding any Hillsborough County gasoline tax funds.

(12) "Department" shall mean the Department of Transportation of Florida and any successor thereto.

(13) Words importing singular number shall include the plural number in each case, and vice versa, and words importing persons shall include firms and corporations.

History.—s. 2, ch. 63-447; s. 18, ch. 69-216; s. 1, ch. 69-361; ss. 23, 35, ch. 69-106; s. 1, ch. 76-256.

348.52 Tampa-Hillsborough County Expressway Authority.—

(1) There is hereby created and established a body politic, corporate and an agency of the state, to be known as the "Tampa-Hillsborough County Expressway Authority."

(2) The governing body of the authority shall consist of a board of seven members.

(a) Four of the members shall be appointed by the governor, subject to confirmation by the senate at the next regular session of the legislature. Refusal or failure of the senate to confirm an appointment shall create a vacancy.

1. Each such member's term of office shall be for 4 years or until his successor shall have been appointed and qualified; however, for the initial membership of the newly reconstituted governing body, one such member shall be appointed for a term of 1 year beginning July 1, 1974; one member shall be appointed for a term of 2 years beginning July 1, 1974; one member shall be appointed for a term of 3 years beginning July 1, 1974; and one member shall be appointed for a term of 4 years beginning July 1, 1974.

2. Vacancies occurring in the governing body for any such members prior to the expiration of the affected term shall be filled for the unexpired term.

3. The governor shall have the authority to remove from office any such member of the governing body in the manner and for cause defined by the laws of this state.

4. Each such member, before entering upon his official duties, shall take and subscribe to an oath before some official authorized by law to administer oaths that he will honestly, faithfully, and impartially perform the duties devolving upon him in office as a member of the governing body of the authority and that he will not neglect any duties imposed upon his by this part.

(b) One member shall be the mayor, or his designate, who shall be the chairman of the city council, of the city in Hillsborough County having the largest population, according to the latest decennial census, who shall serve as a member ex officio.

(c) One member shall be a member of the Board of County Commissioners of Hillsborough County, selected by such board, who shall serve as a member ex officio.

(d) One member shall be the district I engineer of the Department of Transportation, who shall serve ex officio.

(3) The authority shall designate one of its members as chairman. The members of the authority shall not be entitled to compensation, but shall be entitled to receive their traveling and other necessary expenses as provided in s. 112.061. A majority of the members of the authority shall constitute a quorum and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting shall become effective without publication or posting or any further action of the authority.

(4) The authority may employ a secretary and executive director, its own counsel and legal staff, and such legal, financial and other professional consultants, technical experts, engineers and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms or corporations. The authority may contract with the Division of Bond Finance of the Department of General Services for any financial services authorized herein.

(5) The authority may delegate to one or more of its officers or employees such of its powers as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the governor for miscon-

duct, malfeasance, misfeasance and nonfeasance in office.

History.—s. 3, ch. 63-447; ss. 22, 35, ch. 69-106; s. 1, ch. 74-369.

348.53 Purposes of the authority.—The authority is created for the purposes and shall have power to construct, reconstruct, improve, extend, repair, maintain and operate the expressway system. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the State of Florida, City of Tampa and the County of Hillsborough, for the increase of their pleasure, convenience and welfare, for the improvement of their health, to facilitate transportation for their recreation and commerce and for the common defense. The authority shall be performing a public purpose and a governmental function in carrying out its corporate purpose and in exercising the powers granted herein.

History.—s. 4, ch. 63-447.

348.54 Powers of the authority.—Except as otherwise limited herein, the authority shall have the power:

(1) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(2) To adopt, use and alter at will, a seal.

(3) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(4) To construct, reconstruct or improve on or along the system suitable facilities for gas stations, restaurants and other facilities for the public; such facilities may be publicly offered for leasing for operation under rules and regulations to be established by the authority.

(5) To enter into and make lease-purchase agreements as provided in s. 348.60 for terms not exceeding 40 years, or until all bonds secured by a pledge thereunder, and all refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(6) To fix, alter, charge, establish and collect tolls, rates, fees, rentals and other charges for the services and facilities of the expressway system, which tolls, rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds; provided, however, that such right and power, or any part thereof may be assigned or delegated, by the authority, to the lessee under a lease-purchase agreement.

(7) To borrow money and issue negotiable bonds, and to provide for the rights of the holders thereof.

(8) To secure the payment of bonds by a pledge of all or any portion of the revenues or such other moneys legally available therefor and of all or any portion of the Hillsborough County gasoline tax funds in the manner provided by this part; and in general to provide for the security of the bonds and the rights and remedies of the holders thereof. Interest upon the amount of gasoline tax funds to be repaid to the county pursuant to s. 348.60 shall be payable, at the highest rate applicable to any outstanding bonds of the authority, out of revenues and other available moneys not required to meet the authority's obligations to its bondholders.

(9) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(10) Without limitation of the foregoing, to borrow money and accept gifts or grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the county, the city or with any other public body of the state or any other person and to comply with the terms and conditions thereof.

(11) To have the power of eminent domain.

(12) To construct and maintain over, under, along, or across the system, telephone, telegraph, television, electric power and other wires or cables, pipelines, water mains and other conduits and mechanical equipment, not inconsistent with the appropriate use of the system, or to contract for such construction; and upon such terms and conditions as the authority shall determine, to lease all or any part of such property and facilities or the right to use the same whether such facilities are constructed by the authority or under a contract for such construction, for a period of not more than 20 years from the date when such lease is made.

(13) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this part or any other law.

(14) Prior to entering into any sale, lease, transfer or disposition of its real properties pursuant to subsection (3), leasing any of its facilities pursuant to subsection (4), or taking final action under subsection (7), the authority shall give notice thereof by publication on at least five separate days, in a newspaper of general circulation in the county. Such notice shall state the place and time, not less than 14 days following the first such publication, when objections may be filed with and heard by the authority.

History.—s. 5, ch. 63-447.

348.56 Bonds of the authority.—

(1) The authority shall have the power and is hereby authorized from time to time to issue bonds in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient moneys for achieving its corporate purposes, including construction, reconstruction, improvement, extension, repair, maintenance and operation of the expressway system, the cost of acquisition of all real property, interest on bonds during construction and for a reasonable period thereafter, establishment of reserves to secure bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2)(a) Bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, not exceeding the maximum rate fixed by general law for authorities, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such

place or places, be subject to such terms of redemption and be entitled to such priorities of lien on the revenues, other available moneys, and the Hillsborough County gasoline tax funds as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon. The coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority. Such bonds shall have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon.

(b) The bonds shall be sold at public sale, and the net interest cost to the authority on such bonds shall not exceed the maximum rate fixed by general law for authorities. If all bids received on the public sale are rejected, the authority may then proceed to negotiate for the sale of the bonds at a net interest cost which shall be less than the lowest net interest cost stated in the bids rejected at the public sale. Pending the preparation of definitive bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) Any such resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, the Hillsborough County gasoline tax funds, or other moneys lawfully available therefor.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, operation, lease or lease-purchase of the expressway system, or any part or parts thereof, and the duties and obligations of the authority and others, including the department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by any federal agency or the state or any political subdivision thereof may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the expressway system or any part thereof.

(e) The setting aside of reserves or of sinking funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which same may be issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, assign and pledge all or any of the revenues and other available moneys, including all or any portion of the Hillsborough County gasoline tax funds, pursuant to the terms of this part. Such deed of trust, indenture or other agreement, may contain such provisions as are customary in such instruments or as the authority may authorize, including, but without limitation, provisions as to:

(a) The pledging of all or any part of the revenues, the Hillsborough County gasoline tax funds, or other moneys lawfully available therefor.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(e) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(5) Any of the bonds issued pursuant to this part are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the Law Merchant and the Negotiable Instruments Law of the state.

(6) It is the intention hereof that any pledge made by the authority shall be valid and binding from the time when the pledge is made; that the moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(7) Neither the members nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(8) The authority shall have power out of any funds available therefor to purchase bonds, which shall thereupon be canceled, at a price not exceeding, if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next date of redemption thereof, or if the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to said date.

History.—s. 7, ch. 63-447; s. 1, ch. 68-120; ss. 23, 35, ch. 69-106; s. 1, ch. 70-260.
cf.—s. 215.685 State, county, municipal, etc., bonds; maximum rate of interest.

348.57 Refunding bonds.—

(1) Subject to public notice as provided in s. 348.54, the authority is authorized to provide by resolution for the issuance from time to time of bonds for the purpose of refunding any bonds then outstanding. The authority is further authorized to provide by resolution for the issuance of bonds for the combined purpose of:

(a) Paying the cost of constructing, reconstructing, improving, extending, repairing, maintaining and operating the expressway system.

(b) Refunding bonds then outstanding. The authorization, sale and issuance of such obligations,

the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

(2) In the event that the authority shall determine to issue bonds for the purpose of refunding any outstanding bonds prior to the maturity thereof, the proceeds of such refunding bonds may, pending the redemption of the bonds to be refunded, be invested in direct obligations of the United States. It is the express intention of this part that outstanding bonds may be refunded and retired by and upon the issuance of bonds notwithstanding that all or a portion of such outstanding bonds will not mature or become redeemable until after the date of issuance of such refunding bonds.

History.—s. 8, ch. 63-447.

348.58 Remedies.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions or indenture providing for the issuance of bonds, or by any lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on the bonds shall have become due, whether at maturity or upon call for redemption, as provided in said resolution or indenture, or the lessee shall default in any payments under, or covenants made in, any lease-purchase agreement and such default shall continue for a period of 30 days, or in the event that the authority or the lessee shall fail or refuse to comply with the provisions of this part or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall have first given written notice of their intention to appoint a trustee, to the authority and to such lessee.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of 25 percent, or such other percentages as may be specified in any deed of trust, indenture or other agreement aforesaid, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement, including the right to require the lessee to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Hillsborough County gasoline tax funds or other funds so agreed to be paid and to require the lessee to carry out any other covenants and agreements with or for the benefit of the bondholders and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity require the authority or any lessee under any lease-purchase agreement to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the system or the facilities or any part or parts thereof, the revenues and other pledged moneys and, subject to and in compliance with the provisions of any lease-purchase agreement, operate and maintain the same, for and on behalf of and in the name of, the authority, the lessee and the bondholders, and collect and receive all revenues and other pledged moneys in the same manner as the authority or the lessee might do, and shall deposit all such revenues and moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this part shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement, of operating and maintaining the system or any facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this part to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement, to the operation and maintenance of the system, or any facility or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the lessee and the bondholders, and no holder of bonds nor any trustee, shall ever have the right in any suit, action or proceeding at law, or in equity, to compel a receiver, nor shall any receiver

be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—s. 9, ch. 63-447.

348.59 Traffic control.—

(1) In addition to the powers conferred by the statutes of the state and the ordinances of the city, the authority is hereby authorized to promulgate such rules and regulations for the use and occupancy of the expressway system as may be necessary and proper for the public safety and convenience, for the preservation of its property and for the collection of tolls.

(2) The enforcement of the rules and regulations of the authority and of those provisions of the statutes and ordinances applicable to the expressway system may be by the city police department and sheriff of Hillsborough County; provided, however, that at the request of the authority, such enforcement shall also be the duty of the Florida Highway Patrol. Violators shall be apprehended and prosecuted in the same manner as provided for the apprehension and prosecution of violators of such statutes and ordinances who commit violations thereof upon streets, roads and thoroughfares in the state.

History.—s. 10, ch. 63-447.

348.60 Lease-purchase agreements.—

(1) In order to effectuate the purposes of this part, the authority may enter into lease-purchase agreements with the city, the county, the state or any agency thereof, including the department, and any federal agency relating to and covering the expressway system or any portion thereof.

(2) Such lease-purchase agreements may provide for the leasing of the expressway system or any portion thereof by the authority as lessor to any one or more of the aforementioned governmental entities or agencies as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and may provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreements, title in fee simple absolute to the expressway system, as then constituted, shall be transferred in accordance with law by the authority to such lessee or otherwise as provided in such agreements. In the event of such transfer to the lessee, the authority shall deliver to such lessee such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in such lessee.

(3) The lease-purchase agreements may include such other provisions, agreements and covenants as the authority and the lessee deem advisable or necessary, including but not limited to provisions with respect to bonds, the construction, reconstruction, extension, improvements, operation, repair, and maintenance of the expressway system, the expenses and costs of operation of the system and of the authority, the charging and collecting of tolls, rates, fees and other charges for the use of the services and facilities thereof, the application of federal, state or other grants or aid which may be made or given to assist the authority, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or convenient to the making of and full performance under such lease-purchase agreements.

(a) In the event the department is a lessee under any such lease-purchase agreement, it is authorized to pay as rentals thereunder in addition to the revenues accruing thereto from the operation of the expressway system, all or any portion of the Hillsborough County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the legislature heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement shall be construed to require the legislature to make or continue such appropriations nor shall any holder of bonds ever have any right to require the legislature to make or continue such appropriations.

(b) In the event the county is a lessee under any such lease-purchase agreement, it shall be authorized to pay as rentals thereunder in addition to the revenues accruing to the county from the operation of the expressway system all or any part of the 20 percent surplus gasoline tax funds accruing to Hillsborough County.

(4) No pledge of either the 80 percent surplus gasoline tax funds or the 20 percent surplus gasoline tax funds under any such lease-purchase agreement shall be made without the consent of the county evidenced by a resolution duly adopted by its board of county commissioners, nor unless the revenues pledged under any such lease-purchase agreements are estimated by the authority to aggregate during the term of such lease-purchase agreements not less than the principal amount of the bonds secured thereunder plus interest thereon. Such resolution, among other things shall provide that any excess of such pledge of the Hillsborough County gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds shall be returned annually to the appropriate board or agency for distribution to the county as provided by law; and shall provide, further, that any Hillsborough County gasoline tax funds actually expended for such debt service, shall be repaid with interest out of revenues and other available moneys not required to meet the authority's obligations to its bondholders, as determined by the authority.

(5) Any lessee under such lease-purchase agreements shall have power to covenant therein that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of the expressway system, and any part of the cost of completing such system, to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than revenues and Hillsborough County gasoline tax funds. Any such lessee may also agree to make such other payments from moneys available to the county, the city, the authority or the department in connection with the construction or completion of such system as shall be deemed by such lessee to be fair and proper under any such covenants heretofore or hereafter entered into.

(6) Any lease-purchase agreement may provide that the system shall be a part of the state road system. The department is hereby authorized, upon request of the authority, to expend out of any funds

available for the purpose, such moneys, and to use such of its engineering or other forces, as may be necessary and desirable in the judgment of the department, for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of costs, preliminary engineering and other studies.

History.—s. 11, ch. 63-447; ss. 23, 35, ch. 69-106.

348.61 Department may be appointed agent of authority for construction.—The department may be appointed by the authority as its agent for the purpose of constructing, reconstructing, improving, extending or repairing the expressway system. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the department to do such construction work including the planning, surveying and actual construction involved and shall transfer to the credit of an account of the department in the Treasury of the state the necessary funds therefor. The department shall thereupon be authorized, empowered and directed to proceed with such construction work and to use the said funds for such purpose and in the same manner that it is now authorized to use the funds otherwise authorized by law for its use in construction of roads and bridges.

History.—s. 12, ch. 63-447; ss. 23, 35, ch. 69-106.

348.62 Acquisition of lands and property.—

(1) For the purpose of this part, the authority may acquire private or public property and property rights including rights of access, air, view and light by gift, devise, purchase or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this part. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law, in particular chapter 74.

(2) The authority may acquire such rights, title, interest or easements in such lands and property as it may deem necessary for any of the purposes of this part.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion, acquire an entire lot, block, parcel or tract of land, if by so doing the interest of the public will be best served, even though such entire lot, block, parcel or tract is not immediately needed for the right-of-way proper.

History.—s. 13, ch. 63-447.

348.63 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, authority, corporation or individual in or of the state to make and enter into with the authority, contracts, leases, conveyances or other agreements within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals for the purpose of carrying out the provisions of this part.

History.—s. 14, ch. 63-447.

348.64 Covenant of the state.—The state does hereby pledge to and agree with the holders from time to time of the bonds that the state will not limit or alter the rights hereby vested in the authority, the department, the county and the city to collect revenues and Hillsborough County gasoline tax funds and to fulfill the terms of any agreements made with the holders of bonds or to in any way impair the rights and remedies of such holders until such bonds and the interest due thereon have been paid. The state does further pledge to and agree with the United States and any federal agency that in the event any federal agency shall construct or contribute funds for the construction, reconstruction, extension or improvement of the system or any part thereof the state will not alter or limit the rights of the authority, the department, the county or the city in any manner which would be inconsistent with the continued maintenance or operation of the system or the construction, reconstruction, extension or improvement thereof and which would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority, the department, the county and the city shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this part.

History.—s. 15, ch. 63-447; ss. 23, 35, ch. 69-106.

348.65 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this part is, shall and will be in all respects for the benefit of the people of the state for the increase of their commerce, prosperity and for the improvement of their health and living conditions. Since the authority will perform essential governmental functions in effectuating such purpose, the authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it. The bonds, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision or other taxing agency or instrumentality thereof. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 16, ch. 63-447; s. 11, ch. 73-327.

cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

348.66 Eligibility for investments and security.—The bonds shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators and all other fiduciaries and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public

funds notwithstanding the provisions of any other law or laws to the contrary.
History.—s. 17, ch. 63-447.

348.67 Pledges enforceable for bondholders.—It is the express intention of this part that any pledge of revenues, Hillsborough County gasoline tax funds or other funds either as rentals to the authority or for the payment of the principal of and interest on bonds, or any covenant or agreement relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the department, the county or the city, as may be appropriate.
History.—s. 18, ch. 63-447; ss. 23, 35, ch. 69-106.

348.68 Consultation with Hillsborough County Planning and Zoning Commission.—In determining the route or routes, and the design and type of construction in connection with constructing the expressway system or any extension thereof, consideration shall be given by the authority to the long-range overall land use plans, and the economic needs of the city and county and the usage for which the properties abutting thereon is best suited. In the furtherance of this purpose, the authority shall consult with the Hillsborough County Planning and Zoning Commission, hereinafter referred to as commission. The authority may, with the advice and consent of such commission, employ a firm of nationally recognized traffic engineers and shall also cause its traffic engineers, in conducting their studies and in preparing surveys and estimates in connection with the location of the route or routes and with such construction, to consult with such commission for the purpose of considering any traffic studies and other pertinent information which the commission may have available. After preliminary studies and recommendations of the authority's traffic engineers, consulting engineers and other advisors have been made, the commission shall submit to the authority its written recommendations as to the best route or routes for the expressway system or any extensions thereof. The authority and the commission shall thereafter hold a joint public hearing on at least 10 days' notice which shall be published in a newspaper designated by the authority and of general circulation in Hillsborough County at which all interested persons may be heard with respect to the recommended route or routes or alternate routes of the expressway system. After such public hearing the authority shall by resolution determine the route or routes of the expressway system or any extension thereof; provided, however, that an affirmative vote of not less than five members of its governing body shall be required to change or alter the route or routes recommended by the commission.
History.—s. 19, ch. 63-447.

348.681 Design standards.—The geometric design standards used in connection with constructing the expressway system or any extension thereof shall as nearly as is practicable follow or be superior to design standards adopted for the National System of Interstate and Defense Highways.
History.—ss. 1, chs. 65-555, 65-556.

348.69 Audit required.—The authority shall have its books, records, and accounts audited annually by the Auditor General, and shall maintain a copy thereof in its office, available for public inspection.
History.—s. 20, ch. 63-447; s. 8, ch. 69-82.

348.70 Part II complete and additional authority.—The powers conferred by this part shall be in addition and supplemental to the existing respective powers of the authority, the department, the county and the city, if any, and this part shall not be construed as repealing any of the provisions of any other law, general, special or local, but shall be deemed to supersede such other law or laws in the exercise of the powers provided in this part insofar as such other law or laws are inconsistent with the provisions of this part and to provide a complete method for the exercise of the powers granted herein. The construction, reconstruction, improvement, extension, repair, maintenance and operation of the expressway system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in the county or in the city or in any other political subdivision of the state shall be required for the issuance of such bonds.
History.—s. 21, ch. 63-447; ss. 23, 35, ch. 69-106.

PART III

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY

348.751 Short title.—Part III of chapter 348 shall be known and may be cited as the "Orlando-Orange County Expressway Authority Law."

History.—s. 1, ch. 63-573.
Note.—Former s. 348.0100.

348.752 Definitions.—The following terms, whenever used or referred to in this law, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) The term "authority" shall mean the body politic and corporate, and agency of the state created by part III, of chapter 348.

(2) The term "members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(3) The term "bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form which the authority is authorized to issue pursuant to this part.

(4) The term "lease-purchase agreement" shall mean the lease-purchase agreements which the authority is authorized pursuant to this part to enter into with the Department of Transportation.

(5) The term "department" shall mean the Department of Transportation existing under chapters 334-339.

(6) The term "county" shall mean the County of Orange.

(7) The term "city" shall mean the City of Orlando.

(8) The term "State Board of Administration" shall mean the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution, or any successor thereto.

(9) The term "agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the state.

(10) The term "Federal Agency" shall mean and include the United States, the President of the United States, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(11) The term "Orange County gasoline tax funds" shall mean all the 80 percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Orange County under the provisions of s. 9, Art. XII of the State Constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the department or the county for outstanding obligations.

(12) The term "limited access expressway" shall mean a street or highway especially designed for through traffic, and over, from or to which, no person shall have the right of easement, use or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(13) The term "expressway" shall be the same as limited access expressway.

(14) "Orlando-Orange County Expressway System" shall mean any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges and avenues of access for said expressway or expressways.

(15) Words importing singular number shall include the plural number in each case and vice versa, and the words importing persons shall include firms and corporations.

History.—s. 2, ch. 63-573; s. 18, ch. 69-216; ss. 23, 35, ch. 69-106; s. 126, ch. 71-377.
Note.—Former s. 348.0101.

348.753 Orlando-Orange County Expressway Authority.—

(1) There is hereby created and established a body politic and corporate and agency of the state, to be known as the Orlando-Orange County Expressway Authority, hereinafter referred to as "authority."

[1](2) The governing body of the authority shall consist of five members. Three members shall be citizens of Orange County, who shall be appointed by the Governor; the fourth member shall be, ex officio, the chairman of the County Commissioners of Orange County, and the fifth member shall be, ex officio, the member of the State Road Board from the district of which Orange County shall from time to time be a part. Two of the members of the authority who are first appointed shall be designated by the Governor to serve for terms expiring January 3, 1965, and the other member of the authority who is first appointed shall be designated by the Governor to serve for a term expiring January 3, 1967. Thereafter, the term of each appointed member shall be for 4 years. Each appointed member shall hold office until his successor has been appointed and he has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility and business ability but no person who is an officer or employee of any city or of Orange County in any other capacity shall be an appointed member of the authority. Each such original appointment shall be made within 30 days of the effective date of this part. Any member of the authority shall be eligible for reappointment.

(3)(a) The authority shall elect one of its members as chairman of the authority. The authority shall also elect a secretary and a treasurer, who may or may not be members of the authority. The chairman, secretary and treasurer shall hold such offices at the will of the authority. Three members of the authority shall constitute a quorum and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(b) Upon the effective date of his appointment, or as soon thereafter as practicable, each appointed

member of the authority shall enter upon his duties.

(4)(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, such engineers and such employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons, firms or corporations; and may employ a fiscal agent or agents, provided, however, that the authority shall solicit sealed proposals from at least three persons, firms or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(b) Members of the authority shall be entitled to receive from the authority their traveling and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but they shall draw no salaries or other compensation.

History.—s. 3, ch. 63-573.

[1]**Note.**—See s. 23, ch. 69-106, which abolished the road board and transferred its functions to the department of transportation.

Note.—Former s. 348.0102.

348.754 Purposes and powers.—

(1)(a) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Orlando-Orange County Expressway System hereinafter referred to as "system."

(b) It is the express intention of this part that said authority, in the construction of said Orlando-Orange County Expressway System, shall be authorized to construct any extensions, additions or improvements to said system or appurtenant facilities, including all necessary approaches, roads, bridges and avenues of access, with such changes, modifications or revisions of said project as shall be deemed desirable and proper.

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use and alter at will a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years, or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish and collect rates, fees, rentals, and other charges for the services and facilities of the Orlando-Orange County Expressway System, which rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part; provided, however, that such right and power may be assigned or delegated, by the authority, to the department.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "bonds" of the authority, for the purpose of financing all or part of the improvement or extension of the Orlando-Orange County Expressway System, and appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Orlando-Orange County Expressway System and for any other purpose authorized by this part, said bonds to mature in not exceeding 40 years from the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals or other charges, including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department; and in general to provide for the security of said bonds and the rights and remedies of the holders thereof. Provided, however, that no portion of the Orange County gasoline tax funds shall be pledged for the construction of any project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the board of county commissioners, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when said pledge of funds shall be in effect.

1. The authority shall reimburse Orange County for any sums expended from said gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

2. In the event the authority shall determine to fund or refund any bonds theretofore issued by said authority, or by said commission as aforesaid prior to the maturity thereof, the proceeds of such funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and it is the express intention of this part that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this part.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the

County of Orange, the City of Orlando or with any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under both chapters 73 and 74.

(k) To pledge, hypothecate or otherwise encumber all or any part of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this part or any other law.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including the City of Orlando and the County of Orange, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this part to the contrary notwithstanding, acquisition of right-of-way for a project of the authority which is within the boundaries of any municipality in Orange County shall not be begun unless and until the route of said project within said municipality has been given prior approval by the governing body of said municipality.

(5) The authority shall have no power other than by consent of Orange County or any affected city, to enter into any agreement which would legally prohibit the construction of any road by Orange County or by any city within Orange County.

History.—s. 4, ch. 63-573; s. 1, ch. 68-8; ss. 23, 35, ch. 69-106.
Note.—Former s. 348.0103.

348.755 Bonds of the authority.—

(1)(a) The bonds of the authority issued pursuant to the provisions of this part, whether on original issuance or on refunding, shall be authorized by resolution of the members thereof and may be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, not exceeding 7½ percent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals or other charges or receipts of the authority including the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(b) Said bonds shall be sold at such price or prices as the authority shall determine to be in its best interest; provided that all such sales shall be made upon the receipt of competitive bids from at least two qualified bidders and provided further that the interest cost to the authority on such bonds shall not exceed 7½ percent per annum. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals (including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, or any part thereof), or other charges or receipts of the authority, derived by the authority, from the Orlando-Orange County Expressway System.

(b) The completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of said system, and the duties of the authority and others, including the department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing and collecting of rates, fees, rentals or other charges for use of the services and facilities of the Orlando-Orange County Expressway System or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The authority may employ fiscal agents as provided by this part or the State Board of Administration of Florida may upon request of the authority act as fiscal agent for the authority in the issuance of any bonds which may be issued pursuant to this part, and the State Board of Administration may upon request of the authority take over the management, control, administration, custody and payment of any or all debt services or funds or assets now or hereafter available for any bonds issued pursuant to

this part. The authority may enter into any deeds of trust, indentures or other agreements with its fiscal agent, or with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Orange County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, thereunder. Such deed of trust, indenture or other agreement may contain such provisions as are customary in such instruments, or, as the authority may authorize, including but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair and lease of, or lease-purchase agreement relating to the Orlando-Orange County Expressway System, and the duties of the authority and others including the department, with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

(4) Any of the bonds issued pursuant to this part are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the Law Merchant and the Negotiable Instruments Law of the state.

History.—s. 5, ch. 63-573; s. 1, ch. 65-481; s. 2, ch. 68-8; ss. 23, 35, ch. 69-106; s. 28, ch. 73-302.

Note.—Former s. 348.0104.

348.756 Remedies of the bondholders.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by a lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on said bonds shall have become due, whether at maturity or upon call for redemption, or the department shall default in any payments under, or covenants made in, any lease-purchase agreement between the authority and the department, and such default shall continue for a period of 30 days, or in the event that the authority or the department shall fail or refuse to comply with the provisions of this part or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall have first given notice of their intention to appoint a trustee, to the authority and to the department. Such notice shall be deemed to have been given if given in writing, and deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post-office box or station and addressed, respectively, to the chairman of the authority and to the secretary of the Department of Transportation at the principal office of the department.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of 25 percent, or such other percentages as may be specified in any deed of trust, indenture or other agreement aforesaid, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the department, including the right to require the department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Orange County gasoline tax funds or other funds of the department so agreed to be paid and to require the department to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity require the authority or the department to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the Orlando-Orange County Expressway System or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges or receipts from which are, or may be, applicable to the payment of the bonds so in default, and subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department operate and maintain the same, for and on behalf of and in the name of, the authority, the department and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply the same in

such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues or receipts, derived from the Orlando-Orange County Expressway System, or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals, or other charges, revenues or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this part shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the Orlando-Orange County Expressway System or any facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this part to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, to the operation and maintenance of the Orlando-Orange County Expressway System, or any facility, or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the department and the bondholders, and no holder of bonds on the authority nor any trustee, shall ever have the right in any suit, action or proceeding at law or in equity, to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—s. 6, ch. 63-573; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106.
Note.—Former s. 348.0105.

348.757 Lease-purchase agreement.—

(1) In order to effectuate the purposes of this part and as authorized by this part, the authority may enter into a lease-purchase agreement with the department relating to and covering the Orlando-Orange County Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Orlando-Orange County Expressway System, by the authority, as lessor, to the department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Orlando-Orange County Expressway System as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under, and for the purposes of, this part, the completion, extension, improvement, operation and maintenance of the Orlando-Orange County Expressway System and the expenses and the cost of operation of said authority, the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof, the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation and maintenance of the Orlando Expressway System, which the authority is hereby authorized to accept and apply to such purposes, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or appurtenant to the making of and full performance under such lease-purchase agreement.

(4) The department as lessee under such lease-purchase agreement, is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts or income accruing to the department from the operation of the Orlando-Orange County Expressway System and the Orange County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the legislature of the state heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement is intended to nor shall this part or such lease-purchase agreement require the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of said Orange County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of the County of Orange evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in Orange County. Said resolution, among other things, shall provide that any excess of said pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the department for distribution to Orange County as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Orange County planning and zoning commission for its comments and recommendations.

(6) Said department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of said system, and any part of the cost of completing said system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other

than the revenues derived from the operation of said system and said Orange County gasoline tax funds. Said department may also agree to make such other payments from any moneys available to said commission, said county or said city in connection with the construction or completion of said system as shall be deemed by said department to be fair and proper under any such covenants heretofore or hereafter entered into.

(7) Said system shall be a part of the state road system and said department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys, and to use such of its engineering and other forces, as may be necessary and desirable in the judgment of said department, for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost and other preliminary engineering and other studies; provided, however, that the aggregate amount of moneys expended for said purposes by said department shall not exceed the sum of $375,000.

History.—s. 7, ch. 63-573; ss. 23, 35, ch. 69-106; s. 103, ch. 77-104.
Note.—Former s. 348.0106.

348.758 Department may be appointed agent of authority for construction.—The department may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the Orlando-Orange County Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the department to do such construction work including the planning, surveying and actual construction of the completion, extensions, and improvements to the Orlando-Orange County Expressway System and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor and the department shall thereupon be authorized, empowered and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—s. 8, ch. 63-573; ss. 23, 35, ch. 69-106.
Note.—Former s. 348.0107.

348.759 Acquisition of lands and property.—

(1) For the purposes of this part the Orlando-Orange County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this part. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) All property rights acquired under the provisions of this part shall be in fee simple.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right-of-way proper.

History.—s. 9, ch. 63-573.
Note.—Former s. 348.0108.

348.760 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission or individual in, or of, the state to make and enter into with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals, for the purpose of carrying out the provisions of this part.

History.—s. 10, ch. 63-573.
Note.—Former s. 348.0109.

348.761 Covenant of the state.—The state does hereby pledge to, and agrees, with any person, firm or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree, with the United States that in the event any federal agency shall construct or contribute any funds for the completion, extension or improvement of the Orlando-Orange County Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the Orlando-Orange County Expressway System or the completion, extension or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension or improvement of the Orlando-Orange County Expressway System, or any part or portion thereof.

History.—s. 11, ch. 63-573; ss. 23, 35, ch. 69-106.
Note.—Former s. 348.0110.

348.762 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this part is, shall and will be, in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required

to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income or charges at any time received by it, and the bonds issued by the authority, their transfer and the income therefrom, including any profits made on the sale thereof shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 12, ch. 63-573; s. 12, ch. 73-327.
Note.—Former s. 348.0111.
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

348.763 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—s. 13, ch. 63-573.
Note.—Former s. 348.0112.

348.764 Pledges enforceable by bondholders.—It is the express intention of this part that any pledge by the department of rates, fees, revenues, Orange County gasoline tax funds or other funds, as rentals, to the authority, or any covenants or agreements relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

History.—s. 14, ch. 63-573; ss. 23, 35, ch. 69-106.
Note.—Former s. 348.0113.

348.765 Part III complete and additional authority.—

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of said board and the department, and this part shall not be construed as repealing any of the provisions, of any other law, general, special or local, but to supersede such other laws in the exercise of the powers provided in this part, and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of said Orlando-Orange County Expressway System, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in said County of Orange, or in said City of Orlando, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind or modify any other law or laws relating to said State Board of Administration, said Department of Transportation, or the Division of Bond Finance of the Department of General Services, but shall be deemed to and shall supersede such other law or laws as are inconsistent with the provisions of this part.

History.—s. 15, ch. 63-573; ss. 22, 23, 35, ch. 69-106.
Note.—Former s. 348.0114.

PART IV

PASCO COUNTY EXPRESSWAY AUTHORITY

348.80 Short title.—Part IV of chapter 348 shall be known and may be cited as the "Pasco County Expressway Authority Law."

History.—s. 1, ch. 73-226.

348.81 Definitions.—As used in part IV of this chapter, unless the context clearly indicates otherwise:

(1) "Authority" means the Board of County Commissioners of Pasco County.

(2) "Members" means the governing body of the authority and "member" means one of the individuals constituting such governing body.

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations in either temporary or definitive form which the authority is authorized to issue pursuant to this part.

(4) "Lease-purchase agreement" means lease-purchase agreements which the authority is authorized, pursuant to this part, to enter into with the Department of Transportation.

(5) "Department" means the Department of Transportation existing under chapters 334-339.

(6) "County" means the County of Pasco.

(7) "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution or any successor thereto.

(8) "Agency of the state" means and includes the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(9) "Federal agency" means and includes the United States, the President of the United States, and any department of, or corporation, agency, or

instrumentality heretofore or hereafter created, designated, or established by, the United States.

(10) "Pasco County gasoline tax funds" means all the 80 percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Pasco County under the provisions of s. 9, Art. XII of the State Constitution or all such secondary gas funds as may otherwise be provided now or hereafter by the Constitution or by statute for use in Pasco County, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the Department of Transportation or the county for outstanding obligations.

(11) "Limited access expressway" means a street or highway especially designed for through traffic and over, from, or to which no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highway or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(12) "Expressway" means the same as limited access expressway.

(13) "Pasco County Expressway System" means any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, road, bridges, and avenues or access for said expressway or expressways.

(14) Words importing singular number shall include the plural number in each case and vice versa, and the words importing persons shall include firms and corporations.

History.—s. 1, ch. 73-226.

348.82 Pasco County Expressway Authority.—There is created and established a body politic and corporate, an agency of the state, to be known as the Pasco County Expressway Authority, hereinafter referred to as "authority." All the authority, powers, duties, responsibilities, personnel, properties, and appropriations or other funds of the Pasco County Expressway System are hereby transferred to, and vested in, the Board of County Commissioners of Pasco County as the authority.

History.—s. 1, ch. 73-226.

348.83 Purposes and powers.—

(1)(a) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own, and lease, in the capacity of lessor, the Pasco County Expressway System, hereinafter referred to as "system."

(b) It is the express intention of this part that said authority, in the construction of the Pasco County Expressway System, shall be authorized to construct any extensions, additions, or improvements to the system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access, with such changes, modifications, or revisions of the project as shall be deemed desirable and proper.

(2) The authority is hereby granted, and shall have and may exercise, all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire, purchase, hold, lease as lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder and any refundings thereof are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Pasco County Expressway System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part. However, such right and power may be assigned or delegated by the authority to the department.

(g)1. To borrow money as provided by the State Bond Act.

2. The authority shall reimburse Pasco County for any sums expended from the gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases, or other transactions with, any federal agency, the state, any agency of the state, the County of Pasco, or any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under both chapters 73 and 74.

(k) To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Pasco County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(3) The authority shall have no power at any

time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including the County of Pasco; nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof; nor shall the state or any political subdivision or agency thereof except the authority be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this part or any other provision of the law to the contrary notwithstanding, the consent of any municipality shall not be necessary for any project of the authority, whether or not the project lies within the boundaries of any municipality either in whole or in part. However, the officials and residents of any municipality in which any project of the authority is to be located in whole or in part shall be given ample opportunity to discuss the project and advise the authority as to their position thereon at a duly advertised public hearing. Advertisement of said public hearing shall be by way of a newspaper published in Pasco County and circulated in the affected municipalities. Said legal advertisement shall be published once at least 2 weeks prior to the public hearing and shall contain the time and place of the public hearing and a short description of the subject to be discussed. The public hearing may be adjourned from time to time and set for a time and place certain without necessity of further advertisement.

(5)(a) The authority is directed to reevaluate all projects planned as of July 1, 1969. As to such projects, the authority shall hold at least one duly advertised public hearing in each of the cities of Dade City and New Port Richey prior to final approval of any such project. Subsequent to the hearings, the authority may amend or modify the project and adjust its proposed route so as to best serve the needs of the county and to protect the rights of persons affected by the project.

(b) Projects subject to the provisions of this subsection shall not be finally approved except by a three-fifths vote of the authority. After the authority approves same, the Pasco County Commission shall order a referendum election on such project by the freeholders of the county. Approval of a majority of those voting in such election shall constitute approval of such project.

History.—s. 1, ch. 73-226.
cf.—ss. 215.57-215.83 State Bond Act.

348.84 Bonds.—Bonds may be issued on behalf of the authority as provided by the State Bond Act.

History.—s. 1, ch. 73-226.
cf.—ss. 215.57-215.83 State Bond Act.

348.86 Lease-purchase agreement.—

(1) In order to effectuate the purposes of this part and as authorized herein, the authority may enter into a lease-purchase agreement with the department relating to and covering the Pasco County Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Pasco County Expressway System by the authority, as lessor, to the department, as lessee; prescribe the term of such lease and the rentals to be paid thereunder; and provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Pasco County Expressway System, as then constituted, shall be transferred in accordance with law by the authority to the state, and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this part; the completion, extension, improvement, operation, and maintenance of the Pasco County Expressway System; the expenses and cost of operation of said authority; the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof; the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the Pasco County Expressway System, which the authority is hereby authorized to accept and apply to such purposes; the enforcement of payment and collection of rentals; and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of, and full performance under, such lease-purchase agreement.

(4) The department, as lessee under such lease-purchase agreement, is hereby authorized to pay, as rentals thereunder, any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the Pasco County Expressway System and the Pasco County gasoline tax funds and may also pay, as rentals, any appropriations received by the department pursuant to any act of the Legislature heretofore or hereafter enacted. However, nothing herein or in such lease-purchase agreement is intended to require, nor shall this part or such lease-purchase agreement require, the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of Pasco County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of Pasco County, evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in the county. The resolution, among other things, shall provide that any excess of the pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by the authority shall be returned annually to the department for distribution to Pasco County as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Pasco County planning council for its comments and recommendations. The department shall have power to covenant in any lease-purchase agree-

ment that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of the system, and any part of the cost of completing the system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than the revenues derived from the operation of the system and the Pasco County gasoline tax funds. The department may also agree to make such other payments from any moneys available to Pasco County, in connection with the construction or completion of the system, as shall be deemed by the department to be fair and proper under any such covenants heretofore or hereafter entered into.

(6) The system shall be a part of the state road system, and the department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys and to use such of its engineering and other forces as may be necessary and desirable in the judgment of the department for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost, and other preliminary engineering and other studies. However, the aggregate amount of moneys expended for said purpose by the department shall not exceed the sum of $500,000.

History.—s. 1, ch. 73-226.

348.87 Department may be appointed agent of authority for construction.—The department may be appointed by the authority as its agent for the purpose of constructing improvements and extensions to the Pasco County Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto, request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the Pasco County Expressway System, and transfer to the credit of an account of the department, in the treasury of the state, the necessary funds therefor, and the department shall thereupon be authorized, empowered, and directed to proceed with such construction and to use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—s. 1, ch. 73-226.

348.88 Acquisition of lands and property.—

(1) For the purposes of this part, the Pasco County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) In connection with the acquisition of property or property rights as herein provided, the authority may, in its discretion, acquire an entire lot, block, or tract of land if by so doing the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

History.—s. 1, ch. 73-226.

348.89 Cooperation with other units, boards, agencies, and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district, or other political subdivision, board, commission, or individual in or of the state to make and enter into contracts, leases, conveyances, or other agreements with the authority within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances, and other agreements with any political subdivision, agency, or instrumentality of the state and any and all federal agencies, corporations, and individuals for the purpose of carrying out the provisions of this part.

History.—s. 1, ch. 73-226.

348.90 Covenant of the state.—The state does hereby pledge to, and agrees, with any person, firm, or corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree with, the United States that, in the event any federal agency shall construct, or contribute any funds for the completion, extension, or improvement of, the Pasco County Expressway System or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the Pasco County Expressway System or the completion, extension, or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the Pasco County Expressway System or any part or portion thereof.

History.—s. 1, ch. 73-226.

348.91 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this part is, shall, and will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used

by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges at any time received by it, and the bonds issued by the authority, their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof.

History.—s. 1, ch. 73-226.

cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

348.92 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—s. 1, ch. 73-226.

348.93 Pledges enforceable by bondholders.—It is the express intention of this part that any pledge by the department of rates, fees, revenues, Pasco County gasoline tax funds, or other funds, as rentals, to the authority, or any covenants or agreements relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

History.—s. 1, ch. 73-226.

348.94 Part IV complete and additional authority.—

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of the board and the department, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part, and to provide a complete method for the exercise of the powers granted herein. The extension and improvement of the Pasco County Expressway System, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state, the County of Pasco, or any other political subdivision of the state shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the Department of General Services, but shall be deemed to, and shall, supersede such other law or laws as are inconsistent with the provisions of this part.

History.—s. 1, ch. 73-226.

PART V

SEMINOLE COUNTY EXPRESSWAY AUTHORITY

348.95 Short title.—Part V of chapter 348 shall be known and may be cited as the "Seminole County Expressway Authority Law."

History.—s. 1, ch. 74-375.

348.951 Definitions.—As used in this part, unless the context clearly indicates otherwise:

(1) "Authority" means the Seminole County Expressway Authority.

(2) "Members" means the governing body of the authority, and "member" means one of the individuals constituting such governing body.

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) "Lease-purchase agreement" means lease-purchase agreements which the authority is authorized pursuant to this part to enter into with the Department of Transportation.

(5) "Department" means the Department of Transportation existing under chapters 334-339.

(6) "County" means the County of Seminole.

(7) "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution or any successor thereto.

(8) "Agency of the state" means and includes the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(9) "Federal agency" means and includes the United States, the President of the United States, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(10) "Seminole County gasoline tax funds" means all the 80 percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Seminole County under the provisions of s. 9, Art. XII of the State Constitution, or all such secondary gas funds as may otherwise be provided now or hereafter by the constitution or by statute for use in Seminole County, after deduction

only of any amounts of said gasoline tax funds heretofore pledged by the Department of Transportation or the county for outstanding obligations.

(11) "Limited access expressway" means a street or highway especially designed for through traffic and over, from, or to which no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(12) "Expressway" means the same as limited access expressway.

(13) "Seminole County Expressway System" means any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressway or expressways.

(14) Words importing singular number shall include the plural number in each case and vice versa, and the words importing persons shall include firms and corporations.

History.—s. 1, ch. 74-375; s. 104, ch. 77-104.

348.952 Seminole County Expressway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Seminole County Expressway Authority, hereinafter referred to as "authority."

(2) Said authority shall have exclusive right to exercise all those powers herein set forth, and no other entity, body, or authority, whether within or without Seminole County, shall either directly or indirectly exercise any jurisdiction, control, authority, or power in any manner relating to any expressway system within Seminole County without either the express consent of the authority or as otherwise provided herein.

(3) The governing body of the authority shall consist of seven members. Five members shall be the members of the Board of County Commissioners of Seminole County, and the term of each such member shall be concomitant with his term as a county commissioner. Two members shall be appointed by the board of county commissioners from among the duly elected municipal officers within the county, and said municipal members shall, unless reappointed, serve 2-year terms. Said 2-year terms shall run from the date of appointment and shall automatically terminate should any such member cease to be a duly elected municipal officer. The two initial municipal members shall be appointed by the board of county commissioners no sooner than 60 or more than 90 days from the effective date of this act, and, in the event that two-thirds of the municipalities within the county shall within 60 days of the effective date of this act jointly recommend in writing to said board any individual or individuals to fill said membership or memberships, said board must appoint the individual or individuals so recommended. Thereafter, municipal membership vacancies shall be filled within 45 days of the occurrence of such vacancy by the board of county commissioners, and in the event that two-thirds of the municipalities shall within 30 days of any such vacancy jointly recommend to the board of county commissioners any individual to fill such vacancy, said board must appoint the individual so recommended.

(4) The authority shall elect one of its members as chairman of the authority. The authority shall also elect a secretary and a treasurer, who may or may not be members of the authority. The chairman, secretary, and treasurer shall hold such offices at the will of the authority. Four members of the authority shall constitute a quorum, and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(5) Upon the effective date of his appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his duties.

(6) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and such engineers and such employees, permanent or temporary, as it may require; determine the qualifications and fix the compensation of such persons, firms, or corporations; and employ a fiscal agent or agents. However, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its powers as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority.

(7) Members of the authority shall be entitled to receive from the authority their traveling and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but they shall draw no salaries or other compensation.

History.—s. 1, ch. 74-375.

348.953 Purposes and powers.—

(1)(a) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Seminole County Expressway System, hereinafter referred to as "system."

(b) It is the express intention of this part that said authority, in the construction of the Seminole County Expressway System, shall be authorized to construct any extensions, additions, or improvements to the system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access, with such changes, modifications, or revisions of the project as shall be deemed desirable and proper.

(2) The authority is hereby granted, and shall have and may exercise, all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts;

(b) To adopt, use, and alter at will a corporate seal;

(c) To acquire, purchase, hold, lease as lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it;

(d) To enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this part;

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer;

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Seminole County Expressway System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part; however, such right and power may be assigned or delegated by the authority to the department;

(g)1. To borrow money as provided by the State Bond Act.

2. The authority shall reimburse Seminole County for any sums expended from the gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority;

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases, or other transactions with, any federal agency, the state, any agency of the state, the County of Seminole, or any other public body of the state;

(j) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74;

(k) To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Seminole County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for all or any of the obligations of the authority; and

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including the County of Seminole; nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof; nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this part or any other provision of the law to the contrary notwithstanding, the consent of any municipality shall not be necessary for any project of the authority, whether or not the project lies within the boundaries of any municipality, either in whole or in part. However, the officials and residents of any municipality in which any project of the authority is to be located, in whole or in part, shall be given ample opportunity to discuss the project and advise the authority as to their position thereon at a duly advertised public hearing. Advertisement of the public hearing shall be by way of a newspaper published in Seminole County and circulated in the affected municipalities. The legal advertisement shall be published once at least 2 weeks prior to the public hearing and shall contain the time and place of the public hearing and a short description of the subject to be discussed. The public hearing may be adjourned from time to time and set for a time and place certain without necessity of further advertisement. In routing and locating any expressway or its interchanges in or through a municipality, the authority shall give due regard to the effect of such location on the municipality as a whole and shall not unreasonably split, divide, or otherwise separate areas of the municipality one from the other.

History.—s. 1, ch. 74-375.
cf.—ss. 215.57-215.83 State Bond Act.

348.954 Bonds.—Bonds may be issued on behalf of the authority as provided by the State Bond Act.

History.—s. 1, ch. 74-375.
cf.—ss. 215.57-215.83 State Bond Act.

348.955 Lease-purchase agreement.—

(1) In order to effectuate the purposes of this part and as authorized herein, the authority may enter into a lease-purchase agreement with the department relating to and covering the Seminole County Expressway System.

(2) The lease-purchase agreement shall provide for the leasing of the Seminole County Expressway System by the authority, as lessor, to the department, as lessee; shall prescribe the term of such lease and the rentals to be paid thereunder; and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Seminole County Expressway System, as then constituted, shall be transferred in accordance with law by the authority to the state, and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) The lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this part; the completion, extension, improvement, operation, and maintenance of the Seminole

County Expressway System and the expenses and the cost of operation of said authority; the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof; the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the Seminole County Expressway System, which the authority is hereby authorized to accept and apply to such purposes; the enforcement of payment and collection of rentals; and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of, and full performance under, such lease-purchase agreement.

(4) The department, as lessee under such lease-purchase agreement, is hereby authorized to pay, as rentals thereunder, any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the Seminole County Expressway System and the Seminole County gasoline tax funds and may also pay, as rentals, any appropriations received by the department pursuant to any act of the legislature of the state heretofore or hereafter enacted. Nothing herein or in such lease-purchase agreement is intended to require, nor shall this part or such lease-purchase agreement require, the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of Seminole County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of Seminole County, evidenced by a resolution duly adopted by the board of county commissioners of the county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in the county. The resolution, among other things, shall provide that any excess of the pledged gasoline tax funds which is not required for debt service, or reserves for such debt service, for any bonds issued by the authority shall be returned annually to the department for distribution to Seminole County as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Seminole County Planning Council for its comments and recommendations. The department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the system, and any part of the cost of completing the system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than the revenues derived from the operation of the system and the Seminole County gasoline tax funds. The department may also agree to make such other payments from any moneys available to Seminole County, in connection with the construction or completion of the system, as shall be deemed by the department to be fair and proper under any such covenants heretofore or hereafter entered into.

(6) The system shall be a part of the State Road System, and the department is hereby authorized, upon the request of the authority, to expend, out of any funds available for the purpose, such moneys, and to use such of its engineering and other forces as may be necessary and desirable in the judgment of the department for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost, and other preliminary engineering and other studies. However, the aggregate amount of moneys expended for said purpose by the department shall not exceed the sum of $500,000.

History.—s. 1, ch. 74-375.

348.956 Department may be appointed agent of authority for construction.—The department may be appointed by the authority as its agent for the purpose of constructing improvements and extensions to the Seminole County Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto, shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the Seminole County Expressway System, and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor; and the department shall thereupon be authorized, empowered, and directed to proceed with such construction and to use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—s. 1, ch. 74-375.

348.957 Acquisition of lands and property.—(1) For the purposes of this part, the Seminole County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) In connection with the acquisition of property or property rights, as herein provided, the authority may, in its discretion, acquire an entire lot, block, or tract of land if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

History.—s. 1, ch. 74-375.

348.958 Cooperation with other units, boards, agencies, and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in or of the state to make and enter into contracts, leases, conveyances, or other agreements within the provisions and purposes of this part with the authority. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances, and other agreements with any political subdivision,

agency, or instrumentality of the state and any and all federal agencies, corporations, and individuals for the purpose of carrying out the provisions of this part.

History.—s. 1, ch. 74-375.

348.959 Covenant of the state.—The state does hereby pledge to, and agrees with, any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purpose of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agrees with, the United States that, in the event any federal agency shall construct, or contribute any funds for the completion, extension, or improvement of, the Seminole County Expressway System or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the Seminole County Expressway System or the completion, extension, or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for carrying out the purposes of this part and the purposes of the United States in the completion, extension, or improvements of the Seminole County Expressway System or any part or portion thereof.

History.—s. 1, ch. 74-375.

348.96 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this part is, shall, and will be, in all respects, for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges at any time received by it, and the bonds issued by the authority, and their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or any political subdivision, taxing agency, or instrumentality thereof. However, the exemption granted by this section shall not be applicable to any tax imposed by chapter 220, on interest, income, or profits on debt obligations owned by corporations. When property of the authority is leased it shall be exempt from ad valorem taxes only if the use by the lessee qualifies the property for exemption under s. 196.199.

History.—s. 1, ch. 74-375.

cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

348.961 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds, and shall also be and constitute securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—s. 1, ch. 74-375.

348.962 Pledges enforceable by bondholders.—It is the express intention of this part that any pledge by the department of rates, fees, revenues, Seminole County gasoline tax funds, or other funds, as rentals, to the authority, or any covenants or agreements relative thereto, may be enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

History.—s. 1, ch. 74-375.

348.963 Part V complete and additional authority.—

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of the board and the department, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but as superseding such other laws in the exercise of the powers provided in this part and as providing a complete method for the exercise of the powers granted herein. The extension and improvement of the Seminole County Expressway System, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state, in the County of Seminole, or in any other political subdivision of the state shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the Department of General Services, but shall be deemed to supersede such other law or laws as are inconsistent with the provisions of this part.

History.—s. 1, ch. 74-375.

CHAPTER 349

JACKSONVILLE TRANSPORTATION AUTHORITY

349.01 Title of law.—This law shall be known and may be cited as the "Jacksonville Transportation Authority Law."

History.—s. 1, ch. 29996, 1955; s. 2, ch. 71-101.

349.02 Definitions.—The following terms whenever used or referred to in this law shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) The term "authority" shall mean the body politic and corporate, an agency of the state created by this chapter.

(2) The term "members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(3) The term "bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form, which the authority is authorized to issue pursuant to this chapter.

(4) The term "lease-purchase agreement" shall mean the lease-purchase agreements which the authority is authorized pursuant to this chapter to enter into with the Department of Transportation.

(5) The term "department" shall mean the Department of Transportation existing under chapters 334-339.

(6) The terms "Florida State Improvement Commission" or "commission" shall mean the state agency created, organized and existing under and by virtue of the provisions of former chapter 420, or the successor thereto, chapter 29788, Acts of 1955, now chapter 288.

(7) The term "county" shall mean the County of Duval.

(8) The term "city" shall mean the City of Jacksonville.

(9) The term "State Board of Administration" shall mean the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution, or any successor thereto.

(10) The term "agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the state.

(11) The term "federal agency" shall mean and include the United States, the President of the United States, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(12) The term "Duval County gasoline tax funds" shall mean all the 80 percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Duval County under the provisions of s. 9, Art. XII of the State Constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the department or the county for outstanding obligations.

(13) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History.—s. 2, ch. 29996, 1955; s. 18, ch. 69-216; ss. 23, 35, ch. 69-106.

349.03 Jacksonville Transportation Authority.—

(1) There is hereby created and established a body politic and corporate and an agency of the state to be known as the Jacksonville Expressway Authority, redesignated as the Jacksonville Transportation Authority, and hereinafter referred to as the authority.

(2) The governing body of the authority shall consist of seven members. Three members shall be appointed by the Governor and confirmed by the Senate. Three members shall be appointed by the mayor of the City of Jacksonville subject to confirmation by the council of the City of Jacksonville. The seventh member shall be the district engineer of the Department of Transportation serving the Second Congressional District. Except for the seventh member, members shall be residents and qualified electors of the City of Jacksonville. The members of the authority holding office on July 1, 1979, shall continue in office until the expiration of their terms as if this section were not in effect, to insure staggered terms, and their successors shall thereafter be appointed by either the mayor or the Governor, whoever appointed the retiring member.

(3) The terms of appointed members shall be for 4 years deemed to have commenced on June 1 of the year in which they are appointed. No appointed member shall serve more than two terms, except that any appointed member holding office on July 1, 1979, shall be exempt from such two-term limitation. Each member shall hold office until his successor has been appointed and has qualified. A vacancy during a term shall be filled by the respective appointing authority only for the balance of the unex-

pired term. One of the members so appointed shall be designated annually by the members as chairman of the authority. The members of the authority shall not be entitled to compensation, but shall be reimbursed for traveling expenses or other expenses actually incurred in their duties as provided by law. Four voting members of the authority shall constitute a quorum, and no resolution adopted by the authority shall become effective unless with the affirmative vote of at least four members. The authority may employ an executive director and may organize the authority into such departments and divisions as it deems necessary. It may appoint department directors, deputy directors, division chiefs, and staff assistants to the executive director. In so appointing, the authority may fix the compensation of those appointees, who shall serve at the pleasure of the authority. The authority may employ such financial advisors and consultants, technical experts, engineers, and agents and employees, permanent or temporary, [1]as it may require and may fix the compensation and qualifications of such persons, firms, or corporations.

History.—s. 3, ch. 29996, 1955; s. 19, ch. 63-400; s. 1, ch. 67-542; ss. 23, 35, ch. 69-106; s. 1, ch. 70-381; s. 2, ch. 71-101; s. 1, ch. 79-409.

[1]**Note.**—The words "employees, permanent or temporary, as" were omitted by the editors as a probable typographical error.

349.04 Purposes and powers.—

(1)(a) The authority created and established by the provisions of this chapter is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Jacksonville Expressway System (hereinafter referred to as "system") heretofore partially constructed or acquired by Florida State Improvement Commission in the Jacksonville, Duval County, metropolitan area, as more specifically described in the proceedings of said commission which authorized the issuance of $28 million bonds of said commission for said purpose, and as hereafter completed or improved or extended as authorized by this chapter, and all appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Jacksonville Expressway System, and to construct or acquire extensions, additions and improvements to said system and to complete the construction and acquisition of said system.

(b) The authority may, in addition, acquire, hold, construct, improve, operate, maintain, and lease in the capacity of lessor, a mass transit system employing motor cars or buses, street railway systems beneath, on the surface, or above the surface, or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in the City of Jacksonville.

(c) The authority may further plan, coordinate, and recommend to appropriate officers and agencies of federal, state, and local governments methods and facilities for the parking of vehicles, the movement of pedestrians, and vehicular traffic, public and private, in the City of Jacksonville, to accomplish a coordinated transportation system for the greater Jacksonville area. The authority may construct and operate passenger terminals for the parking of automobiles and movement by public conveyance of persons and construct and operate all other facilities necessary to a complete and coordinated transportation system in the Jacksonville area.

(d) It is the express intention of this chapter that said authority, in completing the construction of said Jacksonville Expressway System, shall not be limited to the description thereof contained in said proceedings of said commission which authorized the issuance of $28 million bonds to finance part of the cost thereof, but shall be authorized to construct any additional extensions, additions or improvements to said system, or appurtenant facilities, including all necessary approaches, roads, bridges and avenues of access, with such changes, modifications or revisions of said project as shall be deemed desirable and proper. It is the intent of this chapter, and to effect its purposes, the Legislature determines that bonds issued under this chapter are deemed to be state capital improvement bonds to finance or refinance the cost of state capital projects.

(e) The authority, in addition to the other powers and duties provided, shall have the power and responsibility to formulate and implement a plan for a mass transit system which will serve the consolidated City of Jacksonville.

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use and alter at will, a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years, or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish and collect rates, fees, rentals and other charges for the services and facilities of the Jacksonville Expressway System, which rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this chapter; provided, however, that such right and power may be assigned or delegated, by the authority, to the department.

(g)1. To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, (hereinafter in this chapter sometimes called "bonds") of the authority, for the purpose of funding or refunding, at or prior to maturity, any bonds theretofore issued by said au-

thority, or by Florida State Improvement Commission to finance part of the cost of the Jacksonville Expressway System, and purposes related thereto, and for the purpose of financing all or part of the completion or improvement or extension of the Jacksonville Expressway System, and appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Jacksonville Expressway System and for any other purpose authorized by this chapter, said bonds to mature in not exceeding 40 years from the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals or other charges, including all or any portion of the Duval County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department; and in general to provide for the security of said bonds and the rights and remedies of the holders thereof.

2. In the event that the authority shall determine to fund or refund any bonds theretofore issued by said authority, or by said commission as aforesaid prior to the maturity thereof, the proceeds of such funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and it is the express intention of this chapter that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this chapter notwithstanding that part of such outstanding bonds will not mature or become redeemable until 6 years after the date of issuance of bonds pursuant to this chapter to fund or refund such outstanding bonds.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the County of Duval, the City of Jacksonville or with any other public body of the state.

(j) To have the power of eminent domain.

(k) To pledge, hypothecate or otherwise encumber all or any part of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Duval County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other law.

(m) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness either in temporary or definitive form of the authority for the purpose of funding or refunding the cost of the acquisition of motor or street railway vehicles, passenger terminals, automobile parking facilities, administrative offices, and for any other purposes authorized by this chapter, said bonds to mature in not exceeding 40 years from the date of the issuance thereof; to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals or other charges, and in general to provide for the security of said bonds and the rights and remedies of the holders thereof.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of, or interest on, such obligations. However, this provision shall not be applicable to the type or manner of financing authorized by s. 9(c)(5), Art. XII of the State Constitution and laws enacted pursuant thereto.

History.—s. 4, ch. 29996, 1955; ss. 23, 35, ch. 69-106; s. 2, ch. 70-381; ss. 1, 3-5, ch. 71-101.

349.041 Plans, appropriations and services.—

(1) The authority shall prepare and submit annually its requests for such funds as it may require from the city for the ensuing year to the council of the city on or before June 1, setting forth its estimated gross revenues and estimated requirements for operations, maintenance expenses, and debt service. A copy of such requests shall be furnished to the Department of Transportation. The council and the mayor of the City of Jacksonville may appropriate such funds as they deem appropriate for the use of the authority.

(2) Except as the council may provide, and except as otherwise required by any trust indenture outstanding on September 1, 1971, the authority shall utilize, on a cost accounted basis, the central services of the city, and shall pay therefor. The authority may, however, employ legal counsel it deems necessary, upon resolution of the authority.

History.—s. 6, ch. 71-101.

349.042 Planning board review.—

(1) HEARINGS.—Plans for the construction and operation of the expressway and transit functions of the authority shall be submitted to the Jacksonville area planning board for review and comment in accord with requirements herein set out. Two public hearings shall be held by the authority to insure public participation in the process for determining the need for the project contemplated and the location and effect of such project. One hearing shall be conducted before the route location of any expressway or right-of-way for mass transit operations is approved and before the authority is committed to a specific proposal. A second hearing shall be held after the route location has been approved, but before the authority is committed to a specific design proposal.

(2) NOTICE.—No such public hearing shall be held until after the authority has published notice thereof, the size of which shall be at least one fourth page, inviting the public to be present and heard, in a daily newspaper published in Jacksonville of at least 50,000 circulation, 14 to 30 days in advance of the public hearing to be held. Such notice shall desig-

nate the place of hearing which shall be in such school board district as defined by the charter of Jacksonville as the contemplated project can reasonably be expected to affect. If the contemplated project affects more than one school board district, it shall be held in the city hall.

(3) PLANNING BOARD COMMENT.—The Jacksonville area planning board shall review the proposed project and report its comments thereon to the authority 30 days before the first hearing and within 60 days after the second hearing.

History.—s. 7, ch. 71-101.

349.05 Bonds of the authority.—

(1)(a) The bonds of the authority issued pursuant to the provisions of this chapter shall be authorized by resolution of the members thereof and may be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, not exceeding 7½ percent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals or other charges or receipts of the authority including the Duval County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(b) Prior to any sale of bonds the authority shall cause notice to be given by publication in some newspaper published in the county that the authority will receive bids for the purchase of the bonds at the office of the authority in the county. Said notice shall be published twice and the first publication shall be given not less than 15 days prior to the date set for receiving the bids. Said notice shall specify the amount of the bonds offered for sale and shall state that the bids shall be sealed bids, shall give the schedule of the maturities of the proposed bonds and such other pertinent information as may be prescribed in the resolution authorizing the issuance of such bonds or any resolution subsequent thereto. Bidders may be invited to name the rate of interest which the bonds are to bear or the authority may name rate of interest and invite bids thereon. In addition to publication of notice of the proposed sale the authority shall also give notice in writing of the proposed sale enclosing a copy of such advertisement to the secretary of the Department of Transportation and to at least three recognized bond dealers in the state, such notice to be given not less than 10 days prior to the date set for receiving the bids.

(c) All bonds and refunding bonds issued pursuant to this chapter shall be sold to the highest and best bidder at such public sale unless sold at a better price or yield basis within 30 days after failure to receive an acceptable bid at a duly advertised public sale, provided that the interest cost to the authority on such bonds shall not exceed 7½ percent per annum, and provided further, that the authority shall have the right to reject all bids and cause a new notice to be given in like manner inviting other bids for such bonds. In determining the highest and best bidder for bonds offered for sale, the net interest cost to the authority as shown in standard bond tables shall govern; provided, that the determination of the authority as to the highest and best bidder shall be final. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the authority may determine.

(d) The authority may require all bidders for said bonds to give security by bond or deposit to the authority to insure that the bidder shall comply with the terms of the bid, and any bidder whose bid shall be accepted shall be liable to the authority for all damages on account of the nonperformance of the terms of such bid or to a forfeiture of the deposit required by the authority.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals, (including all or any portion of the Duval County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, or any part thereof), or other charges or receipts of the authority, derived by the authority from the Jacksonville Expressway Systems;

(b) The completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of said system, and the duties of the authority and others, including the department, with reference thereto;

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied;

(d) The fixing, charging, establishing and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Jacksonville Expressway System or any part thereof;

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof;

(f) Limitations on the issuance of additional bonds;

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which the same may be issued; and

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3)(a) The State Board of Administration of Florida shall be the fiscal agent of the authority for any bonds issued by the authority pursuant to this chapter whenever the authority requires the issuance of bonds related to or dependent upon pledging of Duval County gasoline tax funds; but the state board of administration need not be the fiscal agent for the authority in the issuance of bonds not related to or dependent upon the pledging of Duval County gasoline tax funds. The authority may enter into deeds of trust, indentures or other agreements with said fiscal agent, or with any bank or trust company within or without the state, with the consent of said board, as security for such bonds, and may, under such agreements, assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Duval County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, thereunder. Such deed of trust, indenture or other agreement, may contain such provisions as is customary in such instruments or, as the authority may authorize, including, but without limitation, provisions as to:

1. The completion, improvement, operation, extension, maintenance, repair and lease of, or lease-purchase agreement relating to, the Jacksonville Expressway System, and the duties of the authority and others, including the department, with reference thereto;
2. The application of funds and the safeguarding of funds on hand or on deposit;
3. The rights and remedies of the trustee and the holders of the bonds; and
4. The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(b) Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the Law Merchant and the Negotiable Instruments Law of the state.

History.—s. 5, ch. 29996, 1955; s. 1, ch. 63-272; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 8, ch. 71-101; s. 29, ch. 73-302.

349.06 Remedies of the bondholders.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by any lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this chapter after such principal of or interest on said bonds shall have become due, whether at maturity or upon call for redemption, or the department shall default in any payments under, or covenants made in, any lease-purchase agreement between the authority and the department, and such default shall continue for a period of 30 days, or in the event that the authority or the department shall fail or refuse to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall have first given notice of their intention to appoint a trustee, to the authority and to the department. Such notice shall be deemed to have been given if given in writing, and deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post-office box or station and addressed, to the chairman of the authority at the principal office of the authority and to the secretary of the Department of Transportation at the principal office of the department.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of 25 percent (or such other percentages as may be specified in any deed of trust, indenture or other agreement aforesaid) in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter,

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the department, including the right to require the department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Duval County gasoline tax funds or other funds of the department so agreed to be paid and to require the department to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter,

(c) Bring suit upon the bonds,

(d) By action or suit in equity require the authority or the department to account as if it were the trustee of an express trust for the bondholders,

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the Jacksonville Expressway System or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges or receipts from which are, or may be, applicable to the payment of the bonds so in default, and

subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department operate and maintain the same, for and on behalf of and in the name of, the authority, the department and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues or receipts, derived from the Jacksonville Expressway System, or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals, or other charges, revenues or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the Jacksonville Expressway System or any facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, to the operation and maintenance of the Jacksonville Expressway System, or any facility, or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the department and the bondholders, and no holder of bonds of the authority nor any trustee, shall ever have the right in any suit, action or proceeding at law, or in equity, to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—s. 6, ch. 29996, 1955; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 101, ch. 71-355.

349.07 Lease-purchase agreement.—

(1) In order to effectuate the purposes of this chapter and as authorized by this chapter, the authority may enter into a lease-purchase agreement with the department relating to and covering the Jacksonville Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Jacksonville Expressway System, by the authority, as lessor, to the department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Jacksonville Expressway System as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this chapter, the completion, extension, improvement, operation and maintenance of the Jacksonville Expressway System and the expenses and cost of operation of said authority, the charging and collecting of tolls, rates, fees and other charges for the use of the services and facilities thereof, the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation and maintenance of the Jacksonville Expressway System, which the authority is hereby authorized to accept and apply to such purposes, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or appurtenant to the making of and full performance under such lease-purchase agreement.

(4) The department, as lessee under such lease-purchase agreement, is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts or income accruing to the department from the operation of the Jacksonville Expressway System and the Duval County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the legislature of the state heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement is intended to nor shall this chapter or such lease-purchase agreement require the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this chapter ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of said Duval County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of the County of Duval evidenced by a resolution duly adopted by the board of county commissioners of said county, which resolution, among other things, shall provide that any excess of said pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the department for distribution to Duval County as provided by law.

(6) Said department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of said system, and any part of the cost of completing said system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other

than the revenues derived from the operation of said system and said Duval County gasoline tax funds. Said department may also agree to make such other payments from any moneys available to said commission, said county or said city in connection with the construction or completion of said system as shall be deemed by said department to be fair and proper under any such covenants heretofore or hereafter entered into.

(7) Said system shall be a part of the state road system and said department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys, and to use such of its engineering and other forces, as may be necessary and desirable in the judgment of said department, for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost and other preliminary engineering and other studies; provided, however, that the aggregate amount of moneys expended for said purposes by said department shall not exceed the sum of $375,000.

History.—s. 7, ch. 29996, 1955; s. 1, ch. 57-809; ss. 23, 35, ch. 69-106.
cf.—s. 335.04 Classification of roads, etc.

349.08 Transfer of existing Jacksonville Expressway System to Authority.—

(1) In order to effectuate the purposes of this chapter, and subject to the rights of any holders of bonds heretofore issued by said Florida State Improvement Commission to finance any part of the cost of said Jacksonville Expressway System heretofore constructed by Florida State Improvement Commission in the Jacksonville, Duval County, metropolitan area, and to the rights of the State Road Department under any lease-purchase agreement heretofore entered into therefor between Florida State Improvement Commission and said State Road Department, all the right, title and interest in and to said Jacksonville Expressway System, and all powers, jurisdiction and control over or relating thereto, heretofore vested in Florida State Improvement Commission, upon the request of the authority, shall be transferred, set over, assigned and conveyed to said authority, and said Florida State Improvement Commission shall thereupon transmit to the proper officers of the authority all deeds, conveyances, documents, books and records relating to said system, and shall execute all necessary documents and papers to carry out and consummate the conveyance and transfer of said system to said authority as provided for in this chapter; provided, however, that in the event no such request is made by said authority on or before April 1, 1956, then, and in such event, this chapter shall be of no force or effect and, thereafter, all powers, jurisdiction and control over or relating to said Jacksonville Expressway System existing in the Florida State Improvement Commission, the State Road Department and the State Board of Administration prior to the enactment of this chapter shall continue in full force and effect to the same extent as if this chapter had never been enacted.

(2) This section, without reference to any other laws, shall be deemed to be and shall constitute complete authority for the transfer, assignment and conveyance herein authorized, any provisions of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as herein prescribed.

History.—s. 8, ch. 29996, 1955.

349.09 Department may be appointed agent of authority for construction.—The department may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the Jacksonville Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the department to do such construction work including the planning, surveying and actual construction of the completion, extensions, and improvements to the Jacksonville Expressway System and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor and the department shall thereupon be authorized, empowered and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—s. 9, ch. 29996, 1955; ss. 23, 35, ch. 69-106.

349.10 Acquisition of lands and property.—

(1) For the purposes of this law the Jacksonville Transportation Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) All property rights acquired under the provisions of this law shall be in fee simple.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

History.—s. 10, ch. 29996, 1955; s. 1, ch. 57-800; s. 2, ch. 71-101.

349.11 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission or individual in, or of, the state to make and enter into with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this chapter. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals, for the purpose of carrying out the provisions of this chapter.

History.—s. 11, ch. 29996, 1955.

349.12 Covenant of the state.—The state does hereby pledge to, and agrees, with any person, firm or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by the authority for the purposes of this chapter that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree, with the United States and any federal agency that, in the event that any federal agency shall construct or contribute any funds for the completion, extension or improvement of the Jacksonville Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the Jacksonville Expressway System or the completion, extension or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this chapter and the purposes of the United States in the completion, extension or improvement of the Jacksonville Expressway System, or any part or portion thereof.

History.—s. 12, ch. 29996, 1955; ss. 23, 35, ch. 69-106.

349.13 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this chapter is, shall and will be, in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income or charges at any time received by it, and the bonds issued by the authority, their transfer and the income therefrom, (including any profits made on the sale thereof) shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 13, ch. 29996, 1955; s. 13, ch. 73-327.
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

349.14 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—s. 14, ch. 29996, 1955.

349.15 Pledges enforceable by bondholders.—It is the express intention of this chapter that any pledge by the department of rates, fees, revenues, Duval County gasoline tax funds or other funds, as rentals, to the authority or any covenants or agreements relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

History.—s. 15, ch. 29996, 1955; ss. 23, 35, ch. 69-106.

349.16 Transfer of refunding powers to authority.—The power vested in the State Board of Administration by s. 344.26, to issue its refunding bonds for the purpose of refunding, at or prior to maturity, outstanding obligations of Florida State Improvement Commission, is, but only insofar as such power to refund is applicable to any bonds of Florida State Improvement Commission heretofore issued to finance part of the cost of Jacksonville Expressway System, hereby transferred to and vested in the authority and the authority is hereby authorized to issue its revenue bonds, for the purpose of refunding such outstanding bonds of Florida State Improvement Commission, and the State Board of Administration shall be deemed to be, and is hereby, divested of such power to refund, at or prior to maturity, said bonds of Florida State Improvement Commission heretofore issued to finance part of the cost of Jacksonville Expressway System.

History.—s. 16, ch. 29996, 1955.

349.17 Chapter complete and additional authority.—

(1) The powers conferred by this chapter shall be in addition and supplemental to the existing powers of said board and the Department of Transportation, and this chapter shall not be construed as repealing any of the provisions of any other law, general, special or local, but to supersede such other laws in the exercise of the powers provided in this chapter, and to provide a complete method for the exercise of the powers granted in this chapter. The refunding of any of the bonds of Florida State Improvement Commission heretofore issued to finance part of the cost of said Jacksonville Expressway System, and the completion, extension and improvement of said system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this chapter by the qualified electors or qualified electors who are freeholders in the state or in said County of Duval, or in said City of Jacksonville, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this chapter.

(2) This chapter shall not be deemed to repeal, rescind or modify any other law or laws relating to

said State Board of Administration, said Department of Transportation, or said Florida State Improvement Commission, but shall be deemed to and shall supersede such other law or laws in the exercise of the powers provided in this chapter insofar as such other law or laws are inconsistent with the provisions of this chapter.

History.—s. 17, ch. 29996, 1955; ss. 23, 35, ch. 69-106.

TITLE XXVI

RAILROADS AND OTHER REGULATED UTILITIES

CHAPTER 350

FLORIDA PUBLIC SERVICE COMMISSION

350.001 Legislative intent.—The Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government. It is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The Legislature accordingly delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him to participate in the selection of members only from the list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by s. 350.031.

History.—s. 1, ch. 78-426.

350.01 Florida Public Service Commission.—(1) The Florida Public Service Commission shall consist of five commissioners appointed pursuant to s. 350.031.

(2)(a) Each commissioner serving on July 1, 1978, shall be permitted to remain in office until the completion of his current term. Upon the expiration of the term, a successor shall be appointed in the manner prescribed by s. 350.031(3) and (4) for a 4-year term, except that the terms of the initial members appointed under this act shall be as follows:

1. The vacancy created by the present term ending in January, 1981, shall be filled by appointment for a 4-year term and for 4-year terms thereafter; and

2. The vacancies created by the two present terms ending in January, 1979, shall be filled by appointment for a 3-year term and for 4-year terms thereafter.

(b) Two additional commissioners shall be appointed in the manner prescribed by s. 350.031(3) and (4) for 4-year terms beginning the first Tuesday after the first Monday in January, 1979, and successors shall be appointed for 4-year terms thereafter.

(c) Vacancies on the commission shall be filled for the unexpired portion of the term in the same manner as original appointments to the commission.

(3) If the electorate approves an amendment to the State Constitution at the general election to be held in November, 1978, authorizing commissioners to serve terms in excess of 4 years, the following shall apply:

(a) Each commissioner serving on the effective date of the constitutional amendment or appointed for a term beginning in January, 1979, shall be permitted to remain in office until the completion of his current term or the term beginning in January, 1979. Upon the expiration of such terms, all subsequent appointments shall be made in the manner prescribed by s. 350.031(3) and (4) for 6-year terms.

(b) A vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(4) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council at least 180 days before the expiration of his term a statement that he desires to serve an additional term.

(5) One member of the commission shall be elected by majority vote to serve as chairman for a term of 2 years, beginning with the first Tuesday after the first Monday in January, 1979. A member may not serve two consecutive terms as chairman.

(6) The primary duty of the chairman is to serve as chief administrative officer of the commission; however, the chairman may participate in any proceedings pending before the commission when administrative duties and time permit. In order to distribute the work load and expedite the commission's calendar, the chairman, in addition to other administrative duties, has authority to assign the various proceedings pending before the commission requiring hearings to two or more commissioners or to the commission's office of hearing examiners under the supervision of the office of general counsel. Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding; provided, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chairman shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. If a commissioner becomes unavailable after assignment to a

particular proceeding, the chairman shall assign a substitute commissioner. In those proceedings assigned to a hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

(7) A majority of the commissioners may determine that the full commission shall sit in any proceeding. The public counsel or a person regulated by the Public Service Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations, regulatory policies, conservation, economy, competition, public health, and safety of the area involved. If the petition is denied, the commission shall set forth the grounds for denial.

(8) This section does not prohibit a commissioner, designated by the chairman, from conducting a hearing as provided under s. 120.57(1), s. 323.07, or s. 350.631, and the rules of the commission adopted pursuant thereto.

History.—s. 1, ch. 4700, 1899; GS 2882; s. 10, ch. 7838, 1919; RGS 4607; CGL 6692; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 78-426.

350.011 Florida Public Service Commission.—The state regulatory agency heretofore known as the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission shall be known and hereafter called Florida Public Service Commission, and all rights, powers, duties, responsibilities, jurisdiction and judicial powers now vested in said Railroad and Public Utilities Commission or said Florida Public Utilities Commission and the commissioners thereof are vested in the Florida Public Service Commission and the commissioners thereof. Whenever reference is made to the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission and the commissioners thereof in the laws of the state previously enacted or enacted at this session of the Legislature, such reference shall be construed to mean the Florida Public Service Commission and the commissioners thereof and all appropriations for the use of said Railroad and Public Utilities Commission or Florida Public Utilities Commission and the members thereof for the biennium or continuing in nature previously made or made at this session of the Legislature, shall be construed to be for the use of said Florida Public Service Commission and the commissioners thereof, to be used for the purposes set out in the laws making said appropriations; provided, however, the change in name of said regulatory agency shall in nowise affect any pending causes and proceedings, existing notices, orders, certificates, permits, licenses, or authorities previously granted or any action previously taken by the Florida Railroad and Public Utilities Commission or Florida Public Utilities Commission.

History.—s. 1, ch. 24095, 1947; s. 1, ch. 63-279; s. 1, ch. 65-52.

350.03 Power of Governor to remove and to fill vacancies.—The Governor shall have the same power to remove, suspend or appoint to fill vacancies in the office of commissioners as in other offices.

History.—s. 1, ch. 4700, 1899; GS 2884; RGS 4609; CGL 6694.

350.031 Florida Public Service Commission Nominating Council.—

(1) There is created a Florida Public Service Commission Nominating Council consisting of nine members. Three members, including one member of the House of Representatives, shall be appointed by the Speaker of the House; three members, including one member of the Senate, shall be appointed by the President of the Senate; and three members shall be selected and appointed by a majority vote of the other six members of the council. For the initial term of appointment, each member appointed by the Speaker of the House and the President of the Senate shall serve for 3 years, except those members of the House and Senate, who shall serve until the end of the elected term of the House member, and each member selected by a majority vote of the six members shall serve for 2 years. Thereafter, all terms shall be for 4 years, except those members of the House and Senate, who shall serve 2-year terms concurrent with the 2-year elected terms of House members. Vacancies on the council shall be filled for the unexpired portion of the term in the same manner as original appointments to the council.

(2) No member or spouse shall be an agent, officer, employee or be any type of partner in any industry regulated by the commission, nor shall a member or spouse have any ownership in, including any ownership of shares in, or be in a position to substantially influence or affect, or be in a position to be substantially influenced or affected by the management or managerial policies of any industry regulated by the commission. A member of the council may be removed by the Speaker of the House of Representatives and the President of the Senate upon a finding by the Speaker and the President that the council member has violated any provision of this subsection or for other good cause.

(3) It is the responsibility of the council to recommend to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission. The council shall submit the recommendations to the Governor by October 1 of those years in which the terms are to begin the following January, or within 60 days after a vacancy occurs for any reason other than the expiration of the term.

(4) The Governor shall fill a vacancy occurring on the Public Service Commission by appointment of one of the persons recommended by the council. If the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the

following January, then the council, by majority vote, shall appoint by December 31 one person from the names previously recommended to the Governor to fill the vacancy. If the Governor has not made the appointment to fill a vacancy occurring for any reason other than the expiration of the term by the 60th day following receipt of the recommendations of the council, the council by majority vote shall appoint within 30 days thereafter one person from the names previously recommended to the Governor to fill the vacancy.

(5) Each appointment to the Public Service Commission shall be subject to confirmation by the Senate.

(6) The council shall establish procedures for applications for membership on the commission. No person shall be recommended to the Governor by the council unless the council is satisfied that the person is competent and knowledgeable in one or more fields which include, but are not limited to, public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the commission. The commission shall fairly represent the above-stated fields. Recommendations of the council shall be on a nonpartisan basis.

(7) All meetings of the council shall be open to the public and subject to the provisions of s. 286.011. A majority of the membership of the council may conduct any business before the council.

(8) Members of the council are entitled to per diem and travel expenses as provided in s. 112.061, which shall be funded by the Florida Public Service Regulatory Trust Fund.

History.—s. 3, ch. 78-426.

350.04 Qualifications of commissioners.—The commissioners provided for in this chapter shall not, jointly or severally, or in any way be holders of any railroad stock or bonds or any utility stock or bonds, or be the agent or employee of any railroad company or have any interest in any railroad company or be the agent or employee of any utility company or have any interest in any utility company during their respective terms of office.

History.—s. 1, ch. 4700, 1899; GS 2885; RGS 4610; CGL 6695; s. 1, ch. 65-422.

350.05 Oath of office.—Before entering upon the duties of his office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am qualified to hold office under the constitution of the state, and that I will well and faithfully perform the duties of Florida Public Service Commissioner, on which I am now about to enter; that I am not a stockholder in any railroad or freight transportation company or any utility company, nor in any way, directly or indirectly, in the employment of, or engaged in the management of any railroad or transportation company or any utility company, so help me God." In case any commissioner should in any way become disqualified, he shall at once remove such disqualification or resign, and upon his failure to do so, he shall be suspended from office by the Governor and dealt with as provided by law.

History.—s. 1, ch. 4700, 1899; GS 2886; RGS 4611; CGL 6696; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 65-422.

350.051 Qualifications of Chief Auditor.—The Chief Auditor of the Florida Public Service Commission, who is designated and serves as the director of the accounting department of said commission, shall be a person holding a certificate to practice in the state as a certified public accountant issued by the State Board of Accountancy under chapter 473.

History.—s. 1, ch. 69-168.

350.06 Place of meeting; expenditures; employment of personnel; records availability and fees.—

(1) The offices of said commissioners shall be in the vicinity of Tallahassee, but the commissioners may hold sessions anywhere in the state at their discretion.

(2) All sums of money authorized to be paid on account of said commissioners shall be paid out of the State Treasury only on the order of the Comptroller countersigned by the Governor.

(3) The commissioners may employ clerical, technical, and professional personnel reasonably necessary for the performance of their duties. The commissioners may also employ one or more persons capable of stenographic court reporting, to be known as the official reporters of the commission, and fix the compensation of each not to exceed $28,000 annually. The official reporters shall furnish only to the commission transcripts of all testimony taken by them, and the commission may make and sell certified copies of such testimony and charge therefor the same fees as are allowed clerks of the circuit courts of the state, subject to such rules and regulations as may be prescribed by the commission.

(4) When needed, the commission may engage supplementary qualified reporters at their usual rate of compensation; however, the supplementary reporters shall furnish the commission the original certified transcripts of testimony taken by them, but such reporters shall have the right to sell copies of such transcripts subject to rules and regulations of the commission. The commission may make copies of the transcripts for internal use without further compensation. When supplementary reporters are unable to provide copies within a reasonable time, the commission may, upon request, sell copies at its usual rate and shall deposit the proceeds in the Public Service Regulatory Trust Fund.

(5) Upon request by the governing body of a municipal or county government within 7 days after completion of the transcript and its delivery to the commission, the commission shall provide copies of the transcripts of testimony at the cost of reproduction and mailing, but such copies need not be certified unless specifically requested.

(6) The commission shall make available to the public counsel the original copy of all transcripts for use and study in the commission offices. If the commission makes any copies of transcripts for internal use and if the public counsel has so requested in

writing to the clerk of the commission at the time of his intervention, the commission shall supply the public counsel with a copy of the transcript at no charge. In all other cases, the public counsel may obtain a copy of the transcript from the commission for the cost of reproduction.

(7) The commission shall collect for copying, examining, comparing, correcting, verifying, certifying, or furnishing orders, records, transcripts of testimony, papers, or other instruments the same fees that are allowed clerks of the circuit courts of Florida. In cases where the fee would amount to less than $1, no fee shall be charged.

(8) Copies of commission orders furnished to public officials, newspapers, periodical publications, federal agencies, state officials of other states, and parties to the proceeding in which the order was entered and their attorneys shall be without charge. However, the commission may in its discretion charge fees for the furnishing of more than one copy of any order to any of the foregoing.

(9) The commission shall keep a book in which all fees collected by it as provided for herein shall be recorded, together with the amount and purpose for which collected. This book shall be a public record. The commission shall prepare a statement of these fees in duplicate each month and remit one copy of the statement, together with all fees collected by it, to the State Treasurer. All moneys collected pursuant to this section by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund created by the provisions of s. 350.78.

History.—s. 2, ch. 4700, 1899; GS 2887; s. 1, ch. 5625, 1907; s. 1, ch. 7811, 1919; RGS 4612; s. 1, ch. 11365, 1925; s. 2, ch. 12218, 1927; CGL 6697; s. 1, ch. 15720, 1931; s. 2, ch. 75-109.

cf.—s. 29.03 Compensation for services of court reporter.

350.0605 Former commissioners and employees; representation of clients before commission.—

(1) Any former commissioner of the Public Service Commission is prohibited from appearing before the commission representing any client or any industry regulated by the Public Service Commission for a period of 2 years following termination of service on the commission.

(2) Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Public Service Commission on any matter which was pending at the time of termination and in which such former employee had participated.

History.—s. 4, ch. 78-426.

350.061 Public counsel.—

(1) The Joint Legislative Auditing Committee shall appoint a "public counsel" by majority vote of the members of the committee to represent the general public of Florida before the Florida Public Service Commission. The public counsel shall be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Joint Legislative Auditing Committee, subject to annual reconfirmation by the committee. Vacancies in the office shall be filled in the same manner as the original appointment.

(2) The public counsel shall take and subscribe to the oath of office required of state officers by the state constitution.

(3) No officer or full-time employee of the public counsel shall actively engage in any other business or profession; serve as the representative of any political party or on any executive committee or other governing body thereof; serve as an executive, officer, or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; or engage on behalf of any candidate for public office in the solicitation of votes or other activities in behalf of such candidacy. Neither the public counsel nor any employee of the public counsel shall become a candidate for election to public office unless he shall first resign from his office or employment.

History.—s. 1, ch. 74-195.

350.0611 Public counsel; duties and powers.—It shall be the duty of the public counsel to provide legal representation for the people of the state in proceedings before the commission. The public counsel shall have such powers as are necessary to carry out the duties of his office, including, but not limited to, the following specific powers:

(1) To recommend to the commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission and urge therein any position which he deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission which shall be reviewable by summary procedure in the circuit courts of this state;

(2) To have access to and use of all files, records, and data of the commission available to any other attorney representing parties in a proceeding before the commission;

(3) In any proceeding in which he has participated as a party, to seek review of any determination, finding, or order of the commission, or of any hearing examiner designated by the commission, in the name of the state or its citizens;

(4) To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions;

(5) To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

History.—s. 1, ch. 74-195; s. 1, ch. 77-174.

350.0612 Public counsel; location.—The public counsel shall maintain his office in Leon County on the premises of the commission or, if suitable space there cannot be provided, at such other place convenient to the offices of the commissioners as will

enable him to carry out expeditiously the duties and functions of his office.

History.—s. 1, ch. 74-195.

350.0613 Public counsel; employees; receipt of pleadings.—The committee may authorize the public counsel to employ clerical and technical assistants whose qualifications, duties, and responsibilities the committee shall from time to time prescribe. The committee may from time to time authorize retention of the services of additional attorneys or experts to the extent that the best interests of the people of the state will be better served thereby, including the retention of expert witnesses and other technical personnel for participation in contested proceedings before the commission. The commission shall furnish the public counsel with copies of the initial pleadings in all proceedings before the commission, and if the public counsel intervenes as a party in any proceeding he shall be served with copies of all subsequent pleadings, exhibits, and prepared testimony, if used. Upon filing notice of intervention, the public counsel shall serve all interested parties with copies of such notice and all of his subsequent pleadings and exhibits.

History.—s. 1, ch. 74-195.

350.0614 Public counsel; compensation and expenses.—

(1) The salaries and expenses of the public counsel and his employees shall be allocated by the committee only from moneys appropriated to the public counsel by the Legislature.

(2) The Legislature hereby declares and determines that the public counsel is under the legislative branch of government within the intention of the legislation as expressed in chapter 216, and no power shall be in the Executive Office of the Governor or its successor to release or withhold funds appropriated to it, but the same shall be available for expenditure as provided by law and the rules or decisions of the Joint Auditing Committee.

(3) Neither the Executive Office of the Governor nor the Department of Administration or its successor shall have power to determine the number, or fix the compensation, of the employees of the public counsel or to exercise any manner of control over them.

History.—s. 1, ch. 74-195; s. 120, ch. 79-190.

[1]350.07 Rates of toll allowed to be charged by railroad companies.—If any railroad, railroad company or common carrier, organized, or that may be hereafter organized, or exist, in this state under any act of incorporation or general law of this state now in force, or which may hereafter be enacted, or any railroad, railroad company or common carrier, organized, or which may be hereafter organized under the laws of any other state, and doing business in this state, shall charge, collect, demand or receive more than a fair, reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its tracks, or any of the branches thereof, or upon any railroad within this state which it has the right, license or permission to use, operate or control, the same upon conviction thereof, shall be dealt with as hereinafter provided for.

History.—s. 3, ch. 4700, 1899; GS 2888; RGS 4613; CGL 6698; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.08 Unjust discriminations by common carriers prohibited.—If any railroad, railroad company or other common carrier as aforesaid, shall make any unjust discriminations in its rates, or charges of toll, or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon any railroad, or upon any of the branches thereof, or upon any railroad or steamship lines connected therewith, which it has a right, license or permission to operate, use or control within this state, the same shall be guilty of violating the provisions of this chapter, and upon conviction thereof shall be dealt with as hereinafter provided.

History.—s. 4, ch. 4700, 1899; GS 2889; RGS 4614; s. 1, ch. 10235, 1925; CGL 6699; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 358.11 Free or reduced transportation may be furnished.

[1]350.09 Application of chapter.—The provisions of this chapter shall apply to the transportation of passengers and property and to the receiving, delivering, storage and handling of property wholly within this state and shall apply to all railroads, railroad companies and common carriers engaged in this state in the transportation of passengers or property by railroads or common carriers therein from any point within this state to any point within this state. So far as is or may be permitted by the Constitution and the laws of the United States they shall apply also to interstate and foreign commerce and common carriers to and from points in this state.

History.—s. 5, ch. 4700, 1899; GS 2890; s. 1, ch. 6527, 1913; RGS 4615; CGL 6700; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.10 Definitions of terms.—

(1) The term "railroad" as used in this chapter shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, association, partnership, receiver, trustees or any other person operating a railroad, whether owned or operated under a contract, agreement, lease or otherwise; also all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of persons or property; also all freight and passenger depots, yards and grounds used or necessary in the receiving, handling, transportation and delivery of passengers and freight; also all terminal companies or union depot companies, passenger or freight, whether operating train service or not. The term "railroad corporation" or "railroad company" as used in this chapter shall be deemed to mean all corporations, associations, partnerships, receivers, trustees or any other persons now owning or operating or which may hereafter own or operate any railroad in whole or in part in this state or own or operate any express service or train, or car service, including sleeping car, parlor

car and dining car service on any railroad in this state. Whenever any railroad company owns and operates in connection with its road and for the purpose of transporting its cars, freight or passengers, any steamer or other watercraft, such steamer or watercraft shall be deemed a part of the said road.

(2) The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract expressed or implied, for the use thereof and all service in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.

History.—s. 5, ch. 4700, 1899; GS 2891; s. 2, ch. 6527, 1913; RGS 4616; CGL 6701; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.11 Definition of the term "common carrier."—

(1) The term "common carrier," as used in this chapter, shall be deemed to mean and include:

(a) All persons owning and operating railroads, wholly or partly within this state;

(b) All persons owning and operating steamships, engaged in the transportation of freight or passengers from and to ports within this state;

(c) All persons owning and operating steamboats used in the transportation of freight or passengers upon the rivers or inland waters in this state, and also all boats or vessels of 10 tons net or over and propelled by gasoline, kerosene, fuel oil, or any such like propelling products running from a coastal port to a coastal port in this state used in the transportation of freight or passengers for hire;

(d) All persons owning or operating railroads, passenger terminals or union depots, for the purpose of receiving, delivering or transferring passenger traffic to and from the place or city in which said terminal or union depot may be situated, or to or from one or more of the railroads operating its train service into said terminal or depot from or to any other railroad or railroads.

(2) Whenever any steamship or steamboat company owns and operates any barge, canal boat, steam-tug, ferryboat or lighter in connection with its ships or boats, the thing so owned and operated shall be deemed a part of its main line.

History.—s. 5, ch. 4700, 1899; GS 2892; RGS 4617; s. 1, ch. 9308, 1923; CGL 6702; s.3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.12 Duties and powers of commissioners.—

(1) It shall be the duty of said commissioners:

(a) To make reasonable and just rates of freight and passenger tariffs to be observed by all railroads, railroad companies and common carriers doing business in this state over their respective lines. This clause shall include the right to prescribe how much baggage may be carried free with each passenger and the rates of excess baggage.

(b) To make reasonable and just rules and regulations to enforce observance of their tariffs for the handling, transportation and delivery of all kinds of freight and for the transportation of passengers.

(c) To make reasonable and just rates of charges for the use and transportation of all kinds of railroad cars conveying all kinds of freight to and from any and all points in this state.

(d) To make reasonable and just rules and regulations for the prevention of any unjust discrimination against persons or localities in charges or in furnishing facilities.

(e) To make reasonable and just rates of freight to be observed by all railroads, railroad companies, and common carriers doing business in this state, and to be observed in all handling, transportation, and delivery of freight, which rates do not discriminate against the transport of solid waste, recovered resources, or recycled materials, and which rates shall, whenever practicable, provide an incentive for resource recovery and recycling.

(2) The commissioners shall have power:

(a) To make reasonable and just joint rates for all connecting carriers doing business in this state as to all traffic passing from the line of one common carrier to another, and to apportion such joint rates between said carriers participating therein.

(b) To compel all railroads and railroad companies crossing or meeting each other at any point, or serving the same city, town or locality, provided they be of the same gauge, to construct such switches, sidetracks and connections as will enable them to transport cars to and from each other's lines. And in the event railroads or railroad companies required to construct such switches, sidetracks and connections are unable to agree upon how the costs thereof shall be borne or apportioned, it shall then be the duty of the commissioners, upon a proceeding in accordance with chapter 120, to apportion the costs between them on a just and equitable basis, or, if justice requires, to impose the entire cost of construction upon one railroad or railroad company.

(c) To require railroads and water carriers serving any given point or community as common carriers of freight or passengers to provide such reasonable physical connection as may be necessary to properly facilitate the transfer of freight or passengers from one of said carriers to the other.

(d) To compel the interchange of traffic and cars between railroad companies under such rules and regulations as will secure due compensation for cars and the prompt return of cars to the railroad company from which they are received.

(e) To require the establishment of stations, including flag stations, at which trains may be required to stop, and the establishment of landings and wharves at which water carriers may be required to stop; to designate the location and require the erection of such freight and passenger depots, houses, platforms and wharves with all necessary conveniences as the safety, convenience and comfort of passengers and the proper handling, care, protection and prompt delivery and transportation of freight may require; to supervise, regulate and control all stations, depots, platforms, houses and wharves and to require a sufficient force of employees to be maintained therein and thereat to conduct in a proper manner the business of the carriers.

(f) To establish such schedules for the arrival and

departure of all trains at stations and depots, and to order such connections in point of time to be made between common carriers, as the public convenience, comfort and interest may require, and to prescribe rules and regulations relating to and regulating the changing of time schedules of all common carriers and the bulletining by railroad companies of the arrival and departure of all regular passenger trains which may be late.

(g) To regulate, supervise and control all passenger, terminal or union depot companies, whether owned or operated by any railroad in connection with its main line or by separate company organized for that purpose and to require the admission into such union depot or terminal by the owner, lessee or operator thereof of any railroad company which may desire to enter such terminal or union depot or which may be required to do so by order of the said commissioners and to compel the person operating said depot or terminal to furnish to the railroad entering the same fair and equal participation in all the rights, privileges, connections, interchanges of traffic and other benefits of said depot or terminal and to prescribe and enforce just and reasonable rates for the use of such terminals or depots and the privileges thereof.

(h) To require two or more of the railroads entering the same town, city or point, to erect, operate and maintain a joint passenger or freight or a joint passenger and freight terminal or union depot and to provide for the interchange of traffic between said railroads.

(i) To require railroads and railroad companies to make connections with private sidetracks along their respective lines upon reasonable terms and conditions.

(j) To regulate the charges for storage, wharfage, demurrage and reciprocal demurrage.

(k) To regulate and direct the use and charges for use of refrigerator cars, refrigerator boxes, icing and all other facilities and services incidental to transportation.

(l) To regulate all other matters pertaining to the receiving, handling, care, transportation and delivery of property, and to the safety, care, comfort, convenience, proper accommodation and transportation of passengers that shall be for the good of the public. The operation of this general grant or of any other general grant of power in this chapter shall not be held to be limited by the grants of specific powers.

(m) To prescribe all rules and regulations appropriate for the execution of any of the powers conferred upon them by law either in express terms or by implication. All rules and regulations made and prescribed by the commissioners shall be made prima facie evidence in the manner that the schedules are made prima facie evidence. Every rule, regulation, schedule or order heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof or be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumptions shall be in favor of every action of the commissioners and all doubts as to their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the Florida Public Service Commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control public carriers in the public interest. If in any proceeding to enforce any rule, regulation, schedule or order, any part thereof shall be found invalid, the court shall proceed to enforce such portion thereof as may be valid if the same can be done.

(n) To promulgate and enforce reasonable rules and regulations relating to sanitation and adequate shelter as affecting the health and welfare of railroad trainmen, enginemen, yardmen, maintenance-of-way employees, highway-crossing watchmen, clerical, platform, freight house and express employees.

History.—s. 6, ch. 4700, 1899; GS 2893; s. 3, ch. 6527, 1913; RGS 4618; s. 1, ch. 8469, 1921; CGL 6703; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 67-525; s. 4, ch. 74-342; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.13 Applying joint rates to common carrier; notice; hearing; preventing rebates.—Before applying joint rates to common carriers not under joint management and control, the commissioners shall give 30 days' notice to the carriers of the joint rate contemplated, and of its divisions of the same, and give hearing to the carriers desiring to object to said rates, and shall make just and reasonable rules and regulations to prevent the giving or paying of any bonus, rebate, or device of any description used by said carriers directly or indirectly for the purpose of deceiving or misleading the public as to the actual rates charged.

History.—s. 6, ch. 4700, 1899; GS 2894; s. 4, ch. 6527, 1913; RGS 4619; CGL 6704; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.14 Power to create basing points.—The commissioners may create rating or basing points at places where competing lines of railroads meet, or where water or other competition exists, and break the continuity of rates to and from such points, so as to maintain competition between rival lines and points, and may, in fixing the rate upon any commodity, take into consideration the competition between different localities or shipping points producing or shipping such commodity.

History.—s. 6, ch. 4700, 1899; GS 2895; RGS 4620; CGL 6705; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.15 May establish and abolish shipping points.—The Florida Public Service Commissioners may establish and abolish stations and shipping points on all railroads and common carriers in this state, for the purpose of computation and making of rates in this state, and prohibit the publication of rates to and from any such stations or shipping points as have been abolished by said Florida Public Service Commissioners; provided, that nothing here-

in shall apply to the physical operation of any railroad or railroad train.

History.—s. 1, ch. 12220, 1927; CGL 6706; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.16 Commissioners may require necessary facilities, service, etc.—The commissioners may require any railroad, railroad company or common carrier to properly operate its railroad or transportation line and to furnish all the necessary facilities for the convenient and prompt handling, transportation, and delivery of all freights offered along its line for transportation, and provide and prescribe all such rules and regulations as may be necessary to secure such operation and the furnishing of such facilities and the prompt handling, transportation, and delivery of all freights offered, and may regulate, require, and provide for prompt delivery and transfer by any such company or common carrier to any other such company or common carrier within this state of any and all freights consigned or offered for transportation from any point in Florida to any point in Florida whenever such transfer and delivery will afford a shorter or otherwise more available route of transportation than can be given by the company or common carrier first receiving the freight and shall provide and prescribe and enforce observance of all such rules and regulations as to such prompt delivery and transfer as they may deem necessary. Every railroad company shall operate over every part of its line not less than one passenger and one freight train each way daily except Sunday; provided, if after investigation the Florida Public Service Commissioners shall determine that the public need does not require such daily service, they shall prescribe such service as in their opinion the public need does require and such service will be deemed sufficient until the commissioners shall otherwise order. However, nothing herein contained shall be held as limiting the right of the Florida Public Service Commissioners to require of all railroads and common carriers such greater service as they shall deem to be to the best interest of the public.

History.—s. 6, ch. 4700, 1899; GS 2896; s. 5, ch. 6527, 1913; RGS 4621; CGL 6707; s. 1, ch. 19177, 1939; s. 7, ch. 22858, 1945; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.17 Terminal facilities erected on certain lands under jurisdiction of commissioners.—Any land, including the beach, shore and bottom of any tidal waters of the state, and riparian rights or property, held in trust by the state for the benefit of all the people of the state, and which the state has heretofore granted to any municipality in the state for the benefit of or aid to commerce or navigation, and which the state or any municipality has granted or leased or in any manner surrendered into the possession or control of any person for the purpose of aiding either interstate or intrastate commerce, and in or upon which any such person has heretofore constructed, or shall hereafter construct, any docks, wharves or other terminal facilities for use by them in connection with any business carried on by them as common carriers, and all railroad tracks used in connection with any such docks, wharves or terminals within the corporate limits of any municipality, are hereby placed under the jurisdiction of the Florida Public Service Commission for the purpose of encouraging, aiding and facilitating commerce.

History.—s. 1, ch. 6977, 1915; RGS 4622, CGL 6708; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.18 Commissioners may order joint use of terminal facilities.—Whenever the Florida Public Service Commission, upon its own motion, or upon complaint, shall find that public convenience and necessity, or the need of commerce, require the use by any person owning, possessing, or using any such land, or other such property, or rights for the purpose of constructing, or operating, thereon any such railroads, docks, wharves, or terminals, of the railroads, tracks, docks, wharves, or terminals, or any part thereof, belonging to any other person, and possessed or used by them under any franchise, or other grant, by this state, or any of its municipalities, and that such use will not prevent the owners or others in the possession or use thereof from performing their duties as common carriers or otherwise, as required by their franchise or as conditioned in any other grant, nor result in irreparable injury to such owners, or other users of such tracks, docks, wharves, terminals, or equipment, or in any substantial detriment to the service, and that such person owning, controlling, or using any such tracks, docks, wharves, or terminals have failed to agree upon such joint use, or the terms and conditions or compensation for the same, or for making physical connections, the Florida Public Service Commission may order and direct that such connections and use shall be permitted, and prescribe reasonable compensation, and reasonable terms and conditions therefor, and prescribe rules and regulations from time to time as may be necessary for such use. For the purposes of this chapter, the Florida Public Service Commission may authorize and require the physical connection of the main spur, switch and lateral tracks, owned, or controlled and operated by any persons, including municipal corporations, and used or designed, or available, for use in connection with any dock, wharves, terminals or other property mentioned in s. 350.17.

History.—s. 2, ch. 6977, 1915; RGS 4623; CGL 6709; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]350.19 Construction of ss. 350.17 and 350.18.—Sections 350.17 and 350.18 are intended to enlarge and extend the jurisdiction, powers and duties conferred upon the Florida Public Service Commission, and shall be construed in connection with other provisions of this chapter whenever necessary to effectuate the purpose of this chapter. The provisions of ss. 350.17 and 350.18 shall not apply in any municipality in or for which a [1]Board of Port Commissioners has heretofore been created nor repeal, limit or

affect any powers of any such municipality or of any such port commissioners therein.

History.—ss. 3, 4, ch. 6977, 1915; RGS 4624; CGL 6710; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 14, ch. 73-206; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Local boards abolished by ch. 75-201 which created the State Board of Pilot Commissioners, effective October 1, 1975.

[2]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.22 Length of cattle cars and minimum carload.—All companies transporting livestock within the boundaries of the state shall provide, for such transportation of such livestock, properly constructed cars, as set forth in s. 352.33, of not less than 34 feet in length and the Florida Public Service Commission shall prescribe the minimum carload for cars of such length.

History.—s. 4, ch. 5422, 1905; RGS 4627; CGL 6713; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 352.35 Penalty for violations of this section.

[1]350.23 Jurisdiction to enforce provisions of law.—The Florida Public Service Commission shall have full jurisdiction of the provisions of ss. 350.22, 352.33, 352.34 and 352.36, and enforce the provisions thereof, and make such rules and regulations governing such traffic as to them may seem meet.

History.—s. 5, ch. 5422, 1905; RGS 4628; CGL 6714; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 352.35 Penalty for violations of this section.

[1]350.24 Violation of regulations as to transporting livestock by transportation company.—All transportation companies violating any of the provisions of ss. 350.22, 350.23, 352.33 and 352.34 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. However, this section shall not apply to any violation in which the delay or default was caused by accident or providential hindrance.

History.—s. 6, ch. 5422, 1905; RGS 5588; CGL 7774; s. 246, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.28 Penalty for violation of law; defense of carriers; recovery of penalty; pleadings; evidence; fine imposed illegal, etc.—

(1) If any railroad, railroad company, or other common carrier doing business in this state shall by any officer, agent, or employee be guilty of a violation or disregard of any order, rate, schedule, rule, or regulation provided or prescribed by the Florida Public Service Commission, or shall fail to make any report required to be made under the provisions of this chapter or shall otherwise violate any provision of this chapter, such company or common carrier shall thereby incur a penalty for each such offense of not more than $5,000, unless otherwise provided, to be fixed and imposed by said commissioners.

(2) The said penalty in the amount so imposed, if not promptly paid to the State Treasurer, shall be recovered with interest thereon from the date of the order in a civil action brought by the said commissioners in the name of the state in any county in the state where such violation has occurred, or in any other county through or in which such common carrier runs or does business.

(3) The complaint shall be deemed sufficient if it recites fully or sets forth the said order on which the suit is brought, with an averment that the defendant is indebted to the plaintiff thereon in the amount of the penalty imposed with interest as aforesaid.

(4) In such cases there shall be no general issues, but the answer shall specifically set forth the particular defense or defenses to the action; and no defense which existed prior to the day of hearing before the commissioners, and which was not made before them, shall be permitted to stand as a defense in the action.

(5) The fact of the fixing and imposing of such fine by the commissioners shall constitute prima facie evidence of everything necessary to create the liability or require the payment of the fine or penalty as fixed and imposed, and to authorize a recovery thereon in any suit brought by the commissioners, and a copy of the entry in the minute book of the commissioners of the order fixing and imposing such fine or penalty, certified by the chairman of the board of Florida Public Service Commissioners, shall constitute prima facie evidence of the fact that such fine or penalty was fixed and imposed by the commission.

(6) Every fine when imposed by the commissioners shall be a lien upon the railroad, equipment, boats and real property of the common carrier on which it is imposed except such real property as is not used in the business of transportation.

(7) If any railroad, railroad company or other common carrier doing business in this state shall claim that any penalty sought to be imposed upon it under the provisions of this section unlawfully deprives said railroad, railroad company or other common carrier of its property or property rights without due process of law, said railroad, railroad company or other common carriers shall have the right by answer to assert such defense in any suit brought under this section, and if the court shall find that the answer is well-founded in law and fact it shall enter judgment for the defendant.

(8) An answer filed as a defense upon the ground that the enforcement of the penalty will unlawfully deprive the defendant of its property without due process of law shall be as full and particular in averment as would be essential if pleaded as in a suit in equity seeking an injunction to restrain the enforcement of the acts for which the penalty is sought to be imposed and the courts shall have the power to render such judgment in said action as might be necessary to give said defendant the full benefit of its constitutional rights in the premises.

(9) In all such cases the burden of establishing such last-mentioned defense or defenses shall be upon the defendant and the same shall be required to be established by such defendant by a preponderance of the evidence.

(10) A proceeding under s. 350.36 shall be a bar to a like proceeding under this section and a proceeding under this section shall be a bar to a like proceeding under s. 350.36.

History.—s. 12, ch. 4700, 1899; GS 2908; s. 12, ch. 6527, 1913; RGS 4645; s. 4, ch. 12218, 1927; CGL 6731; s. 36, ch. 29737, 1955; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; s. 1, ch. 79-6.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.
cf.—s. 350.56 Additional penalties.

[1]350.29 Action commenced.—The commissioners shall institute such action through the Department of Legal Affairs or State Attorney, who shall not require other fees than those they now receive by law, or by special counsel employed by the commissioners and the Department of Legal Affairs, as provided in this chapter, the fees of which special counsel shall be fixed and allowed by the commissioners and the Department of Legal Affairs as may seem to them reasonable and just; and any and all expenses of litigation and proceedings under the provisions of this chapter may be by the commissioners allowed and paid, and in the event of recovery of any such fine or penalty may be paid out of any moneys recovered under the provisions hereof, and the balance of any moneys so recovered shall be, by the State Treasurer, put to the credit of the Florida Public Service Commission to meet any of the expenses of said commission and the cost of carrying out and enforcing the provisions of this chapter. The commissioners shall have the right to suspend, reduce or remit any fine or penalty so imposed, and may suspend, reduce or remit the same on such terms or conditions as may be fixed by them.

History.—s. 13, ch. 4700, 1899; GS 2909; RGS 4646; CGL 6732; s. 1, ch. 63-279; s. 1, ch. 65-52; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.30 May employ special counsel.—The Florida Public Service Commissioners may employ special counsel to advise them and to conduct any or all litigation or proceeding of any character instituted by or against them, and such special counsel shall be paid such compensation as said commissioners deem proper out of the funds available for the maintenance of the Florida Public Service Commission.

History.—s. 1, ch. 5620, 1907; RGS 4647; CGL 6733; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.31 Conducting suits.—All suits instituted by the Florida Public Service Commissioners through special counsel shall be conducted as now provided by law, and the Department of Legal Affairs or any state attorney shall join in any such suit when requested to do so by said commissioners.

History.—s. 2, ch. 5620, 1907; RGS 4648; CGL 6734; s. 1, ch. 63-279; s. 1, ch. 65-52; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.32 Power to sue in behalf of individuals; damages for discrimination; limitation of actions.—

(1) If any railroad, railroad company or other common carrier, doing business in this state shall, in violation or disregard of any rule, rate or regulation provided by the commissioners aforesaid, inflict any wrong or injury upon any person, the Florida Public Service Commissioners if requested by such injured person shall institute proceedings to compel restitution; and such action by the Florida Public Service Commission shall preclude any settlement by the party or parties injured without the consent of the commission.

(2) If any railroad company or common carrier shall discriminate, by way of rebate or otherwise, directly or indirectly, in favor of any consignor or consignee of freights within this state, or allow him a reduction of the rate fixed by said commissioners as reasonable and just, any other consignor or consignee of freights within this state shall have a right of action against the said railroad company or common carrier, and the amount of his damages shall be fixed by a jury, unless a jury shall be waived, and the measure of damages shall be such sum or sums of money as will fairly compensate the injury done to said last mentioned consignor or consignee.

(3) In all such cases demand in writing on said railroad, railroad company or common carrier shall be made for the money damages sustained before suit is brought for recovery under this section.

(4) All suits under this chapter shall be brought within 2 years after the commission of the alleged wrong or injury, except in cases where the Florida Public Service Commissioners have heretofore been or shall hereafter be, by refusal of such railroad or common carrier to observe the rates, rules, schedules or regulations by the Florida Public Service Commissioners, compelled to resort to suits to enforce such rates, rules, schedules or regulations, and in such cases suits for such loss, damage, or penalty may be brought within 12 months after the termination of such suits in favor of the Florida Public Service Commissioners.

History.—s. 13, ch. 4700, 1899; s. 1, ch. 5624, 1907; s. 13, ch. 6527, 1913; RGS 4649; CGL 6735; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.33 Rights of injured persons.—Any person from whom any moneys shall have been exacted by any such company or common carrier in excess of the amounts properly chargeable under the provisions of this chapter, and any person who shall have suffered any pecuniary injury by the violation of any such company or common carrier of any provisions of this chapter, shall have the right, by written demand, to require the commissioners to enforce recovery of his damages, or may upon failure of the commissioners to institute suit therefor within 90 days after such written demand, institute suit in his own name against any such company or common carrier in any court of competent jurisdiction in the county in which the cause of action arose, or in any county in the state through or in which such company or common carrier runs or does business; and any such person upon establishing his right of recovery, shall be entitled to recover the total amount of such overcharge or other pecuniary injury, with interest thereon, together with such additional amount as the jury may find necessary to reasonably compensate him for all expense, including the value of his own time and services, and all reasonable cost and attorneys' fees incurred in the recovery of such dam-

ages, and such right of action shall exist in the legal representatives or assignee of any such person.

History.—s. 13, ch. 4700, 1899; GS 2911; RGS 4650; CGL 6736; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.34 Additional expense account of appeal and delay; parties to actions.—

(1) In the event of an appeal after the judgment for such recovery the appellate court shall, upon an affirmation of such judgment allow and adjudge or require to be allowed and adjudged, the payment of such additional amount as may be necessary to reasonably compensate the plaintiff for all such additional expenses as may be incident to the appeal and delay.

(2) Any such action or any other action instituted by the Florida Public Service Commission shall be in the name, except as herein otherwise provided, of the Florida Public Service Commissioners without using their individual names, and the recovery had thereon shall be held by such commissioners and applied to the use of the party or parties so injured.

(3) Such commissioners may unite in one action the claims of different persons by whom they may be requested to institute such suits where such claims are of the same character and against the same defendant.

History.—s. 13, ch. 4700, 1899; GS 2912; RGS 4651; CGL 6737; s. 7, ch. 22858, 1945; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.35 Rules of evidence.—In all cases under the provisions of this chapter, the rules of evidence shall be the same as in civil actions, except as otherwise provided herein or in chapter 120. The remedies hereby given the injured person shall be regarded as cumulative to the remedies now given by law against railroads, railroad corporations, and common carriers, and this chapter shall not be construed as repealing any statute giving such remedies; provided, that making recompense to any person or corporation for wrongs or injuries done them by any railroad, railroad companies or other common carriers shall not prevent the commissioners from enforcing penalties for any violations of rules, regulations, or rates.

History.—s. 14, ch. 4700, 1899; GS 2913; RGS 4652; CGL 6738; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.36 Penalties; proceedings to recover.—

(1) Every common carrier, railroad, street railroad, railroad corporation, street railroad corporation, express, telephone, telegraph, and terminal company or corporation within the state, and all other corporations, companies, or persons coming under the provisions of this section, or of any other law relating to the Florida Public Service Commissioners, and any officers, agents, and employees of the same, shall obey, observe, and comply with every order made by the Florida Public Service Commissioners under authority of law.

(2) Any common carrier, railroad, street railroad, railroad corporation, street railroad corporation, express, telephone, telegraph, or terminal company or corporation, or any other corporations, companies, or persons coming under the provisions of this section, which shall violate any provision of this section or the laws heretofore passed, or hereafter passed, or now in force, or which fails, refuses, or neglects to obey, observe and comply with any order, direction or requirement of the Florida Public Service Commissioners heretofore or hereafter passed, shall forfeit to the state a sum of not more than $5,000 unless otherwise provided for each and every offense, the amount to be fixed by the presiding judge. Every violation of the provisions of this section or any preceding law, or of any such order, direction, or requirement of the Florida Public Service Commission shall be a separate and distinct offense.

(3) An action for the recovery of such penalty may be brought in the county of the principal office of such corporation or company in this state, or in the county of the state where such violation has occurred and wrong shall be perpetrated, or in any county in this state through which said corporation or company operates, or, where the violation consists of an excessive charge for the carriage of freight or passengers or services rendered, in any county in which such charges are made or through which it was intended that such passengers or freight should have been carried or through which such corporation operates, and shall be brought in the name of the state by direction of the Florida Public Service Commissioners.

(4) Any procedure to enforce such penalty shall be triable the first term of the court at which it is brought and shall be given precedence over other civil business by the presiding judge, and the court shall not be adjourned until such proceeding is legally continued or disposed of, without the consent of counsel representing the state as plaintiff.

(5) Any judgment in any such case may be taken by either party to the cause to the appropriate district court of appeal for review in the manner and within the time provided by the Florida Appellate Rules for reviewing judgments rendered by circuit courts in actions at law.

(6) The complaint in any case shall be deemed sufficient if it shall allege the making of an order or rule, regulation, requirement or direction against the defendant, and that such defendant has failed, neglected or refused to obey the same.

(7) In such cases there shall be no general issues, but the answer shall specifically set forth the particular defense to the action, and no defense other than by answer specifically setting forth all of the facts to show a particular defense to the action shall be permitted in the action.

(8) Suits may be brought and instituted under this section by counsel employed by the Florida Public Service Commission under the authority of s. 350.30 and such counsel by and with the consent of said Florida Public Service Commissioners may compromise and adjust with the defendant the amount of any penalties sought to be recovered.

(9) All suits brought under this section shall be subject to the provisions of s. 350.31 relating to the conduct of suits by or on behalf of the Florida Public Service Commissioners, and the same legal pre-

sumptions shall prevail as in proceedings under s. 350.28.

History.—s. 4, ch. 5622, 1907; s. 3, ch. 12218, 1927; RGS 4632; CGL 6718; s. 2, ch. 29737, 1955; s. 1, ch. 63-279; s. 23, ch. 63-559; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.37 Power to require delivery by shortest and most available route.—The commissioners may regulate, require and provide for delivery of such freight by the shortest or most available route and no such company or common carrier shall charge more compensation for the transportation of freight or passengers over an unnecessarily long route than would be a just and reasonable charge for the transportation of the same by the nearest available route, whether the nearest available route be over one railroad or line of transportation or over more than one. When a carrier for the purpose of shortening the distance as compared to the existing route, and for improvement in service to the public, shall have completed within the last 5 years, or may hereafter construct, a shorter route that does or will reduce the distance between any two or more points in the state not to exceed 30 miles and continues to operate both the new and the old routes such carrier shall be permitted to charge for the transportation of passengers and freight over said shorter route the same rates and fares as were theretofore legally applicable over the longer route, for a period of 5 years from the time said shorter route was placed in operation, and upon the expiration of said period of time the Florida Public Service Commission may, in its discretion, permit said carrier to charge for the transportation of passengers or freight or both over the shorter route the same rates and fares as were theretofore legally applicable over the longer route, and where the distance between any two or more points in the state shall, subsequently to June 4, 1927, by the construction by any carrier of a shorter route, be reduced by more than 30 miles and said carrier continues to operate both the new and the old route, then, in that event the commissioners may, in their discretion, permit said carrier to charge for the transportation of passengers and freight over the last-named shorter route the same rates and fares as were theretofore legally applicable over the longer route.

History.—s. 6, ch. 4700, 1899; GS 2897; RGS 4633; s. 1, ch. 12219, 1927; CGL 6719; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.38 Construction of s. 350.37; waiver by carrier.—

(1) Nothing contained in s. 350.37 shall be construed as affecting any principle of rate making, except when and as applied to a situation described in said section.

(2) Any carrier or carriers may file with the Florida Public Service Commission a disclaimer or waiver, waiving the provisions of s. 350.37 and this section, with respect to either freight or passenger rates, or both, over any such reduced route or routes affected by the terms of said sections; and, in that event, the rates as to which such disclaimer or waiver shall be filed shall not be affected by the provisions of s. 350.37.

History.—s. 6, ch. 4700, 1899; GS 2897; RGS 4633; ss. 2, 3, ch. 12219, 1927; CGL 6719; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.39 To furnish common carrier with schedule of rates; evidence; revision of rates.—Said commissioners shall make and furnish to each common carrier doing business in this state, as soon as practicable, a printed or written schedule of just and reasonable rates and charges for transportation of freights, passengers and cars on its transportation lines under its control or management, and such schedule, certified by the chairman of the commissioners, shall be admitted in evidence without necessity for other proof, and shall in all suits brought against any common carrier wherein is involved the rates of any common carrier for the transportation of freight of any description or charges for the transportation or use of any kind of car upon the tracks of any railroad or of any of the branches thereof, or for the transportation of passengers, or for any unjust discrimination, in relation thereto, be deemed and taken in all the courts of this state as prima facie evidence that the rates fixed in such schedule are just and reasonable rates of charges for the transportation of freight, cars and passengers upon the transportation lines of said carrier; and said commissioners shall, as often as circumstances may require, change or revise any schedule and furnish all common carriers doing business in this state with notice of such changes or revisions, and such notice shall state the time when such changes or revisions shall go into effect.

History.—s. 8, ch. 4700, 1899; GS 2899; s. 6, ch. 6527, 1913; RGS 4635; CGL 6721; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.42 Commissioners not to discriminate in classes of freight.—Said commissioners in changing, revising, fixing, allowing or adopting any schedule of rates for freights or cars shall not discriminate unreasonably or unjustly in favor of any one class of freight to the detriment of other classes of freight.

History.—s. 8, ch. 4700, 1899; GS 2902; RGS 4638; CGL 6724; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.43 Schedules and rate sheets open to public.—The common carriers affected shall furnish at their own cost and shall keep open to public access in such manner as may be directed by the commissioners their schedules and rate sheets and shall also post within their depots, cars, landings or boats such notices relating to the conduct of their business as the Florida Public Service Commissioners may prescribe by rule or regulation.

History.—s. 8, ch. 4700, 1899; GS 2903; s. 9, ch. 6527, 1913; RGS 4639; CGL 6725; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.44 Inspection of accounts and records of common carriers; production of books and records, etc.—The commissioners or either of them or such person as they may employ for the purpose may inspect the accounts, books, records and papers of any description of any common carrier subject to their jurisdiction and they may make personal visitation of railroad offices, stations and other places of business within or without the state for the purpose of such examination; provided, that any person other than one of said commissioners who shall make the demand for inspection of the books and papers shall produce his authority in writing from the said commissioners. The commissioners may require by order or subpoena the production within this state at such time and place as they may designate of any accounts, books, records and papers of any description kept by such common carriers in any office or place without the state, or verified copies in lieu thereof if the commissioners shall so order in order that an examination thereof may be made by the commission or under its direction.

History.—s. 9, ch. 4700, 1899; GS 2904; s. 10, ch. 6527, 1913; RGS 4640; CGL 6726; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.45 Power to examine officers and employees of common carriers under oath; compelling reports; reports of accidents; passes, tickets, etc.—

(1) The commissioners, or any person employed by them for the purpose of making examination, may examine all officers, agents or employees of any common carrier under oath in relation to its organization, property, business and affairs or the operation of its line. They may at any time, stated or otherwise, call on any common carrier for reports under oath or otherwise, of any matter or thing, or giving any information concerning such organization, property, business or affairs and operation of such power is not limited by the fact that the same subject may be embraced in the annual report, and they may require railroad companies or common carriers to report by divisions either in the annual or special reports. All common carriers shall report, as required by the commissioners, all accidents, wrecks, derailments and explosions which occur on their respective lines, with such particulars and in such form as the commissioners may prescribe, but no such report shall be competent evidence in any court against the common carriers making it in any court.

(2) All common carriers shall also report, whenever so required to do by the commissioners, a verified list of all passes, tickets and mileage books issued free or for other than actual bona fide money consideration at full, established rates, together with the names of the recipients thereof, the reason for issuing the same, the points of origin and destination and the amounts received therefor or the consideration thereof. This provision shall not apply to the sale of tickets at reduced rates open to the public, but embraces all other free or reduced transportation whatsoever not open to the public.

History.—s. 9, ch. 4700, 1899; GS 2905; s. 11, ch. 6527, 1913; RGS 4641; CGL 6727; s. 1, ch. 14500, 1929; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.46 Railroad companies to have blackboards to post mark and brand of cattle killed; penalty.—Every railroad company or person operating a line of railroad or running cars or trains in this state shall have prepared blackboards with the words "Marks and Brands" painted in large white letters across the top of each blackboard, and shall have one of such blackboards placed in an accessible and convenient place at each depot on their respective roads or division of roads. Any such railroad company or person failing to comply with the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 1, ch. 4431, 1895; GS 3644; RGS 5580; CGL 7766; s. 247, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.47 To keep a record of and publish marks and brands of cattle killed or injured; penalty.—Every person operating any railroad in this state shall keep a record, in a book for that purpose, at the nearest depot, of the earmarks and brands and flesh marks and description of all livestock killed or injured by trains operated by them, stating the number of milepost nearest to where such stock was killed or injured, which said record book shall be, at all times, open to the inspection of the public. Where said railroad is not fenced, the person operating said road shall publish one time in some newspaper, published at the county seat of the county in which such stock was killed or injured, the earmarks and brands and flesh marks and description of said stock. Any person failing to comply with any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 5021, 1901; GS 3645; RGS 5581; CGL 7767; s. 248, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.48 Engineer to report killing or injury to livestock; penalty.—Every engineer, or other person in charge of an engine or train of cars by which any livestock is killed or injured shall report by telegraph or otherwise, not later than 24 hours after such killing or injury, to the supervisor or roadmaster on whose division of railroad such stock may be killed or injured, the killing or injury of such stock; such report to specify the place of killing or injury by stating the same to be north or south, east or west, of the nearest milepost to where such stock was killed or injured. Any engineer or other person in charge of an engine or train by which livestock is killed or injured, who fails to report as provided for in this section, shall be guilty of a misdemeanor of

the second degree, punishable as provided in s. 775.083.

History.—s. 2, ch. 4431, 1895; GS 3646; RGS 5582; CGL 7768; s. 249, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.49 Duty of supervisor relative to livestock killed or injured; penalty.—Each supervisor or roadmaster of each railroad or division of railroad in this state shall keep a book in which reports of stock killed or injured made as provided by law shall be set down as soon as may be after the receipt of such reports. The full particulars of such report shall be set down in such book, together with the name of the engineer or other person making the report. Whenever any such supervisor or roadmaster shall receive reports of stock being killed or injured on their roads or division of roads, as herein provided for, he shall see that a report of such killing or injury is written or printed on white paper and posted on the blackboards provided for by s. 350.46, at the depot nearest to the place of the killing or injury, not later than 48 hours after the receipt by him of such report. Such report so posted shall give as full description of such livestock as such supervisor or roadmaster is able to give, and shall state as near as may be the place where the same was killed. Any such supervisor or roadmaster who fails to comply with the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 3, ch. 4431, 1895; GS 3647; RGS 5583; CGL 7769; s. 7, ch. 22858, 1945; s. 250, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.50 Duty of section boss relative to livestock killed or injured; penalty.—Every section boss or railroad track foreman employed upon a railroad in this state, whenever he shall find or shall know of any livestock that has been killed or injured by any engine or cars upon his section of railroad, shall post a notice written on white paper, on all the blackboards prepared for that purpose on his section, giving the marks and brands, color, sex, kind, and, as near as possible, the weight and age of such livestock so killed or injured, and also the name of the owner when known. Such notice shall be kept posted on such blackboard for at least 60 days. Such section boss or track foreman shall keep a book in which he shall record the marks and brands, color, sex and kind of all stock killed or injured on his section, the name of the owner when known, and the date and place where such stock was killed or injured. Such section boss or track foreman shall expose such book for inspection to any citizen of this state at any time when he is requested to do so. Any section boss or track foreman failing or refusing to comply with the requirements of this section shall be fined not more than $25 for each failure to comply.

History.—s. 4, ch. 4431, 1895; GS 3648; RGS 5584; CGL 7770; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.51 Disposition of carcass; penalty.—Any section boss, track foreman or other person who moves, burns, buries, or otherwise disposes of any carcass of any stock found on any railroad in this state before the marks, brands, color and sex have been recorded as provided for in this chapter shall be fined not more than $200.

History.—s. 5, ch. 4431, 1895; GS 3649; RGS 5585; CGL 7771; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.52 Application to all railroad companies.—The provisions of ss. 350.46-350.51 shall apply to all railroads in this state whether operated by one or more companies or owners, and where more than one company is operating or running its trains over the same road, the company owning the said road shall make settlement to the owner for all stock killed or damaged and the same shall be a charge against the company whose train kills or damages such stock.

History.—s. 7, ch. 4431, 1895; GS 3650; RGS 5586; CGL 7772; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.53 Railroads to make reports, etc.—

(1) Every railroad, railroad company and common carrier incorporated or doing business in this state, or which hereafter shall become incorporated or do business in this state shall, annually on or before August 1 transmit to the office of the Florida Public Service Commissioners a full and true statement under oath of the proper officers of said corporation, of the affairs of such corporation, company or common carrier as the same existed on the first day of the preceding July, specifying:

(a) The amount of capital stock subscribed, the number of shares, and the par value thereof.

(b) The names of the owners of its stock, and the amount owned by them respectively, and the residence of each stockholder as far as known.

(c) The amount of stock paid in and by whom.

(d) The amount of assets and liabilities.

(e) The names and places of residence of its officers.

(f) The amount of the funded or bonded debt.

(g) The amount of floating debt.

(h) The estimated value of the roadbed, including iron and bridges.

(i) The estimated value of rolling stock.

(j) The estimated value of stations and buildings.

(k) The estimated value of other property.

(l) The length of single track on main line.

(m) The length of double track on main line.

(n) The length of branches, stating whether they have double or single track.

(o) The aggregate length of siding and other tracks above enumerated.

(p) The number of tons of through freight carried during the year preceding the making of the report.

(q) The number of tons of local freight carried during the same time.

(r) The monthly earnings for the transportation of passengers during the same time.

(s) The monthly earnings for the transportation of freight during the same time.

(t) The amount of expense incurred in the running and management of passenger trains, in the running and management of freight trains and in the running and management of mixed trains during the same time.

(u) The expenses incurred in the running and management of the road, including the salaries or compensation of general officers for the same time, which shall be reported separately in detail.

(v) The amount expended for repairs, including maintenance of roadways, repairs and removal of bridges, ties and iron.

(w) The amount expended for other improvements not included in the last subdivision.

(x) The amount expended for motive power, cars, stations, houses, and all other buildings and fixtures, including all other expenditures in the management and running of said road.

(y) The rate of fare for passengers for each month during the same time; through and way passengers separately.

(z) The tariff of freights; showing the changes of tariff, if any during the same time.

(aa) A copy of each published rate of fare for passengers and tariffs of freights, issued for the government or its agents during the same time, and whether the rate of fare and tariff of freight in such published lists are the same as those actually received by the company, and if not, what were received.

(bb) What express companies run on its roads and on what terms and conditions, and the kind of business done by them.

(cc) What freight and transportation companies run on its roads and on what terms, and whether such freight and transportation companies use the cars of the railroad company, or cars furnished by themselves.

(dd) Whether the freight or cars of such transportation companies are given any preference in speed or order of transportation, and if so, what.

(ee) Number of free passes issued during same time and to whom.

(ff) What running or traffic arrangements it has with other railroad companies.

(gg) What amount of land was granted them by the state and by the United States; how much of said land has already been actually conveyed by deed; how much land is still due them; how much land has been sold, and what has been the gross receipts from such sales of lands since granted by the state and the United States.

(2) They shall answer such additional interrogatories as such commissioners may make and propound to the said railroad and express companies; and this section shall apply to the president, directors and general officers of every railroad and express company now existing, or which shall hereafter be organized and exist in this state, and to every lessee, manager or operator of any railroad and express line within this state.

History.—s. 10, ch. 4700, 1899; GS 2906; RGS 4642; CGL 6728; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.54 Railroads to make annual reports.—All common carriers subject to the provisions of this chapter shall make to the Florida Public Service Commissioners annually, at such time as said commissioners shall designate, and in accordance with such forms as said commissioners shall prescribe, annual reports for the current year ending December 31, immediately preceding, which shall contain a statement of the organization, capitalization, traffic earnings and such other matters connected with their organization and operations as said commissioners shall require, which said reports shall be verified by affidavits of the principal officers thereof, and said commissioners shall tabulate and file said annual reports, and include them in their annual report to the Governor.

History.—s. 20, ch. 4700, 1899; GS 2920; s. 1, ch. 7341, 1917; RGS 4660; CGL 6746; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.55 Contracts to be submitted to commissioners for approval.—All contracts and agreements between any and all railroads, railroad companies and common carriers doing business in this state, as to rates of freight and passenger tariffs, use and transportation of cars, shall be submitted to said Florida Public Service Commissioners for inspection and correction, that it may be ascertained as to whether or not they are reasonable and just and will insure prompt delivery of freight and passengers to points of destination, or the violation of any section of this chapter, and said commissioners shall have power to revise and correct the same and to make such rules and regulations in accordance therewith as they may deem necessary, which said rules and regulations shall be observed and obeyed by said railroad, railroad companies and common carriers as other rules and regulations of this chapter; and any such agreement not approved by said commissioners shall be deemed illegal and void.

History.—s. 11, ch. 4700, 1899; GS 2907; RGS 4643; CGL 6729; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.56 Long and short haul; special cases; reduction and increase of rate in competition with water route; application to change rate; penalty; liability of carrier; proviso.—

(1) No railroad company engaged in the business of common carrier of freight in the state shall charge or receive any greater compensation in the aggregate for the transportation of freight of any nature for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or charge any greater compensation as a through route than the aggregate of the intermediate rates, subject to the provisions of this section. This shall not be construed as authorizing any common carrier, within the terms of this section, to charge or receive as great compensation for a shorter as for a longer distance. Upon applications to the Florida Public Service Commissioners, such common carrier may in special

cases, after investigation, be authorized by the Florida Public Service Commissioners to charge less for longer than for shorter distances, for the transportation of freight, and the Florida Public Service Commissioners may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section. Whenever a carrier by railroad shall, in competition with a water route, reduce the rate on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition. No rates or charges shall be required to be changed by reason of the provisions of this section in any case where application shall have been filed before the Florida Public Service Commissioners in accordance with the provisions of this section until a determination of such application by the Florida Public Service Commissioners.

(2) If any railroad company shall violate any of the provisions of this section, or any rule, order or regulation prescribed by the Florida Public Service Commissioners under the authority of this section, such company or common carrier shall thereby incur a penalty for each offense of not more than $500, to be fixed, imposed and collected by the Florida Public Service Commissioners in the manner provided in s. 350.28. In case any common carrier subject to the provisions of this section shall do, cause to be done, or permit to be done, any act, matter or thing in this section prohibited or declared to be unlawful, or shall omit to do any act or thing in this section required to be done, such common carrier shall be liable to the person injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this section, and shall thereby incur a penalty of $100 for each such offense, recoverable by the injured party, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery. This attorney's fee shall be taxed and collected as part of the costs in the case. This section shall not apply to commerce among the several states.

History.—ss. 1-5, ch. 6523, 1913; RGS 4644; CGL 6730; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.57 Duplicate freight receipts; liability of initial carrier; recovery by initial carrier; may prescribe forms of bills of lading.—

(1) All common carriers in this state shall, upon demand, issue duplicate freight receipts to all shippers of freight in which shall be stated the class or classes of freight shipped, freight charges over the line of the carrier issuing such receipts, and as far as is practicable shall state the charges upon the same over the connecting lines transporting such freight, and in all cases the carrier receiving such freight shipped shall be held in all the courts of this state as responsible for the prompt and safe delivery of same to its point of destination within a reasonable time required for its transportation, which reasonable length of time shall be determined after due investigation by said Florida Public Service Commissioners. When the consignee of such freight presents the carrier's receipt to the agent of the carrier last transporting such freight, such agent shall deliver the articles shipped upon the payment of the rates charged for the class of freight as stipulated in said receipt. If any common carrier shall violate this section it shall incur a penalty to be determined as provided for in this chapter.

(2) No contract, receipt, rule or regulation shall exempt the initial common carrier from the liability hereby imposed. The common carrier issuing such freight receipts or bills of lading shall be entitled to recover from the common carrier on whose line the delay, damage, loss or injury shall have been sustained, the amount which it may have been required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof.

(3) The commissioners may prescribe the form or forms of freight receipts or bills of lading.

History.—s. 15, ch. 4700, 1899; GS 2914; s. 14, ch. 6527, 1913; RGS 4653; CGL 6739; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.58 Annual report to Governor.—The commissioners shall, by March 1 in every year, make to the Governor annual reports of all transactions of their office, including an itemized statement of penalties imposed and fines collected, and recommend from time to time such legislation as they may deem advisable. The public counsel shall, by February 1 in every year, make a report to the Legislature and the commission of the activities of his office during the preceding calendar year, including recommendations for legislation relating to the commission or to the office of public counsel.

History.—s. 16, ch. 4700, 1899; GS 2915; RGS 4654; CGL 6740; s. 2, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.59 Powers to issue certain writs.—Said Florida Public Service Commissioners in making any examination for the purpose of obtaining information pursuant to this chapter, may issue summons, subpoenas, subpoenas duces tecum or other writs for the attendance of witnesses by such rules as they may prescribe, and such witnesses shall receive for such attendance the same fees and mileage as now allowed witnesses by law in the circuit court, to be ordered paid by the Governor upon presentation of subpoena, accompanied by affidavit of the witness as to the number of days served and miles traveled, made before the clerk of said commissioners, who is hereby authorized to administer oaths. In case any person shall refuse or willfully fail to obey such subpoena, subpoena duces tecum or other writ issued by commissioners, the said commissioners may issue an attachment for such witness and compel him to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners and to bring and produce such books or papers or documents required of such person, and said commissioners may punish

for contempt as in cases of refusal to obey the orders and process of the circuit court of the state.

History.—s. 17, ch. 4700, 1899; GS 2916; RGS 4655; CGL 6741; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 92.142 Witnesses; pay.
s. 900.04 Contempts, criminal.

[1]350.60 May administer oaths; witnesses; examiner; report; service of subpoenas, notices, etc.—In making any investigations or examinations pursuant to this or any other section of this chapter each Florida Public Service Commissioner may administer oaths or affirmations, and in such examinations or investigations no person called upon to testify shall be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but such testimony shall not be used against him in any criminal proceeding. The said commissioners may appoint any one of their number, or designate in writing an examiner, to make investigations or examinations outside of their office and such member in making such investigation or examination is hereby invested with the same power as the full board would have. The commissioner so appointed shall report to a full board the result of his investigation. The secretary of said Florida Public Service Commission is hereby authorized to serve any subpoena, notice or other process or other paper issued by the commissioners and required by them to be personally served (which service may be by registered mail), and the sheriffs in the different counties in this state shall make such service, and execute all process or orders when required by the commissioners; said sheriffs to be paid the same fees as are allowed them by law for similar services.

History.—s. 17, ch. 4700, 1899; GS 2917; s. 15, ch. 6527, 1913; RGS 4656; CGL 6742; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

[1]350.61 Power to declare and punish contempts.—Every officer, agent or employee of any railroad, railroad company or other common carrier, who shall willfully refuse to make and furnish any report required by the commissioners as necessary to the purposes of this chapter, or who shall willfully and unlawfully hinder, delay or obstruct the said commissioners in the discharge of their duties imposed upon them, or who shall commit in their presence during a hearing, investigation or examination, any act which would be deemed a contempt if committed in the presence of the circuit court, may be declared in contempt and punished as provided for in s. 350.59.

History.—s. 18, ch. 4700, 1899; GS 2918; s. 16, ch. 6527, 1913; RGS 4657; CGL 6743; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 350.59 Powers to issue certain writs.

[1]350.62 Mandamus, injunction, etc.; discovery of names of persons damaged by carrier's violation of law; compelling payment, etc.—

(1) The commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this state, by the Department of Legal Affairs, state attorney or special counsel, designated by them, in the name of the state, proceedings by or for mandamus, injunction, mandatory injunction, prohibition or procedendo, against any such company or common carrier subject to the provisions of this chapter, or against any office, officer, or agent thereof, to compel the observance of the provisions of this chapter, or any rule, rate or regulation of the commissioners made thereunder, or to compel the accounting for and refunding of any moneys exacted in violation of any one of the provisions of this chapter.

(2) In all cases where any common carrier shall have become indebted or liable for damages to a large number of persons by reason of its failure to abide by or comply with the provisions of any rule, rate or regulation of the commissioners, or by its violation of any provisions of this chapter, the Florida Public Service Commissioners shall demand of such common carrier by written notice served upon it, a discovery of the names of all such persons and an accounting and payment to all such persons of all such indebtedness or damages. If such common carrier shall refuse or shall fail to make such accountings and payments within 60 days after such notice shall have been served upon it, the Florida Public Service Commissioners shall institute a proceeding or proceedings by or for mandamus or mandatory injunction against such common carrier to compel the making of such accountings and payments. In any such proceeding upon an adjudication against such common carrier there shall be taxed as costs and paid over to the Florida Public Service Commissioners to be paid out by them all such costs, attorneys' fees and expenses of such proceedings as shall appear to the court reasonable under all the circumstances and necessary to effect such accounting and settlement without cost or expense to the state or to the claimants. The courts shall make all such orders as may be necessary or advisable to secure an accounting and payment of costs and damages as full and complete as may appear to be practicable, and any money not paid over to the persons to whom it shall be due within 30 days after such payment shall have been ordered made, shall be paid into the registry of the court to be disbursed to the proper persons upon orders of the court.

(3) The commissioners may do and perform any act or thing necessary to be done to effectually carry out and enforce the provisions and objects of this chapter.

History.—s. 21, ch. 4700, 1899; GS 2921; s. 1, ch. 5616, 1907; RGS 4661; CGL 6747; s. 1, ch. 63-279; s. 1, ch. 65-52; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.63 Judicial powers.—The said Florida Public Service Commissioners are vested with judicial powers to do or enforce or perform any function, duty or power conferred upon them by this chapter to the exercise of which judicial power is necessary.

History.—s. 22, ch. 4700, 1899; GS 2922; RGS 4662; CGL 6748; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.631 Prehearing procedure in any action before the Florida Public Service Commission.—

(1) The Florida Public Service Commission may, in its discretion, direct the attorneys for the parties, or the parties if unrepresented by attorneys, to appear before it, one of its members, or a hearing examiner designated by it for a conference to consider:

(a) The simplification of the issues.

(b) The necessity or desirability of amendments to the pleadings or the application.

(c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

(d) The limitation of the number of expert witnesses.

(e) Such other matters as may aid in the disposition of the action.

(2) Notice of a prehearing conference shall be given in the same manner as is required by law for notice of hearing before the commission. Further notices of conference or hearing in the cause may thereafter be given only to those parties or their attorneys who appear in the cause at the initial prehearing conference; provided that if an amendment is made enlarging the scope of an application for certificate of convenience and necessity, notice of further proceedings shall be given as required by law for initial hearings. The commission shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings or the application, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent cause of action, unless modified at the hearing to prevent manifest injustice.

History.—s. 1, ch. 57-116; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.64 Appeals.—Appeals by either party shall be from judgments, orders and decrees of inferior courts in all suits and cases brought under the provisions of this chapter to the same extent that appeals lie in similar suits and cases brought under any other law in this state. No supersedeas shall be granted from any order, decree or judgment of any court rendered in favor of said commissioners upon any proceeding instituted or caused to be instituted by the commissioners by or for mandamus, injunction, mandatory injunction, prohibition or procedendo, to compel the observance of the provisions of this chapter, as to any rule, rate or regulation of the commissioners, made thereunder, but any such order, decree or judgment shall be respected and obeyed until finally disposed of by the appellate court; but supersedeas may be granted in any other suit or case brought under the provisions of this chapter in which a supersedeas could in a similar suit or case brought under the provisions of other laws of this state be granted.

History.—s. 23, ch. 4700, 1899; GS 2923; RGS 4663; CGL 6749; s. 23, ch. 63-559; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.641 Commission orders; review by certiorari.—

(1) All petitions to the Supreme Court to review orders of the Florida Public Service Commission by writ of certiorari shall be filed in the Supreme Court within the time and in the manner provided by the Florida Appellate Rules.

(2) Notice of such review shall be given by the petitioner to all parties who entered appearances of record in the proceedings before said commission in which the order sought to be reviewed was made, by serving a copy of the petition for writ of certiorari upon each of said parties, at the same time as a copy of the petition, transcript of record and supporting brief are furnished the respondent Florida Public Service Commission.

(3) Within 10 days after such service has been made, such parties may file briefs in support of their interests as such interests may appear.

(4) Such parties shall be entitled as a matter of right to make oral argument in support of their interests as such interests may appear in any case where oral argument is granted by the court on the application of the petitioner or the respondent.

History.—s. 1, ch. 25185, 1949; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.65 Injunction to enforce regulations as to rates.—The writ of injunction shall lie and obtain in all cases of the violation of any freight or passenger rates, or of any schedule of either, or of any failure or refusal to conform to or enforce or put and keep the same, or any or either, in operation, by any railroad company or other common carrier, to prevent the violation of any such rate or schedule, and to compel any such railroad or common carrier to observe and put and keep in operation the same.

History.—s. 24, ch. 4700, 1899; GS 2924; s. 17, ch. 6527, 1913; RGS 4664; CGL 6750; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.66 Commissioners to appeal to Interstate Commerce Commission.—The Florida Public Service Commission shall investigate all through rates from points out of Florida to points in Florida and all rules and regulations made by transportation companies engaged in interstate business, both those now fixed and those that may hereafter be fixed. Whenever any such transportation company shall charge a through rate into or out of Florida or shall make any rule or regulation which in the opinion of the commission is excessive, unjust, unreasonable or discriminating in its nature, the commission shall call the attention of the officers of the offending company to the fact, and urge upon them the propriety of changing such rates, rules or regulations. Whenever such rates, rules or regulations are not changed according to the suggestion of the commission, the

commission shall present the facts to the Interstate Commerce Commission and appeal to it for relief. In all work devolving upon the Florida Public Service Commission prescribed herein they shall receive upon application the services of the Department of Legal Affairs, and it shall also represent them whenever called upon to do so before the Interstate Commerce Commission, and it may employ such special counsel to assist it as it and the commissioners may agree upon, whenever it or the commissioners may deem it necessary, and at such compensation as it and the commissioners may agree upon, and the commissioners may employ special counsel to assist it whenever they may deem it necessary, and at such compensation as it and the commissioners may agree upon.

History.—s. 1, ch. 5215, 1903; GS 2925; RGS 4665; CGL 6751; s. 1, ch. 63-279; s. 1, ch. 65-52; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.67 Penalty for employees, etc., violating provisions of chapter.—If any officer, agent or employee of any railroad company, or other common carrier, shall violate or refuse to obey the provisions of law relating to the establishment and operation of a Florida Public Service Commission in this state, such officer, agent or employee of such railroad company or other common carrier shall, except in cases where the punishment is otherwise provided, upon conviction thereof be fined not less than $250 nor more than $1,000 for each and every offense.

History.—s. 6, ch. 4205, 1893; GS 3633; RGS 5568; CGL 7754; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.76 Microfilming and destroying records.—

(1) The purpose of this section is to make available for the use of the Florida Public Service Commission sufficient floorspace to enable it to efficiently administer the affairs of said agency.

(2) The Florida Public Service Commission is hereby authorized to destroy records and documents as hereinafter provided and to reclaim binders and filing equipment.

(3) The Florida Public Service Commission is hereby authorized, in its discretion, to destroy general correspondence files over 3 years old, certificates and permits which have been revoked or canceled for more than 3 years, applications which have been denied or withdrawn for more than 3 years, together with supporting testimony and exhibits, also any other records not specifically provided for herein.

(4) The Florida Public Service Commission is hereby authorized to photograph, microphotograph or reproduce on film whereby each page will be exposed in exact conformity with the original, all old carrier and utility reports, agency reports, account books, certificate and permit applications, transcript of testimony and other records and documents as it may in its discretion select, and said commission is hereby authorized to destroy any of said documents after they have been photographed and filed and after audit of its office has been completed for the period embracing the dates of said instruments.

(5) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—ss. 1-5, ch. 23788, 1947; s. 24, ch. 57-1; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.771 Fees required to be paid by railroads and, where applicable, express and pullman companies.—Every railroad company and, where applicable, every express and pullman company, shall pay the following application, permit or filing fee to the Florida Public Service Commission:

(1) Applications to discontinue trains:
(a) When formal hearing required, $1,000;
(b) When no hearing required, $200;
(2) To discontinue rail or express agency, $500;
(3) To abandon nonagency station, $250;
(4) To abandon sidetracks serving more than one customer:
(a) Hearing required, $250;
(b) If no hearing required, $50;
(5) To curtail or change rail services (Note: this schedule shall not apply to changes necessitated by any merger of companies), $200;
(6) All rate applications for increased rates, $1,000;
(7) Exemption from clearance rules, to be paid by applicant, $100;
(8) Tariff filings, $10.

History.—s. 19, ch. 67-319; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.78 Florida Public Service Regulatory Trust Fund; moneys to be deposited therein.—

(1) There is hereby created in the State Treasury a special fund to be designated as the Florida Public Service Regulatory Trust Fund which shall be used in the operation of the Florida Public Service Commission in the performance of the various functions and duties required of it by law.

(2) All fees, licenses, and other charges, collected by the commission, except road taxes under chapter 323, shall be deposited in the State Treasury to the credit of said Florida Public Service Regulatory Trust Fund to be used in the operation of said commission as authorized by the Legislature; provided, however, punitive fines assessed and collected by said commission shall not be deposited in said trust fund but shall be deposited in the General Revenue Fund of the state.

(3) Each telephone and telegraph company, as defined in chapter 364, and each electric and gas utility under the jurisdiction of the Florida Public Service Commission, which was in operation for the preceding 6-month period shall pay to said commission within 30 days following each 6-month period, commencing June 30, 1977, one-eighth of 1 percent

of its intrastate gross operating revenues for such 6-month period, except that revenues owing for calendar year 1976 shall not be due until July 1, 1977. Differences, if any, between the amount paid in any calendar year and the amount actually determined by the commission to be due for the calendar year shall, upon notification by the commission, be added to, or deducted from, the payment for the 6-month period ending June 30, which is payable 30 days subsequent to June 30. Each telephone and telegraph company, and each electric and gas utility, which is, or may become, subject to the jurisdiction of said commission, but which did not operate during the entire preceding 6-month period, shall, within 30 days after it has completed its first 6-months' operation under the jurisdiction of said commission and within 30 days following each 6-month period thereafter, pay to said commission one-eighth of 1 percent of its gross operating revenues derived from intrastate business done within the state during said 6-months' operation. All payments to the commission under this section shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund, to be used in the operation of said commission as authorized by the Legislature. In no event shall payments under this section be less than $25 annually.

(4) All moneys in the Florida Public Service Regulatory Trust Fund, from time to time, shall be for the use of the Florida Public Service Commission in the performance of its various functions and duties as provided by law, subject always, however, to regular control by the Executive Office of the Governor, as provided by law, and to annual appropriations by the Legislature for salary, expense, and capital expenditures of said regulatory commission.

(5) Annual appropriations from the General Revenue Fund of the state for the operation of the Florida Public Service Commission may be credited to the Florida Public Service Regulatory Trust Fund in appropriate monthly amounts, and all expenditures authorized by the Legislature and the Executive Office of the Governor for the operation of said regulatory commission may be from said trust fund as supplemented by appropriations from the General Revenue Fund.

(6) Such compensation as the commissioners deem proper to be paid to special counsel or other experts who are not full-time employees of the Florida Public Service Commission may be authorized and drawn from the Florida Public Service Regulatory Trust Fund by the Florida Public Service Commissioners.

History.—ss. 1-5, ch. 63-296; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 4, ch. 65-337; s. 1, ch. 65-327; s. 1, ch. 67-258; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 1, ch. 69-162; s. 1, ch. 70-223; s. 2, ch. 73-247; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 76-265; s. 1, ch. 77-457; s. 121, ch. 79-190.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.781 Annual tax on gross revenues of railroad, express, and pullman companies; intrastate business.—Each railroad, express, and pullman company under the jurisdiction of the Florida Public Service Commission shall pay to the commission, on or before July 1 of each year, one-eighth of 1 percent of its gross operating revenues derived from intrastate business done within Florida during the preceding calendar year. All payments to the commission under this section shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used in the operation of the commission as authorized by the Legislature. In no event shall payments under this section be less than $25 annually.

History.—s. 1, ch. 70-426; s. 3, ch. 76-168; s. 2, ch. 76-265; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.79 Disbursement of fees.—All fees collected pursuant to ss. 323.03(1), 323.041(2), 323.06(3), 323.08(1), 323.10(1), 323.28(2), 323.31(3)(b), (6), (9), 350.771, 364.41(8), and 367.141 by the commission shall be disbursed pursuant to the provisions of s. 350.78(2).

History.—s. 20, ch. 67-319; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 74, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]350.80 Coal slurry pipeline companies regulated.—

(1) Any person, corporation, or other legal entity which exercises or intends to exercise powers of eminent domain pursuant to s. 361.08, or which owns or operates a coal slurry pipeline which was constructed on property acquired by eminent domain, shall be subject to regulation as a common carrier by the Florida Public Service Commission, unless such regulation is preempted by regulation of the Interstate Commerce Commission, and then only to the extent that such regulation is actually preempted by the Interstate Commerce Commission, to assure fairness in rates, rate structure or tariffs, and conditions of service.

(2) All coal slurry pipeline companies, as common carriers, shall be subject to the rules and regulations of the Florida Public Service Commission relating thereto and all applicable laws, including, but not limited to, those governing common carriers as defined in s. 350.11. No coal slurry pipeline company shall discriminate between or against any person, corporation, public utility, municipality, or other legal entity in regard to facilities furnished, services rendered, or rates charged for the transportation of coal or its derivatives. All contracts or agreements between any coal slurry pipeline company and any person, corporation, public utility, municipality, or other legal entity for the transportation of coal or its derivatives shall be submitted to the Florida Public Service Commission for review and approval prior to their execution. The commission shall adopt rules and regulations to ensure that all contracts, rates, and charges involving the transportation of coal or its derivatives by pipeline shall be just and reasonable, nondiscriminatory, and offer no preference to any person, corporation, public utility, municipality, or other legal entity. The commission shall prohibit any contract charging a rate for the transportation by pipeline of coal or its derivatives which is higher than the lowest rate available by any other common carrier operating in Florida.

(3) The Florida Public Service Commission shall file for proposed adoption, within 180 days from the effective date of this act, the necessary rules for the implementation of this act. The rules shall provide,

among other things, an administrative procedure pursuant to chapter 120, under and by which the commission shall determine the public need for and the economic and environmental feasibility of any proposed coal slurry pipeline. Prior to the commission's determination of the environmental feasibility of any proposed coal slurry pipeline, it shall ask for comment from the Department of Environmental Regulation. A final order of the Florida Public Service Commission determining the economic and environmental feasibility of a coal slurry pipeline system shall be conclusive and binding on the court in any condemnation proceeding brought pursuant to s. 361.08 and chapter 73 or chapter 74.

(4) It is the intent of the Legislature that electric utility companies under the regulation of the Florida Public Service Commission shall not unduly profit from markups on the purchase price of the coal for the pipeline in the event that such companies are participants in the coal pipeline company. To this end, the commission shall have the right of access to the appropriate financial records of any coal pipeline company in which electric utility companies participate with regard to any rate hearing for the affected electric utility company. Should the commission be unable to enforce this provision, it shall consider the average price of coal in Florida at that time as being the cost to the electric utility company for ratemaking purposes.

History.—ss. 3-5, ch. 79-236.

[1]**Note.**—Section 5 of ch. 79-236 provides that: "This act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline." Section 6 of that act provides further that: "There is created the Coal Slurry Pipeline Study Committee . . . . The committee shall study the net energy cost of construction and maintenance of a coal slurry pipeline in this state, its overall impact on other transportation modes and the costs of moving other commodities, freight and passengers by such other transportation modes, and other health, economic and social impacts of a coal slurry pipeline. Such study shall be completed and submitted to the Speaker of the House and the President of the Senate on or before February 1, 1980. This act shall not take effect until completion of this report and completion of the regular session of the 1980 Legislature."

CHAPTER 351

DUTIES OF RAILROADS IN OPERATING TRAINS

351.01 To stop at crossings.—Every train of passenger cars, of freight cars drawn by one or more locomotives, and every streetcar, propelled by steam, electricity, compressed air, or other power, upon railway track, shall come to a full stop before arriving at or crossing the track of another railroad or streetcar railway track within 50 feet thereof, and the train or streetcar, as the case may be, arriving at such crossing first shall move on and cross first; and every such train or streetcar shall also slow down to a speed of not more than 4 miles an hour before running on or crossing the draw of any bridge over a stream which is regularly navigated by vessels; provided, however, that whenever the lines of two railroads cross each other on the same grade in this state, the trains shall be brought to a full stop at least 50 feet before reaching the crossing. But the foregoing shall not apply where the crossing is equipped with signal lights or semaphores or other safety appliances which shall indicate that the train may cross in safety, or where a flagman or watchman is stationed and he signals that the train may cross in safety.

History.—s. 29, ch. 1987, 1874; RS 2263; s. 1, ch. 4763, 1899; s. 1, ch. 5216, 1903; GS 2840; RGS 4528; CGL 6591; s. 1, ch. 14833, 1931.
cf.—ss. 316.158, 316.159, 316.171 Motor vehicles crossing railroad tracks.

351.03 To post signboard, ring bell, and exercise reasonable care at highway and street crossings.—Every railroad company shall exercise reasonable care for the safety of motorists whenever its track crosses a highway and shall put up large signboards at or near said crossing with the following inscription in large letters on both sides of the boards: LOOK OUT FOR THE CARS! In all incorporated cities and towns the said companies shall cause the bell on the engine to be rung before crossing any of the streets of a city or town, and their trains shall not go faster through any of the traveled streets of a city or town than at the rate of 12 miles per hour. This requirement for posting signs shall not apply to railroad crossings having signs as required by s. 316.171. All motorists approaching a railroad crossing shall exercise reasonable care for their own safety and that of their passengers and for the safety of railroad train crews operating trains across such crossings.

History.—s. 34, ch. 1987, 1874; RS 2264; GS 2841; ch. 7940, 1919; RGS 4529; CGL 6592; s. 1, ch. 73-336; s. 52, ch. 76-31.
cf.—s. 351.30 Automatic signals.

351.031 Definitions.—When used in this act the following words shall mean:

(1) "Carrier," "railroad," "railroad company" shall mean a common carrier by railroad, or partly by railroad and partly by water, and any receiver or any other individual or body, judicial or otherwise, when in possession of the business of railroad carriers covered by this act, excluding street, suburban or interurban electrical railways.

(2) "Train," "cars," "equipment" shall mean engines and any type of equipment or rolling stock

capable of blocking any crossing of the railroad tracks and public highways, streets, and roads; and also shall mean any such carried by said railroad whether owned by it or not; and shall likewise mean any equipment of any contractor or other person using said rails with the knowledge, permission or consent of said railroad for which the responsibility of the railroad is hereby established fully as though said equipment was owned and operated by said railroad and its employees.

History.—s. 1, ch. 67-309.

351.032 Blocking highway crossing for unreasonable period prohibited.—It shall be unlawful for any railroad company, except in an emergency, to order, allow, permit, or to so operate its system so that its trains or equipment of any cars and equipment carried by it blocks the crossings of railroad tracks and public streets, roads, and highways of this state for more than a reasonable time; and such railroad shall so operate its system in such manner and with such trains and sufficient crews and facilities so as to avoid unnecessary blocking of such crossings.

History.—s. 2, ch. 67-309.

351.033 Railroad personnel liable for unreasonable blocking of highway crossing in certain circumstances.—Excepting in cases of an emergency, the personnel of such trains or equipment operating or in charge of the same shall be liable for such unreasonable or prohibited blocking of such crossings only when it is due to the sole fault of such personnel. At all other times the railroad company shall be held responsible for all unreasonable or prohibited blockings.

History.—s. 3, ch. 67-309.

351.034 Highway crossings to be cleared for emergency vehicles.—Trains or equipment shall be so cut, separated or so moved, as to clear any crossing of any public road, street or highway in this state, upon the approach of any emergency vehicle, which for the purpose of this law shall be:

(1) An ambulance operated by public authority or by private persons;

(2) A fire engine; or an emergency vehicle operated by power or electric companies; or

(3) Any other vehicle when operated as an emergency vehicle, defined as one which is engaged in the saving of life, property, or responding to any other public peril; or

(4) Emergency vehicles used as such by the Government of the United States; when upon the approach of such emergency vehicle, such vehicle gives due warning of its approach to such crossing by the sounding of sirens, flashing of lights, waving of flag, or any other warning sufficient to attract attention to such emergency vehicle; and thereupon the said train or equipment shall be cut and said crossing shall be cleared with all possible dispatch to permit the crossing and passing through of said emergency vehicle.

History.—s. 4, ch. 67-309.

351.035 Company responsible for acts of its agents.—The railroad company shall be responsible for the acts of its agents and employees, when a violation of this law occurs, unless said agents and employees are acting beyond the scope of their authority.

History.—s. 5, ch. 67-309.

351.036 Liability of company for violations of local ordinances relating to crossings.—The railroad company shall be responsible for the acts of its agents and employees, for the violation of any ordinance of any city, county, or other public authority regulating the period of time when such streets, roads, or highways may be so blocked by such equipment, unless said agents and employees are acting beyond the scope of their authority.

History.—s. 6, ch. 67-309.

351.037 Penalty.—It is provided, further, that violation of this law constitutes a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 7, ch. 67-309; s. 252, ch. 71-136.

351.038 Duty of Florida Public Service Commission.—In addition to all other methods of enforcing this law herein set forth, it shall be the duty of the Florida Public Service Commission to investigate, determine, make a record of, and report to all railroads instances where such crossings are blocked.

History.—s. 8, ch. 67-309.

351.04 Penalty for violating regulation.—In case any railroad or canal company, or its agents, servants or employees, shall neglect or refuse to comply with any of the provisions of this chapter, or of chapters 352 and 353, such railroad or canal company shall, for each or every violation, or refusal, unless otherwise provided, forfeit and pay the sum of $50, said penalty to be collected by suit, and to be paid into the county treasury of the county where such action is brought, for the benefit of the school fund.

History.—s. 42, ch. 1987, 1874; RS 2265; GS 2842; RGS 4530; CGL 6593.

351.05 Locomotives to be equipped with certain headlights; penalty.—All railroad locomotives operated in this state in the service of drawing passenger or freight trains shall be equipped with a first-class headlight, the illuminating source of which shall consist of an electric incandescent lamp of not less than 200 watts rating, and with suitable reflector, which headlight shall be kept in good condition and used by those operating such railroad locomotives. Any person who shall fail to so equip his locomotives used in drawing passenger or freight trains, as herein required, or shall operate and use a locomotive in drawing passenger or freight trains not equipped with a headlight as required by this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 6526, 1913; RGS 5567; CGL 7753; s. 1, ch. 63-208; s. 253, ch. 71-136.

351.06 Fixing hours for labor for trainmen.—(1) No railroad doing business in this state shall require or permit its employees who are engaged in the business of operating its trains over its roads, to make runs of over 13 hours, or make runs aggregating more than 13 hours in any 24 hours, except when such train is detained by reason of casualty, or other cause, from reaching its destination on schedule time, and no conductors nor engineers, after having been on a run or runs for as much as 13 hours out of every 24 hours, shall be required to again go on duty until after 8 hours' rest, except in the case above-stated. No employee of any railroad company shall be deprived of his right to recover damages for personal injury by reason of the fact that he, at the time of such injury, was making a run of more than 13 hours in 24 hours, or had gone on duty after a 13 hours' run, or runs aggregating 13 hours before 8 hours' rest.

(2) Any railroad violating any of the provisions of this section shall be subject to a forfeiture of not less than $50 nor more than $500; all forfeitures collected under the provisions of this section shall be paid into the State Treasury to the credit of the school fund.

History.—ss. 1-3, ch. 4199, 1893; GS 2843; RGS 4532; CGL 6595.

351.07 Leave of absence for employees holding governmental offices.—When any regular or part-time employee of any railroad company or railroad corporation operating and doing business in the state shall be elected or appointed to any federal, state, county or municipal office, such railroad company or railroad corporation shall, upon application of such employee, grant a leave of absence to such employee for such period of time said employee holds or occupies such office or position, and such leave of absence shall in no wise impair, prejudice or deprive said employee of the seniority ranking held by him at the time of the granting of such leave of absence.

History.—s. 1, ch. 19273, 1939; CGL 1940 Supp. 6595(1).

351.08 Reinstatement; damages.—Upon the expiration or termination of any such term of office or appointment to any federal, state, county, or municipal office or position, any such regular or part-time employee, upon giving a written notice to such railroad company or railroad corporation, and upon passing such physical and mental examinations as is customarily required, shall be entitled forthwith to reinstatement to the position or employment held by him at the time of such election or appointment, and upon failure or refusal of any railroad company or railroad corporation to immediately reinstate said employee, he shall have and may maintain a civil action for damages against such railroad company or railroad corporation for any salaries or wages which would have been due him from the date of such notice and of the passing of such examination, had he been reemployed as required hereby; in such action, should the plaintiff recover he shall also be entitled to recover a reasonable attorney's fee as compensation for his attorney.

History.—s. 2, ch. 19273, 1939; CGL 1940 Supp. 6595(2).

351.09 Demand for freight, when prohibited.—(1) No common carrier in this state shall demand of any consignee the freight on goods, wares and merchandise not delivered or ready to be delivered, as a condition precedent to the delivery of goods, wares or merchandise in the custody of said common carrier, at the point of destination. And upon a tender by any consignee of the freight due upon any goods, wares or merchandise in the custody of such carrier at the point of destination it shall deliver the same.

(2) Should any common carrier in this state violate the provisions of this section, it shall forfeit a sum in double the amount of the freight demanded on goods, wares or merchandise not delivered or ready to be delivered, to be collected by suit before any competent court having jurisdiction of the amount.

History.—ss. 1, 2, ch. 4200, 1893; GS 2844; RGS 4533; CGL 6596.

351.11 Record of contract.—Contracts for the sale of railroad or street railway equipment or rolling stock shall be recorded by the Florida Public Service Commission in a book of records to be kept for that purpose. On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The Florida Public Service Commission shall be entitled to a fee for such services as for similar services, for recording each of said contracts and each of said declarations, and a fee of $1 for noting such declarations on the margin of the record. This section shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to herein, and any such contract heretofore made may, upon compliance with the provisions of this section, be recorded as herein provided.

History.—s. 2, ch. 4201, 1893; GS 2846; RGS 4535; CGL 6598; ss. 10, 35, ch. 69-106; s. 1, ch. 70-307.

351.12 Freight notice.—All common carriers engaged in the transportation and delivery of freight in this state, immediately upon receipt of any freight at the point to which it may be consigned, shall notify in writing the consignee of the same. Such common carriers shall make no charges for the storage of such freight until after the expiration of 3 days after such notice is given as hereinbefore provided. Such common carriers shall be liable for said freight.

History.—ss. 1, 2, ch. 4202, 1893; GS 2847; RGS 4536; CGL 6599.

351.13 Depot contract.—Whenever any railroad company in this state obtains from any person any grant of land, money, right-of-way or other thing of value on condition that the said railroad company shall construct a depot, sidetrack or warehouse at any point or locality on the line of its road, such condition shall be held and deemed a contract, and specific performance of the same shall be decreed on bill in chancery filed by the person entitled thereto

in the circuit court. If any railroad company shall fail or refuse to obey any decree rendered pursuant to this section, it shall be the duty of the Judge of the Circuit Court rendering the decree, on the failure or refusal of the railroad company to obey the said decree being made known to him, to appoint a receiver for the railroad of said railroad company, who shall thereupon carry out the terms of the decree out of such funds as may come into his hands as receiver.

History.—ss. 1, 2, ch. 4203, 1893; GS 2848; RGS 4537; CGL 6600.

cf.—ss. 350.12, 350.26 and 350.41 Powers and duties of commissioners.
s. 360.01 Authority to erect station or depot.

351.14 Duty of railroad companies with crossing lines.—All railroad companies in this state crossing or meeting each other at any point shall construct such switches, sidetracks and connections as will enable them to transport cars to and from each other's lines; and the expense of such construction shall, unless otherwise provided, be borne equally by such connecting lines of railroad.

History.—s. 1, ch. 4205, 1893; GS 2849; RGS 4538; CGL 6601.

351.15 Shipping of freight.—All railroad companies or other common carriers doing business in this state shall ship all freight received by them by such routes, and deliver the same to such connecting lines as the shippers may direct; and no railroad company or other common carrier shall refuse to receive any freight because it is billed by the shipper by any particular route; and provided, that no railroad company, nor other common carrier, shall charge any higher rate for delivering freight to a connecting line than would be charged by said company for delivering freight to individuals at the place where such connecting road or common carrier receives such freight.

History.—s. 2, ch. 4205, 1893; GS 2850; RGS 4539; CGL 6602.

351.16 To receive cars from connecting lines.—All railroad companies or other common carriers shall receive from connecting lines cars loaded with freight, or empty cars, and transport the same to their destination, or to such other connecting line as they may be consigned to, and return such cars to the connecting line from which they are received, and they shall also deliver to connecting lines cars loaded with freight, or empty cars, as they may be consigned; and no railroad company in this state shall charge or collect any higher rate of freight or wheelage than would be charged for transporting and delivering freights to individuals between the point of receipt and the point of delivery.

History.—s. 3, ch. 4205, 1893; GS 2851; RGS 4540; CGL 6603.

351.17 Recovery of damages.—If any person shall be damaged by the refusal or failure of any railroad company to obey the provisions of ss. 351.14-351.16, such person shall, upon suit brought, recover from the railroad company so violating said sections damages in full of the amount of loss actually incurred, all costs, charges and reasonable attorney's fees.

History.—s. 4, ch. 4205, 1893; GS 2852; RGS 4541; CGL 6604.

cf.—s. 353.04 Claim for damages to freight.

351.18 Duty of State Attorney and judge.—If any railroad company shall fail or refuse to comply with the provisions of s. 351.14, the State Attorney of the judicial circuit in which is situated the lines of railroad where the action is attempted, shall institute suit against the offending company in the circuit court, and on the facts being proven the Judge of the Circuit Court shall render a decree requiring a compliance with the conditions of s. 351.14, and if the railroad company shall fail or refuse to obey said decree, the Judge of the Circuit Court, upon the fact of such refusal being made known to him, shall appoint a receiver for such road, who shall have such sidetracks, switches and connections made as may be necessary, conforming to the rules of said road in placing danger signals, putting in switches and passing trains during the construction of such work; and the state shall not be liable for any damages from accident caused by and during the construction of said work. When the aforesaid rules have been complied with, the cost of the construction of the same shall be a lien on said road paramount to all others; provided, that all costs, charges and a reasonable fee for the State Attorney shall be decreed against the railroad company in the cases where a decree is rendered against said company.

History.—s. 5, ch. 4205, 1893; GS 2853; RGS 4542; CGL 6605.

351.19 Penalty for not complying with laws relating to transfer of freight to other roads.—If any person, agent or employee of any railroad company, or other common carrier, shall violate or refuse to obey the provisions of ss. 351.14-351.18, such officer, agent or employee of such railroad company or other common carrier shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

History.—s. 6, ch. 4205, 1893; GS 3653; RGS 5590; CGL 7776; s. 254, ch. 71-136.

351.20 Blacklisting of discharged employees prohibited; penalty; written statement of reasons to be furnished.—If any railroad company or other corporation doing business in this state, or any person, agent or employer of any such company or corporation, after having discharged any employee from the service of any such company or corporation, shall attempt to prevent by word or writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and such person, agent, employer, company or corporation shall be liable in damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing to any other person, company or corporation to whom such discharged person has applied for employment a truthful statement of the reasons for such discharge; and shall furnish to such discharged employee, on his application, to such address as may be given by such discharged employee, within 10 days

after such application made as aforesaid, a true copy of any such written statement.

History.—s. 1, ch. 4207, 1893; GS 2854; RGS 4543; CGL 6606; s. 7, ch. 24337, 1947; s. 255, ch. 71-136.

cf.—ss. 448.03, 448.04 Penalty for attempting to force employee to trade with specified persons.

351.21 Company responsible for violations of s. 351.20.—If any railroad company or other corporation doing business in this state shall authorize or permit, with its knowledge and consent, any of its officers, agents, employers or employees to commit either or any of the acts prohibited by s. 351.20, such railroad company or corporation shall be liable in damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action.

History.—s. 2, ch. 4207, 1893; GS 2855; RGS 4544; CGL 6607.

351.22 Duties of persons, employers and corporations.—Any person, officer, agent, employer, company or corporation, after having discharged any employee from the service of any such company or corporation, upon written demand by such employee, shall furnish to him, within 10 days from the application for the same, a full statement in writing of the cause or causes of his discharge, and if any such person, officer, agent, employer, company or corporation as aforesaid shall refuse within 10 days after demand as herein provided to furnish such statement to such discharged employee, it shall be ever after unlawful for any such person, officer, agent, employer, company or corporation to furnish any statement of the cause of such discharge to any person or corporation, or to in any way blacklist, or to prevent such discharged employee from procuring employment elsewhere, subject to the penalties prescribed in s. 351.20. On the trial of any person, company or corporation for a violation of the provisions of ss. 351.20-351.24, any other person who may have authorized or permitted, with knowledge and consent as aforesaid, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury in any matter to which he may have testified; and on the trial of any such person for any violation of said sections the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, of the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be a contempt of court, and punishable as such against the custodian or person, company or corporation having the control or in charge of such books and papers who shall fail to produce the same; provided, that such written cause of the discharge, when so made as aforesaid, at the request of such discharged employee, shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same.

History.—s. 3, ch. 4207, 1893; GS 2856; RGS 4545; CGL 6608.

351.23 Employees to have a statement on demand.—Any person, company or corporation who has received any request or notice in writing, sign, word, or otherwise from any person, company or corporation preventing or attempting to prevent the employment of any person discharged from the service of either of the latter, shall, on demand of such discharged employee, furnish to such employee within 10 days after such demand a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority furnishing the same; and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by this chapter.

History.—s. 4, ch. 4207, 1893; GS 2857; RGS 4546; CGL 6609.

351.24 Companies affected.—The provisions of ss. 351.20-351.23 shall apply to and prevent, under all the penalties in this chapter, railroad companies or corporations under the same general management and control but having separate divisions, superintendents or master mechanics, master machinists, or similar officers, for separate or different lines, their officers, agents and employees, from preventing or attempting to prevent the employment of any such discharged person by any other separate division or officer or agent or employer of any such separate railroad line or lines.

History.—s. 5, ch. 4207, 1893; GS 2858; RGS 4547; CGL 6610.

351.25 No charge for placing cars.—No charge whatever shall be made by a railroad having the line haul for placing for loading, an empty car at any warehouse or other point on its line or any sidetrack or spur connected therewith or for switching the loaded car to or from the same either for delivery or for transportation for intrastate shipment; it being the purpose of this section to require one placement of a car for loading or unloading upon a sidetrack and its removal in the opposite direction without any charge in addition to the charge for transportation or line haul.

History.—s. 1, ch. 7320, 1917; RGS 4548; CGL 6611.

351.26 Penalty for violations of s. 351.25.—Any railroad, railroad company, or common carrier violating the provisions of s. 351.25, shall thereby incur a penalty for each such offense of not more than $5,000, to be fixed and imposed by the Public Service Commissioners in accordance with the provisions of s. 350.28, and each charge made in violation hereof shall constitute a separate offense.

History.—s. 2, ch. 7320, 1917; RGS 4549; CGL 6612; s. 1, ch. 63-279; s. 1, ch. 65-52.

351.27 Railroads to allow dredges in Everglades to pass right-of-way without charge.—All railroad companies shall allow all dredges engaged in the work of constructing canals in the Everglades of Florida to pass through their tracks and right-of-way without charge or expense.

History.—s. 1, ch. 6887, 1915; RGS 4550; CGL 6613.

351.28 To maintain drawbridges.—All railroad companies, when requested so to do by the board having in charge the drainage and reclamation of the Everglades of Florida, shall provide and maintain drawbridges, at their expense, over and across any of the canals provided for and used in connection with the drainage and reclamation of the Everglades of Florida.

History.—s. 2, ch. 6887, 1915; RGS 4551; CGL 6614.

351.29 Penalty for violation of ss. 351.27 and 351.28.—Any railroad company failing to comply with the provisions of s. 351.27 or s. 351.28 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

History.—s. 3, ch. 6887, 1915; RGS 4552; CGL 6615; s. 256, ch. 71-136.

351.30 Crossing signs and signboards.—Whenever any railroad company has or may hereafter install at any grade crossing, signals of the automatic flashlight type which are approved by the Association of American Railroads and by the Federal Public Roads Administration, and which have the words "Railroad Crossing" on the side of said crossing signal facing the approach from the highway and which are located one on each side of the railroad track or tracks at a distance of not less than 8 feet nor more than 30 feet from the nearest track measured from the gage of the nearest rail to the base of such signal light, then and in any such event, so long as said automatic signals are maintained in force and effect, it shall be unnecessary for railroad companies to comply with, and such railroad companies are herein and hereby relieved from the duty of complying with, ss. 316.171 and 351.03 relating to signboards and crossing signs.

History.—s. 1, ch. 20679, 1941; s. 52, ch. 76-31.

351.35 Railroad tracks and related equipment; safety rules; penalties.—

(1) The Department of Transportation shall adopt rules requiring companies operating railroads wholly or in part in the state to maintain tracks and all supportive, related equipment, including locomotives and other rolling stock, of such railroad companies within the state in a safe condition.

(2) If any company operating a railroad either in whole or in part within the state fails to comply with any rule or regulation adopted by the department, such company shall thereby incur a penalty for each offense of not more than $5,000, to be fixed, imposed, and collected by the department.

History.—s. 2, ch. 78-88.

351.36 Railroad safety inspections and inspectors.—

(1) The Department of Transportation shall employ competent safety inspectors to inspect the physical conditions of the tracks and all supportive, related equipment, including locomotives and other rolling stock, of any railroad operated wholly or in part in the state. Safety inspectors shall attain Federal Railroad Administration qualifications necessary to qualify the state for federal funds.

(2) The inspectors shall report in writing the results of their inspections in the manner and on forms prescribed by the department.

History.—s. 1, ch. 78-88.

351.37 Railroad safety; legislative intent.—It is the intent of the Legislature that the state supplement and not replace the Federal Government's responsibility in the inspection of physical conditions of railroad facilities within the state to ascertain compliance with federal standards and regulations. Because this is a supplementary program, the state shall not be deemed to be liable for any actions or omissions in inspecting or failing to inspect railroad facilities. To that end, it is the express intent of the Legislature that the provisions of this act shall replace all other provisions in the Florida Statutes relating to jurisdiction over railroad safety.

History.—s. 3, ch. 78-88.

CHAPTER 352

DUTIES TO RAILROAD PASSENGERS AND FREIGHT

352.01 Passengers may be ejected for nonpayment of fare.—If any passenger shall refuse to pay his fare, the conductor of the train and the servants of the corporation may put him and his baggage out of the cars on stopping the cars at any usual stopping place, or near any dwelling house, as the conductor shall elect.

History.—s. 41, ch. 1987, 1874; RS 2267; GS 2859; RGS 4553; CGL 6616.
cf.—s. 351.04 Penalty for violating regulation.

352.02 Passenger conductors to have police powers.—

(1) The conductors of any train carrying passengers in this state are invested with all the powers, duties and responsibilities of police officers while on duty on their trains.

(2) When a passenger or any other person is guilty of disorderly conduct by fighting or using any obscene, profane or vulgar language, or plays any game of cards or other game of chance for money or other thing of value, upon any passenger train, or drinks intoxicating liquors of any kind in or upon any railway passenger train, coach or vestibule thereof, or platform connected therewith, when such liquors are not used as a medicine in case of actual sickness, the conductor of such train may at the next regular stopping place of such train eject such passenger from the train, using only such force as may be necessary to accomplish such removal, and the conductors may command the assistance of the employees of the company and of the passengers on each train to assist in such removal; and any person neglecting or refusing to render such assistance shall be punished as in the case of neglect or refusal to aid a police officer or watchman in the execution of the duties of his office.

(3) The conductor may cause any person violating the provisions of this section, and which are in violation of the laws of this state, to be detained and delivered to the proper authorities for trial as soon as practicable.

History.—s. 1, ch. 4072, 1891; GS 3659; s. 1, ch. 6897, 1915; RGS 5596; CGL 7782; s. 105, ch. 77-104.
cf.—s. 843.06 Neglect or refusal to aid peace officers.

352.19 Discrimination in rates.—If any common carrier, engaged in business as such in the state, or any officer, agent or employee thereof, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, than such common carrier charges, demands, collects or receives from any other person for doing a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier, officer, agent, or employee, shall be guilty of unjust discrimination, which is prohibited and declared to be unlawful. It is unlawful for any person to receive any sum of money, rebate, or other thing of value, directly or indirectly, that is prohibited to be given, charged, demanded, collected or received by this section.

History.—s. 1, ch. 5621, 1907; RGS 4564; CGL 6627.
cf.—s. 350.08 Discrimination prohibited.
s. 350.12 Rules and regulations to prevent discrimination.
s. 350.32 Action for damages.
s. 350.42 Classes of freight not to be discriminated against.
s. 358.11 Permissible reductions in rates.

352.20 Penalty for violation of s. 352.19.—Any common carrier or corporation violating any provision or provisions of s. 352.19 shall be guilty of a felony of the third degree, punishable as provided in s. 775.083, and any officer, agent or employee of such corporation, or any other person violating the provisions of s. 352.19, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082.

History.—s. 2, ch. 5621, 1907; RGS 5692; CGL 7906; s. 257, ch. 71-136.

352.21 Discrimination in passengers or freight.—Any person engaged in the transportation of passengers or freight in this state, or his agents, who shall make any discrimination against or in favor of any person whatever, shall be guilty of a felony of the third degree, punishable as provided in s. 775.083.

History.—s. 2, ch. 4204, 1893; GS 3652; RGS 5589; CGL 7775; s. 258, ch. 71-136.

352.25 To receive, transport and deliver freight.—Any railroad or canal company operating in this state shall receive for shipment and transportation any and all grain, cotton, lumber and other freight that shall be offered to such company, its authorized agents, servants or employees, for transportation over their road or canal, and shall make and deliver for such grain or other freight consigned

to any consignee or consignees the usual bills of lading to the shipper or consignor thereof, and shall transport and convey all freights over its road or canal at the tariff or charges then in force to such person as the same may be directed or shipped to by the owner, shipper or consignor of such property, and shall deliver such freight as may be designated in the bills of lading.

History.—s. 35, ch. 1988, 1874; RS 2269; GS 2861; RGS 4571; CGL 6636.
cf.—s. 350.57 Forms of bills of lading.
s. 353.04 Action against connecting lines.
ss. 831.01, 831.02 Forgery or counterfeiting bills of lading.

352.26 Freight to be delivered according to terms and direction.—Public or common carriers in this state are required to deliver all freight received by them for transportation according to the terms of the contract under which they are received. The bill of lading or other memorandum, as made between the consignor and carrier at the initial points, shall be considered as the evidence of direction by which freights are to be received, carried and delivered by the common carriers in this state, and any common carrier violating the provisions of this section shall be liable in damages to the person aggrieved.

History.—s. 1, ch. 3610, 1885; RS 2348; GS 2862; RGS 4572; CGL 6637.
cf.—Ch. 353 Claims for lost or damaged freight.

352.27 Penalty for not delivering freight according to terms and directions.—Any officer, agent or employee of any common carrier in this state who shall violate the provisions of s. 352.26 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 3610, 1885; RS 2695; GS 3640; RGS 5576; CGL 7762; s. 262, ch. 71-136.

352.28 Regulations for transporting firewood.—No railroad or canal company shall be compelled to transport firewood, unless the same shall be piled up at some reasonably convenient point on its line in quantities sufficient to load at least five cars at one time or one canal boat. When that is done and 3 days' notice is given to the proper officer in person, or by mail to the principal officer of such company, such company shall provide sufficient cars or boats to transport such wood, but such wood shall be loaded and unloaded by the owners thereof. The company shall charge no more for the transportation of wood than is prescribed in the tariff or rates.

History.—s. 36, ch. 1988, 1874; RS 2270; GS 2863; RGS 4573; CGL 6638.

352.29 Must provide flatcars with suitable appliances for hauling lumber, etc.—Every railway company or person engaged in the business of carrying for hire in this state, shall efficiently and suitably equip and supply every and all flatcars and cars belonging to such carrier, and which may be furnished on which to load any cargo of lumber or timber with all proper and sufficient standards, supports, stays, strips, railing, and other equipments and appliances necessary to hold and keep the cargo firmly in place.

History.—s. 1, ch. 5213, 1903; GS 2864; RGS 4574; CGL 6639.

352.30 Appliances weighed as part of cars.—The standards, supports, stays, strips, railings, equipment, appliances, contrivances, etc., provided for in the preceding section shall constitute and be held and considered part and parcel of said cars and the weight of the same shall be added to the weight of the car and shall be deducted from the weight of the cargo of lumber and timber shipped so that the freight charges shall be charged by the carriers only on the cargo.

History.—s. 2, ch. 5213, 1903; GS 2865; RGS 4575; CGL 6640.

352.31 Penalty for not providing appliances.—Whenever any such carrier shall fail in the duty imposed upon it, in respect of its said cars in ss. 352.29 and 352.30 and the unsupplied standards, supports, strips, and other proper equipments shall be provided by the shipper, such carrier owning car, shall pay the shipper $1.50 for each and every car to which it may be necessary for said shipper to supply or provide any such standard, support, strips or other equipments, as compensation to the shipper for the same, payment of which sum shall be made by the carrier to the shipper upon demand of the shipper made upon any agent of the carrier, and the shipper shall have a lien therefor on said car.

History.—s. 3, ch. 5213, 1903; GS 2866; RGS 4576; CGL 6641.

352.32 River boats to deliver freight in dry places.—The captains of all steamboats and barges transporting freight upon any of the rivers in this state shall place such freight at the landings in the warehouse, or, in case there is no warehouse, in a dry and convenient place, so that it may not be damaged by reason of the water or mud. A failure to comply with the provisions of this section shall subject the owner of such boat or barge to pay to the party injured double the amount of damages sustained and all costs of suit, including a reasonable attorney's fee for the plaintiff.

History.—s. 3, ch. 5213, 1903; GS 2866; RGS 4576; CGL 6641.

352.33 Construction of cars for transportation of cattle.—It is unlawful for any railway or other transportation company doing business in the state, to transport within the boundaries of the state any cattle, hogs, or sheep, shipped from any point in such state to another point in such state, unless the same be transported in properly constructed cattle cars, which said cars shall be cleated and provided with suitable slatted doors as is usual in such properly constructed cars.

History.—s. 1, ch. 5422, 1905; RGS 4578; CGL 6643.
cf.—s. 828.14 Water and food for stock on trains, etc.

352.34 Care of livestock in transit.—All transportation companies which shall transport such livestock within the boundaries of the state shall unload the same for feed and water at least once in every 28 hours, or with the written consent of the shipper every 36 hours, and upon arrival at the destination of the aforesaid cars, said livestock shall be unloaded immediately by the company so transporting same, and no such car or cars loaded with livestock shall be kept standing on tracks of said railroad at said destination for a longer period than 3 hours before such livestock is unloaded; provided, that such de-

tention on tracks shall in no case result in preventing the unloading of stock once in every period of 28 hours aforesaid.

History.—s. 2, ch. 5422, 1905; RGS 4579; CGL 6644; s. 1, ch. 22725, 1945.
cf.—s. 828.14 Water and food for stock on trains, etc.

352.35 Penalty for violation of regulations as to transporting livestock by transportation company.—All transportation companies violating any of the provisions of ss. 350.22, 350.23, 352.33 and 352.34, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083; except, however, that the provisions of this section shall not apply to any violation of said sections in which the delay or default was caused by accident or providential hindrance.

History.—s. 6, ch. 5422, 1905; RGS 5588; CGL 7774; s. 263, ch. 71-136.
cf.—s. 350.24 Penalty for violation of regulations in transporting livestock.
s. 828.14 Water and food for stock on trains, etc.

352.36 Charges for feeding and watering livestock in transit.—The transportation companies transporting livestock in the state shall be entitled to charge as an extra compensation, the actual amount expended by them for feed and water of the aforesaid livestock while en route from the point of shipment to destination.

History.—s. 3, ch. 5422, 1905; RGS 4580; CGL 6645.

352.37 Penalty for conductors, etc., violating regulations.—Every conductor, engineer or other person, having charge of the running of any train of passenger cars, who willfully or knowingly violates any of the provisions of law relating to the operation of trains, or their duties in relation to passengers, or in regard to the receipt, transportation and delivery of freight, shall, except as otherwise provided by law, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 1987, 1874; RS 2685; GS 3631; RGS 5564; CGL 7750; s. 264, ch. 71-136.
cf.—s. 351.04 Penalty for violating regulation.

CHAPTER 353

CLAIMS FOR LOST OR DAMAGED FREIGHT

353.01 Claims for freight lost or damaged by common carrier; payment within 60 days.—All common carriers operating within this state when any person, his agent or attorney, files with, or presents to them, or any station agent of said common carrier, or where there is no station agent, upon any other agent of such common carrier, his claim for any freight, baggage or express lost or damaged by said common carrier, or for any overcharge made by such common carrier on any freight, baggage or express, or for any reciprocal demurrage, shall pay the said claim within 60 days from its filing with, or presentation to, said common carrier or any station agent, or other agent of such common carrier.

History.—ss. 1, 2, ch. 5424, 1905; s. 1, ch. 5618, 1907; s. 1, ch. 5894, 1909; RGS 4581; CGL 6646.

cf.—s. 351.04 Penalty for violating regulation.

353.02 Carrier not paying claim liable for amount and 50 percent per annum, etc.—Should any common carrier fail to comply with the provisions of s. 353.01, then the said common carrier making such failure shall be liable to the claimant for the amount of his claim and 50 percent per annum interest on the principal sum of said claim from the date of the filing of the same with, or presentation of the same to, the common carrier, or any station agent or other agent of such common carrier, and when the said claimant shall bring suit and recover judgment for his claim against said common carrier, he shall be allowed the said 50 percent per annum, in addition to the principal sum of said claim, and the same shall be allowed in the verdict giving him judgment; provided, however, that the claimant shall not recover and have judgment for the said 50 percent per annum, nor attorney's fees, as provided for in s. 353.03, unless he recovers judgment for a sum which fixes the principal sum of said claim at an amount greater than the amount which said common carrier had offered and tendered to the claimant in settlement of his claim before the expiration of said 60 days in which the said common carrier is required to pay such claim under the provisions of s. 353.01.

History.—s. 2, ch. 5618, 1907; s. 2, ch. 5894, 1909; RGS 4582; CGL 6647.

353.03 Attorney's fee.—Any common carrier who fails to comply with the provisions of s. 353.01, shall, in the event that the claimant shall prevail in an action to recover on his claim, be liable for a reasonable attorney's fee, and the court shall allow the claimant such reasonable attorney's fee, which shall be fixed by the court, not to exceed $15 if the amount received does not exceed $100, and not to exceed 15 percent on any amount recovered greater than the sum of $100.

History.—s. 3, ch. 5618, 1907; s. 3, ch. 5894, 1909; RGS 4583; CGL 6648.

353.04 Action against connecting lines, etc.—When any claim arises under the provisions of this chapter, and the shipment went, or should have gone, over more than one common carrier's line, the claimant may file his claim with any of said common carriers over whose line said shipment went or should have gone, and may bring action against either of them for recovery of damages, as herein provided for; provided, he shall have served said notice on the common carrier he elects to sue.

History.—s. 4, ch. 5894, 1909; RGS 4584; CGL 6649.

353.05 Construction of chapter.—This chapter shall not be construed to be in conflict with the laws of the state regulating and making punishable usurious contracts.

History.—s. 2, ch. 5424, 1905; RGS 4585; CGL 6650.

CHAPTER 354

SPECIAL OFFICERS FOR CARRIERS

354.01 Appointment of special officers.—Upon the application of any railroad, express company, or other common carrier, doing business in this state, the Governor shall appoint one or more special officers for the protection and safety of such carriers, their passengers and employees, and the property of such carriers, passengers and employees.

History.—s. 1, ch. 8539, 1921; CGL 6653.
cf.—s. 113.01 Fees for commissions issued by governor.

354.02 Powers.—Each special officer shall have and exercise throughout every county in which the common carrier for which he was appointed, shall do business, operate, or own property, the power to make arrests for violation of law on the property of such common carrier, and to arrest persons, whether on or off such carrier's property, violating any law on such carrier's property, under the same conditions under which deputy sheriffs may by law make arrests, and shall have authority to carry weapons for the reasonable purpose of their offices.

History.—s. 2, ch. 8539, 1921; CGL 6654.

354.03 Bond.—Before entering into the performance of his duties every such special officer shall enter into a good and sufficient bond payable to the Governor of Florida, and his successors, in the penal sum of $5,000, with some surety company authorized to do business in this state as surety thereon, conditioned for the faithful performance of his duties, and to pay any and all damage done by any illegal act committed by him, to be approved by the Department of Banking and Finance.

History.—s. 3, ch. 8539, 1921; CGL 6655; ss. 12, 35, ch. 69-106.

354.04 Compensation.—Such special officers shall not receive any fees or salary from the state or any county, but their compensation shall be agreed upon and paid by the carrier making such application.

History.—s. 4, ch. 8539, 1921; CGL 6656.

354.05 Term of office; removal.—The special officers provided for herein shall be commissioned by the Governor and their commissions shall continue so long as they are employed in such capacity by the railroad, express company or other common carrier, but they shall be removed by the Governor at any time, in the manner and for the causes provided by law.

History.—s. 5, ch. 8539, 1921; CGL 6657; s. 1, ch. 63-57.

354.06 Fees to sheriff.—In each case where any of the special officers effect an arrest, the sheriff of the county in which such arrest is effected shall be entitled to the lawful fees the same as though such arrest had been effected by him or one of his deputies.

History.—s. 6, ch. 8539, 1921; CGL 6658.

354.07 Suit for damages on bond.—Any person who shall have been damaged, either in his person or his property, by the wrongful act of such officer may bring suit for the redress of such wrong on the bond of such officer hereinbefore provided for.

History.—s. 7, ch. 8539, 1921; CGL 6659.

CHAPTER 355

CARRIER'S LIEN AND ENFORCEMENT

355.01 Carrier's lien.—Common carriers transporting goods for hire shall have a lien upon such goods for their lawful charges; and shall have a lien upon any and all goods held by them for delivery, or on demurrage, or in storage; and such lien shall be enforceable in the manner hereinafter provided.

History.—s. 1, ch. 10176, 1925; CGL 6660.

355.02 Enforcement; nonperishable property.—Whenever any person to whom nonperishable freight shall have been consigned and shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for the period of 15 days, after notice of arrival of such nonperishable freight shall have been duly sent or given; and disposition of such property shall not have been arranged for within 30 days after the sending or giving of the notice to consignor or shipper hereinafter provided to be sent or given by such carrier, shall have been duly sent or given; and whenever any person shall fail or refuse to take or receive any nonperishable property when entitled to take or receive the same, held by such common carrier for delivery, in storage or on demurrage, for a period of 15 days after notice by such common carrier to take or receive the same, and disposition of such property shall not have been arranged for within 30 days after the sending or giving of the notice hereinafter provided to be sent or given to shipper or consignor by such carrier, shall have been duly sent or given; such common carrier may sell such nonperishable property at public sale without resorting to the courts for the purpose of satisfying its lawful transportation, demurrage or storage charges.

History.—s. 2, ch. 10176, 1925; CGL 6661.
cf.—s. 1.01 "Person" defined.

355.03 Sale of nonperishable property.—Before such sale of nonperishable property shall be made, such common carrier shall first mail, send or give to the shipper or consignor thereof, notice in writing that such nonperishable property has been refused or remains unclaimed, as the case may be, for 15 days after the sending or giving to consignee, or if shipped order notify, the party to be notified, of notice of arrival or of notice to take or receive such property, as the case may be; that if disposition of such nonperishable property be not arranged for within 30 days, that the same will be subject to sale at the end of such 30 days. Such common carrier before causing any sale of nonperishable property to be made, shall also insert and cause to be published once a week for 2 successive weeks in some newspaper of general circulation at the place of sale or nearest place where such newspaper is published a notice of such sale, containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, or, if held for delivery or in storage or on demurrage, the name of the party for whom so held, as the case may be, if such be known, and the time and place of such sale; provided, that before publication of such notice of sale shall be made, 30 days shall have elapsed since the giving or sending to consignor or shipper, of any notice that the property was refused or remains unclaimed.

History.—s. 3, ch. 10176, 1925; CGL 6662.

355.04 Livestock.—Whenever any person to whom livestock shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for a period of 3 days, after the notice of arrival and carrier's intention to sell hereinafter provided to be given in regard to such livestock shall have been duly posted and sent or given, and such livestock shall not have been returned to the shipper or consignor; and whenever any person shall fail or refuse to take or receive livestock, when entitled to take or receive the same, held by such common carrier for delivery or in storage or on demurrage, for a period of 3 days after notice of demand by such carrier to take or receive such livestock and of the intention of such carrier to sell the same in default of compliance therewith, as hereinafter provided to be given by such carrier, shall have been duly posted and sent or given by such carrier, any such common carrier may, to prevent death, disease, shrinkage, deterioration or further disease, shrinkage or deterioration of such livestock, sell such livestock at public sale without resorting to the courts, for the purpose of satisfying its lawful transportation, demurrage or storage and other charges.

History.—s. 4, ch. 10176, 1925; CGL 6663.

355.05 Sale of livestock.—Before such sale of livestock shall be made such common carrier shall give 3 days' notice by telegraph, telephone, messenger, or other expedited means of communication to the shipper and consignee of livestock, if such be known, of the arrival of such livestock and intention of such common carrier to sell the same at the end of 3 days to prevent death, disease, shrinkage or deterioration or further disease, shrinkage or deterioration of the same, and the time and place of holding such sale; or in the case of livestock held for delivery, on demurrage or in storage, in the same manner, notice of the demand of such carrier to the shipper and consignee of such livestock to take or receive the same within 3 days and of such common carrier's intention to sell the same after three days in default of compliance with such demand to prevent death, disease, shrinkage or deterioration or further disease, shrinkage or deterioration of the same and the time and place of such sale. No sale

shall be made under the provisions of this section unless such common carrier shall, 3 days prior to such sale, post at the outer door, customarily used by the public, of the local freight office or in the absence of freight office, at the local freight warehouse of such common carrier, in the village, town or city in which such livestock shall be held or nearest thereto, notice of the arrival of such livestock and carrier's intention to sell, or in the case of livestock held for delivery, on demurrage or in storage, notice of demand to take or receive the same within 3 days and of such carrier's intention to sell in default of compliance therewith; every such notice to be posted shall further contain the names and addresses of the shipper and consignee if such be known, and a brief description of the livestock to be sold, the reasons for making and the time and place of holding such sale; provided, that if the name of neither the shipper nor the consignee of the livestock intended to be sold shall be known to such common carrier then the posting of the notice herein provided of the holding of such sale with a brief description of the livestock intended to be sold shall be deemed sufficient notice and such sale shall be valid to all intents and purposes.

History.—s. 5, ch. 10176, 1925; CGL 6664.

355.06 Perishable property other than livestock.—Whenever any person to whom perishable freight other than livestock shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for a period of 24 hours after the notice of arrival and carrier's intention to sell hereinafter provided to be given in regard to such perishable property other than livestock, shall have been duly posted and sent or given, and such perishable goods shall not have been returned to the shipper or consignee; and whenever any person shall fail or refuse to take or receive any perishable property, other than livestock, when entitled to take or receive the same, held by such common carrier for delivery, on demurrage or in storage for a period of 24 hours after notice of demand by such carrier to take or receive such perishable property other than livestock and of intention of such carrier to sell the same in default of compliance therewith as hereinafter provided to be given by such carrier, shall have been duly posted and sent or given by such carrier, any such common carrier may in its discretion, to prevent deterioration or further deterioration, sell such perishable property other than livestock, at public sale, without resorting to the courts, for the purpose of satisfying its lawful transportation, demurrage, or storage charges.

History.—s. 6, ch. 10176, 1925; CGL 6665.

355.07 Sale of perishables other than livestock.—

(1) Before sale of such perishable property shall be made, such common carrier shall give 24 hours' notice by telegraph, telephone, messenger, or other expedited means of communication to the shipper and consignee of such perishable property, if such be known, of the arrival of such perishable property and intention of such common carrier to sell the same at the end of 24 hours to prevent deterioration or further deterioration of the same, and the time and place of holding such sale; or in the case of perishable property held for delivery, or on demurrage or in storage, in the same manner, notice of the demand of such carrier to the shipper and consignee of such perishable property to take or receive the same within 24 hours and of such carrier's intention to sell the same after 24 hours in default of compliance therewith to prevent deterioration or further deterioration of the same, and the time and place of such sale.

(2) No sale shall be made under the provisions of this section unless such common carrier shall, 24 hours prior to such sale, post at the outer door, customarily used by the public, of the local freight office or in the absence of freight office, at the local freight warehouse of such common carrier, in the village, town or city in which such perishable property shall be held or nearest thereto, notice of the arrival of such perishable property and carrier's intention to sell, or in the case of perishable property held for delivery, or on demurrage or in storage, notice of demand to take or receive the same within 24 hours and of such carrier's intention to sell in default of compliance therewith; such notice to be posted shall further contain the names and addresses of the shipper and consignee, if such be known, a brief description of the property to be sold, the reasons for making and the time and place of holding such sale; provided, that if the name of neither the shipper nor the consignee of the perishable property intended to be sold shall be known to such common carrier, then the posting of the notice herein provided of the holding of such sale with a brief description of the perishable property intended to be sold shall be deemed sufficient notice and such sale shall be valid to all intents and purposes.

History.—s. 7, ch. 10176, 1925; CGL 6666.

355.08 Bids; disposition of proceeds.—

(1) At any sale provided for by this chapter, the common carrier shall sell the property upon which it shall have a lien to the highest and best bidder, but may reject any and all bids.

(2) The carrier shall apply the amounts received for the property so sold to the satisfaction of the lawful charges accruing thereupon, whether for transportation, storage, demurrage, refrigeration or otherwise, and, if any surplus be left from the proceeds of such sale after such application, such carrier shall hold the same on deposit for the owners of the property sold, without interest, and may pay the same over at any time thereafter to the persons who would have been entitled to receive the property sold.

History.—s. 8, ch. 10176, 1925; CGL 6667.

355.09 Carrier protected from liability.—No common carrier shall be liable as for a conversion or otherwise for any property sold by it in accordance with the provisions of this chapter.

History.—s. 9, ch. 10176, 1925; CGL 6668.

CHAPTER 356

FENCING AND EVIDENCE IN LIVESTOCK CASES; RAILROADS

356.01 Railroads to be fenced.—Every railroad company, or person now or hereafter operating or constructing any railroad or railway in the state, shall erect and construct and maintain fences on both sides of its railroad suitable and sufficient to prevent the intrusion of any cattle, horses, hogs or other domestic livestock upon its track; provided, that no fence shall be required within the limits of any incorporated town or city, unless by the ordinances of said town or city, nor within 1 mile of any city of 10,000 inhabitants, nor within the limits of any precinct, district, or county or other territory where there is in effect any law making it unlawful for such livestock to run at large.

History.—ss. 1, 2, ch. 4706, 1899; GS 2868, 2869; RGS 4586, 4587; CGL 6669, 6670; s. 1, ch. 14835, 1931.

356.02 Description of fence required; stock guards and crossings.—All fences enclosing railroads in this state shall be substantially built and shall be of such kind as to prevent the intrusion of any and all cattle, horses, hogs or other domestic livestock upon the track of the said railroad, and there shall be a space left for all road crossings, either neighborhood or public, at least 30 feet wide, with such stock guards on both sides of such road crossings as will prevent cattle, horses, hogs or other domestic livestock entering such railroad enclosures; all such fencing from such livestock guards shall run at an acute angle with the railroad track to the main line of fence, and posts shall be placed in the ground not more than 8 feet apart for a distance of 60 feet from such stock guards, and one board shall be placed on said posts 12 inches from the earth, one 36 inches and one 54 inches from the earth, and shall have such additional boards or wires as may be necessary to make the fence suitable and sufficient to prevent the intrusion upon the track by any cattle, horses, hogs and other domestic livestock; and there shall be such crossings and stock guards constructed on all railroads passing through farms at such places as may be reasonably requested by the owners or their agents.

History.—s. 4, ch. 4706, 1899; GS 2870; RGS 4588; CGL 6671.

356.03 Fences to be kept in good repair.—The fences and stock guards required in this chapter shall be kept in good repair and maintained by the companies, person or persons owning or operating the said railroads so that they shall at all times be suitable and sufficient to prevent the intrusion of any cattle, horses, hogs or other domestic livestock upon the tracks of such railroad, and the failure of the railroad company, person or persons to maintain said fence as aforesaid shall subject them to the same penalties as are provided for in this chapter for failure to erect such fences and stock guards.

History.—s. 6, ch. 4706, 1899; GS 2872; RGS 4590; CGL 6673.

356.04 Double damages for killing stock.—Any railroad company, or person owning or operating any railroad in this state who has failed to erect and maintain fences along the sides of its railroad track as is provided in this chapter shall be liable for the full cash value of any and all cattle, horses, hogs or other domestic livestock which may be killed or injured by any train, engine or cars upon the track of the said railroad, if the claim be paid within 60 days after the presentation of the claim for damages by the owner of the killed or injured livestock or his agent or attorney, whether the same was killed or injured negligently or not; provided, that upon the failure to pay the claim within 60 days after its presentation the said railroad companies, or person owning or operating said roads not fenced as herein provided shall be liable for double the value of the animal killed or injured and for attorney's fees.

History.—s. 5, ch. 4706, 1899; s. 1, ch. 5020, 1901; GS 2871; RGS 4589; CGL 6672.

cf.—ss. 356.06, 356.07 When double damages not allowed.

356.05 Presenting claim in writing.—When any livestock is killed or injured upon any railroad in this state, the person entitled to damages therefor shall, by himself, attorney or agent, give notice and present his claim to any general agent or any stock claim agent or general officer of the corporation, or person owning or operating the said railroad, or to any depot or station agent for said corporation or person, residing in the county where such livestock was killed or injured, which said notice and presentation of claim shall be in writing; and if, after such presentation of claim and notice, said corporation or person shall fail to pay the said claim for the space of 60 days, suit may be brought in any court of this state having jurisdiction by the person having the general or special property in said livestock, but nothing herein shall be construed to authorize two suits by different parties for the same cause of action.

History.—s. 7, ch. 4706, 1899; s. 1, ch. 5020, 1901; GS 2873; RGS 4591; CGL 6674.

356.06 Unreasonable or unjust claims where verdict does not exceed amount tendered.—If, when the claim is presented as provided in s. 356.05, said corporation, or person operating the railroad as aforesaid shall deem such claim unreasonable and unjust, and shall tender or offer to pay such amount

for damages as in their estimation is reasonable and just for the livestock so killed or injured, and the claimant shall refuse to accept the amount tendered or offered to be paid, and upon the trial of the cause a jury, or the judge in case the cause be tried without a jury, under the proofs find a verdict for not more than the amount so tendered or offered as aforesaid, the court shall render judgment against the plaintiff in favor of the defendant for all reasonable cost, and said cost shall be deducted from the amount assessed as damages for the livestock killed or injured, and the plaintiff shall not be entitled to any attorney's fees as provided in cases where the plaintiff prevails.

History.—s. 8, ch. 4706, 1899; GS 2874; RGS 4592; CGL 6675.

356.07 Judgment; when rendered; amount; where verdict exceeds amount tendered but is less than amount demanded; where verdict equals demand.—

(1) When the owner of any livestock killed or injured upon any railroad in this state by the engine, train or cars of any company or person owning or operating the said railroad, said road not being fenced, and provided with stock guards as required by this chapter, shall bring suit either by himself, agent or attorney, to collect damages for the killing or injury, after having given the notice required in this chapter, and upon the trial of such case the jury, or in the case the same be tried without a jury, the judge of the court trying the case, shall after hearing the evidence of the value, decide the value to be less than the amount demanded in the written notice and presentation of claim required by this chapter, but more than the amount tendered or offered, then and in that case the court shall render judgment for the plaintiff against the defendant for the actual value only and cost of suit and attorney's fees to be fixed as hereinafter provided.

(2) If the value so decided upon be not less than the amount as originally claimed or demanded, as aforesaid, then in that case the court shall render judgment for the plaintiff against defendant for double the damage found to be due the plaintiff by reason of the killing or injury of the livestock, and also render judgment against the defendant in favor of the plaintiff for all costs of the said suit, which said costs shall include a reasonable attorney's fee, said fee to be determined by the court; provided, however, that no attorney's fee shall be allowed any plaintiff not represented by an attorney in the suit; and provided, that any animal which may be injured by the operation of a railroad in this state so seriously that it cannot reasonably be expected to recover may be killed by the owner, the employees of said railroad or any other person, if necessary to terminate incurable suffering, and the killing of such animal under such circumstances by any person shall be deemed a killing by the railroad company responsible for the injuries under the provisions of this chapter.

History.—s. 1, ch. 5214, 1903; s. 9, ch. 4706, 1899; ch. 5020, 1901; GS 2875; RGS 4593; CGL 6676.

356.08 Liable only for actual value.—Where any railroad company or person owning or operating any railroad in this state is complying with the provisions of this chapter it shall only be liable for the actual value of all livestock, horses, cattle or hogs killed or injured by the operation of its engines or cars, including all costs and expenses and reasonable attorney's fees, which said sums shall be a lien and collectible as provided in this chapter.

History.—s. 13, ch. 4706, 1899; GS 2876; RGS 4594; CGL 6677.

356.10 Injuring or killing prima facie evidence of negligence.—In all cases in which livestock is injured or killed by railway engines or cars within the state, and suit has been or shall hereafter be brought within 12 months after such injury or killing, to recover from the railroad company operating such engines, cars or trains, damages therefor, the fact of the injury or killing of such livestock by such railway engines, cars or trains, when proven to the satisfaction of the jury on the trial of such suit, shall be prima facie evidence of negligence on the part of such railroad company.

History.—s. 1, ch. 3908, 1889; RS 2280; GS 2878; RGS 4596; CGL 6679.

CHAPTER 357

RAILROAD CROSSINGS

357.01 Highway crossings maintained by railroad companies.—All railroad companies, or persons owning or operating a line of railroad, log road or tram road in the state shall build, construct, maintain and keep in good condition highway crossings at all points where said line of railroad is crossed by any public, county or settlement road or by any public street where required by the board of county commissioners or the town council; such crossings to be constructed with as little slant as practicable, so as to render easy passage over same with loaded teams.

History.—s. 1, ch. 6233, 1911; RGS 4597; CGL 6680.
cf.—s. 1.01 "Person" defined.

357.02 Inspection and approval.—The highway and street crossings herein provided for shall at all times be subject to the inspection and approval of the board of county commissioners of the county in which the same is located, or to the inspection and approval of the city or town council if within an incorporated city or town.

History.—s. 2, ch. 6233, 1911; RGS 4598; CGL 6681.

357.03 Notice to railroad company; service.—Whenever any crossing is not constructed or maintained as provided in s. 357.01, the county commissioners, or the city or town council, as the case may be, shall give to the owner or operator of such railroad a notice in writing, setting forth the place and nature of crossing required, or repairs needed, requiring the crossing to be built, or the repairs made, within 30 days from the time of the service of such notice. The service of such notice upon any agent of the owner or operator of such railroad, residing or having an office or place of business in the county, shall be deemed service upon the owner or operator, or such service may be effected by mailing a copy of the notice to any officer or director of the company, or to the owner or operator of such railroad, addressed to him at his usual place of business, with the legal postage thereon.

History.—s. 3, ch. 6233, 1911; RGS 4599; CGL 6682.

357.04 Failure of railroad company to maintain; construction by county or city; lien on roadbed and rolling stock.—If the railroad company, owner or operator of such railroad, log road or tram road shall fail or refuse to construct such crossing or to make the required repairs within the time specified in the notice, then the county commissioners, or the city or town council, as the case may be, shall proceed to have said crossings built or repaired, as required, and upon completion thereof shall file in the office of the clerk of circuit court of the county an itemized statement of the expenses for labor and material, sworn to by the superintendent of the work, which statement shall be by said clerk forthwith recorded in the lien record book, and shall thereupon become a lien upon the roadbed and rolling stock of said railroad.

History.—s. 4, ch. 6233, 1911; RGS 4600; CGL 6683.

357.05 Suit to enforce payment.—Immediately upon recording such statement the said clerk shall send a copy thereof by mail to any officer or agent of the owner or operator of said railroad, log road or tram road, or deliver the same in person, and if such company, owner or operator shall fail to pay the same within 20 days, then suit may be instituted to enforce the payment thereof.

History.—s. 5, ch. 6233, 1911; RGS 4601; CGL 6684.

357.06 Enforcement of lien.—The liens created under the provisions of this chapter may be enforced by an ordinary suit at law, or as is now or may hereafter be provided by law for the enforcement of liens.

History.—s. 6, ch. 6233, 1911; RGS 4602; CGL 6685.

357.07 Attorney's fee.—Judgments rendered and entered under the provisions of this chapter shall include a reasonable allowance for attorney's fees.

History.—s. 7, ch. 6233, 1911; RGS 4603; CGL 6686.

357.08 Trains blocking highways during darkness; warning signals; violation.—

(1) Whenever a railroad train shall engage in a switching operation or stop so as to block a public highway, road or street at any time from one-half hour after sunset to one-half hour before sunrise, the crew of such railroad train shall cause to be placed a lighted fusee or other visual warning device in both directions from such railroad train upon or at the edge of the pavement of the highway, road or street to warn approaching motorists of the railroad train blocking the highway, road or street; provided, this section shall not apply to railroad crossings at which there are automatic warning devices properly functioning or at which there is adequate lighting.

(2) A person who violates any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 67-274; s. 265, ch. 71-136.

CHAPTER 358

TICKETS, PASSES, AND DISCOUNTS

358.01 Agents to be provided with certificates.—Every common carrier shall provide each agent who may be authorized to sell tickets or other evidence of transportation, of the holder's right to travel on the line of such carrier, or any line of which said carrier's line shall form a part, with a certificate setting forth the authority of such agent to make such sale, which certificate shall be attested by the signature of such common carrier, or whenever such common carrier is a corporation, by the signature of one of its proper officers, and posted in a conspicuous place in the office or place of business of such agent.

History.—s. 1, ch. 4702, 1899; GS 2879; RGS 4604; CGL 6689.

358.02 Only authorized agents to be supplied with tickets.—No general passenger agent or other officer of a common carrier whose duty it may be to supply tickets to the agents of said common carrier for sale to the public, shall supply tickets for sale to any person other than the regularly authorized ticket agent as provided for in s. 358.01. No person not possessed of such authority, so evidenced, shall sell, barter, or transfer, for any consideration whatever, the whole or any part of any ticket, pass, or other evidence of transportation; provided, that the purchaser of a transferable ticket in good faith, for personal use in the prosecution of a journey, shall have the right to resell same to a person who will, in good faith, personally use it in the prosecution of a journey; and provided further, that nothing herein shall prevent the properly authorized agent of any transportation company from purchasing from the properly authorized agent of any other transportation company a ticket for a passenger to whom he may sell a ticket to travel over any part of the line for which he is the properly authorized agent so as to enable such passenger to travel to the place or junction from which his ticket shall read.

History.—s. 2, ch. 4702, 1899; GS 2880; RGS 4605; CGL 6690.

358.03 Carrier to redeem unused tickets.—Every common carrier that shall have sold any ticket or other evidence of transportation, of the holder's right to travel on its line or on any line of which it forms a part, shall, if the whole of said ticket be unused, redeem the same, paying therefor the actual amount at which said ticket was sold, or, if any part of such ticket be unused by the purchaser thereof, redeem the same at a rate for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. The purchaser of an unused or partly used ticket or his or her representative, may have the same redeemed at any time within 1 year after its issue if it be unused, or within 1 year after it shall have been partly used, in the manner following; he or she shall present the same to any ticket agent of any common carrier over whose line such ticket was sold to be used, whereupon such ticket agent shall issue to the purchaser, or his or her legal representative, a receipt describing the same, and shall take the name and address of such owner, and shall, within 5 days thereafter, forward to the officer of such common carrier who shall be authorized or designated to redeem such ticket, the said ticket, with such name and address. And said officer whose duty it shall be to redeem such ticket shall, within 30 days after receipt of such ticket with such name and address, forward or mail to such address the value of the ticket as provided in this section. Such redemption shall be made without cost of exchange or other expense to the purchaser of the ticket; provided, that such ticket agent may, in the discretion of the common carrier by which he is appointed, redeem such ticket in cash when presented.

History.—s. 4, ch. 4702, 1899; GS 2881; RGS 4606; CGL 6691.

358.04 Penalty for violations.—Any person violating any of the provisions of, or neglecting to comply with any of the requirements of law relating to the sale of or redemption of tickets, unless otherwise provided, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 4702, 1899; GS 3641; RGS 5577; CGL 7763; s. 266, ch. 71-136.

358.05 Penalty for failure to redeem unused ticket.—Any ticket agent who shall refuse to give to the purchaser a receipt for a ticket unused or partly used, or refuse to take the name and address of the purchaser of the ticket, or who shall fail within 5 days after receiving such ticket to forward the same with the name and address to the proper officer for redemption shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any general passenger agent, or other officer designated by a common carrier as the proper person to redeem its unused or partly used tickets, who shall refuse or fail to redeem such tickets in the

manner prescribed by law within 30 days after the same shall have reached his hands shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 4702, 1899; GS 3642; RGS 5578; CGL 7764; s. 267, ch. 71-136.

358.06 Agent of passenger vessel to be authorized in writing.—

(1) No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owner or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city or other place, together with the street and the street number, in which his office is kept for the sale of tickets, and unless such written authorization is readily available in such office.

(2) This section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel.

History.—s. 1, ch. 67-431.

358.07 Giving of false or misleading information prohibited.—No person issuing, selling or offering to sell or holding himself out as being authorized to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give or cause to be given any false or misleading information or shall print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any false or misleading advertisement, circular, circular letter, pamphlet, card, handbill or other printed paper or notice in regard to the passage, ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel.

History.—s. 2, ch. 67-431.

358.08 Country of registry to be included in advertising of notice.—No person issuing, selling or offering to sell any passenger ticket for passage or conveyance aboard any foreign vessel, including the owner or consignee of such vessel, his agents, servants or employees, shall omit reference to the country of registry of such vessel from any advertisement, circular, circular letter, pamphlet, card, handbill or other printed paper or notice, written or oral, in regard to the passage, ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel. The reference shall be prominently displayed.

History.—s. 3, ch. 67-431.

358.09 Certain information to be included on tickets.—A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument shall state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line if any, to which such vessel belongs, its country of registry, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, shall be signed by their authorized agent.

History.—s. 4, ch. 67-431.

358.10 Violation a misdemeanor.—Any person violating ss. 358.06-358.09 is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History.—s. 5, ch. 67-431.

358.11 Free or reduced transportation prohibited; exception; penalty.—

(1) Any common carrier may grant, and may exchange with any other common carrier, free or reduced transportation or free tickets to or for any of the following classes of persons and property, notwithstanding any such person's status as a state, county, or municipal officer:

(a) Its own officers and own employees (including pensioners, disabled employees, special officers, and persons traveling to accept or leave employment of such common carrier) and their immediate families dependent upon them.

(b) Its contractors and their employees and the persons traveling to accept employment with such contractors engaged in any construction work for such common carriers and their immediate families dependent upon them.

(c) Widows of deceased employees during their widowhood and the members of their immediate families dependent upon them.

(d) Its physicians, surgeons, and salaried attorneys at law and their immediate families dependent upon them.

(e) Persons employed on sleeping, parlor, dining, and express cars while on duty only and baggage-soliciting agents, watch inspectors, and newsboys while on duty only.

(f) Ministers of religion.

(g) Traveling secretaries of Young Men's Christian Associations and Sunday school field secretaries.

(h) Indigent, homeless, or destitute persons when transported by charitable societies and the necessary agents employed in such transportation.

(i) Persons exclusively engaged in charitable or

eleemosynary work, for the purposes of their work.

(j) Persons injured in wrecks and the physicians, surgeons, nurses, relatives, or friends of such injured persons to and from the place of wreck.

(k) Any person, with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitations in this state.

(l) Persons in charge of livestock shipped, from point of shipment to point of destination and return.

(m) Sheriffs of the state without discrimination, when on official duty.

(n) Witnesses attending any hearing or trial before any court or regulatory commission in which a common carrier is interested, including prosecutions for offenses committed against common carriers or against property in their custody. In any suit or hearing before any court or regulatory commission, where any common carrier is a party and shall transport its witnesses or any of them under the provisions of this section and shall obtain judgment in its favor, it shall not be allowed to recover any costs as mileage or otherwise for transporting said witness or witnesses.

(o) The household goods, chattels, or other personal effects of all employees, agents, or servants within the state.

(p) The carriage, storage, or handling of property for charitable purposes or to and from fairs and expositions for exhibit thereat.

(q) Public officers and employees, as defined in s. 112.061(2)(c) and (d), when traveling on behalf of the state or any region or political subdivision thereof for the purpose of promoting economic development or tourism. Said travel shall be approved in writing, prior to being incurred, by the respective department or agency head, the President of the Senate, or the Speaker of the House, whoever is appropriate.

(r) Business prospects, potential business prospects, travel writers, tour brokers, or other persons from the private sector directly connected with the promotion of Florida economic development or tourism.

(2) Any common carrier may grant reduced rates of transportation to or for any of the following classes of persons and property, notwithstanding any such person's status as a state, county, or municipal officer:

(a) For the transportation of freight wholly within the state for the encouragement of manufacturing industries within the state, to be given without discrimination and published in the schedules and rate sheets of such common carriers.

(b) To members or delegates to and from meetings or conventions of any religious body, fraternal society, or educational association or conventions of any other regularly organized association within the state. Such common carrier may include the general public in the benefits thereof, at its option.

(3) Any common carrier may issue mileage, excursion, or commutation or round trip passenger tickets, including excursion rates as heretofore to delegates to political conventions, without favor or discrimination, or second-class tickets at a lower rate of fare than first-class tickets, for the holders of which second-class tickets only second-class accommodations shall be allowed.

(4) No free or reduced transportation shall be lawful except as specified in this section, and all transportation other than free must be paid for in cash.

(5) Any common carrier may grant reduced rates of transportation for solid waste, recovered resources, and recycled materials which are in transit to or from a resource recovery and management facility.

(6) All such free or reduced transportation shall be reported to the Florida Public Service Commission, the Joint Legislative Auditing Committee, and the Auditor General by the carrier issuing the same, on a common form and at such common times as may be prescribed jointly by the commission and the Auditor General.

(7) Any individual violating the provisions of this section, either by issuing a free pass or giving a reduced rate unlawfully or by receiving and using or taking the advantage of the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; and any common carrier violating this section shall be subject to a penalty to be fixed and imposed by the Florida public service commissioners and enforced as provided in chapter 350, in such amount as provided in said chapter 350 for violations thereof in general.

History.—ss. 1-3, ch. 3739, 1887; RS 2691; ss. 4, 19, ch. 4700, 1899; GS 2889, 2919, 3636; s. 1, ch. 5895, 1909; s. 1, ch. 6229, 1911; s. 1, ch. 7319, 1917; s. 1, ch. 7322, 1917; RGS 4565, 4614, 4658, 4659, 5571; s. 1, ch. 9304, 1923; s. 1, ch. 10225, 1925; s. 1, ch. 10235, 1925; s. 1, ch. 10280, 1925; CGL 6628, 6629, 6630, 6699, 6744, 6745, 7757; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 259, ch. 71-136; s. 5, ch. 74-342; s. 1, ch. 79-191.

Note.—Former s. 352.22.

cf.—s. 350.28 Additional penalties.

358.12 Penalty for issuing free pass to public officers or employees.—If any stockholder, director, president, or other officer or agent of any railroad or other transportation company or common carrier in this state, or any person in any way connected with any such company or common carrier, grants, sends, or delivers a free pass over any transportation line, or for any distance thereon, or discounts the fare thereon paid by the public generally, to any public officer or employee as defined in s. 112.061(2)(c) and (d), except when such public officer or employee is a member of a class of persons granted free or reduced transportation under the provisions of s. 358.11, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 3741, 1887; RS 2689; GS 3634; RGS 5569; CGL 7755; s. 260, ch. 71-136; s. 1, ch. 79-191.

Note.—Former s. 352.23.

358.13 Penalty for receiving pass.—Any public officer or employee, as defined in s. 112.061(2)(c) and (d), who receives such pass or any such discount mentioned in s. 358.12 and who does not qualify under the exception provided therein is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 3741, 1887; RS 2690; GS 3635; RGS 5570; CGL 7756; s. 261, ch. 71-136; s. 1, ch. 79-191.

Note.—Former s. 352.24.

CHAPTER 359

EXPRESS COMPANIES; PAYMENT OF CLAIMS; RATES

359.01 Payment of claims; notice of claim; damages; proviso.—Any person doing an express business, or transporting express in this state shall, within 90 days after the filing with said person by any shipper, of his claim for the loss of, or any damage to any shipment or a part of any shipment received from the said shipper by the said person for transportation, pay said claim to said claimant, and if said person fails to pay said claim within the said 90 days from its filing, then he shall pay to said claimant the sum of 25 percent per annum on the principal sum of said claim, and when the said claimant shall bring suit and recover for his claim against the said person it shall be proper and he shall be allowed in said suit the said 25 percent per annum in addition to the principal sum of said claim and have judgment therefor; provided, however, that the claimant shall not recover and have judgment for the said 25 percent per annum unless he recovers judgment for a sum based upon the principal of said claim which is greater than the amount which the said person had offered and tendered to pay the claimant in settlement of the claim before the expiration of the 90 days in which the said person is by this chapter required to pay said claim.

History.—s. 1, ch. 5421, 1905; RGS 4347; CGL 6309.
cf.—s. 1.01 "Person" defined.

359.02 Construction of chapter.—This chapter shall not be construed to be in conflict with the laws of this state regulating and making a legal rate of interest and defining, prohibiting and punishing usurious contracts.

History.—s. 2, ch. 5421, 1905; RGS 4348; CGL 6310.

359.03 Posting schedule of rates.—Every express company doing business in this state shall have posted in a conspicuous place, easily accessible to the public, at every place where articles are received by such company for shipment by express, or delivered by such company, such articles having been received by express, a schedule of rates, plainly printed; and all such articles shall be weighed on demand of and in the presence of the consignor or consignee, his servant or agent, on standard scales to be furnished by the express company, and no charge greater than that specified in the posted schedule shall be made by such express company.

History.—s. 1, ch. 5626, 1907; RGS 4349; CGL 6311.

359.04 Penalty for failure of express companies to post rates; charging greater rate than posted.—Any express company doing business in this state violating, failing or refusing to comply with the provisions of s. 359.03 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Every day of such violation, failure or refusal shall constitute a separate and distinct offense; provided, however, that if such violation be an excessive charge for transporting or carrying any article or thing, and within 15 days after demand at the place where paid such excess over the proper charge be returned to the party paying the same, then the penalty or forfeiture above provided shall not be enforced.

History.—s. 2, ch. 5626, 1907; RGS 5691; CGL 7905; s. 268, ch. 71-136.

359.05 Rate fixed for transporting certain packages.—Any express company doing business in the state shall transport and carry any package of merchandise not weighing over 5 pounds, of the value of not more than $50, from point to point in this state not exceeding 200 miles, for the sum of 25 cents, and shall charge no more for the transportation of the same.

History.—s. 1, ch. 5627, 1907; RGS 4350; CGL 6312.

359.06 Penalty for failure of express company to carry certain packages not exceeding 200 miles for 25 cents.—Any express company, its agents, or employees, who shall violate the provisions of s. 359.05, and collect more than the amount as prescribed, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5627, 1907; RGS 5693; CGL 7907; s. 269, ch. 71-136.

CHAPTER 360

SPECIAL POWERS OF RAILROAD AND CANAL COMPANIES; TOLLS

360.01 Certain powers enumerated.—Every railroad and canal company shall be empowered:

(1) To cause such examinations and surveys for the proposed railroad or canal to be made as shall be necessary for the selection of the most advantageous route, and for such purposes by its officers, agents and servants to enter upon the lands or water of any person for that purpose.

(2) To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its road or canal, but the real estate received by voluntary grant shall be held and used for purposes of such grant only.

(3) To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its road or canal and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to sell, lease or buy any lands or real estate not necessary for its use.

(4) To lay out its road or canal, not exceeding 200 feet in width, and to construct the same, and, for the purpose of cuttings and embankments and for obtaining gravel and other material, to take as much land as may be necessary for the proper construction, operation and security of the road or canal, or to cut down any trees that may be in danger of falling on the road or into the canal, making compensation therefor as provided for land taken for the use of the company.

(5) To construct its road or canal across, along or upon or use any stream of water, watercourse, street, highway or canal which the route of its road or canal shall intersect or touch, and whenever the track of any railroad or canal shall touch, intersect or cross any road, highway or street, it may be carried over or under such railroad or canal, as may be found most expedient for the public good; and in case any embankment or cut in the construction of any railroad or canal shall make it necessary to change the course of any highway or street, the company may construct such road or canal so as to change the course or direction of any road, highway or street.

(6) To cross, intersect or unite its railroad with any other railroad heretofore or hereafter to be constructed at any point in its route or upon the ground of any other railroad company with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections; and every company whose railroad is or shall be hereafter intersected by any new railroad can unite with the owners of such new railroads forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor and all the points and matters of such crossing and connections, the same shall be ascertained according to the provisions for exercising the right of eminent domain, and no company which shall have obtained the right-of-way and constructed its road at the point of intersection before the beginning of proceedings for condemnation shall be required to alter the grade or change the location of its road.

(7) To take and convey persons or property over their railroad or canal by the power or force of steam or animals or by any mechanical power, and to receive compensation therefor, and to do all the business incident to railroads or canal business.

(8) To erect and maintain all convenient buildings, wharves, docks, stations, fixtures and machinery for the accommodation and use of their passengers and freight business.

(9) To regulate the time and manner in which passengers and property shall be transported.

(10) To borrow such sums of money at such rates of interest and upon such terms as the company or its board of directors shall authorize or agree upon and may deem necessary or expedient, and to execute one or more trust deeds or mortgages, or both, as the occasion may require, of railroads or canals constructed or in process of construction by said company, for the amounts borrowed or owing by such company, as its board of directors shall deem expedient; and such company may make such provisions in such trust deed or mortgage for transferring their railroad track or canal right-of-way, depots, grounds, rights, privileges, franchises, immunities, machines, houses, rolling stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroads or canals, in any manner whatsoever then belonging to the said company, or which shall thereafter belong to it, as security for any bonds, debts or sums of money as may be secured by such trust deed or mortgage, as they shall think proper; and in case of sale of any railroad or canal, or any part thereof, constructed or in course of construction by any railroad or canal company, by virtue of any trust deed or of any foreclosure of any mortgage thereon, the parties acquiring title under

such, and their associates, successors or assigns, shall have or acquire thereby, and shall exercise and enjoy thereafter the same rights, privileges, grants, franchises, immunities and advantages in or by said trust deed or mortgage enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage or contracting such debt, so far as the same relate or appertain to that portion of said road or canal or the line thereof mentioned or described and conveyed by said mortgage or trust deed, and no further, as fully and absolutely in all respects as the corporators, officeholders, shareholders and agents of such company might or could have done, had not such sale or purchase taken place, and such purchasers, their associates, successors or assigns may become incorporated as provided by law.

History.—s. 10, ch. 1987, 1874; RS 2241; GS 2803; RGS 4354; CGL 6316.

360.02 Railroad and canal companies may condemn land for terminal facilities.—Any railroad or canal company, which is a public carrier or intended to be, in the construction of its railroad or canal, or in the extension of the same, for the purpose of securing terminal facilities therefor on any of the waters of any river, lake, bay, gulf or ocean, shall have and they are hereby given the right to condemn for the use of such railroad or canal company, a sufficient area of land therefor and included in which shall be space on shore for depots, yards, switches, turntables, shops and storehouses, and such area in and over the waters to the limit of the channel, natural or artificial, of rivers, lakes, bays, gulf or oceans sufficient for ample room for docks, wharves, elevators, berths for ships, warehouses and storehouses, tracks, switches, and all required facilities for the reception, retention, transfer and forwarding of commerce. However, such right shall be subordinate to the right of the governmental entity wherein the property is located to condemn said property through the exercise of its powers of eminent domain for a public purpose.

History.—s. 1, ch. 4426, 1895; GS 2804; RGS 4355; CGL 6317; s. 1, ch. 74-47.
cf.—Ch. 73 Eminent domain.
Ch. 361 Eminent domain; public utilities.

360.03 When land belongs to state.—Whenever the land or water privileges mentioned in the preceding section shall belong to the state, the use thereof for the aforesaid purposes shall vest in said railroad or canal company upon the occupancy of both or either the said land or water by such company for such purposes. Before any rights shall accrue under this section, the railroad or canal company desiring such use shall file in the office of the Board of Trustees of the Internal Improvement Trust Fund a map or plan of the area of lands and of water, or either, so intended to be used or occupied by it, with such definiteness as may be practicable so as to avoid confusion, and shall apply for the approval of the Board of Trustees of the Internal Improvement Trust Fund of said map or plan. When such plat or plan is so filed and such approval secured, the party filing same and securing such approval shall secure the first right to the occupancy and use of the designated locality, which first right of first occupancy and use shall be lost by failure to use any of the premises for the aforesaid purposes within 2 years from the date of such filing. In the event the Board of Trustees of the Internal Improvement Trust Fund shall deem the acreage claimed under this section to be excessive, the price to be paid for such alleged excess shall be determined by agreement between such railroad or canal company and the Board of Trustees of the Internal Improvement Trust Fund. In the event agreement cannot be reached, the right of such railroad or canal company to occupy and use such alleged excess and the price, if any, to be paid for same shall be determined by a proceeding by such railroad or canal company to condemn said land according to the provisions of law respecting the condemnation of land by railroad companies.

History.—s. 2, ch. 4426, 1895; GS 2805; RGS 4356; s. 1, ch. 9291, 1923; CGL 6318; s. 2, ch. 61-119; ss. 10, 27, 35, ch. 69-106; s. 1, ch. 70-308; s. 103, ch. 71-355.
cf.—Ch. 73 Eminent domain.

360.04 Right-of-way through state lands.—Every railroad or canal company which shall have located or constructed, or which shall hereafter locate or construct, its road or canal through any seminary lands, school lands, or swamp and overflowed lands owned and held by this state shall have the right to take, occupy, hold, and possess for the purposes of a railroad or canal a strip of land 200 feet wide through or across each and every tract of land so owned or held by the state, or over which said railroad or canal is or shall be constructed. This section shall not be applicable to any lands that shall be sold by the state prior to the actual survey and location of any such road or canal line and the filing of a plat of such road or canal line in the office of the Board of Trustees of the Internal Improvement Trust Fund as prescribed by the chapter on internal improvements.

History.—s. 24, ch. 1987, 1874; RS 2243; GS 2807; RGS 4358; CGL 6320; ss. 10, 35, ch. 69-106; s. 2, ch. 70-308.

360.05 Rolling stock to be fixtures; mortgages affecting after-acquired property.—All rolling stock of any railroad company used or employed in connection with its railroad shall be fixtures; and all such property and additional rights-of-way, depots, grounds and other real property acquired subsequently to any deed of trust or mortgage, which may be described as provided for therein, shall be subject to the same lien as is created by such trust deed or mortgage upon the property therein described and to which the company had title at the time of its execution.

History.—s. 31, ch. 1987, 1874; RS 2242; GS 2806; RGS 4357; CGL 6319.

360.06 Right-of-way through lands of persons not sui juris.—In case any title or interest in real estate required by any railroad company formed under any law of this state for its incorporation shall be vested in any trustee not authorized to sell, release and convey the same, or in an infant, idiot or person of unsound mind, the circuit court by a summary proceeding or petition may authorize and empower such trustee or the guardian of such infant, idiot or person of unsound mind to sell and convey the same to such company for the purposes of its incorporation on such terms as may be just; and in case any such infant, idiot or person of unsound mind has no guardian, the said court may appoint a

guardian for the purpose of making such sale, release or conveyance, or may require security from such guardian as the court may require and deem proper. Before any conveyance or release authorized by this section shall be executed, the terms on which the same is executed shall be reported to the court on oath, and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report and direct the proper conveyance and release to be executed, which shall have the same effect as if executed by an owner of said land having legal power to sell and convey the same.

History.—s. 23, ch. 1987, 1874; RS 2244; GS 2808; RGS 4359; CGL 6321.

360.07 Crossing highways.—Whenever the track of a railroad or a canal constructed by a company formed under any law of this state shall cross a railroad or highway, such highway may be crossed under or over the track, as may be found most expedient, and in case where an embankment or cutting shall make a change in the line of such highway or is desirable with a view to more easy ascent or descent, said company may take such additional lands for the construction of such road or highway on such new line as may be deemed requisite by the directors unless the land so taken for the purpose aforesaid shall be donated by the owners. The county commissioners shall declare such roads or highways, as located by the railroad or canal company, open for the purposes of a public road or highway, without cost or expense to such railroad or canal company, and such land so declared open shall be held for highway purposes.

History.—s. 22, ch. 1987, 1874; RS 2245; GS 2809; RGS 4360; CGL 6322.

360.08 Change of route.—The directors of every railroad or canal company may, by a vote of two thirds of their whole number, at any time, alter or change the route or part of the route of the road or canal as constructed if it shall appear to them that the line can be improved thereby. The company shall make and file in the office of the Board of Trustees of the Internal Improvement Trust Fund a certificate of such alteration or change, which certificate shall then be entered of record, and such company shall have the same right and power to acquire title to any land required for the purposes of the company in such altered or changed route as if the road had been located there in the first instance. No such alteration shall be made in any city or town, after the road shall have been constructed unless the same shall be sanctioned by a vote of the common council of the city, and in case of any alteration made in the route of any railroad which the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. All the provisions of law relative to the first location and acquiring title to land shall apply to every such new or altered portion of the route.

History.—s. 21, ch. 1987, 1874; RS 2246; GS 2810; RGS 4361; CGL 6323; ss. 10, 35, ch. 69-106; s. 3, ch. 70-308.

360.09 Extension.—Any railroad or canal company now existing or hereafter organized under the laws of this state may extend its railroad or canal from any point named in its charter, or may build branch railroads from any point or points on the line of road. Before making any such extension or building such branch road or canal, the company shall, by resolution of its board of directors to be entered in the records of its proceedings, designate the route of such proposed extension or branch in the manner prescribed in s. 360.08 and file a certificate as therein provided.

History.—s. 12, ch. 1987, 1874; RS 2247; GS 2811; RGS 4362; CGL 6324.

360.10 Consolidation, lease and purchase.—Any railroad or canal company in this state may make and enter into contracts with any railroad or canal company which has constructed or shall hereafter construct any railroad or canal within this state or in another state as will enable said companies to run their roads in connection with each other, and to merge their stock, or to consolidate with any company within or without this state, or to lease and purchase the stock and property of any such company, and hold, use and occupy the same in such manner as they shall deem most beneficial to their interests. It is lawful for such companies to build, construct and run as a part of their corporate property such number of steamboats or vessels as they may deem necessary to facilitate the business operation of such company or companies. No railroad company or canal company shall consolidate its franchises or its line or lines or its management with the franchises, line or lines or management of any company or person owning or controlling any parallel or competing line of railroad or canal without permission from the Florida Public Service Commission, and all such consolidations or attempted consolidations, without permission as aforesaid, shall be ultra vires.

History.—s. 28, ch. 1987, 1874; s. 1, ch. 3745, 1887; RS 2248; GS 2812; s. 1, ch. 6230, 1911; RGS 4363; CGL 6325; s. 1, ch. 63-279; s. 1, ch. 65-52.

360.11 Canal company may fix rates of toll, etc.—The president and directors of any canal or navigation company are authorized to agree upon such rates of tolls for the use of such navigation as they may deem reasonable, and as shall be approved by the Board of Trustees of the Internal Improvement Trust Fund, and such company may collect tolls on all vessels or other watercraft which may pass or repass through any canal which such company may cut or construct, or which may pass or repass through any channel they may have dredged or deepened, and such company shall be entitled to demand and receive said tolls on all produce, merchandise, goods or other articles which may be transported through any of the canals cut or waters improved by such company; and all produce, goods, merchandise, boats or other articles or things which may be transported or conveyed through any of said canals constructed, or waters made navigable, shall be liable for the tolls and fees to which they are respectively chargeable, and may be detained until the same be paid and acquitted.

History.—s. 12, ch. 1639, 1868; RS 2249; GS 2813; RGS 4364; CGL 6326; s. 2, ch. 61-119.

360.12 Canal tolls regulated by Florida Public Service Commission.—The regulation of canal tolls on any canal or inland waterway on which

boats are operated shall be within the province of the Florida Public Service Commission, and the Florida Public Service Commission shall fix such schedules of tolls or traffic charges to be charged on any public canal.

History.—s. 1, ch. 6888, 1915; RGS 4367; CGL 6329; s. 1, ch. 63-279; s. 1, ch. 65-52.

360.13 Regulation of traffic charges by commission.—The Florida Public Service Commission shall have the same supervisory authority over the canals and inland waterways to regulate traffic charges as they have over railroads and other common carriers.

History.—s. 2, ch. 6888, 1915; RGS 4368; CGL 6330; s. 1, ch. 63-279; s. 1, ch. 65-52.

360.14 Companies may exercise rights outside of state.—Any railroad or canal company heretofore or hereafter incorporated under the laws of this state may exercise all its rights, franchises and privileges in any other state or territory of the United States, under and subject to the laws of the state and territory where it may exercise, or attempt to exercise, the same, and may accept from any other state or territory and use any other additional power and privilege applicable to the carrying of persons and property by railway, steamboat or ships, in said state or territory, or on the high seas or otherwise, applicable to the doings of said company as herein provided.

History.—s. 39, ch. 1987, 1874; RS 2250; GS 2814; RGS 4365; CGL 6327.

360.15 Companies incorporated in other states may construct or own lines in this state.—Any railroad or canal company already or hereafter organized under or by virtue of the laws of any other state or territory, desiring to extend or construct the whole or any part of the whole of its line of railroad or canal in this state shall, upon filing with the Department of State a duly authenticated copy of its charter or articles of incorporation, be entitled to all the franchises, rights, powers and privileges enjoyed by, and shall be subject to all the liabilities, obligations and penalties imposed upon, domestic companies of the same nature. Whenever a railroad company organized under and by virtue of the laws of another state becomes the owner of a line of road already completed in this state, said railroad company, upon filing with the Department of State a copy of its charter or reorganization either before or after the enactment of this provision, shall be entitled to the same franchises, rights, powers and privileges enjoyed by, and shall be subject to the same liabilities, obligations and penalties imposed upon, domestic companies of the same nature. Before any foreign railroad or canal company shall transact business in Florida, it shall pay to the Department of State, the same sum required of any other foreign corporation to obtain a permit to do business in Florida; and such foreign corporation shall at all times be subject to and shall comply with all the provisions of law relative to obtaining permits to transact business in Florida, but no foreign railroad or canal company now doing business in Florida shall be required to obtain such permit.

History.—s. 1, ch. 3906, 1889; RS 2251; s. 1, ch. 4615, 1897; GS 2815; s. 1, ch. 7836, 1919; RGS 4366; CGL 6328; ss. 10, 35, ch. 69-106.

CHAPTER 361

PUBLIC UTILITIES; SPECIAL POWERS

PART I EMINENT DOMAIN RIGHTS (ss. 361.01-361.08)

PART II JOINT ELECTRIC POWER SUPPLY PROJECTS (ss. 361.10-361.18)

PART I

EMINENT DOMAIN RIGHTS

361.01 Eminent domain.—The president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works, or their properly authorized agents, may enter upon any lands, public or private, necessary to the business contemplated in the charter, and may appropriate the same, or may take from any land most convenient to their work, any timber, stone, earth or other material which may be necessary for the construction and the keeping in repair of its works and improvements upon making due compensation according to law to private owners.

History.—s. 10, ch. 1639, 1868; RS 2158; GS 2683; RGS 4111; CGL 6042.
cf.—Ch. 73 Eminent Domain.
ss. 360.01, 360.02 Railroads and canals.
s. 362.02 Telegraph and telephone companies.

361.02 Constructing dams for waterpower.—Whenever any person owning lands in this state on any watercourse, may desire to erect dams for furnishing power for a water gristmill, electric light power, or other machine for public utility, and shall not have the fee simple title to the lands on the opposite side thereof, against which the petitioner would abut his dam, or surrounding lands which would be overflowed thereby, he may proceed to condemn such affected lands under the provisions of law relating to the condemnation of lands for other purposes.

History.—s. 1, ch. 5198, 1903; GS 2684; RGS 4112; CGL 6043.

361.03 Right of electric railway companies.—Any electric railway company operating or constructing any line of its railway outside the incorporated limits of cities or towns in this state, whether for the purpose of transporting passengers exclusively or not, shall have the same rights, powers and privileges of eminent domain as are now exercised and enjoyed by all railroad and canal companies in this state, as and with reference to and concerning the condemnation of public and private property for the right-of-way of such railroads and canals, and such electric railway company shall have the right, privilege and authority to condemn and acquire such right-of-way for the construction of its lines in the same manner and by the use of the same process as is now prescribed by the laws of this state for the condemnation of right-of-way for railroads and canals, and each and every one of the laws of the state applying to the condemnation of right-of-way for railroads and canals in this state, shall apply to, govern and control the acquisition of such right-of-way by and for such electric railway companies.

History.—s. 1, ch. 5018, 1901; GS 2685; RGS 4113; CGL 6044.

361.04 Right of eminent domain to waterworks companies.—Any corporation organized under the laws of this state, either general or special, for the purpose of supplying any city, town, village, or the inhabitants thereof, or any community with water for domestic or sanitary purposes, or for fire protection, shall have the right, through its officers or agents, to enter upon any land, public or private, necessary to the business contemplated in its charter, and may appropriate the same; or may take from any land most convenient to its works, any timber, stone, earth, water or material which may be necessary for the construction, operation, keeping in repair or preservation of such works, upon making due compensation according to law to private owners; and should such waterworks company derive its supply of water, or any part thereof, from any lake, pond or stream of water, whether surface of subterranean, it may, upon making compensation as above specified, to private owners, appropriate any land lying contiguous to such pond, lake or stream, necessary for the preservation or protection of said water from diversion or contamination.

History.—s. 1, ch. 4165, 1893; GS 2686; RGS 4114; CGL 6045.
cf.—Ch. 73 Eminent domain.

361.05 Right of eminent domain to natural gas companies.—Any corporation organized under the laws of this state, or by virtue of the laws of any other state, and qualified to do business in this state, for the purpose of supplying any city, town, village or the inhabitants thereof, or any community with natural gas for domestic or industrial purposes, shall have the right of eminent domain to lay its pipelines and works; to cause such examinations and surveys for the proposed pipelines to be made as shall be necessary for the selection of the most advantageous routes; to enter upon any land, public or private, necessary to the business contemplated in its charter; to construct its pipelines across, over, under, along and upon any stream of water, watercourse, canal, lake, bay, gulf, road, street, highway, railroad

and transmission line; to take from any land most convenient to its pipelines and works, any timber, stone, earth, water or material which may be necessary to the construction, operation, keeping in repair or preservation of its pipelines, works and improvements, upon making due compensation according to law to private owners, with such reservation, if any, of oil, gas and mineral rights as said owners may determine. If, in the event it should become necessary to make any repairs to or relocation of any tracks of any railroad or for the performance of any work of construction or reconstruction by any railroad upon its right-of-way, it should become necessary to temporarily or permanently relocate any natural gas pipeline constructed upon any railroad right-of-way, such work incident to the relocation of such natural gas pipeline shall be performed, and the expense borne, by the company owning or operating said pipeline.

History.—s. 1, ch. 26893, 1951.

361.06 Right of eminent domain to petroleum and petroleum products pipeline companies.—Any pipeline company which is or which intends to be a common carrier of petroleum and petroleum products and which is duly incorporated for such purpose under the laws of this state, or which is a foreign corporation and is qualified to do business in this state as a common carrier of petroleum and petroleum products shall have all the rights of eminent domain and all other rights granted to natural gas companies under s. 361.05 for the purpose of acquisition of rights-of-way for the installation, operation, maintenance, repair and replacement of its pipelines and all structures, pumping stations and other installations and works incident thereto. It is specifically provided, however, that no such company shall have any right of eminent domain as to any property belonging to or operated by the state or any agency thereof, or by any county, school board, municipality or public body. However, any such pipeline company shall have the right to all necessary permits to install, operate, maintain, repair and replace its pipelines under, along and across such property, subject only to reasonable regulations that may be imposed by the particular authority having jurisdiction of such property.

History.—s. 1, ch. 57-1983; s. 1, ch. 69-300.

361.07 Right of eminent domain to companies owning and operating sewer systems.—Any corporation, person or persons owning or operating a sewer system in this state duly authorized and regulated by the Florida Public Service Commission, or county in the state for the collection, treatment, purification or disposal of sewage effluent and residue for the public shall have the right of eminent domain to enter upon any land, public or private, necessary to the business of operating such aforesaid sewer system for the public and may appropriate the same or any part thereof necessary for the operation of such sewer system, upon making due compensation according to law to private owners; provided that any lands so appropriated shall revert to the person or his successor in title from whom the land was acquired, should said sewer system be abandoned or cease to operate as a sewer system.

History.—s. 2, ch. 65-248.

[1]361.08 Right of eminent domain for coal pipeline companies.—

(1) It is the intent of the Legislature that the purpose of adopting this section to provide eminent domain powers and related benefits to certain firms is to make available low-cost electric power to all residents of the state and that this section should be construed consistently with this public interest policy.

(2) Any corporation, partnership, joint venture, association, or other legal entity organized under the laws of this state, or under the laws of any other state and qualified to do business in this state, for the purpose of supplying any electric utility or utilities; any city, town, or village or the inhabitants thereof; or any community with coal or its derivatives [2]or any mixture [2]or combination thereof by pipeline, and for the purpose of serving as a common carrier operating or proposing to operate a pipeline or pipelines for transporting or delivering coal or its derivatives or any mixture or combination thereof, shall have the right of eminent domain, for the purpose of acquiring title, easements, rights-of-way, or other rights or interests in property, necessary to acquire and take private property which is or may be needed for the construction, operation, maintenance, repair, or replacement of coal slurry and derivative plants, pipelines, pumping stations, and any other installations and works incident thereto. The procedure to condemn property or interest therein shall be exercised in the manner set forth in chapters 73 and 74. In any condemnation proceeding under this act, the circuit court shall restrict the exercise of the right of eminent domain in the following particulars:

(a) The right of eminent domain shall be limited to the taking of property or an interest therein from the owner which results in the least property or interest therein being taken to effect the purpose of the condemning entity.

(b) All takings shall be subject to the legal obligation (which shall become a restrictive covenant on the property or interest therein taken) on the part of the condemning authority and its successor in title or interest, jointly and severally, to convey the title or property interest taken to the condemnee or his heirs, successors, or assigns if the condemned property or interest therein is not used within a reasonable time after the taking, which time limit shall be fixed by the court in the condemnation proceeding.

(c) If the property or interest therein is conveyed to the condemnee or to his heirs, successors, or assigns, the grantee of such conveyance shall pay or cause to be paid to the condemning authority or to its successor in title or interest, as the case may be, consideration, in cash, which shall be equal to the value of the condemned property or interest therein being conveyed, as determined as of the time of the taking, discounted at a rate of 10 per cent per year, compounded annually, from the date of the taking to the date of the conveyance.

(d) The court, in any condemnation proceeding brought pursuant to this section, shall be bound by the findings of the Florida Public Service Commis-

sion on the general issues of economic and environmental feasibility as determined pursuant to s. 350.80.

History.—ss. 1, 2, ch. 79-236.

[1]Note.—Section 5 of ch. 79-236 provides that: "This act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline." Section 6 of that act provides further that: "There is created the Coal Slurry Pipeline Study Committee . . . . The committee shall study the net energy cost of construction and maintenance of a coal slurry pipeline in this state, its overall impact on other transportation modes and the costs of moving other commodities, freight and passengers by such other transportation modes, and other health, economic and social impacts of a coal slurry pipeline. Such study shall be completed and submitted to the Speaker of the House and the President of the Senate on or before February 1, 1980. This act shall not take effect until completion of this report and completion of the regular session of the 1980 Legislature."

[2]Note.—The word "or" was substituted for "and" by the editors.

PART II

JOINT ELECTRIC POWER SUPPLY PROJECTS

361.10 Purpose.—The purpose of this act is to implement the provisions of s. 10(d), Art. VII of the State Constitution, as amended. This act may be known and cited as the "Joint Power Act."

History.—s. 1, ch. 75-200.

361.11 Definitions.—When used in this part:

(1) "Project" means a joint electric power supply project and any and all facilities, including all equipment, structures, machinery, and tangible and intangible property, real and personal, for the joint generation or transmission of electrical energy, or both, including any fuel supply or source useful for such a project.

(2) "Electric utility" means any municipality, authority, commission, or other public body, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electrical energy generation, transmission, or distribution system within the state on June 25, 1975.

History.—s. 2, ch. 75-200.

361.12 Joint electric power supply project.—In addition to its existing powers, any electric utility, by participating in an agreement to implement a project, is authorized and empowered to join with any other electric utility or group of electric utilities for the purposes of jointly financing, acquiring, constructing, managing, operating, utilizing, and owning any project or projects in accordance with the provisions of this act, and, in the implementation of this act, may, by providing in the agreement, create any organization, association, or legal entity for the accomplishment of the purposes of this act.

History.—s. 3, ch. 75-200.

361.13 Powers.—Any electric utility participating in an agreement to implement a project has the following additional powers as they may relate to the project:

(1) To plan, finance, acquire, construct, purchase, operate, maintain, use, share cost of, own, lease, sell, or dispose of any project or projects within or without the state.

(2) To exercise the power of eminent domain.

(3) To purchase capacity or energy, or both, in any quantity agreed upon in the joint power agreement from any project in which the purchaser has an ownership interest.

History.—s. 4, ch. 75-200.

361.14 Limitation on sale, etc., of joint project energy.—The additional powers and authority specifically provided for in this act shall in no way be construed to authorize or permit the sale, transfer, or distribution of capacity or energy or both by the project, except to electric utilities which have entered into a project agreement with each other. Nothing herein contained shall limit or restrict any joint participant in selling, transferring, or distributing any portion of its entitlement of capacity or energy or both in a project.

History.—s. 5, ch. 75-200.

361.15 Issuance of bonds.—For the purpose of financing or refinancing the cost of a project or projects, any municipality, authority, board, commission, or other public body which is an electric utility as defined in this act and is a participant in a project under this act may exercise all the powers in connection with the authorization, issuance, and sale of bonds as the same are conferred upon municipalities by chapter 159, Part I. All of the privileges, benefits, powers, and terms of chapter 159, Part I, shall be fully applicable to such body. For the purpose of this section a project as defined in this part shall be a project within the definition of the term project in subsection 159.02(4).

History.—s. 6, ch. 75-200.

361.16 Powers supplemental.—The powers conferred by this act shall be in addition, and supplementary, to existing powers and statutes, and this act shall not be construed as altering, repealing, or limiting any of the provisions of any other law, general, local, or special, or of any articles of incorporation of an electric utility. However, when the exercise of any power conferred on a municipality, authority, commission, or other public body by this act would conflict with a limitation upon the public body contained in its charter or otherwise expressed by special act, such charter or special act limitation shall be superseded by this act for the purposes of the exercise of such power pursuant to this act.

History.—s. 7, ch. 75-200.

361.17 Project taxing power; interests subject to taxation.—Except as provided in s. 10, Art. VII of the State Constitution, no joint electric supply projects authorized under this statute shall lend or use its taxing power or credit to aid any corporation, association, partnership, or person. The private interest portion of such joint projects shall be subject to all taxation in accordance with their proportionate interest in such projects.

History.—s. 8, ch. 75-200.

361.18 Construction.—The provisions of this part, being necessary for the welfare and prosperity of the state and its inhabitants, shall be liberally construed to effect its purposes.

History.—s. 9, ch. 75-200.

CHAPTER 362

SPECIAL POWERS OF TELEGRAPH AND TELEPHONE COMPANIES

362.01 To occupy roads.—Any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set so as to obstruct or interfere with the common uses of said roads or highways. Permission to occupy the streets of an incorporated city or town must first be obtained from the city or town council.

History.—s. 1, ch. 782, 1856; RS 2256; s. 1, ch. 5262, 1903; GS 2820; RGS 4373; CGL 6337.

cf.—ss. 338.17-338.20 Utilities along roads.
s. 364.01 Subject to regulation of Florida Public Service Commission.

362.02 Powers of eminent domain.—Any telegraph or telephone company now organized or which may hereafter be organized under the laws of this or any other state shall have the right to construct, maintain and operate lines of telegraph or telephone along and upon the right-of-way of any railroad in the state, and to that end is granted all powers for the exercise of the right of eminent domain; provided, the ordinary travel or use of said railroad is not interfered with by reason thereof; and provided further, that no pole shall be erected nearer than 20 feet from the outer edge of the track, unless by the consent of the railroad company.

History.—s. 1, ch. 5211, 1903; GS 2821; RGS 4374; CGL 6338.

cf.—Ch. 73 Procedure in exercising right of eminent domain.
ss. 338.17-338.20 Utilities along roads.

CHAPTER 363

TELEGRAPH AND CABLE COMPANIES

363.01 Rates.—No telegraph, cable company nor any company transmitting telegraph messages in the state shall charge and collect more than 4 cents per word for the first 10 words, exclusive of the date, address and signature, of any message transmitted over any ocean or cable telegraph line a distance of 100 miles; 2 cents per word for every additional word for the same number of miles within the state and proportionate rates for any greater or less number of miles that any message is transmitted. They shall also not charge more than 2 cents per word for the first 10 words of any message transmitted over any land telegraph line within the state for the first 100 miles, 1 cent per word for every additional word of any message for the same number of miles within the state and proportionate rates for any greater or less number of miles that any message is transmitted.

History.—s. 1, ch. 3609, 1885; RS 2258; GS 2829; RGS 4382; CGL 6346; s. 7, ch. 22858, 1945.

363.02 Liability for failure to promptly deliver messages; proviso.—Any telegraph company owning or operating a telegraph line wholly or partly in this state, and engaged in transmitting messages for a consideration, who shall negligently fail promptly to transmit and deliver to the addressee, any message received by such company or by any of its agents or employees for transmission, shall be liable to the sender of such message in a penalty for $50, and in addition thereto, shall be liable to both the sender and to the addressee of such message for all damages which they or either of them may sustain in consequence of such negligent failure promptly to transmit and deliver any message so received for transmission as aforesaid, and the company shall not be relieved from such penalty or liability by any stipulation or notice to the contrary; provided, that the provisions of this section relative to the delivery of messages shall apply only to deliveries in incorporated cities and towns.

History.—s. 1, ch. 5628, 1907; RGS 4383; CGL 6347.

363.03 Presumption of negligence.—The failure promptly to transmit or to deliver to the addressee any message so received for transmission as aforesaid shall be presumed to be due to the negligence of the company accepting such message for transmission until the contrary shall be made to appear.

History.—s. 2, ch. 5628, 1907; RGS 4384; CGL 6348.

363.04 Refusing messages for transmission; damages; evidence, etc.—Any telegraph company owning or operating any telegraph line or lines wholly or partly in this state and engaged in transmitting messages, for a consideration, who shall refuse to receive for transmission any legible message tendered to it or to any of its agents or employees for transmission at any office or place where such messages are usually received for transmission during the usual hours in which the messages are received at such office or place for transmission to the destination to which the message so refused is addressed, provided, such destination is a place to which messages are usually transmitted, together with the usual charge for the transmission of such a message, shall be liable to the sender and addressee of such message in a penalty of $50, and in addition thereto shall be liable both to the sender and to the addressee of such message for all damages which they or either of them may sustain in consequence of the refusal to receive, transmit and deliver such message unless it shall be made to appear that the line or lines over which such message should be transmitted is or are in such condition that such message could not be transmitted by means thereof, and the burden of showing such a condition of said line or lines shall be upon the company.

History.—s. 1, ch. 5629, 1907; RGS 4386; CGL 6350; s. 7, ch. 22858, 1945.

363.05 Attorney's fee.—Any person recovering the penalty specified in, or any damage under, ss. 363.02-363.04 shall be entitled to recover, in addition thereto, 10 percent of the amount so recovered as attorney's fees.

History.—s. 3, ch. 5628, 1907; s. 2, ch. 5629, 1907; RGS 4385, 4387; CGL 6349, 6351.

363.06 Recovery for mental anguish and physical suffering; burden of proof.—Persons engaged in the business of transmitting telegrams into or out of this state, or from one point to another point in this state, shall be liable in damages to the sender and addressee, jointly or severally, of any telegram received for transmission and delivery, whether such telegram is received for transmission into or out of this state, or from one point to another point within this state, for mental anguish, distress or feeling, physical and mental pains and suffering resulting from the negligent failure to promptly transmit or promptly deliver such telegram, or because of the negligent failure to correctly transmit and deliver such telegram. In all cases brought under ss. 363.06-363.10, the burden of proof shall be upon the defendant to show to the satisfaction of the jury, or if there be no jury, to the satisfaction of the judge trying the case, by a preponderance of the evidence, that such defendant was free from fault in

and about the transmission and delivery of any telegram received for transmission and delivery.

History.—s. 1, ch. 6522, 1913; RGS 4388; CGL 6352.
cf.—s. 1.01 "Person" defined.

363.07 Assessing damages.—The jury, or the judge where there is no jury, trying any case arising under s. 363.06 shall assess the damages to be awarded the plaintiff or plaintiffs.

History.—s. 2, ch. 6522, 1913; RGS 4389; CGL 6353.

363.08 Cipher messages.—Persons engaged in the business of transmitting telegrams into or out of this state, or from one point to another point within this state, shall be liable in damages to the sender and addressee, jointly or severally, of any telegram in cipher received for transmission into or out of this state, or from one point to another point within this state, for damages resulting from the negligent failure of such person to promptly transmit and deliver any such telegram in cipher, in the same manner and to the same extent as if such telegram was not in cipher; provided, that the provisions of this section shall not apply to telegrams relating to sickness or death.

History.—s. 3, ch. 6522, 1913; RGS 4390; CGL 6354.

363.09 Presumption as to notice of contents.—The receipt of a telegram for transmission by any person engaged in the telegraph business in this state, shall be deemed and held to be notice to such person that such telegram is of importance requiring prompt and correct transmission and delivery.

History.—s. 4, ch. 6522, 1913; RGS 4391; CGL 6355.

363.10 Contracts limiting liability illegal.—All provisions and stipulations contained in any contract relieving or exempting, or having the effect to relieve or exempt any person engaged in the telegraph business in this state, from the liabilities imposed by law, or purporting to limit the time in which suits may be brought against such person for negligent failure to perform any duty imposed by law, or assumed by any such person to a period of time shorter than the time provided by the statute of limitation of this state, are declared to be against the public policy of this state, to be illegal and void, and no court in this state shall give effect to any such provisions or stipulation contained in any contract whatsoever.

History.—s. 5, ch. 6522, 1913; RGS 4392; CGL 6356.
cf.—s. 95.11 Limitation of time upon actions.

CHAPTER 364

TELEGRAPH AND TELEPHONE COMPANIES AND RADIO COMMON CARRIERS

PART I TELEGRAPH AND TELEPHONE COMPANIES (ss. 364.01-364.40)

PART II RADIO COMMON CARRIERS (ss. 364.41-364.44)

PART I

TELEGRAPH AND TELEPHONE COMPANIES

[1]364.01 Powers of commissioners, legislative intent.—

(1) The Florida Public Service Commissioners of this state shall exercise over and in relation to telegraph companies and telephone companies the powers by part I of this chapter conferred.

(2) It is the legislative intent to give exclusive jurisdiction in all matters set forth in parts I and II of chapter 364 to the Florida Public Service Commission in regulating telegraph and telephone and radio common carriers and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist.

History.—ss. 1-4, ch. 6186, 1911; ss. 1-6, ch. 6187, 1911; s. 1, ch. 6525, 1913; RGS 4393; CGL 6357; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 67-541; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—Ch. 350 Florida Public Service Commission.

[1]364.02 Terms used in part I of this chapter defined.—

(1) The term "commissioners," when used in this part, means the Public Service Commissioners of the state.

(2) The term "corporation," when used in this part includes a corporation, company, association or joint stock association.

(3) The term "service," is used in this part in its broadest and most inclusive sense.

(4) The term "telephone company," when used in this part, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication service for hire within this state.

(5) The term "telephone line," when used in this part, includes conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, including radio and other advancements of the art of telephony, real estate, easements, apparatus, property and routes used and operated to facilitate the business of affording telephonic communication service to the public for hire within this state.

(6) The term "telegraph company," when used in this part includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any telegraph line or part of telegraph line used in the conduct of the business of affording for hire communication by telegraph within this state.

(7) The term "telegraph line," when used in this part, includes conduits, poles, wires, cables, crossarms, instruments, machines, appliances, instrumentalities and all devices, including radio and other advancements of the art of telegraphy, real estate, easements, apparatus, property and routes used and operated to facilitate the business of affording communication service by telegraph to the public for hire within this state.

History.—s. 2, ch. 6525, 1913; RGS 4394; CGL 6358; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 65-451; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.03 Rates to be reasonable; performance of service; maintaining facilities, etc.—

(1) All rates, tolls, contracts and charges, rules and regulations of telephone companies and telegraph companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, by any telephone or telegraph company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

(2) Every telephone company and every telegraph company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

(3) Every telephone company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communications and furnish telephone service as demanded upon terms to be approved by the commissioners.

History.—s. 3, ch. 6525, 1913; RGS 4395; CGL 6359; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.04 Schedule of rates, etc., to be filed with commissioners; copy of schedule for use of public, etc.—

(1) Upon order of the commissioners, every telephone company and every telegraph company shall file with the commissioners and shall print and keep open to public inspection at such points as the commissioners may designate, schedules showing the rates, tolls, rentals, contracts and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and service to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points.

(2) If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, contracts, and charges applicable for such through service.

(3) The schedule printed as aforesaid shall plainly state the places between which telephone or telegraph service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations or forms of contract which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered.

(4) A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telephone company and telegraph company readily accessible to and for convenient inspection by the public at such places as may be designated by the commissioners, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telephone company or telegraph company upon the demand of any person.

(5) A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telephone company and telegraph company in

a conspicuous place in every station or office of such company. The commissioners may require compliance with the foregoing provisions either in whole, or in part.

History.—s. 4, ch. 6525, 1913; RGS 4396; CGL 6360; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.05 Changing rates, tolls, rentals, etc.—

(1) Unless the commissioners otherwise order, no change shall be made in any rate, toll, rental, contract or charge, which shall have been filed and published by any telephone or telegraph company in compliance with the requirements of s. 364.04, except after 30 days' notice to the commissioners and the publication for 30 days as required in the case of original schedules in said section, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, contract or charge will go into effect. All proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

(2) The commissioners, for good cause shown, may allow changes in rates, charges, tolls, rentals or contracts without requiring the 30 days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published.

(3) When any change is made in any rate, toll, contract, rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commissioners to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commissioners may designate. No change shall be made in any rate, toll, rental, contract or charge prescribed by the commissioners without their consent.

(4) Pending a final order by the Public Service Commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 30 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond at the end of such period, but the commission shall, by order, require such utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of hearing and final decision in such proceeding, shall by further order require such utility to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct; however, no such funds shall accrue to the benefit of the utility.

History.—s. 5, ch. 6525, 1913; RGS 4397; CGL 6361; s. 3, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 142, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—ss. 323.08, 366.06, 367.081 Rates; procedure for fixing and changing.

[1]364.06 Joint rates, tolls, etc.—The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telephone companies and telegraph companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commissioners such evidence of concurrence therein or acceptance thereof as may be required or approved by the commissioners; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties.

History.—s. 6, ch. 6525, 1913; RGS 4398; CGL 6362; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

364.063 Rate adjustment orders.—Any order issued by the Florida Public Service Commission adjusting general increases or reductions of the rates of an electric, telephone, or gas company shall be reduced to writing including any dissenting or concurring opinions within 20 days of the official vote of the commission. Within said 20 days, the commission shall also mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order shall not be considered rendered for purposes of appeal, rehearing, or judicial review until the date the copies are mailed as required by this section. This provision shall not delay the effective date of the order. Such an order shall be considered rendered on the date of the official vote for the purposes of ss. 364.05(4) and 366.06(4).

History.—s. 1, ch. 78-137.

Note.—Also published at s. 366.072.

[1]364.07 Joint contracts to be filed with commissioners.—Every telephone company and every telegraph company shall file with the commissioners, as and when required by them, a copy of any contract, agreement or arrangement in writing with any other telephone company or telegraph company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telephone line or telegraph line or service by, or rates and charges over and upon, any such telephone line or telegraph line.

History.—s. 7, ch. 6525, 1913; RGS 4399; CGL 6363; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]364.08 Unlawful to charge other than schedule rates, etc., free service and reduced rates prohibited.—

(1) No telephone or telegraph company shall charge, demand, collect or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telephone company or telegraph company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

(2) No telephone company or telegraph company subject to the provisions of this part shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this state; provided, that it shall be lawful in this state to issue exchange passes and franks, and grant free and reduced service, and contract for exchange of services by and between common carriers, as defined by and provided for in the Act of Congress entitled "An Act to Regulate Commerce," and acts amendatory thereof and supplemental thereto.

History.—s. 8, ch. 6525, 1913; RGS 4400; CGL 6364; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.09 Giving rebate or special rate prohibited.—No telegraph or telephone company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this part than it charges, demands, collects or receives from any other person for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions.

History.—s. 9, ch. 6525, 1913; RGS 4401; CGL 6365; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.10 Undue advantage to person or locality prohibited.—No telegraph company or telephone company shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

History.—s. 10, ch. 6525, 1913; RGS 4402; CGL 6366; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.11 Short and long transmission of long distance message.—No telephone or telegraph company subject to the provisions of this part shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates subject to the provisions of this part but this shall not be construed as authorizing any such telephone company or telegraph company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telephone company or telegraph company the commissioners may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or messages in special cases after investigation, but the order must specify and prescribe the extent to which the telephone company or telegraph company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telephone company or telegraph company be relieved from the requirements of this section.

History.—s. 12, ch. 6525, 1913; RGS 4404; CGL 6368; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.12 Transmission of messages of other companies.—Every telegraph company operating in this state shall receive, transmit and deliver without discrimination or delay, the messages of any other telegraph company.

History.—s. 13, ch. 6525, 1913; RGS 4405; CGL 6369; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.13 Commissioners may require installation of stations, etc.—The commissioners shall have power to require the installation and maintenance of telegraph station or telephone toll station now in existence or respective telegraph or telephone lines as may be reasonably necessary for the public convenience and not unjustly burdensome to the company. No telegraph station or telephone toll station now in existence or which may hereafter be established shall be discontinued without the consent of the commissioners.

History.—s. 14, ch. 6525, 1913; RGS 4406; CGL 6370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.14 Readjustment of rates, charges, tolls, etc.; hearing; order compelling facilities to be installed, etc.—

(1) Whenever the commissioners shall find, upon their own motion or upon complaint, that the rates, charges, tolls, or rentals demanded, exacted, charged, or collected by any telegraph company or telephone company for the transmission of messages

by telegraph or telephone, or for the rental or use of any telegraph line, telephone line, or any telegraph instrument, wire, appliance, apparatus, or device or any telephone receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance, or device, or any telephone extension or extension system, or that the rules, regulations, or practices of any telegraph company or telephone company affecting such rates, charges, tolls, rentals, or service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls, or rentals are insufficient to yield reasonable compensation for the service rendered, the commissioners shall determine the just and reasonable rates, charges, tolls, or rentals to be thereafter observed and in force, and fix the same by order as hereinafter provided.

(2) Whenever the commissioners shall find that the rules, regulations, or practices of any telegraph company or telephone company are unjust or unreasonable, or that the equipment, facilities, or service of any telegraph company or telephone company are inadequate, inefficient, improper, or insufficient, the commissioners shall determine the just, reasonable, proper, adequate, and efficient rules, regulations, practices, equipment, facilities, and service to be thereafter installed, observed, and used and fix the same by order or rule as hereinafter provided.

History.—s. 15, ch. 6525, 1913; RGS 4407; CGL 6371; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.15 Compelling repairs or improvements; order.—Whenever the commissioners shall find, on their own motion or upon complaint, that repairs or improvements to, or changes in, any telegraph line or telephone line ought reasonably to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telegraphic or telephonic communications, the commissioners shall make and serve an order directing that such repairs, improvements, changes, additions, or extensions be made in the manner to be specified therein.

History.—s. 16, ch. 6525, 1913; RGS 4408; CGL 6372; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.16 Connection of lines and transfers.—Whenever the commissioner shall find that any two or more telephone companies, whose lines form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections for the transfer of messages or conversations at common points between different localities which are not reached by the line of either company alone, and that such connections or facilities for the transfer of messages or conversations at common points can reasonably be made, and efficient service obtained and that a necessity exists therefor, or shall find that any two or more telegraph or telephone companies have failed to establish joint rates or charges for service by or over their said lines and that joint rates or charges ought to be established, the commissioners may, by their order, require such connection to be made, and that messages be transferred, and prescribe through lines and joint rates and charges to be made, and to be used, observed and in force in the future, and fix the same by order to be served upon the company or companies affected. Provided, however, that the commissioners shall not be authorized to require physical connection of telephone lines owned by different telephone companies where such connection would give interchange of local telephone service between such different telephone companies in the same municipality; and provided further, that the commissioners shall not be authorized to require physical connection between the toll lines owned by different telephone companies when or where all the points reached by the lines sought to be connected are already connected by a through toll line of a telephone company giving adequate service.

History.—s. 17, ch. 6525, 1913; RGS 4409; CGL 6373; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.17 Annual and special reports to commissioners; may prescribe forms of records, etc.; examiners; accounts and records.—

(1) Unless otherwise ordered by the commissioners, every telegraph company and every telephone company shall annually furnish to the commissioners, a report in such form as the commissioners may require, and shall specifically answer all questions propounded to it by the commissioners, upon or concerning which the commissioners may need information.

(2) Such annual report shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended, and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business done wholly within the state and the proportion earned from interstate business, the nature of the business showing the percentage the business of each class bears to the total business, the operating and other expenses and the proportion of such expenses incurred in transacting business wholly within the state and the proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commissioners may prescribe, the balance of profits and loss, and a complete exhibit of the financial operation of the company each year, including an annual balance sheet.

(3) Such report shall also contain such information in relation to rates, charges or regulations concerning fares, charges or tolls or agreements, arrangements or contracts affecting the same, as the commissioners may require; and the commissioners

may, in their discretion, for the purpose of enabling them to better carry out the provisions of this part, prescribe the period of time within which all companies subject to the provisions of this part shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

(4) Such detailed report shall contain all the required statistics for the period of 12 months ending on the last day of any particular month prescribed by the commissioners for any such company.

(5) Such reports shall be made out under oath and filed with the commissioners at their office in Tallahassee within 3 months after the close of the designated year for which such report is made, unless additional time be granted in any case by the commissioners.

(6) The commissioners shall have authority to require any such company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commissioners are authorized or required by this or any other law, to inquire into or keep themselves informed, or which it is required to enforce, such periodical or special reports to be under oath whenever the commissioners so require. The commissioners may, in their discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by such companies, including the accounts, records and memoranda of the business done, the receipts and expenditures of money.

(7) The commissioners shall at all times have access to all accounts, records and memoranda kept by such companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commissioners, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies.

(8) The commissioners may, in their discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commissioners concerning the business done, receipts and expenditures appertaining to those parts of the line within the state; provided, that the forms of any and all accounts, records and memoranda prescribed by the commissioners to be kept by companies which are subject to the interstate commerce act shall conform, whenever in the opinion of the commissioners it is practicable, to the forms and accounts, records and memoranda prescribed by the Interstate Commerce Commission.

History.—s. 18, ch. 6525, 1913; RGS 4410; CGL 6374; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.18 Inspection of accounts and records of companies.—The commissioners in person, or by one of their number, or by any person by them employed for the purpose, may inspect the accounts, books, records and papers of telegraph companies and telephone companies, examine the agents and employees of such companies and require reports of such companies, in the same manner and to the same extent that the law may from time to time authorize the exercise of such power over railroads, railroad companies and other common carriers under the jurisdiction of said commissioners.

History.—s. 21, ch. 6525, 1913; RGS 4413; CGL 6377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.19 Regulation of telephone service contracts.—The commissioners may regulate by reasonable rules the terms of telephone service contracts between telephone companies and their patrons.

History.—s. 19, ch. 6525, 1913; RGS 4411; CGL 6375; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.20 Power to prescribe rules; rule of evidence; rules to be reasonable; presumptions in favor of commissioners, etc.—The commissioners may prescribe all rules and regulations appropriate for the execution of any of the powers conferred upon them by law either in express terms or by implication. All rules and regulations made and prescribed by the commissioners shall be prima facie evidence. Every rule, regulation, schedule, order or requirement heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof or can be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumptions shall be in favor of every action of the commissioners and all doubts as to their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control in the public interest the persons and corporations under their jurisdiction. If in any proceeding to enforce any rules, regulations, schedules or order any part thereof shall be found invalid the court shall proceed to enforce such portion thereof as may be valid if the same can be done.

History.—s. 20, ch. 6525, 1913; RGS 4412; CGL 6376; s. 1, ch. 63-279; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.21 Penalty for violations; procedure for enforcement.—If any telegraph company or telephone company doing business in this state shall, by any officer, agent or employee, be guilty of a violation or disregard of any rate, schedule, rule, regulation, order or requirement provided or prescribed by said commissioners, or shall fail to make any report required to be made under the provisions of this part, or shall otherwise violate any provision of this part, such company shall be guilty of a felony of the third degree, punishable as provided in s. 775.083.

The practice or procedure before the commissioners to ascertain whether any such company has incurred any such penalty and the practice and procedure for the enforcement and collection of any such penalty after the same has been imposed by the commissioners shall conform to the practice and procedure now prescribed or which may be hereafter from time to time prescribed for observance in like cases arising under the law for the regulation of railroads, railroad companies and other common carriers.

History.—s. 22, ch. 6525, 1913; RGS 4414; CGL 6378; s. 270, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.22 Penalty for illegal telegraph company charges.**—Any agent, officer or employee of any telegraph company in this state who charges greater tolls or rates than those allowed by law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 3609, 1885; RS 2722; GS 3714; RGS 5690; CGL 7904; s. 271, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.23 Penalty for disclosing contents of telegrams.**—Any officer or person in the employ of any telegraph company or person in charge of any office or place where messages are sent or received by magnetic telegraph, who discloses to any person other than the person to whom the telegraphic message is directed or in any manner makes known to any other person any part of the contents of any communication sent or received by himself on any telegraph line in this state, without the consent of the person sending or from whom such message may be received, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. This section shall not prevent the delivery of any such telegraphic message to the partner or confidential clerk or member of the family of any person to whom such message may be directed.

History.—s. 10, sub-ch. 1637, 1868; RS 2734; GS 3729; RGS 5754; CGL 7984; s. 272, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.24 Penalty for making known telephone messages.**—Any officer or person in the employ of any telephone company, or person in charge of any office, exchange or place where messages or communications are sent, received or heard by telephone, who shall disclose or make known to any person other than the person to whom the telephone message or communication is directed, or their duly authorized agent, partner, clerk, or some member of his family, any part of the contents or substance of any message or communication sent, received or heard by him, by telephone, by reason of the position he occupies or fills, without consent of person sending or receiving such message or communication, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 5210, 1903; GS 3730; RGS 5755; CGL 7985; s. 273, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.25 Power to summon witnesses, issue writs, and punish contempts.**—The commissioners, in their procedure under this part, may summon witnesses, issue writs and punish contempts in the same manner and to the same extent that the law may from time to time authorize the exercise of such powers in like cases arising under the law for the regulation of railroads, railroad companies and other common carriers.

History.—s. 23, ch. 6525, 1913; RGS 4415; CGL 6379; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.26 Practice before, by, and against commissioners in relation to rates, etc.**—In all matters of practice and procedure and all matters of evidence and the rules of evidence and all matters involving the effect of evidence in proceedings before the commissioners and in proceedings by the commissioners to enforce their rates, rules, regulations, orders and requirements and in proceedings against the commissioners in relation to rates, rules, regulations, orders and requirements prescribed by them, the provisions of law now existing, or which may be from time to time prescribed, for observance in like cases arising under the law for the regulation of railroads, railroad companies and common carriers, shall govern and control.

History.—s. 24, ch. 6525, 1913; RGS 4416; CGL 6380; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.27 Powers and duties as to interstate rates, etc.**—The commissioners shall investigate all interstate rates, fares, charges, classifications or rules of practice in relation thereto, for or in relation to the transmission of messages or conversations, where any act in relation thereto shall take place within this state, and when the same are, in the opinion of the commission, excessive or discriminatory, or are levied or laid in violation of the Act of Congress entitled "An Act of Regulation Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall apply, by petition, to the Interstate Commerce Commission for relief, and may present to the Interstate Commerce Commission all facts coming to their knowledge as to violation of the rulings, orders or regulations of that commission or as to violations of the said act to regulate commerce, or acts amendatory thereof or supplementary thereto.

History.—s. 25, ch. 6525, 1913; RGS 4417; CGL 6381; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.28 Judicial powers.**—The commissioners shall, so far as the constitution of this state permits, exercise all such judicial powers as may be necessary

to enable them to do, enforce or perform any duty, power or function conferred on them by this part.

History.—s. 26, ch. 6525, 1913; RGS 4418; CGL 6382; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.29 Construction of part I.—It is the purpose of this part to confer only such power and authority as this state may lawfully confer and only such power and authority as may be exercised without interference with interstate commerce and without any contravention of the Constitution or Laws of the United States; and this part shall in all instances be construed in accordance with this express purpose.

History.—s. 27, ch. 6525, 1913; RGS 4419; CGL 6383; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.30 Telephone companies; use of outlets, etc.—

(1) Any telephone company, independent or otherwise, operating within the state subject to the provisions of part I, having more than one point of connection or outlet with or through any other telephone company, is hereby authorized and permitted to use and enjoy any of its said points of connection or outlets on any call at any time the same is not in use, and the company with which the telephone call is initiated shall be the sole judge in each instance as to whether the convenience and necessity of its own subscribers, the facility with which the connection and call may be completed, and its financial welfare are best served by the routing selected by the company receiving any such individual call; and under no circumstances shall any telephone company having two or more points of connection or outlets with any other company be required by the connecting company to route all or any specific number of its calls through any one connection at the will of the connecting company.

(2) Any connecting telephone company refusing to give and make a connection with the company through which the call was initially placed, over any connecting point or outlet not in use, shall be guilty of violating the provisions of this section and, on being found guilty of such violation, shall be fined by order of the commissioners the sum of $100 for each such violation, which sum shall be paid within 30 days of the entry of such order. On failure to pay such fine within 30 days, a certified copy of such order shall be filed with the clerk of the circuit court of the county in which such violation occurred, and the same shall be a lien against all of the property of the connecting company guilty of such violation. Thereafter said fine, with interest at 6 percent per annum, beginning at the end of such 30-day period, may be enforced and collected as a judgment at law.

History.—ss. 1, 2, ch. 22073, 1943; s. 1, ch. 63-279; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.31 Reports of violation of gambling laws; facilities for ascertaining violations; penalty.—

(1) All public utilities furnishing communication facilities either to the public or by contract, their agents and employees, are charged with the affirmative duty of reporting to the Florida Public Service Commission and the sheriff of the affected county any information obtained in any manner that any communication facility or service is being used in violation of the laws of the state having for their purpose the prohibiting of bookmaking or other gambling.

(2) It is the duty of public utilities to provide all reasonable means to ascertain if any of its facilities are being used in violation of any of the laws of the state having for their purpose the prohibiting of bookmaking or other gambling.

(3) All public utilities are charged with knowledge of the contents of any message or communication which in the regular course of its business comes clearly within its knowledge, or that of its employees or agents, and it shall be the duty of the public utility to report the contents of such messages to the Florida Public Service Commission when any such message is for the purpose of aiding or abetting gambling, and it shall be the duty of all employees or agents of public utilities to report in writing such knowledge either to the responsible officials of the public utility by which they are employed or directly to the commissioners.

(4) Any person or public utility refusing or failing to comply with the requirements of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The Florida Public Service Commission under its general authority and rule making power may impose penalties in the enforcement of the requirements herein or of similar requirements provided by its rules; provided, however, that no public utility shall be liable at law or in equity for any damages or penalties either civil or criminal because of the disclosure to the Florida Public Service Commission of the contents of any message resulting from its compliance with the provisions of this section, or of any rule, regulation, order or action of the commissioners pursuant to this section.

(5) This section shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state, and all of the provisions of this section shall be liberally construed for the accomplishment of this purpose.

(6) Nothing contained in this section shall be construed as amending or repealing the provisions of any other law or affecting in anywise the general powers of the commission, but is intended to be supplemental thereto.

(7) Nothing contained herein shall be construed to permit or require any violation of the provisions of s. 605 of the Federal Communications Act of 1934.

History.—ss. 1-7, ch. 26720, 1951; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 274, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.32 Definitions; ss. 364.33-364.40.—In construing ss. 364.33-364.40, when applied to any line, plant or system or any extension thereof used or to be used in the furnishing of telephone service, where the context so permits, the following words, phrases or terms shall be given the meaning hereafter stated:

(1) The term "person" means:

(a) Any natural person, firm, association, corporation, business, trust or partnership owning, leasing or operating any line, facility or system used in the furnishing of public telephone service within this state; and

(b) A cooperative, nonprofit, membership corporation, or limited dividend or mutual association, now or hereafter created, with respect to that part or portion of its operations devoted to the furnishing of telephone service within this state.

(2) The term "commission" shall mean the Florida Public Service Commission.

(3) The term "municipality" shall mean a city or town duly incorporated pursuant to the laws of the state.

(4) The term "territory" shall mean any area, whether within or without the boundaries of a municipality.

History.—s. 9, ch. 28013, 1953; s. 24, ch. 57-1; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.33 Certificate of necessity prerequisite to construction, operation or control of telephone line, plant, system.—No person shall hereafter begin the construction or operation of any telephone line, plant or system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the commission a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition; provided ss. 364.32-364.40 shall not require, nor shall it be so construed as to require, any such person to secure a certificate for an extension within any municipality within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such person, necessary in the ordinary course of business, or for substitute facilities within or to any municipality or territory already served by such person, or for any extension into territory contiguous to that already served by such person and not receiving similar service from another such person when no certificate of convenience and necessity has been issued to or applied for by any other person, or for the acquisition and operation of any line, plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued or for the construction of which no such certificate was, under the provisions of this law, required.

History.—s. 1, ch. 28013, 1953; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.34 Application for certificate.—The application for such certificate of convenience and necessity shall be under such rules and regulations as the commission may, from time to time, prescribe. Upon the receipt of any such application for such certificate, the commission shall cause notice thereof, stating a time and place for any required hearing, to be given by mail or personal service to the chief executive officer of the municipality or municipalities affected, if any, and to any person occupying the territory affected, and shall publish such notice once a week for 3 consecutive weeks in some newspaper of general circulation in each territory affected, in addition to any notice required by chapter 120.

History.—s. 2, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.35 Issuance of certificate; powers of commission.—

(1) The commission shall have power to issue said certificate of convenience and necessity, as prayed for, or to refuse to issue the same, or to issue it for the construction, operation, or acquisition of a portion only of the contemplated line, plant, or system, or extension thereof.

(2) The commission shall not grant a certificate for a proposed plant, line, or system, or extension thereof, which will be in competition with or duplication of any other plant, line, or system, unless it shall first determine that the existing facilities are inadequate to meet the reasonable needs of the public, or that the person operating the same is unable to or refuses or neglects to provide reasonably adequate service.

History.—ss. 3, 7, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.36 Issuance of certificate; construction, operation existing on May 19, 1953.—Any person engaged in the construction or operation of any line, plant or system, or any extension thereof, on May 19, 1953 shall be entitled to receive a certificate of convenience and necessity from the commission authorizing such person to continue the construction or operation of such line, plant or system, or extension thereof, in the territory professed to be served by such person on May 19, 1953, if within 60 days thereafter such person files maps with the commission showing his existing lines and facilities, his lines or extensions thereof under construction, and the territory professed to be served by such person.

History.—s. 4, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.37 Controversy concerning territory to be served; powers of commission.—If any person in constructing or extending his line, plant, or system unreasonably interferes or is about unreasonably to interfere with any line, plant, system, or service of any other person, or if a controversy arises between any two or more persons with respect to the

territory professed to be served by each, the commission, on its own initiative or on complaint of any person claiming to be injuriously affected, may make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

History.—s. 5, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.38 Unlawful construction; operation of telephone lines, plant, system; powers of commission.—Whenever any person engages or is about to engage in the construction, operation, or acquisition of any line, plant, or system without having secured a certificate of convenience and necessity as required by s. 364.33, any interested person may file a complaint with the commission. The commission may make its order requiring the person complained of to cease and desist from such construction, operation, or acquisition until the commission makes and files its decision on said complaint or until the further order of the commission. The commission may make such further order and prescribe such terms and conditions with respect thereto as are just and reasonable.

History.—s. 6, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.39 Authority under certificate to be exercised within reasonable time.—Any person obtaining a certificate of convenience and necessity hereunder for any territory shall exercise said authority within a reasonable time. If such person fails or refuses to provide reasonably adequate service to such territory after notice and a reasonable opportunity to do so, the commission, in addition to other powers provided by law, shall have power to issue a certificate to any other person willing and able to provide reasonably adequate service to such territory.

History.—s. 8, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]364.40 Penalty for violations of ss. 364.32-364.39.—The provisions of ss. 350.36 and 364.21, as now or hereafter amended, shall be applicable to any and all violations by any person of any of the provisions of ss. 364.32-364.39.

History.—s. 10, ch. 28013, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

PART II

RADIO COMMON CARRIERS

[1]364.41 Regulation of radio common carriers.—

(1) The Florida Public Service Commission shall exercise over and in relation to radio common carriers the powers conferred by part II of this chapter.

(2)(a) The word "commission" when used in this part, means the Florida Public Service Commission.

(b) The word "commissioners" when used in this part, means the commissioners of the Florida Public Service Commission.

(c) The term "radio common carriers" when used in this part includes every corporation, company, association, partnership and persons and lessees, trustees, or receivers, appointed by any court whatsoever owning, operating or managing a radio common carrier engaged in the business of providing a service of radio communications between mobile and base stations, between mobile and land stations, or between mobile stations, under license as a miscellaneous common carrier from the Federal Communications Commission, but not engaged in the business of providing a public land line message telephone service or a public message telegraph service.

(d) Notwithstanding any provisions of ss. 364.01-364.40, or any provision of part II, the term "radio common carrier" as used in this part shall not be construed to mean a "telephone company" under the provisions of said ss. 364.01-364.40, and no such radio common carrier shall have any of the powers, rights or duties provided for and prescribed by said ss. 364.01-364.40.

(3) The rates of every radio common carrier shall be just, reasonable and not unduly preferential; the service of every such carrier shall be adequate and not unduly preferential, and the rules and regulations of every such carrier shall be just, reasonable and not unduly preferential. It shall be the duty of the commissioners to prescribe appropriate rules and regulations, and to make such orders as may be necessary and proper, to insure that such radio common carrier rates, services, rules and regulations are reasonable, just, adequate and not unduly preferential.

(4) No radio common carrier shall begin, or continue, the construction or operation of any mobile radio system, or any extension thereof, or acquire ownership or control thereof either directly or indirectly without first obtaining from the commission a certificate that the present or future public convenience and necessity requires or will require such construction, operation or acquisition; provided this act shall not require, nor shall it be so construed as to require, any such carrier to secure a certificate for an extension within any municipality within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such carrier, necessary in the ordinary course of business, or for substitute facilities within or to any municipality or territory already served by such carrier, or for any extension into territory contiguous to that already served by such carrier and not receiving similar service from another such carrier when no certificate of convenience and necessity has been issued to or applied for by any other radio common carrier, or for the acquisition and operation of any plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued. The commissioners are hereby authorized to prescribe appropriate and reasonable rules and reg-

ulations governing the issuance of such certificates.

(5) Any person engaged in the construction or operation of any radio common carrier on the effective date of this part shall receive a certificate of convenience and necessity from the commission authorizing such person to continue the construction or operation of such radio common carrier in the territory professed to be served by such person on the effective date of this part if, within 60 days after this part becomes effective, such person shall file with the commission an application for such certificate, including copies of any license or licenses issued by the Federal Communications Commission to such person, showing the area professed to be served by such person.

(6) The commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public or that the person operating the same is unable to or refuses or neglects to provide reasonably adequate service.

(7) Each radio common carrier holding a certificate from the commission may interconnect its common carrier radio telephone facilities with the telephone facilities of the telephone company serving the area in which the base station of the radio common carrier is located, provided an agreement can be reached between the radio common carrier and the serving telephone company providing for such interconnection; provided further, that when an agreement cannot be reached between the radio common carrier and the serving telephone company, the radio common carrier may petition the commission for the right of interconnection and if the commission finds that a necessity exists therefor, such interconnection shall be ordered by the commission on such reasonable terms as shall be set by the commission.

(8)(a) Applications for certificate of public convenience and necessity authorizing operation as a radio common carrier shall be accompanied by the payment of a $500 application fee to be placed in the General Revenue Fund.

(b) Joint applications for transfer of radio common carrier certificates shall be accompanied by the payment of a $500 application fee to be placed in the General Revenue Fund.

(c) All other applications and petitions filed hereunder with the commission shall be accompanied by a $10 filing fee when such application or petition requires formal commission action, said fee shall be deposited in the General Revenue Fund.

History.—ss. 3, 4, ch. 65-451; s. 1, ch. 65-52; s. 13, ch. 67-319; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.42 Power to prescribe rules.**—The commissioners may prescribe all rules and regulations appropriate for the execution of any of the powers conferred upon them by s. 364.41, either in expressed terms or by implication.

History.—ss. 3, 4, ch. 65-451; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.43 Penalty for violation.**—If any radio common carrier doing business in this state shall, by any officer, agent or employee, be guilty of a violation or disregard of any rate schedule, rule, regulation, order, or requirement provided or prescribed by said commissioners, or shall otherwise violate any provision of s. 364.41 or s. 364.42, such radio common carrier shall thereby incur a penalty for each such offense of not more than $5,000. The practice or procedure before the commissioners to ascertain whether any radio common carrier has incurred any such penalty and the practice and procedure for the enforcement and collection of any such penalty after the same has been imposed by the commissioners shall conform to the practice and procedure now prescribed or which may be hereafter from time to time prescribed for observance in like cases arising under the law for the regulation of railroads, railroad companies and other common carriers.

History.—ss. 3, 4, ch. 65-451; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**364.44 Gross revenue tax.**—Each radio common carrier shall, on or before March 15 in every year, report to the commission, under oath of one of its officers, the total amount of the gross revenue derived by it in the immediately preceding period of January 1 to December 31, inclusive, from business done within this state. At the time of so reporting, each radio common carrier shall pay to the commission a gross revenue tax in the amount of one-eighth of 1 percent of such gross revenues, but in no event less than $25 annually. If any radio common carrier fails to make such report and pay such tax, the commission, after giving at least 5 days' written notice to the radio common carrier, shall estimate the amount of such gross revenue from such information as it may be able to obtain from any source, and shall add 10 percent of the amount of such tax as a penalty and shall proceed to collect such tax and penalty, together with all costs of collection thereof, in the same manner as other delinquent taxes are collected. However, no penalty shall be added to the tax in the event a return is made and the amount of the tax is paid before the expiration of the time fixed in the notice given by the commission. All such tax payments and penalties shall be placed in the Florida Public Service Regulatory Trust Fund, as established under the provisions of chapter 350. The commission may audit such reports, and, upon demand, every radio common carrier shall submit all of its records, papers, books, and accounts to the commission or its representatives for audit.

History.—s. 5, ch. 76-265.

[1]**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 364 by that act.

CHAPTER 365

PRIVATE WIRE SERVICES

[1]365.01 Definitions.—The following words, terms and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

(1) The term "commissioners" when used in this chapter shall mean the Florida public service commissioners of the state.

(2) "Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(3) "Person" means a corporation (including a public utility), partnership or association, as well as a natural person.

(4) "Private wire" means any and all "wire service," service equipment, facilities, conduits, poles, wires, circuits, systems by which or by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, teletypewriter, loudspeaker, radio, television, or any other means, or by which the voice or electrical impulses are sent over a wire, but shall not include private wires used for fire or burglar alarm purposes, nor telegraph messenger cell boxes and circuits used in connecting therewith, time clock circuits used for furnishing correct time service, nor any private wires used by any department or agency of the United State Government or of this state or by any municipality or other political subdivision of this state.

(5) "Public utility" means a person, partnership, association or corporation, now or hereafter owning or operating in the state, equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(6) The singular shall include the plural.

History.—s. 1, ch. 25016, 1949; s. 1, ch. 26820, 1951; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.02 Unlawful to furnish or use wire service for gambling.—It shall be unlawful for any public utility knowingly to furnish to any person any private wire for use or intended for use in the dissemination of information in furtherance of gambling or for gambling purposes, or for any person knowingly to use any private wire in the dissemination of information in furtherance of gambling or for gambling purposes.

History.—s. 2, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.03 Unlawful use declared a public nuisance.—The use of any private wire for use in the dissemination of information in furtherance of gambling or for gambling purposes is hereby declared to be a public nuisance and subject to abatement as provided for in ss. 60.05 and 60.06, but this remedy of injunction shall be in addition to and not in lieu of any remedy provided by this chapter or otherwise provided by law.

History.—s. 3, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.031 Attorney general; authority.—Nothing in chapter 943 shall be construed to remove from the attorney general the power, duty, and authority as set forth in this chapter in abating public nuisances, conducting preinstallation investigations of private wire service, or presenting evidence before the public service commission.

History.—s. 45, ch. 67-2207; ss. 20, 35, ch. 69-106; s. 9, ch. 73-333; s. 3, ch. 76-168; s. 106, ch. 77-104; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 23.085.

[1]365.04 Private wire; contract to declare purpose; exceptions.—It shall be unlawful for any public utility to furnish to any person any private wire, except in pursuance of a written contract signed by the person contracting for said private wire and responsible under the terms of the contract for the payment for the service, and by the person in possession or control of any place or location designated in the contract for installation or connection of said private wire, which contract shall include a detailed written statement of the purpose for which such private wire is intended to be used; provided, that this section shall not apply to the furnishing of any private wire in case of public emergency, or where the furnishing of the said wire is for a temporary purpose not to exceed 48 hours; provided, however, that this section relating to contracts shall not apply to any private wire furnished for use in radio broad-

casting, or to any protective service operating under a franchise granted by any municipality, or for use in interstate commerce, for use of newspaper of general circulation, or recognized press association furnishing their news service or for use of any agricultural or marketing agency or broker, railroad, pipeline, common carrier, public utility furnishing service to the public and requiring wires for their own intercommunication purposes, or any national or state bank, or any licensed dealer or broker in stocks, bonds, or other securities; provided further that the provisions of this section relating to written contracts shall not apply to customary telephone service either individual, party line, or public (pay station) service, which operate through the general telephone exchange system or toll service.

History.—s. 4, ch. 25016, 1949; s. 2, ch. 26820, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.05 Contracts reviewable by commissioners.—It shall be unlawful for any public utility to furnish to any person any private wire without first furnishing to the commissioners one duplicate original and two copies of the written contract required by s. 365.04. The commissioners shall examine the same forthwith and conduct such investigation as they may deem necessary, and, if upon examination of the contract, or after investigation, or otherwise at any time, the commissioners shall find that the said private wire is intended for or has been used for or is being used for the transmission of information or advices in furtherance of gambling, the commissioners shall disapprove the said contract and give notice of such disapproval to the contracting parties. Thereafter it shall be unlawful for any public utility to furnish the said private wire provided for in the said contract; provided, that this section shall not apply to the furnishing of any private wire in case of public emergency, or where the furnishing of the said private wire is for a temporary purpose not to exceed 48 hours.

History.—s. 5, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.06 Department of Legal Affairs, state attorney to assist commissioners.—

(1) Upon receipt of the written contract, hereinabove referred to, the commissioners shall send one copy to the Department of Legal Affairs and a copy to the state attorney of the judicial circuit in which the facilities specified in said contract are located, and it shall be the duty of the Department of Legal Affairs and said state attorneys to assist the commissioners in making the investigations referred to in this chapter, and they shall have the right to be present at any hearing before the commissioners, to examine witnesses, present evidence and to make argument.

(2) The commissioners shall notify the public utility and the person contracting for service of the action taken or pending on the contract submitted as herein provided and if the public utility receives no such notice within 15 days from the time such contracts are received by the commissioners, in that event the public utility may proceed to install and connect such private wire service and no such connection shall be deemed a violation of the provisions of this chapter, provided, however, that such contract shall be subject to review by the commissioners as hereinafter provided in s. 365.07.

History.—s. 6, ch. 25016, 1949; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.07 Procedure for canceling contracts.—All contracts between a public utility and any person for private wire in effect on May 4, 1949 and all written contracts between a public utility and any person for private wire entered into after May 4, 1949, and approved by the commissioners, shall be subject to review and examination by the commissioners under the procedure stated in s. 365.06 whenever a written request therefor is made upon the commissioners by the Department of Legal Affairs or the state attorney of any circuit in Florida in which the said private line or any part thereof is located; and if the commissioners find that said private wire is being used for the transmission of information or advices for gambling purposes or in furtherance of gambling, the commissioners shall order the public utility to cancel said contract and give notice thereof to the contracting parties. Said notice shall be effective at the expiration of 10 days from its date, and thereafter it shall be unlawful for any public utility to furnish the said private wire provided for in the said contract unless a request for a hearing before the commissioners has been filed pursuant to s. 365.08 within such 10 days, in which event the order for such cancellation shall be stayed until final order of the commissioners entered after such hearing.

History.—s. 7, ch. 25016, 1949; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 107, ch. 77-104; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.08 Aggrieved parties entitled to hearing.—

(1) Any public utility or other person whose substantial interests are determined by the action of the commission in disapproving, canceling, or otherwise terminating such contract for any private wire shall be entitled to a hearing before the commissioners upon written request; provided, however, that when the use which is prohibited by this chapter has to do with customary telephone service, either individual, party line, or public telephone (pay station) service, such telephone service shall be discontinued or removed subject to the following provisions of this section.

(2) Each and every telephone and telegraph company operating within the state under the jurisdiction of the Florida Public Service Commission, shall furnish service subject to the condition that it will not be used for an unlawful purpose.

(3) Whenever application is made in any such utility for the installation of any telephone or telegraph facility at any location within the state, said utility shall refuse to install the same when it has reasonable grounds to believe that said facility will

be used in violation of the law.

(4) Whenever any new or additional service is furnished to any applicant, the records of the utility shall show, in the case of business telephones, the business classification designated by the applicant.

(5) Whenever any state or federal law enforcement officer acting within his apparent jurisdiction acquires proof that certain telephone or telegraph facilities, or any part thereof, are being used or have been used in violation of any federal law or the laws of the state, then such officer may make application to the circuit court in the county where the alleged violation took place for an order requiring the public utility to disconnect and remove such facilities and discontinue all telephone and telegraph service as hereinafter provided. The circuit court shall, within 48 hours after application and written notice to the subscriber, hold a hearing to determine whether such service should be discontinued and the facilities removed. The 48-hour period prescribed herein shall commence to run from the time the written notice is served upon such subscriber by delivering the same to the address at which the telephone service is furnished and the facilities are located.

History.—s. 8, ch. 25016, 1949; s. 3, ch. 26820, 1951; s. 1, ch. 29805, 1955; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; ss. 1, 2, ch. 78-178.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.09 Unlawful to use for purpose not in contract.—It shall be unlawful for any person, who has been furnished a private wire by any public utility in accordance with the provisions of this chapter, to use such private wire for any purpose other than that specified in the contract provided for in s. 365.04.

History.—s. 9, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.10 Horserace, etc., information prima facie unlawful.—To further effectuate the purposes of this chapter, it is hereby provided that the contract first referred to in s. 365.04, shall constitute prima facie evidence that such private wire will be used in furtherance of gambling or for gambling purposes, where it shall appear in such contract, or otherwise, that such private wire will be used, is intended to be used or has been used for the dissemination of information pertaining to any horseracing, racetrack, racehorse, betting, betting odds or any information relative thereto.

History.—s. 10, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.11 Burden of proof.—In any proceeding before the commissioners under this chapter and in any hearing or proceeding on appeal, the burden of proof shall be on the person contracting for such private wire to show that the private wire has not been used, or is not being used, or is not intended for use in the furtherance of gambling or for gambling purposes.

History.—s. 11, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.12 Florida Public Service Commission; powers; review of orders.—For the purpose of enforcing the provisions of this chapter the Florida Public Service Commission shall have all the powers granted to it under the laws of the state. Review of orders of the commissioners under this chapter shall be by certiorari by the Supreme Court in the manner and within the time provided by the Florida Appellate Rules and the statutes of the state not superseded by or in conflict with said rules.

History.—s. 12, ch. 25016, 1949; s. 14, ch. 63-512; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.13 Penalties.—Any person or public utility who or which shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not less than $500 nor more than $5,000, or undergo imprisonment for a period not to exceed 12 months, or both, at the discretion of the court; provided, however, that no public utility shall be liable at law or in equity for any damages or penalties, either civil or criminal, for failure to provide or delay in providing service, or for any discontinuance or disconnection of service, resulting from its compliance with the provisions of this chapter or of any rule, regulation, order or action of the commissioners by virtue of the authority vested in them by this chapter.

History.—s. 13, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.14 Construction.—This chapter shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state, and all of the provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

History.—s. 15, ch. 25016, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.15 Party lines, emergency calls.—

(1) Any person who shall willfully refuse to immediately relinquish a party line when informed that such line is needed for an emergency call, and in fact such line is needed for an emergency call, to a fire department or police department or for medical aid or ambulance service, or any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) "Party line" as used in this section means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency" as used in this section means a situation in which property or human life is in jeop-

ardy and the prompt summoning of aid is essential.

(3) Every telephone directory hereafter published and distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in this section, such notice to be printed in type which is not smaller than the smallest type appearing on the same page and to be preceded by the word "warning" printed in boldface type; provided, that the provisions of this subdivision shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory heretofore distributed to the general public. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section and does not contain the notice herein provided for shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 63-54; s. 275, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]365.16 Obscene or harassing telephone calls.—

(1) Whoever:

(a) Makes a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy; during such call makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent; and by such call or such language intends to offend, annoy, abuse, threaten, or harass any person at the called number; or

(b) Makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

(c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number,

shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly permits any telephone under his control to be used for any purpose prohibited by this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Every telephone directory hereafter published for distribution to the members of the general public shall contain a notice which explains this law, such notice to be printed in type which is no smaller than the smallest type on the same page and to be preceded by the word "warning." The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories.

(4) All telephone companies in this state shall cooperate with the law enforcement agencies of this state in using their facilities and personnel to detect and prevent violations of this statute.

(5) Nothing contained in this section shall apply to telephone calls made in good faith in the ordinary course of business or commerce.

History.—ss. 1, 2, ch. 63-51; s. 1, ch. 69-25; s. 276, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-270.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

365.165 Automated telephone solicitation.—

(1) No person shall use a telephone or knowingly allow a telephone to be used for the purpose of offering any goods or services for sale or conveying information regarding any goods or services when such use involves an automated system for the selection and dialing of telephone numbers and the playing of a recorded message when a connection is completed to the called number.

(2) Nothing herein shall prohibit the use of automated telephone systems with recorded messages when the calls are made or messages given solely in response to calls initiated by the person to which the automatic call or recorded message is directed.

(3) Any person who violates any provision of this section shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The Attorney General or any telephone company servicing an area to which or from which automated calls are made may seek injunctive relief to enforce this section. In the event a civil action is filed pursuant to this subsection, the prevailing party shall be entitled to a reasonable attorney's fee.

History.—s. 3, ch. 78-178.

[1]365.171 Emergency telephone number "911."—

(1) SHORT TITLE.—This section shall be known and cited as the "Florida Emergency Telephone Act of 1974."

(2) LEGISLATIVE INTENT.—The legislature hereby finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There currently exist thousands of different emergency phone numbers throughout the state. Provision for a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public service efforts by making it easier to notify public safety personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, and quicker apprehension of criminals. It is the intent of the legislature to establish and implement a cohesive statewide emergency telephone number "911" plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

(3) DEFINITIONS.—As used in this section, unless the context clearly requires otherwise:

(a) "Department" means the Department of General Services.

(b) "Division" means the Division of Communications of the Department of General Services.

(c) "Local government" means any city, county, or political subdivision of the state and their agencies.

(d) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state, which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(e) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The division shall develop a statewide emergency telephone number "911" system plan. The plan shall provide for:

(a) The establishment of the public agency emergency telephone communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and civil defense services.

(c) Identification of the mutual aid agreements necessary to obtain an effective "911" system.

(d) A funding provision which shall identify the cost necessary to implement the "911" system.

(e) A firm implementation schedule, which shall include the installation of the "911" system in a local community within 24 months after the designated agency of the local government gives a firm order to the telephone utility for a "911" system.

The division shall be responsible for the implementation and coordination of such plan. The division shall promulgate any necessary rules, regulations, and schedules related to public agencies for implementing and coordinating such plan, pursuant to chapter 120. The public agency designated in the plan shall order such system within 6 months after publication date of the plan if the public agency is in receipt of funds appropriated by the Legislature for the implementation and maintenance of the "911" system. Any jurisdiction which has utilized local funding as of July 1, 1976, to begin the implementation of the state plan as set forth in this section, shall be eligible for at least a partial reimbursement of its direct cost when, and if, state funds are available for such reimbursement.

(5) SYSTEM DIRECTOR.—The director of the division is designated as the director of the statewide emergency telephone number "911" system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director is authorized to employ not less than five persons, three of whom will be at the professional level, one at the secretarial level, and one to fill a fiscal position, for the purpose of carrying out the provisions of this section. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) REGIONAL SYSTEMS.—Nothing in this section shall be construed to prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency.

(7) TELEPHONE INDUSTRY COORDINATION.—The division shall coordinate with the Public Service Commission which shall encourage the Florida telephone industry to activate facility modification plans for a timely "911" implementation.

(8) COIN TELEPHONES.—The Public Service Commission shall establish rules to be followed by the telephone utilities in Florida designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—From July 1, 1974, no emergency telephone number "911" system shall be established and no present system shall be expanded without prior approval of the Division of Communications.

(10) COMPLIANCE.—All public agencies shall assist the division in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) EXISTING EMERGENCY TELEPHONE SERVICE.—Any emergency telephone number established by any local government or state agency prior to July 1, 1974, using a number other than "911" shall be changed to "911" on the same implementation schedule provided in subsection (4)(e).

(12) FEDERAL ASSISTANCE.—The director of the division is authorized to apply for and accept federal funding assistance in the development and implementation of a statewide emergency telephone number "911" system.

History.—ss. 1-12, ch. 74-357; s. 3, ch. 76-168; ss. 1, 2, ch. 76-272; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 366

PUBLIC UTILITIES

[1]**366.01 Legislative declaration.**—The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

History.—s. 1, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.015 Interagency liaison.**—The Public Service Commission is directed to provide for, and assume primary responsibility for, establishing and maintaining continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities over which the commission has primary regulatory jurisdiction. This liaison shall be conducted at the policy-making levels as well as department, division, or bureau levels. Active participation in other agencies' public hearings is encouraged to transmit the commission's policy positions and information requirements, in order to provide for more efficient regulation.

History.—s. 6, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.02 "Public utility" defined.**—The term "public utility" as used herein means and includes every person, corporation, partnership, association or other legal entity and their lessees, trustees or receivers, now or hereafter either owning, operating, managing or controlling any plant or other facility supplying electricity or gas (natural, manufactured or similar gaseous substance) to or for the public within this state, directly or indirectly for compensation; but the term "public utility" as used herein does not include either a cooperative now or hereafter organized and existing under the Rural Electrification Cooperative Law of the state nor a municipality nor any natural gas pipeline transmission company making only sales of natural gas at wholesale and to direct industrial consumers, nor a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity, manufactured or natural gas.

History.—s. 2, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.03 General duties of public utility.**—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate and efficient service upon terms as required by the commission, provided, no public utility shall be required to furnish electricity or gas for resale. All rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

History.—s. 3, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.04 Florida Public Service Commission; jurisdiction.—**

(1) In addition to its existing functions, the Florida Public Service Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates, service and the issuance and sale of its securities except a security which is a note or draft maturing not more than 1 year after the date of such issuance and sale, and aggregating (together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is liable) not more than 5 percent of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issue. The jurisdiction conferred upon said commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith all lawful acts, orders, rules and regulations of the commission shall in each instance prevail.

(2) In the exercise of its jurisdiction, the commission shall have power over rural electric cooperatives and municipal electric utilities for the following purposes:

(a) To prescribe uniform systems and classifications of accounts.

(b) To prescribe a rate structure for all electric utilities.

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.

(e) To resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the Public Service Commission may consider, but not be limited to, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population and the degree of urbanization of the area and its proximity to other urban areas and the present and reasonably foreseeable future requirements of the area for other utility services.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

(3) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

History.—s. 4, ch. 26545, 1951; s. 1, ch. 63-288; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.041 Rate fixing; adequacy of facilities as criterion.—

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities under its jurisdiction, the Florida Public Service Commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered, the value of such service to the public, and the ability of the utility to improve such service and facilities; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration thereof, the commission shall have authority, and it shall be the commission's duty, to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals; provided however, that no service complaints shall be taken up or considered by the commission at any proceedings involving rates, charges, fares, tolls or rentals unless the utility shall have been given at least 30 days' written notice thereof and any proceeding may be extended prior to final determination for such period; and provided further that no order hereunder shall be made effective until a reasonable time shall be given the utility involved to correct the cause of service complaints considering the factor of growth in the community and availability of necessary equipment.

(2) The power and authority herein conferred upon the Florida Public Service Commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service shall be rendered by public utilities in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by said commission and observed by said utilities under its jurisdiction.

(3) The term "public utility" as used herein means all persons or corporations which the Public Service Commission has the authority, power, and duty to regulate for the purpose of fixing rates and charges for services rendered and requiring the rendition of adequate service.

(4) Any order entered pursuant to the provisions of this section shall be fully reviewable by the Supreme Court as provided by law.

History.—ss. 1-4, ch. 67-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.05 Powers.—

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to prescribe uniform system and classification of accounts for all public utilities, which among other things shall set up adequate, fair and reasonable depreciation rates and charges; to require the filing by each public utility of periodic reports and all other reasonably necessary data; to require repairs, improvements, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners, and technical, legal and clerical employees as it deems necessary to carry out the provisions of this chapter; to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter; and to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

(2) Every public utility as defined in s. 366.02, who in addition to the production, transmission, delivery or furnishing of heat, light or power also sells appliances or other merchandise, shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the

sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all appliances used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such appliances, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the public utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to insure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Electric Power Plant Siting Act, ss. 403.501-403.515.

History.—s. 5, ch. 26545, 1951; s. 2, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.055 Availability of, and payment for, energy reserves.—

(1) Energy reserves of all utilities in the Florida energy grid shall be available at all times to insure that grid reliability and integrity are maintained. The commission is hereby authorized to take such action as necessary to assure compliance. However, prior commitments as to energy use:

(a) In interstate commerce, as approved by the Federal Power Commission;

(b) Between one electric utility and another, which have been approved by the Federal Power Commission; or

(c) Between an electric utility which is a part of the energy grid created herein and another energy grid shall not be abridged or altered except during an energy emergency as declared by the governor and cabinet.

(2)(a) When the energy produced by one electric utility is transferred to another or others through the energy grid and under the powers granted by this section, the commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the Federal Power Commission for such purposes.

(b) Any utility which provides a portion of those transmission facilities involved in the transfer of energy from a producing utility to a recipient utility or utilities shall be entitled to receive an appropriate reimbursement commensurate with the transmission facilities and services provided. However, no utility shall be required to sell purchased power to a recipient utility or utilities at a rate lower than the rate at which the power is purchased from a producing utility.

(3) To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electric energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

History.—s. 3, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.056 Annual tax on gross revenues of municipal electric utilities and rural electric cooperatives.—Each municipal electric utility and rural electric cooperative shall pay to the commission, on or before March 31 of each year, one-sixty-fourth of 1 percent of its gross operating revenues for the preceding calendar year. All payments shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used by the commission in the performance of its duties under ss. 366.04(2) and (3), 366.05(7) and (8), and 366.055.

History.—s. 6, ch. 76-265.

[1]**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 366 by that act.

[1]366.06 Rates; procedure for fixing and changing.—

(1) All rates being charged and collected by a public utility on May 9, 1951 shall be the lawful rates until changed in accordance with the rules, regulations or orders of the commission or court decree. Under rules and regulations to be prescribed by the commission every public utility shall, within 90 days after the effective date of such rules and regulations, file with the commission schedules showing all rates, classifications and charges for service of every kind furnished by it, and all rules and regulations relating thereto in effect on May 9, 1951. Thereafter current schedules shall be maintained on file with the commission on such forms and under such rules and regulations as the commission may prescribe.

(2) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service in-

volved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just and reasonable rates that may be requested, demanded, charged or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for rate-making purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.

(3) Whenever the commission shall find, upon request made or upon its own motion, that the rates demanded, charged or collected by any public utility company for public utility service, or that the rules, regulations or practices of any public utility company affecting such rates are unjust, unreasonable, unjustly discriminatory, or in anywise in violation of law, or that such rates are insufficient to yield reasonable compensation for the services rendered, or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the utility company, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and to promulgate rules and regulations affecting equipment, facilities and service to be thereafter installed, furnished, and used; provided, however, that nothing in this chapter shall be construed to affect a rate in litigation and refund proceedings thereunder pending in the courts on April 3, 1951; provided, however, that a rate order of a duly constituted local regulatory board or authority entered before April 3, 1951 shall be deemed to be the lawful rates charged and collected by the public utility subject to such regulatory body, and should such rate order be challenged or such challenge is pending before the courts of this state or the United States, such rate order shall continue in full force and effect until final determination of such litigation, or until changed by an order of the commission, and the jurisdiction of said board to continue said litigation, and said rates, shall continue until such final determination by the courts, and the commission shall not interfere with the conduct of such litigation nor the jurisdiction of the board.

(4) Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 30 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond at the end of such period, but the commission shall, by order, require such utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of hearing and final decision in such proceeding shall by further order require such utility to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct; however, no such funds shall accrue to the benefit of the utility.

History.—s. 6, ch. 26545, 1951; s. 4, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.
cf.—ss. 323.08, 367.081 Rates; procedure for fixing and changing.
s. 364.05 Changing rates, tolls, rentals, etc.

[1]366.065 Prevention of discrimination or unreasonably high profits.—In order to prevent discrimination or unreasonably high profits, upon receipt of a consumer complaint alleging that:

(1) The consumer purchases energy from a company holding a certificate of public convenience and necessity from a state or federal agency authorizing it to sell energy;

(2) The rates and charges of the company are either discriminatory or unreasonably high;

(3) The energy product or an alternative energy product is not readily available to the consumer from a competitive supplier; and

(4) The price of energy sold by the company to the consumer is not regulated by a government agency,

the Public Service Commission may assume jurisdiction to investigate the allegations and is authorized to exercise all of the powers and duties it is granted by law for the regulation of public utility rates and charges notwithstanding any exemptions or limitations otherwise placed upon the commission's jurisdiction.

History.—s. 1, ch. 73-289; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.07 Rates; adjustment.—Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

History.—s. 7, ch. 26545, 1951; s. 24, ch. 57-1; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

366.072 Rate adjustment orders.—Any order issued by the Florida Public Service Commission adjusting general increases or reductions of the rates of an electric, telephone, or gas company shall be reduced to writing including any dissenting or concurring opinions within 20 days of the official vote of the commission. Within said 20 days, the commission shall also mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order shall not be considered rendered for purposes of appeal, rehearing, or judicial review until the date the copies are mailed as required by this section. This provision shall not delay the effective date of the order. Such an order shall be considered rendered on the date of the official vote for the purposes of ss. 364.05(4) and 366.06(4).

History.—s. 1, ch. 78-137.
Note.—Also published at s. 364.063.

[1]366.08 Investigations, inspections; power of commission.—The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this chapter; provided, such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

History.—s. 8, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.09 Incrimination at hearing of commission.—Any person called upon to testify before the commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced documentary evidence provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History.—s. 9, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.10 Review of commission's orders.—Any public utility or any person in interest dissatisfied with any order of the commission may have it reviewed by the supreme court by certiorari.

History.—s. 10, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.11 Certain exemptions.—

(1) No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04(2) and (3), 366.05(7) and (8), 366.055, and 366.056, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electrification Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

(2) Nothing herein shall restrict the police power of municipalities over their streets, highways and public places or the power to maintain or require the maintenance thereof, or the right of a municipality to levy taxes on public services under s. 166.231, or affect the right of any municipality to continue to receive revenue from any public utility as is now provided or as may be hereafter provided in any franchise.

History.—s. 11, ch. 26545, 1951; s. 5, ch. 74-196; s. 3, ch. 76-168; s. 7, ch. 76-265; s. 108, ch. 77-104; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.12 Penalty.—If any public utility, by any authorized officer, agent or employee, shall knowingly refuse to comply with or willfully violate any provision of this chapter or any lawful rate, rule or regulation, order, direction, demand or requirement prescribed by the commission hereunder, such public utility shall incur a penalty for each such offense of not more than $5,000 to be fixed, imposed and collected by the commission. Each day that said refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the public utility, enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited to the credit of the general revenue fund of the state.

History.—s. 12, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.13 Taxes, not affected.—No provision of this chapter shall in any way affect any municipal tax or franchise tax in any manner whatsoever.

History.—s. 13A, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 367

WATER AND SEWER SYSTEMS

[1]367.011 Jurisdiction; legislative intent.—

(1) This chapter shall be known and may be cited as the "Water and Sewer System Regulatory Law."

(2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, rates, and issuance and sale of its securities maturing more than 12 months after date of issue, except as provided in this chapter.

(3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.021 Definitions.—As used in this chapter the following words or terms shall have the meanings indicated:

(1) "Commission" means the Florida Public Service Commission.

(2) "Certificate" means written authority from the commission to a utility to provide service in a specific territory.

(3) "Utility" means water or sewer utility and, except as provided in s. 367.022, includes every person, lessee, trustee or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or sewer service to the public for compensation.

(4) "System" means facilities and property used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and property.

(5) "Governmental agency" means a political subdivision authorized to provide water or sewer service.

(6) "Territory" means the geographical area described in a certificate, which may be within or without the boundaries of an incorporated municipality, and may include areas in more than one county.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.022 Exemptions.—The following are not subject to regulation by the commission as a utility:

(1) The sale, distribution or furnishing of bottled water;

(2) Systems owned, operated, managed or controlled by governmental agencies;

(3) Manufacturers providing service solely in connection with their operations;

(4) Public lodging establishments providing service solely in connection with service to their guests;

(5) Landlords providing service to their tenants without specific compensation for the service;

(6) Systems designed to serve or serving 100 persons or less; and

(7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.031 Certificate.—Each utility shall obtain a certificate authorizing it to provide service.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.041 Application.—Each applicant for a certificate shall:

(1) Provide information required by the commission, which may include a detailed inquiry into the ability of the applicant to provide service, the territory and facilities involved, and the existence or nonexistence of service from other sources within geographical proximity to the territory applied for;

(2) File with the commission schedules showing all rates, classifications, and charges for service of every kind furnished by it and all rules, regulations, and contracts relating thereto;

(3) File the application fee required by s. 367.141;

(4) Submit an affidavit that the applicant has caused notice of its intention to file an application, to be given:

(a) By mail or personal delivery:

1. To each utility serving, as disclosed by the records of the commission, within 10 miles of the applied-for territory, which has registered pursuant to the provisions of s. 367.171(1)(a); and

2. To the county commissions of the counties affected; and

(b) By publishing an advertisement each week, for 3 consecutive weeks, in a newspaper of general circulation in the territory involved.

Notice to be given shall be styled "Application For A Water Certificate," "Application For A Sewer Certificate," or "Application For A Water And Sewer Certificate," as the case may be, and shall include the name and address of the applicant together with a commonly understood description of the territory for which application is to be made. Notice must be given no more than 30 days prior to the filing of the application.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.051 Issuance of certificate.—

(1) If within 20 days following the filing of the application, the commission does not receive written objection to the application, the commission may dispose of the application without hearing.

(2) Notwithstanding any provision to the contrary in chapter 120, if within 20 days following the filing of the application the commission receives a written prima facie valid objection to the application from a consumer, utility, or governmental agency in the territory involved, the commission shall hold a public hearing in or near such territory, with notice of the hearing to be given to the applicant and parties objecting.

(3) In either event, the commission may grant a certificate, in whole or in part or with modifications in the public interest, or deny a certificate. The commission shall not grant a certificate for a proposed system, or for the extension of an existing system, which will be in competition with, or duplication of, any other system or portion of a system, unless it shall first determine that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable or refuses or neglects to provide reasonably adequate service.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.061 Extension of certificate.—

(1) A utility may extend its service outside of the territory described in its certificate, if the extension does not involve territory described in an organizationally unrelated utility's certificate, served by a governmental agency, or receiving similar service from any other utility or governmental agency.

(2) Proposed extensions of service other than as authorized in subsection (1) shall not be commenced until the utility first obtains for such extensions an amended certificate in accordance with s. 367.041.

(3) A utility proposing to extend service in accordance with subsection (1) shall cause notice to be given at least 30 days prior to commencing of construction of the proposed extension, in the manner provided by s. 367.041(4).

(a) If within 50 days following the date notice was first given the commission does not receive written objection to the extension, the utility may provide service in the territory for which notice was given.

(b) If objection is received, the matter will be disposed of in accordance with s. 367.051(2) and (3).

(4) An application to amend a certificate may be made at any time, but no later than April 1 of the year following the extension. The application shall contain a description of all additional territory served. The commission shall issue an amended certificate describing all territory which it had theretofore been authorized to serve, together with the additional territory served by such extension.

(5) Notices will be styled "Application For Amendment Of Certificate No....."

(6) Applications made pursuant to this section shall be accompanied by a fee as provided by s. 367.141.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.071 Transfer.—

(1) No utility shall sell, assign, or transfer its certificate, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest.

(2) Applications for proposed sale, assignment or transfer shall be made in the same manner as provided by s. 367.041, except that:

(a) The notice shall be styled "Application For Transfer Of Certificate No....," and

(b) The application shall be accompanied by a fee as provided by s. 367.141. No fee is required to be paid by a governmental agency that is buyer, assignee, or transferee.

(3) Applications shall be disposed of as provided in s. 367.051, except that:

(a) The sale or transfer of certificates or facilities to a governmental agency shall be approved as a matter of right.

(b) When paragraph (a) of this subsection does not apply, the commission shall amend the certificates as necessary to reflect the change resulting from the sale, assignment, or transfer.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.081 Rates; procedure for fixing and changing.—

(1) Rates and charges being charged and collected by a utility shall be changed only by approval of the commission.

(2) The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unjustly discriminatory. In all such proceedings, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest, the utility's requirements for working capital, maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service, and a fair return on the utility's investment in property used and useful in the public ser-

vice. The commission shall also consider the utility's investment in property required by duly authorized governmental authority to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months.

(3) The commission shall grant to any utility which receives all of its utility service from a governmental agency and redistributes that service to its utility customers an increase or decrease in rates for service, without hearing, upon verified notice that the rates charged by the governmental agency have changed. The new rates authorized shall reflect the amount of the change of the rates imposed upon the utility by the governmental agency. Provisions of this subsection shall not prevent a utility which receives its service from a governmental agency from seeking changes in rates pursuant to the provisions of subsection (2).

(4) Applications for rate changes shall be accompanied by a fee as provided by s. 367.141, except that no fee shall be required for applications for rate changes made pursuant to subsection (3).

(5) Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 30 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond at the end of such period, but the commission shall by order require such utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of hearing and final decision in such proceeding shall by further order require such utility to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct; however, no such funds shall accrue to the benefit of the utility.

(6) In no instance is any regulated company allowed to put suspended rates into effect more than one time in any 12-month period.

History.—s. 1, ch. 71-278; s. 5, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 323.08 Rates; procedure for fixing and changing.
s. 364.05 Changing rates, tolls, rentals, etc.
s. 366.06 Rates; procedure for fixing and changing.

[1]367.091 Rates; new class of service.—If any request for service of a utility shall be for a new class of service not provided for in the filings required by s. 367.041(2), the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.101 Charges for service availability.—Charges and conditions made by a utility shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions to be made by a utility for service availability. The commission shall set just and reasonable charges and conditions for service availability.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.111 Service.—

(1) Each utility shall provide service to the territory described in its certificate within a reasonable time. If the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted territory to that of another utility company is economical and feasible, it may amend the certificate to delete the territory not served or not properly served by the utility, or it may rescind the certificate.

(2) Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by chapter 10D-4, Florida Administrative Code for Water Systems, and chapter 17-4, Florida Administrative Code for Sewer Systems, but such service shall not be less safe, efficient, and sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; ss. 1, 2, ch. 79-49.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.121 Powers of commission.—

(1) In the exercise of its jurisdiction, the commission shall have power:

(a) To prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each utility;

(b) To prescribe uniform system and classification of accounts for all utilities, which, among other things, shall establish adequate, fair, and reasonable depreciation rates and charges;

(c) To require the filing by each utility of periodic reports and all other reasonably necessary information;

(d) To require repairs, improvements, additions, and extensions to the plant and equipment of any utility reasonably necessary to promote the convenience and welfare of the public and secure sufficient service or facilities for those reasonably entitled thereto in the territory, except that no utility shall be required to extend its service outside its territory, or make additions to its plant or equipment to serve

outside its territory, unless the commission shall first enter an order based upon findings establishing the financial ability of the utility to make such additional investment without impairing its capacity to serve its existing customers and its ability to operate efficiently;

(e) To employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter;

(f) To prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter; and

(g) To exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

(2) The commission or its duly authorized representatives may, during all reasonable hours, enter upon any premises occupied by any utility and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter. Such utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations, and tests.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.122 Examination and testing of appliances.—

(1) The commission may provide for the examination and testing of all appliances used for measuring any product or service of a utility.

(2) Any customer or user may have any such appliance tested by the utility upon payment of the fee fixed by the commission.

(3) The commission shall establish reasonable fees to be paid for testing such appliances on the request of the customers. The fee shall be paid by the customer or user at the time of his request. However, the fee shall be paid by the utility and repaid to the customer or user if the appliance is found defective or incorrect to the disadvantage of the customer or user in excess of the degree or amount of tolerance customarily allowed for such appliances, or as may be provided for in rules and regulations of the commission. No fee may be charged for any such testing done by the commission or its representatives.

(4) The commission may purchase materials, apparatus and standard measuring instruments for such examinations and tests.

History.—s. 1, ch. 71-278; s. 100, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.123 Service for resale.—The commission shall not require a utility to provide service for resale, but any utility which provides service for resale shall provide such service upon terms and conditions established by the commission, and no utility shall discontinue such service without the approval of the commission.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.131 Review of commission's orders.— Any utility, or any person in interest, dissatisfied with any order of the commission may have it reviewed by the Supreme Court by certiorari.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.141 Fees.—Applications by utilities, made pursuant to the provisions of ss. 367.041, 367.061, 367.071, and 367.081, shall be accompanied by a fee, based upon the existing or proposed capacity of the system or extension, as follows:

(1) From 1 to 249 persons, $50;
(2) From 250 to 499 persons, $75;
(3) From 500 to 999 persons, $150;
(4) From 1,000 to 1,499 persons, $375;
(5) From 1,500 to 2,499 persons, $600;
(6) From 2,500 to 4,999 persons, $900;
(7) From 5,000 to 9,999 persons, $1,500;
(8) Ten thousand or more persons, $2,250.

Such fees shall be placed in the Public Service Regulatory Trust Fund under the provisions of chapter 350.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 3, ch. 76-265; s. 1, ch. 77-457; s. 75, ch. 79-164.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.151 Gross receipts tax.—Each utility shall, on or before March 15 in every year, report to the commission, under oath of one of its officers, the total amount of the gross receipts derived by it in the immediately preceding period of January 1 to December 31, inclusive, from utility business done within this state. Each utility whose ownership or system is transferred in any manner to a governmental agency shall, within 30 days of the date of transfer, report the total amount of gross receipts derived by it during the period from January 1 to the date of transfer. In either event, at the time of so reporting, each utility shall pay to the commission a gross receipts tax in the amount of 2.5 percent of such gross receipts. However, whenever a purchase is made of any water and a tax is paid thereon by a utility and such utility resells the same directly to customers, such utility shall be entitled to, and receive, credit on such taxes as may be due by it under this section to the extent of the tax paid or payable upon such water by the person, firm, or corporation from whom such purchase was made. If any utility fails to make such report and pay such tax, the commission, after giving at least 5 days' written notice to the utility, shall estimate the amount of such gross receipts from such information as it may be able to obtain from any source, add 10 percent of the amount of such tax as a penalty, and proceed to collect such tax and penalty, together with all costs of collection thereof, in the same manner as other delinquent taxes are collected. However, no penalty

shall be added to the tax in the event a return is made and the amount of the tax is paid before the expiration of the time fixed in the notice given by the commission. All such tax payments and penalties shall be placed in the Florida Public Service Regulatory Trust Fund, as established under the provisions of chapter 350. The commission may audit such reports, and, upon demand, every utility shall submit all of its records, papers, books, and accounts to the commission or its representatives for audit.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 3, ch. 76-265; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.161 Incrimination, violations; penalties.—

(1) A person called upon to testify before the commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate him; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced documentary evidence. However, no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

(2) If any utility, by any authorized officer, agent, or employee, shall knowingly refuse to comply with, or willfully violate, any provision of this chapter or any lawful rate, rule or regulation, order, direction, demand, or requirement prescribed by the commission, such utility shall incur a penalty for each such offense of not more than $5,000, to be fixed, imposed, and collected by the commission. Each day that said refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85. The proceeds from the enforcement of any such lien shall be deposited in the general revenue fund of the state.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]367.171 Effectiveness of this chapter.—

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners adopting such resolution shall immediately notify the commission of its adoption and submit the resolution to the commission.

(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its area of service.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it if, within 90 days, the utility will make application by filing with the commission:

1. A map of its existing system or system under construction; and
2. A description of the area served by the system.

Such application shall be accompanied by a fee as provided by s. 367.141.

(2)(a) In consideration of the advisory opinion of the Supreme Court of Florida to the Governor on May 14, 1969, responding to the Governor's request for the court's opinion upon a question affecting the executive powers and duties, as authorized by s. 1(c), Art. IV, State Constitution, the court found, inter alia, that the Legislature of the State of Florida is vested with inherent power to prevent unjust discrimination and excessive charges by persons engaged in common carriage and providing other service of a public nature. Thus, the Legislature has inherent authority to create and empower a public utilities commission and impose upon it responsibility and authority for regulation of water and sewer utilities in certain areas of this state.

(b) In consideration of the variance of powers, duties, responsibilities, population, size of municipalities of the several counties and that every county varies from every other county and thereby affects the functions, duties and responsibilities required of its county officers and the scope of responsibilities which each county may, at this time, undertake, the Counties of Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Collier, Columbia, Dade, DeSoto, Dixie, Escambia, Flagler, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Okaloosa, Okeechobee, Polk, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Wakulla and Washington are excluded from the provisions of this chapter until such time as the board of county commissioners of such counties, acting pursuant to the provisions of subsection (1), shall make this chapter applicable to such county or until the Legislature shall, by appropriate act, remove one or more such counties from this exclusion.

History.—s. 1, ch. 71-278; s. 1, ch. 73-193; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 368

GAS SAFETY LAW

368.01 Short title.—This law may be known and cited as "The Gas Safety Law of 1967."

History.—s. 1, ch. 59-304; s. 1, ch. 67-379.

368.021 Applicability.—The provisions of this law and all orders, rules and regulations adopted pursuant thereto shall apply to every person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling any gas transmission or distribution facilities or any other facility supplying natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substance to or for the public within this state; provided, however, that the terms of this law shall not apply to those supplying liquefied petroleum gas in either the liquid or gaseous form.

History.—s. 2, ch. 67-379; s. 1, ch. 69-248.

368.03 Purpose and legislative intent.—This law authorizes the establishment of rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and gas services up to the outlet of the customer's meter set assembly, gas-storage equipment of the closed-pipe type fabricated or forged from pipe or fabricated from pipe and fittings, and gas-storage lines. It is intended that the requirements of such rules and regulations shall be adequate for safety under conditions normally encountered in the gas industry, but requirements for abnormal or unusual conditions or all details of engineering and construction need not be specifically provided for or prescribed. It is not intended that the rules and regulations adopted pursuant hereto be applied retroactively to existing installations so far as design, fabrication, installation, establishing operating pressure and testing are concerned. It is intended, however, that the provisions of the rules and regulations shall be applicable to the operation, maintenance and uprating of existing installations. This law, and the rules and regulations adopted pursuant to it, are declared to be in the public interest and are deemed to be an exercise of the police power of the state for the protection of the public welfare and shall be liberally construed for the accomplishment of that purpose.

History.—s. 2, ch. 59-304; s. 3, ch. 67-379.

368.05 Commission jurisdiction, rules and regulations.—

(1) In addition to its existing functions, the Florida Public Service Commission shall have jurisdiction over all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards established by the commission pursuant to this law. The jurisdiction conferred upon the commission hereby shall be exclusive of and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages or counties; and in case of conflict therewith all lawful safety acts, orders, rules and regulations of the commission shall in each instance prevail.

(2) The commission shall have the power to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders, rules and regulations not inconsistent herewith as it may find necessary or appropriate to the exercise of the authority granted under the provisions of this law. The commission may require the filing of periodic reports and all other data reasonably necessary to determine whether the safety standards prescribed by it are being complied with; may require repairs and improvements to the gas transmission and distribution piping systems subject to this law which are reasonably necessary to promote the protection of the public; and may exercise all judicial powers, issue all writs and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its safety orders and rules and regulations adopted pursuant to this law.

History.—ss. 48, 49, ch. 59-304; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 4, ch. 67-379.

368.061 Penalty for violation of chapter.—

(1) Any person who violates any provision of this chapter, or any regulation issued hereunder, shall be subject to a civil penalty of not to exceed $1,000 for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed $200,000 for any related series of violations.

(2) Any such civil penalty may be compromised by the commissioners. In determining the amount of such penalty or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation shall be considered. Each penalty shall be a lien upon the real and personal property of said persons and enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited in the general revenue fund of the state.

(3) The commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this state proceedings for injunction against any person subject to the provisions of this chapter to compel the observance of the provisions of

this chapter or any rule, regulation or requirement of the commission made thereunder.

History.—s. 2, ch. 69-248.

TITLE XXVI

CONSERVATION

CHAPTER 370

SALTWATER FISHERIES

370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase or term:

(1) "Resident" or "resident of Florida" includes citizens of the United States who have continuously resided in this state, next preceding the making of their application for hunting, fishing or other license, for the following period of time, to wit: For 1 year, in the state, and 6 months in the county when applied to all fish and game laws not related to freshwater fish and game.

(2) "Saltwater fish" shall include all classes of pisces, shellfish, sponges and crustacea indigenous to salt water.

(3) "Open season" shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(4) "Closed season" shall be that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(5) "Salt water," except where otherwise provided by law, shall be all of the territorial waters of Florida excluding all lakes, rivers, canals, and other waterways of Florida from such point or points

where the fresh and salt waters commingle to such an extent as to become unpalatable because of the saline content, or from such point or points as may be fixed for conservation purposes by the Division of Marine Resources and the Game and Fresh Water Fish Commission of the Department of Natural Resources with the consent and advice of the board of county commissioners of the county or counties to be affected.

(6) "Common carrier" shall include any person, firm or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his services to all such as may choose to employ him and pay his charges.

(7) "Transport" shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

(8) "Guide" shall include any person engaged in the business of guiding hunters or hunting parties, fishermen or fishing parties, for compensation.

(9) "Shellfish" shall include oysters, clams and whelks.

(10) "Coon oysters" are oysters found growing in bunches along the shore between high and low watermark.

(11) "Reef bunch oysters" are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

(12) "Food fish" shall include mullet, trout, redfish, sheepshead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption.

(13) A "natural oyster or clam reef," or "bed," or "bar," shall be considered and defined as an area containing not less than 100 square yards of the bottom where oysters or clams are found in a stratum.

(14) "Department" shall mean the Department of Natural Resources.

(15) "Beaches" and "shores" shall mean the coastal and intracoastal shoreline of this state bordering upon the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any part thereof, and any other bodies of water under the jurisdiction of the State of Florida, between the mean high waterline and as far seaward as may be necessary to effectively carry out the purposes of this act.

(16) "Erosion control," "beach preservation" and "hurricane protection" shall include any activity, work, program, project or other thing deemed necessary by the Division of Marine Resources of the Department of Natural Resources to effectively preserve, protect, restore, rehabilitate, stabilize and improve the beaches and shores of this state, as defined above.

(17) "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore processes.

(18) "Saltwater products" means any species of saltwater fish, marine plant, or echinoderm, except shells, nonliving sponges, and salted, cured, canned, or smoked seafood.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 63-40; s. 1, ch. 65-140; ss. 25, 35, ch. 69-106; s. 127, ch. 71-377; s. 1, ch. 78-56; s. 76, ch. 79-164.

cf.—s. 1.01 General definitions.

s. 372.001 Definitions re freshwater fish.

370.013 Department of Natural Resources; general function.—The Department of Natural Resources is charged with the administration, supervision, development and conservation of the natural resources of the state.

History.—ss. 25, 35, ch. 69-106.

370.015 Development of Suwannee River and area.—The Department of Natural Resources, through its Suwannee River Authority, is granted the authority to guide, stimulate, and promote the coordinated, efficient, and beneficial development and improvement of the Suwannee River and its tributaries and surrounding area. Expenditures of funds therefor are hereby declared to be for a proper public purpose.

History.—s. 1, ch. 71-16.

370.017 Executive director, responsibility to Board of Trustees of Internal Improvement Trust Fund.—In addition to his other duties, it is the responsibility of the executive director of the Department of Natural Resources to advise and make recommendations to the Board of Trustees of the Internal Improvement Trust Fund on all matters pertaining to the natural resources of the state.

History.—ss. 25, 35, ch. 69-106.

370.02 Department of Natural Resources.—

(1) [1]DIVISION OF ADMINISTRATIVE SERVICES; POWERS AND DUTIES.—The [1]Division of Administrative Services shall have the duty and responsibility of rendering any services required by the department and its several divisions, herein set forth, that can advantageously and effectively be centralized and such other functions and duties of the department not specifically assigned by law to some other division. Necessary promotional expenses incurred in such activities of the department shall include, but not be limited to, conventions, conferences, and meetings within and without this state, and shall be paid from the water resources development account in amounts totaling not more than $2,000 per fiscal year.

(2) DIVISION OF MARINE RESOURCES; POWERS AND DUTIES.—

(a) It shall be the duty of the Division of Marine Resources of the department to preserve, manage, and protect the marine, crustacean, shell and anadromous fishery resources of the state in the waters thereof; to regulate the operations of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the Legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classifications; to conduct scientific, economic and other studies and

research, and to enter into contracts for such studies and research, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

(b) The Division of Marine Resources shall administer, coordinate, and enforce the provisions of ss. 370.03, 370.041, 370.06-370.172 and chapter 371.

(c) The Department of Natural Resources acting through the Division of Marine Resources shall be the state agency for:

1. Administering, coordinating, enforcing, and carrying out the powers, duties, functions, and responsibilities relating to beach and shore erosion including restoration and protection against hurricane and storm damages.

2. Processing of applications and issuing of permits prior to commencement of work for all coastal construction, physical activity, or structures pertaining thereto, except those authorized to be constructed under chapter 253, below the mean high waterline of any body of tidal water within the limits of the state, and the setting of reasonable fees and costs therefor.

(d) Specific duties of the Division of Marine Resources shall include the following:

1. To administer, coordinate, and enforce the provisions of chapter 161.

2. To conduct, direct, encourage, coordinate, and organize a continuing program of research into problems of beach erosion, shoreline deterioration and hurricane protection.

3. To prepare a comprehensive, and a long-range statewide plan for erosion control, beach preservation, and hurricane protection.

4. To review all plans and activity pertinent to erosion control, beach, and hurricane protection, and to provide coordination in these fields among the various levels of government and areas of the state.

5. To make recommendations to the department concerning the use of funds in the erosion control account.

6. To insure the proper regulation of shoreline alteration and development by investigating proposed work and making recommendations to the department.

7. To promote sound planning and development of shoreline upland by devising standards and working closely with local planning and zoning bodies.

8. To coordinate erosion control, beach preservation and hurricane protection activities with waterways, harbors, water control and development projects.

9. To provide a clearing service for erosion control, beach preservation and hurricane protection matters by collecting, processing and disseminating pertinent information.

10. To assist and guide localities in the preparation and execution of integrated erosion, beach preservation and hurricane protection programs.

11. To provide such other services as the department may direct.

(3) DIVISION OF RESOURCE MANAGEMENT; POWERS AND DUTIES.—

(a) It shall be the duty of the Division of Resource Management to coordinate the activities of all public bodies, authorities, agencies and special districts charged with the development of waterways within the state, whether such bodies, authorities, agencies, or special districts now exist or may hereafter be created by general or special act of the Legislature.

(b) The division shall also foster, promote, and guide development of an integrated system of waterways within the state, utilizing, where practical, the natural bodies of water lying therein.

(c) This division may disburse to the canal authority of the state any funds transferred to the department by the Board of Trustees of the Internal Improvement Trust Fund as herein provided to be used as matching funds for the purpose of acquiring rights-of-way for any waterways development project authorized by an appropriate federal or state agency the route of which is to pass through or adjacent to the counties comprising any special taxing district created for the purpose of raising funds for acquiring such rights-of-way. Provided, however, no such matching funds shall be so disbursed except upon approval of the department and upon receipt of satisfactory proof from the canal authority that it has sufficient funds on hand to match the state funds herein referred to on an equal basis. The Board of Trustees of the Internal Improvement Trust Fund shall transfer to the department such of its funds as may be available and as the department may deem necessary to provide the matching fund herein authorized. The use of the funds of the Land Acquisition Trust Fund for the purposes herein shall be deemed a valid use of said funds.

(d) It shall be the duty of the Division of Resource Management to administer, coordinate, and enforce the functions of the division as set forth in ss. 377.075 and 373.012. The division shall also administer, enforce and coordinate the provisions of chapter 377 relating to conservation of oil and gas resources.

(e) The Division of Resource Management shall perform all powers, duties, and functions of the former Division of Interior Resources not transferred elsewhere by chapter 75-22, Laws of Florida. The division shall also perform functions including, but not limited to, preservation, management, and protection of lands held by the state other than parks and recreational and wilderness areas. The division shall also carry out the responsibilities of boundary determination pursuant to chapter 253.

(4) DIVISION OF LAW ENFORCEMENT; POWERS AND DUTIES.—The Division of Law Enforcement shall perform the duties currently assigned to the Bureau of Law Enforcement of the Division of Marine Resources.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 57-367; s. 1, ch. 57-153; s. 1, ch. 57-253; s. 1, ch. 59-193; s. 1, ch. 61-231; ss. 2, 3, ch. 63-40; s. 2, ch. 65-140; ss. 25, 27, 35, ch. 69-106; s. 30, ch. 69-353; s. 1, ch. 70-254; s. 128, ch. 71-377; s. 14, ch. 75-22; s. 6, ch. 77-306; s. 30, ch. 79-65; s. 77, ch. 79-164.

[1]**Note.**—See s. 2, ch. 79-255, which changed the name of "Division of Administrative Services" of the Department of Natural Resources to "Division of Administration."

cf.—s. 370.061 Confiscation of property and products.

370.021 Administration, rules, regulations, etc.—

(1) RULES AND REGULATIONS.—The Department of Natural Resources shall make, adopt, pro-

mulgate, amend and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations, powers and responsibilities conferred on said department or any of its divisions. The director of each division shall submit to the department suggested rules and regulations for that division. Any person violating or otherwise failing to comply with any of the rules and regulations adopted as aforesaid shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided by law.

(2) PENALTY FOR VIOLATION.—Any person violating any provisions of this chapter, unless otherwise provided, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) RULES; ADMISSIBILITY AS EVIDENCE.—Rules and regulations shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the executive director of the department certifying that the rule or regulation has been lawfully adopted, promulgated, and published; and such affidavit shall be prima facie evidence of proper adoption, promulgation, and publication of the rule or regulation.

(4) PUBLICATIONS BY DEPARTMENT.—The department through the [1]Division of Administrative Services is given authority, from time to time in its discretion, to cause the statutory laws under its jurisdiction, together with any rules and regulations promulgated by it, to be published in pamphlet form for free distribution in this state. The department is hereby authorized to make charges for technical and educational publications and mimeographed material of use for educational or reference purposes. Such charges shall be made at the discretion of the [1]Division of Administrative Services. Such charges may be sufficient to cover cost of preparation, printing, publishing and distribution. All moneys received for publications shall be deposited in the General Revenue Fund. The department is further authorized to enter into agreements with persons, firms, corporations, governmental agencies and other institutions whereby publications may be exchanged reciprocally in lieu of payments for said publications.

(5) POWERS OF OFFICERS.—The department may designate such employees of the several divisions, as it may deem necessary in its discretion, as law enforcement officers, who shall meet the provisions of s. 943.13 and subsection 943.12(1) and have the powers and duties conferred in this subsection, except that such employees shall comply with the provisions of chapter 943. Such officers, together with the executive director and the director of the Division of Law Enforcement, are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules and regulations of the department under their jurisdiction and for violations of chapter 253 and the rules and regulations promulgated thereunder. The general laws applicable to arrests by peace officers of this state shall also be applicable to such law enforcement officers. Such law enforcement officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry shall not constitute a trespass. It shall be lawful for any boat, motor vehicle, or aircraft owned or chartered by the department or its agents or employees to land on and depart from any of the beaches or waters of the state. Such law enforcement officers shall have the authority, without warrant, to board, inspect, and search any boat, fishing appliance, storage or processing plant, fishhouse, spongehouse, oysterhouse, or any other warehouse, building, or vehicle engaged in transporting or storing any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules promulgated under this law. Any such law enforcement officer may at any time seize or take possession of any saltwater products or contraband which have been unlawfully caught, taken, or processed or which are unlawfully possessed or transported in violation of any of the laws of this state or any rule or regulation of the department. Such law enforcement officers may arrest any person in the act of violating any of the provisions of this law, rules or regulations of the department, the provisions of chapter 253 and the rules and regulations promulgated thereunder, or any of the laws of this state. It is hereby declared unlawful for any person to resist such arrest or in any manner interfere, either by abetting or assisting such resistance or otherwise interfering, with any such law enforcement officer while engaged in the performance of the duties imposed upon him by law or regulation of the department.

(6) DUTIES OF DEPARTMENT OF LEGAL AFFAIRS.—The Department of Legal Affairs shall attend to the legal business of the Department of Natural Resources and its divisions but if at any time any question of law or any litigation arises, and the Department of Legal Affairs is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the occasion demands, the several State Attorneys shall attend to any such question of law or litigation arising within their respective circuits, and if such State Attorney is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the case may demand, the said Department of Natural Resources may employ additional counsel for that particular cause, with the advice and consent of the Department of Legal Affairs. Such additional counsel's fees shall be paid from the moneys appropriated to the Department of Natural Resources.

(7) DESTRUCTION OF RECORDS.—

(a) The purpose of this section is to make available for the use of the executive director sufficient floorspace for efficient administration of his office.

(b) The executive director is authorized to destroy copies and records of all licenses, of every nature, issued by the department under his authority provided such records shall not be destroyed until a period of 2 years shall have elapsed after completion

of the audit of said records as provided by law; provided, further, that he shall prepare and preserve a register of all destroyed copies and records, upon which shall be inscribed the nature of the several licenses, the date of issue thereof, and the name and address of the person, persons, or associations of persons to whom issued. The power hereby conferred shall be a continuing power.

(c) The executive director is further authorized to destroy any other correspondence, documents and records, which in his discretion have, after the expiration of 2 years from the date of their postaudit as provided by law, become obsolete.

(8) COURTS OF EQUITY MAY ENJOIN, ETC.—Courts of equity in this state shall have jurisdiction to enforce the conservation laws of this state by injunction.

(9) BOND OF EMPLOYEES.—The department may require, as it determines, that bond be given by any employee of the department or divisions thereof, payable to the Governor of the state, and his successor in office, for the use and benefit of those whom it may concern, in such penal sums with good and sufficient surety or sureties approved by the department conditioned for the faithful performance of the duties of such employee.

History.—s. 2, ch. 61-231; s. 1, ch. 61-22; ss. 11, 25, 35, ch. 69-106; s. 1, ch. 70-378; s. 1, ch. 70-439; s. 277, ch. 71-136; s. 1, ch. 75-180; s. 23, ch. 78-95; s. 31, ch. 79-65.

[1]**Note.**—See s. 2, ch. 79-255, which changed the name of "Division of Administrative Services" of the Department of Natural Resources to "Division of Administration."

370.03 Water bottoms.—

(1) OWNERSHIP.—All beds and bottoms of navigable rivers, bayous, lagoons, lakes, bays, sounds, inlets, oceans, gulfs and other bodies of water within the jurisdiction of Florida shall be the property of the state except such as may be held under some grant or alienation heretofore made. No grant, sale or conveyance of any water bottom, except conditional leases and dispositions hereinafter provided for, shall hereafter be made by the state, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services, or any other official or political corporation. Persons who have received, or may hereafter receive permits to do business in this state, with their factories, shucking plants and shipping depots located in this state, may enjoy the right of fishing for oysters and clams from the natural reefs and bedding oysters and clams on leased bedding grounds, and shall have the right to employ such boats, vessels, or labor and assistants as they may need. Provided that no oysters shall be transported unshucked and in the shells, out of the state, except for use in what is commonly known as the "half-shell trade." When the oyster meats have been separated from the shells it shall be permissible to ship the meats out of the state for further processing and for canning or packing. It shall be unlawful to transport oysters out of the state, unshucked and in the shells, for processing or packing.

(2) CONTROL.—The Division of Marine Resources of the Department of Natural Resources has exclusive power and control over all water bottoms, not held under some grant or alienation heretofore made, including such as may revert to the state by cancellation or otherwise, and may lease the same to any person irrespective of residence or citizenship, upon such terms, conditions and restrictions as said division may elect to impose, without limitation as to area to any one person, for the purpose of granting exclusive right to plant oysters or clams thereon and for the purpose of fishing, taking, catching, bedding and raising oysters, clams and other shellfish. No such lessee shall re-lease, sublease, sell or transfer any such water bottom or property; provided, that nothing herein contained shall be construed as giving said division authority to lease sponge beds.

(3) FEES FOR BOTTOM LEASES, ETC.—The division shall charge and receive a fee of $2 for each lease granted, and in all other cases, not specifically provided by this chapter, the same fees as are allowed Clerks of the Circuit Court for like services. All fees shall be paid by the party served.

(4) CONFIRMATION OF FORMER GRANTS; PROVISO.—All grants prior to June 1, 1913, made in pursuance of heretofore existing laws, where the person receiving such grant, his heirs or assigns, have bona fide complied with the requirements of said law, are hereby confirmed; provided, that if any material or natural oyster or clam reefs or beds on such granted premises are 100 square yards in area and contained natural oysters and clams (coon oysters not included) in sufficient quantity to have been resorted to by the general public for the purpose of gathering oysters or clams to sell for a livelihood, at the time they were planted by such grantee, his heirs or assigns, such reefs or beds are declared to be the property of the state; and when such beds or reefs exist within the territory heretofore granted as above set forth, or that may hereafter be leased, such grantee or lessee shall mark the boundaries of such oyster and clam reefs or beds as may be designated by the division as natural oyster or clam reefs or beds, clearly defining the boundaries of the same, and shall post notice or other device, as shall be required by the division, giving notice to the public that such oyster or clam beds or reefs are the property of the state, which said notice shall be maintained from September 1 to June 1 of each and every year, on each oyster bed or reef and on each clam bed for such period of each year as the board may direct, at the expense of the grantee or lessee. The division shall investigate all grants heretofore made, and where, in its opinion, the lessee or grantee has not bona fide complied with the law under which he received his grant or lease, and it shall report the same to the department which is authorized and required to institute legal proceedings to vacate the same, in order to use such lands for the benefit of the public, subject to the same dispositions as other bottoms.

History.—ss. 2, 3, ch. 28145, 1953; s. 1, ch. 29941, 1955; ss. 14, 25, 27, 35, ch. 69-106.

370.031 Choctawhatchee Bay, use study.—

(1) The Department of Natural Resources is hereby directed to conduct an economic, ecological, and biological study of Choctawhatchee Bay, and the inlets and tributaries thereof, to determine the best possible use or uses of the bay. The department shall consider, among other things, the potential use of the bay for: Sport and commercial fishing, shell-

dredging, mariculture, and other recreational, commercial and industrial uses. The study shall include the development of suggested rules and regulations for the protection of the bay to insure that the best use of the bay will continue.

(2) The department may utilize the services, personnel, or facilities of any state institution, agency, department, or other state body either through contract or agreement in carrying out the provisions of this section.

(3) The department is hereby authorized to use any funds appropriated for research in its trust funds to the extent necessary to carry out the provisions of this section.

History.—ss. 1, 2, 4, ch. 69-225; ss. 25, 35, ch. 69-106.

370.032 Definitions; ss. 370.032-370.038.—The following words, terms, and phrases when used in ss. 370.032-370.038 shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, or any other legal or commercial entity.

(2) "Dredge or fill equipment" means any dredge, sand pump, sand sucker, or similar device, having an intake capacity of 4 inches or more, and any dragline excavator, crane, power shovel, backhoe, or similar device, having a bucket or clamshell capacity in excess of 2 yards, and shall include all such devices regardless of how mounted or powered.

(3) "Dredge or fill activities" means any use of dredge or fill equipment for the purpose of removing soil, rock, or other solid material from beneath the surface of any body of water, of creating a body of water of any size whatsoever, or of placing or depositing any such material upon submerged bottom lands of any body of water.

(4) "Body of water" means all freshwater lakes and ponds having a surface area in excess of 10 acres and all oceans, gulfs, bays, bayous, lagoons, rivers and streams, and all other submerged lands.

(5) "Department" means the Department of Natural Resources.

History.—s. 2, ch. 70-442.

370.033 Legislative intent.—It is the legislative intent to require all persons who engage in any dredge or fill activities in this state to obtain a certificate of registration from the Department of Natural Resources and also to keep accurate logs and records of all such activities so that the natural resources may be protected and conserved.

History.—s. 1, ch. 70-442.

370.034 Certificate required; return; application; filing fee.—

(1) Every person owning or controlling any dredge or fill equipment in this state, or leasing or renting such equipment to any other person to operate in this state, shall make a return under oath to the Department of Natural Resources on October 1 of each year in such form as provided by the department of the number and kind of pieces of such dredge or fill equipment owned, used or operated, leased or rented to be used in this state in dredge or fill activities, and shall, on the same day, obtain a certificate of registration from the department authorizing use of such equipment.

(2) No certificate shall be issued except upon written application. The department, before issuing a certificate, shall require the person applying for the certificate to file, under oath, a statement giving full and complete information relative to the number and kind of pieces of dredge or fill equipment owned, used or operated, leased or rented to be used in this state in dredge or fill activities. The applications and statements required by this section shall be retained as a part of the records of the Department of Natural Resources.

(3) There shall be a $10 filing fee collected by the department for issuance of the certificate.

History.—ss. 3, 4, ch. 70-442.

370.035 Construction or fill permit; copy to be obtained; penalty.—Any person who engages in any dredge or fill activities for which a construction or fill permit is required by ss. 253.123 and 253.124 without first obtaining a certified copy of the permit shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Failure to have and keep a certified copy of the permit on the dredge or fill equipment at all times during which such activity is being engaged in shall be prima facie evidence that this provision has not been complied with.

History.—s. 5, ch. 70-442; s. 278, ch. 71-136.

370.036 Dredge or fill activities, records; penalty.—

(1) Every person who engages in dredge or fill activities shall maintain an official log book for each piece of dredge or fill equipment into which the operator thereof shall make daily entries of all dredge or fill activities conducted with such equipment.

(2) Each entry shall be made, dated, and signed by the individual operator of the particular piece of equipment and shall show the kind of activity performed, the precise location of the activity, the kind and quantity of material removed or deposited, the name of the person for whom the activity was performed, the construction or fill permit authorizing such activity, and the certificate number under which the equipment was operated. Entries shall be made on the same day on which the activity is performed.

(3) The log or logs shall reflect all activities conducted with such equipment during the preceding 30 calendar days and shall be kept and remain on the equipment at all times during such period. After such period, the logs shall be kept on file at the principal place of business of the certificate holder for not less than 3 years.

(4) Any person failing to comply with the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person having legal or beneficial ownership of dredging equipment, whether or not properly registered, which is used directly or indirectly in such a manner as to exceed the authority granted by

a valid construction permit issued pursuant to s. 253.124, or which is operated without any such permit, when the dredging is done with intent to defraud, confiscate lands, or trespass, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall suffer suspension of the construction permit for a period not exceeding 90 days, revocation of any and all registrations on dredging equipment owned or operated by the person for a period not exceeding 2 years, or by any or all such fine, imprisonment, suspension of permit, and revocation of registrations on equipment, in the discretion of the court. The penalties herein provided shall extend to the person causing, directing, or permitting such activity as well as to the actual violators.

History.—s. 6, ch. 70-442; s. 279, ch. 71-136.

370.037 Denial, suspension, or revocation of certificate.—

(1) The department may refuse to issue or renew or may suspend or revoke any certificate on any of the following grounds:

(a) Material misstatement in the application for the certificate.

(b) Willful disregard or violation of any of the provisions of ss. 370.033-370.036 or of any rule or regulation promulgated thereunder.

(2) Proceedings may be instituted by the Department of Natural Resources or by any other party by filing a sworn written complaint with the department.

(3) The department may suspend or revoke a certificate, subject to the provisions of chapter 120.

History.—ss. 7-9, ch. 70-442; s. 1, ch. 77-117; s. 23, ch. 78-95.

370.038 Rules and regulations.—The Department of Natural Resources is authorized to make and adopt reasonable rules, regulations, and orders necessary to carry out the provisions of ss. 370.033-370.037.

History.—s. 10, ch. 70-442; s. 23, ch. 78-95.

370.041 Harvesting of sea oats and sea grapes prohibited; possession prima facie evidence of violation.—

(1) The purpose of this section is to protect the beaches and shores of the state from erosion by preserving natural vegetative cover to bind the sand.

(2) It is unlawful for any purpose to cut, harvest, remove, or eradicate any of the grass commonly known as sea oats or *Uniola paniculata* and *Coccolobis uvifera* commonly known as sea grapes from any public land or from any private land without consent of the owner of such land or person having lawful possession thereof. Possession of either *Uniola paniculata* or *Coccolobis uvifera* by other than the owner of such land shall constitute prima facie evidence of violation of this section. However, licensed, certified nurserymen who grow any of the native plants listed in this section from seeds or by vegetative propagation are specifically permitted to sell these commercially grown plants and shall not be in violation of this section of the law if they do so, as it is the intent of the law to preserve and encourage the growth of these native plants which are rapidly disappearing from the state.

(3) A violation of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-458; s. 1, ch. 67-150; s. 280, ch. 71-136; s. 1, ch. 71-153; s. 1, ch. 73-258.

370.06 Licenses.—

(1) LICENSE ON PURSE SEINES.—There is levied, in addition to any other taxes thereon, an annual license tax of $25 upon each purse seine used in the waters of this state. This license fee shall be collected in the manner provided in this section. Anyone violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) LICENSE; ALIEN AND NONRESIDENT COMMERCIAL FISHERMEN.—Aliens and nonresidents shall pay an annual license tax of $25 before engaging in taking saltwater products from the waters of this state, other than for personal use, including fish or seafood sold for bait; however, this tax shall not apply to employees or crewmen who take but do not sell saltwater products. Such license shall be issued by the department upon proper application made on forms to be furnished by the department. The proceeds from the sale of said licenses shall be deposited in the State Treasury to the credit of the Motorboat Revolving Trust Fund.

(3) LICENSE YEAR.—The license year on all licenses relating to saltwater products dealers, seafood dealers, aliens, residents, and nonresidents, unless otherwise provided, shall begin on July 1 of each year and end on June 30 of the next succeeding year. All licenses shall be so dated. This section shall not apply to licenses and permits when their use is confined to an open season.

(4) LICENSES SUBJECT TO INSPECTION; NONTRANSFERABLE; EXCEPTION.—Licenses of every kind and nature granted under the provisions of the fish and game laws of this state shall at all times be subject to inspection by the police officers of this state, the wildlife officers of the Game and Fresh Water Fish Commission, and the officers of the Marine Patrol. Said licenses shall not be transferable unless otherwise provided by law.

(5) COLLECTION OF LICENSES, FEES.—All such license tax or fees provided for in this chapter shall be collected by the department or its duly authorized agents or deputies to be deposited by the Comptroller in the Motorboat Revolving Trust Fund as created by s. 371.171.

(6) GENERAL PENALTY PROVISION.—Any person or persons, corporate or otherwise, violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided in this section.

History.—s. 2, ch. 28145, 1953; ss. 3, 4, ch. 59-399; s. 1, ch. 59-499; s. 1, ch. 61-520; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106; s. 1, ch. 69-399; s. 2, ch. 70-336; s. 281, ch. 71-136; s. 104, ch. 71-355; s. 2, ch. 78-56.

cf.—s. 370.17 Alien sponge fishermen licenses.

370.061 Confiscation of property and products.—

(1) CONFISCATION; PROCEDURE.—In all cases of arrest and conviction for the illegal taking, or attempted taking, sale, possession, or transportation of saltwater fish or other saltwater products,

such saltwater products and seines, nets, boats, motors, other fishing devices or equipment, and vehicles or other means of transportation used in connection with such illegal taking or attempted taking are hereby declared to be nuisances and may be seized and carried before the court having jurisdiction of such offense, and said court may order such nuisances forfeited to the Division of Marine Resources of the department immediately after trial and conviction of the person or persons in whose possession they were found, except that, if a motor vehicle is seized under the provisions of this act and is subject to any existing liens recorded under the provisions of s. 319.27, all further proceedings shall be governed by the expressed intent of the Legislature not to divest any innocent person, firm, or corporation holding such a recorded lien of any of its reversionary rights in such motor vehicle or of any of its rights as prescribed in s. 319.27, and that, upon any default by the violator purchaser, the said lienholder may foreclose its lien and take possession of the motor vehicle involved. When any illegal or illegally used seine, net, trap, or other fishing device or equipment or illegally taken, possessed, or transported saltwater products are found and taken into custody, and the owner thereof shall not be known to the officer finding the same, such officer shall immediately procure from the County Court Judge of the county wherein they were found an order forfeiting said saltwater products, seines, nets, traps, boats, motors, or other fishing devices to the division. All things forfeited under the provisions of this law may be destroyed, used by the division, disposed of by gift to charitable or state institutions, or sold and the proceeds derived from said sale deposited in the State Treasury to the credit of the General Revenue Fund. However, forfeited boats, motors, and legal fishing devices only, may be purchased from the division for $1 by the person or persons holding title thereto at the time of the illegal act causing the forfeiture, if such person shall prove that he in no way participated in, gave consent to, or had knowledge of such act.

(2) CONFISCATION AND SALE OF PERISHABLE PRODUCTS; PROCEDURE.—When an arrest is made pursuant to the provisions of chapter 370, and illegal, perishable products or perishable products illegally taken or landed are apprehended, the defendant may post bond or cash deposit in an amount determined by the judge to be the fair value of such products, and said defendant shall have 24 hours to transport said products outside the limits of Florida for sale or other disposition. Should no bond or cash deposit be given within the time fixed by the judge, the judge shall order the sale of such products at the highest price obtainable and when feasible at least three bids shall be requested. In either event, the amounts received by the judge shall be remitted to the division to be deposited into a special escrow account in the State Treasury and held in trust pending the outcome of the trial of the accused. If a bond is posted by the defendant it shall also be remitted to the division to be held in escrow pending the outcome of the trial of the accused. In the event of acquittal, the bond or cash deposit shall be returned to the defendant, or, the proceeds of the sale shall be paid over to the defendant. In the event of conviction the proceeds of the sale, or proceeds of the bond or cash deposit, shall be deposited by said division into the General Revenue Fund of the state. Such deposit into the General Revenue Fund shall constitute confiscation.

History.—s. 3, ch. 61-231; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106; s. 24, ch. 73-334; s. 1, ch. 77-181.

370.07 Seafood dealers; regulation.—

(1) DEFINITIONS; LICENSES AUTHORIZED.—License or privilege taxes as hereinafter set forth to be paid annually, are hereby levied and imposed upon dealers in the state in seafoods and saltwater products as defined hereafter, and it shall be unlawful for any person, firm or corporation to deal in any such products without first paying for and procuring the license required by this section. Application for all licenses shall be made to the Division of Marine Resources on blanks to be furnished by it, and all licenses shall be issued by the division upon payment to it of the license tax therefor and the proceeds thereof deposited in the State Treasury to the credit of the General Revenue Fund. The licenses are defined as:

(a)1. "Wholesale seafood dealer"; any person, firm or corporation which sells saltwater fish or other saltwater products excluding novelty shells and sponges to any person, firm or corporation except to the consumer; provided that those persons so excluded shall make those reports required of such wholesale dealers.

2. Whenever a person, firm or corporation, already in possession of a wholesale seafood dealer license, shall find it useful and expedient to have more than one establishment, and the function of such additional establishments shall be the loading and preparation of products for later transshipment to the central place of business, it shall not be necessary for that person, firm or corporation to obtain an additional wholesale dealer license.

3. In order for such subordinate establishments or structures to be exempt from the requirement to have a wholesale dealer license, all products passing through must have the licensed wholesale dealer's establishment under whose license the branch functions as their immediate destination.

4. If any products leave the branch or subordinate station for shipment or delivery to any destination other than the wholesale dealer under whose license the branch functions, the loading or subordinate location will also require a wholesale dealer license.

5. All provisions of this act shall apply to establishments and feeder stations when both categories are located within a single county. Whenever intercounty transportation becomes involved, points of origin and points of destination shall both be licensed.

(b) A "retail seafood dealer"; any person, firm or corporation who sells saltwater fish or other saltwater products directly to the consumer as seafood, but no license shall be required of dealers in merchandise who deal in or sell only salted, cured, canned, or smoked seafood.

(c) Any person, firm or corporation which is under the foregoing definitions, both a wholesale and retail seafood dealer, shall obtain both a wholesale

and a retail seafood dealer's license.

(2) LICENSES; AMOUNT, TRUST FUND.—

(a) Resident wholesale seafood dealers are required to pay an annual license tax of $100.

(b) Nonresident wholesale seafood dealers are required to pay an annual license tax of $150.

(c) Alien wholesale seafood dealers are required to pay an annual license tax of $500.

(d) Resident retail seafood dealers are required to pay an annual license tax of $10.

(e) Nonresident retail seafood dealers are required to pay a license tax of $25 per annum in each county in which they do business for each place of business.

(f) Alien retail seafood dealers are required to pay a license tax of $50 per annum in each county in which they do business, for each place they do business.

(g) One-half of all the foregoing funds hereafter collected from resident wholesale seafood dealers and one-third of all such funds collected from nonresident wholesale seafood dealers by the division, together with any other funds derived from the federal government or otherwise, shall be deposited in a Florida Saltwater Products Promotion Trust Fund to be administered by said division for the promotion of all saltwater products produced in this state.

(h) All deposits heretofore made by the division into the Florida Saltwater Products Promotion Trust Fund are hereby ratified and confirmed.

(3) WHOLESALE PERMIT; PENALTY.—

(a)1. Saltwater products produced outside Florida, and transported to Florida for processing, freezing and storage shall not be required to display a wholesale permit number on the individual packages, boxes, or containers when they leave the freezer for shipment out of state. Truckdrivers, in above instances, shall, however, have in their possession invoices, bills of lading and other similar instruments, printed or stamped with a special permit stamp giving the name of the freezer, the location of the freezer, and stating that items on manifest are produced outside Florida. Invoices, bills of lading, and other similar instruments, shall show the number of packages, boxes or containers and the number of pounds of each species to cover and identify all saltwater products in the shipment.

2. The above stamp shall be requested by the freezer owner and shall be furnished, at cost, by the division, or the freezer owner may exercise the option, at his own expense, of having the information required in subparagraph 1. printed on his invoices, bills of lading, and other similar instruments.

(b)1. Saltwater products produced in Florida and processed, frozen and stored by Florida wholesale dealers shall not be required to display the wholesale permit number of the individual owner on individual packages, boxes or containers when they are removed from freezer for shipment or delivery in or out of Florida. Truckdrivers, in above instances, shall, however, have in their possession invoices, bills of lading, and other similar instruments printed or stamped with a special permit stamp giving the name of the freezer, its location and the number of the licensed wholesale dealer written in a blank space provided in the stamp. Invoices, bills of lading, and other similar instruments, shall show the number of packages, boxes, or containers and the number of pounds of each species to cover and identify all saltwater products in the shipment.

2. The above stamp shall be requested by the freezer owner and shall be furnished, at cost, by the division, or the wholesale dealer may, at his option and at his own expense, have printed on his invoices, bills of lading, and other similar instruments the information required in subparagraph 1. The freezer owner shall be furnished free of charge a complete list of Florida wholesale seafood dealers and their permit numbers.

(c)1. Saltwater products produced in Florida may be transported within or without the state without each individual box or container displaying the wholesale permit stamp or permit number.

2. Provided that the truckdrivers shall have in their possession invoices, bills of lading, and other similar instruments showing the number of boxes or containers and pounds of each species, displayed with the permit stamp or permit number of the wholesaler, distributor, or producer from whom the shipment was received.

3. Provided further, that in the event that the seafood products in transit came from more than one dealer, distributor, or producer, each lot from each dealer shall be covered by invoices, bills of lading, and other similar instruments, showing the number of boxes or containers and the number of pounds of each species and said instruments shall be stamped or printed with that dealer's, distributor's or producer's wholesale permit stamp or permit number.

4. It shall be unlawful to sell, deliver, ship, or transport, or to possess for the purpose of selling, delivering, shipping, or transporting any fish, seafoods, or other products of the salt waters of Florida, without all invoices and containers of such products having thereon the wholesaler's permit number in such form as may be prescribed under the provisions of this section, and the rules and regulations of the department and any such products found in the possession of any person whosoever in violation of this provision may be seized by the division and disposed of in the manner provided by law.

(d) Nothing contained in this section shall be construed to apply to the sale and delivery to consumers of such products in ordinary retail transactions by licensed retail dealers who have purchased such products from a licensed wholesale dealer, or to the sale and delivery of his own catch or products, to a Florida licensed wholesale dealer, by any person catching or gathering the same. Wholesale seafood dealers' permits and licenses shall be issued only to applicants who shall furnish to the division satisfactory evidence of law-abiding reputation and who shall pledge themselves to the faithful observance of all of the laws and lawful regulations of this state regulating the conservation, dealing in, taking, selling, transporting, or possession of fish, seafoods, and other saltwater products, and cooperation in the enforcement of all such laws, to every reasonable extent, which pledge may be included in the application for permit and license. Any person violating the provisions of this section shall be guilty of a misde-

meanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) LICENSE REVOCATION; PENALTY.—

(a) Permits and licenses issued to seafood dealers, under the provisions of this chapter, are good only to the person to whom issued, and named therein and are not transferable. Such permit and licenses may be revoked:

1. By the division upon the conviction of the person, to whom issued, of any violation of the laws or regulations designed for the conservation of fish, seafoods or other products of the fresh or saltwaters of this state;

2. Upon conviction of the said person, to whom issued, or knowingly dealing in, buying, selling, transporting, possessing or taking any fish, seafood, or saltwater product, at any time and from any waters, in violation of the laws of this state; or

3. By the division upon satisfactory evidence of any violation of the laws or any regulations of this state designed for the conservation of fish, seafoods, or other products of the fresh or salt waters of this state or of any of the laws of this state relating to dealing in, buying, selling, transporting, possession, or taking of fish, seafoods, or saltwater products.

(b) Upon revocation of such permit or license no other or further permit or license may be issued to the holder of the one revoked within 3 years from the date of revocation, except upon special order of the division. After revocation as aforesaid it shall be unlawful for such seafood dealer to exercise any of the privileges of a licensed seafood dealer.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) RECORDS TO BE KEPT; PENALTY.—Seafood dealers shall be required by the division to make and preserve a record of the names and addresses of persons from whom or to whom fish, seafoods, or other products of the salt waters of the state are purchased or sold, and the quantity so purchased or sold from or to each vendor or purchaser, and the date of each such transaction, and such record shall be open to inspection at all times by the division. A monthly report shall be made to the division covering such sale or sales of products of salt waters of the state. The permit or license of any dealer shall be revoked for failure or refusal to make and keep such records and make such reports, or for failure or refusal to permit the examination thereof as required, or for falsifying any such record; provided this section shall not apply to sales by retail dealers in retail quantities to consumers. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 29990, 1955; s. 1, ch. 57-387; ss. 1, 2, ch. 57-335; s. 2, ch. 61-22; s. 1, ch. 61-376; s. 1, ch. 65-537; s. 1, ch. 67-212; s. 1, ch. 67-262; ss. 25, 35, ch. 69-106; s. 282, ch. 71-136; s. 1, ch. 75-95; s. 23, ch. 78-95.

370.071 Adoption of rules, regulations and sanitary codes.—The Department of Natural Resources is authorized to establish regulations, specifications and codes of sanitary practices relating to the catching, handling, processing, packaging, preserving, canning, smoking and storing of saltwater products for sale for consumption as human food.

History.—s. 1, ch. 65-110; ss. 25, 35, ch. 69-106.

370.08 Fisherman and equipment; regulation.—

(1) ILLEGAL POSSESSION OF SEINES AND NETS.—No person may have in his custody or possession in any county of this state any fishing seine or net, the use of which for fishing purposes in such county is prohibited by law. Such possession shall be evidence of a violation of this subsection by both the owner thereof and the person using or possessing said net. The provisions of this subsection shall not apply to shrimp nets, to pound nets or purse nets when used in taking menhaden fish, to seines used exclusively for taking herring, or to legal beach seines used in the open gulf or Atlantic Ocean if the possession of such nets is not prohibited in the county where found. Violation of this subsection is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) STOP NETTING DEFINED; PROHIBITION; PENALTY.—

(a) It is unlawful for any person to obstruct any river, creek, canal, pass, bayou or other waterway in this state by placing or setting therein any screen, net, seine, rack, wire or other device, or to use, set, or place any net or seine or similar device of any kind, either singularly or in rotation or one behind another in any manner whatsoever so as to prevent the free passage of fish. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) It is unlawful for any person, while fishing or attempting to fish for shrimp or saltwater fish, to attach or otherwise secure a frame net, trawl net, trap net, or similar device to any state road bridge or associated structure situated over any saltwater body or to use more than one such net or device while fishing from such bridge or structure. For the purposes of this paragraph, a "frame net" is any net similar to a hoop net, the mouth of which is held open by a frame, with a trailing mesh net, of any size. Cast nets, dip nets, and similar devices are specifically excluded from the operation of this paragraph.

(3) USE OF PURSE SEINES, GILL NETS, AND POUND NETS, ETC.; PENALTY.—No person may take food fish within or without the waters of this state with a purse seine, purse gill net, or other net using rings or other devices on the lead line thereof, through which a purse line is drawn, or pound net, or have any food fish so taken in his possession for sale or shipment. The provisions of this section shall not apply to shrimp nets or to pound nets or purse seines when used for the taking of tuna or menhaden fish only. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) RETURN OF FISH TO WATER; PENALTY.—All persons, taking food fish from any of the waters of this state, by use of seines, nets, or other fishing devices and not using any of such fish because of size or other reasons, shall immediately re-

lease and return such fish alive to the water from which taken and no such fish may be placed or deposited on any bank, shore, beach or other place out of the water. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) THROWING EXPLOSIVES OR USE OF FIREARMS IN WATER FOR PURPOSE OF KILLING FOOD FISH PROHIBITED; PENALTY.—No person may throw or cause to be thrown, into any of the waters of this state, any dynamite, lime, other explosives or discharge any firearms whatsoever for the purpose of killing food fish therein. The landing ashore or possession on the water by any person of any food fish that has been damaged by explosives or the landing of headless jewfish or grouper, if the grouper is taken for commercial use, is prima facie evidence of violation of this section. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) SEINES, POCKET BUNTS.—In any counties where seines are not prohibited on the open gulf or Atlantic Ocean, such seines may have a pocket bunt on the middle of the seine of a mesh size less than that provided by law.

(7) GILL NETS.—In any county in which gill nets or gill netting is not prohibited, such nets when being fished may be gathered or taken in or taken up in any manner when such nets are gathered in, taken in or taken up by hand; however, no net may be pulled up on shore where seining is prohibited. Such nets may be gathered or taken in or taken up by power on the open waters of the Gulf of Mexico or the Atlantic Ocean.

(8) USE OF GEAR AND OTHER EQUIPMENT.—Whenever it shall appear in the best interests of conservation and will result in a more efficient use of offshore fisheries resources, the Division of Marine Resources of the department may issue a permit for the use of gear and equipment essential to such exploitation. The provisions of this section do not apply to shrimping and sponging operations and all local and general laws pertaining to shrimps and sponges remain in effect.

(9) SNATCH HOOKS, USE OF PROHIBITED TO TAKE SNOOK.—The taking of the game fish snook in state waters is prohibited except by use of the standard bait, lure, plug or spoon. It is unlawful to take snook by use of gig or grain, gang hook, multiple hooks, snatch hooks, or any other device designed to impale or hook the fish. What is commonly called snook snatching is prohibited in the waters of this state.

(10) ILLEGAL USE OF POISONS, DRUGS, OR CHEMICALS.—

(a) It is unlawful for any person to place poisons, drugs, or other chemicals in the marine waters of this state unless that person has first obtained a permit for such use from the Division of Marine Resources of the Department of Natural Resources.

(b) Upon application on forms furnished by the division, the division may issue a permit to use poisons, drugs, or other chemicals in the marine waters of this state for the purpose of capturing live marine species. The application and permit shall specify the area in which collecting will be done, the drugs, chemicals, or poisons to be used, and the maximum amounts and concentrations at each sampling.

(c) Violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Natural Resources may revoke the permit for violation of the conditions placed on its issuance.

(11) USE OF GILL NETS FOR TAKING KING MACKEREL.—No person may take king mackerel from the waters within or without this state in any county bordering on the Atlantic Ocean, except Monroe County, or land any king mackerel so taken with a gill net having a hanging depth of more than 200 meshes of 4¾-inch stretched mesh, measured from the cork line to the lead line or its equivalent. Possession of such a net is prima facie evidence of a violation of this subsection. Any person who violates this subsection is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(12) SIZE OF MESH IN KING MACKEREL NETS.—No person may set a school of king mackerel within or without the waters of this state with a net having a mesh size of less than 4¾ inches. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 57-765; s. 1, ch. 57-766; s. 1, ch. 59-477; s. 1, ch. 65-182; ss. 25, 35, ch. 69-106; s. 1, ch. 69-231; s. 283, ch. 71-136; s. 1, ch. 73-66; s. 1, ch. 76-101; s. 1, ch. 78-80; s. 1, ch. 78-159; s. 2, ch. 78-404; s. 2, ch. 79-263.

370.081 Illegal importation or possession of nonindigenous marine plants and animals; rules and regulations.—

(1) It is unlawful to import or possess any marine plant or marine animal, not indigenous to the state, which, due to the stimulating effect of the waters of the state on procreation, may endanger or infect the marine resources of the state or pose a human health hazard.

(2) Marine animals not to be imported shall include, but are not limited to, all species of the following:

(a) Sea snakes (Family Hydrophiidae);
(b) Rabbitfishes (Family Siganidae);
(c) Weeverfishes (Family Trachinidae); and
(d) Stonefishes (Genus Synanceja).

(3) The department is authorized to adopt, pursuant to chapter 120, rules and regulations to include any additional marine plant or marine animal which may endanger or infect the marine resources of the state or pose a human health hazard.

(4) It is unlawful to release into the waters of the state any nonindigenous marine plant or marine animal not included in subsection (2) or prohibited by rules and regulations adopted pursuant to subsection (3).

History.—s. 1, ch. 71-68; s. 1, ch. 77-65.

370.082 Use of gill nets, wing nets, and similar devices regulated; penalties; confiscation of equipment.—

(1) It is unlawful for any person, firm, or corporation to set, lay out, or fish, or cause to be set, laid out, or fished, any gill net, wing net, or similar device, unattended, in any of the inland salt waters of the

Counties of Walton, Santa Rosa, Okaloosa, Franklin, Escambia, Volusia, Brevard, Indian River, Pinellas, or Duval. However, the Department of Natural Resources may issue permits for the use of such nets or similar devices used for research contrary to the provisions of this section, with respect to Franklin County and Volusia County only, and the department may limit the use of such permits to such times and places in Franklin County and Volusia County as the department deems advisable. Any such net or device, while being fished between sunset and sunrise, shall, in addition to being attended, be marked by a light or lights in a manner causing said net or device to be visible to any approaching vessel.

(2) Gill nets, wing nets, or similar devices shall be clearly marked in such a manner that the identity of the fisherman's boat registration number may be readily determined.

(3) Any person violating the provisions of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any gill net, wing net, or similar device found unattended or unlighted in or on the waters of the Counties of Walton, Santa Rosa, Okaloosa, Franklin, Escambia, Volusia, Brevard, Indian River, Pinellas, and Duval, in violation of the provisions of this act, may be summarily seized and destroyed by the Division of Marine Resources of the Department of Natural Resources.

History.—s. 1, ch. 75-272; s. 1, ch. 77-208; s. 1, ch. 78-404; s. 1, ch. 79-162.

370.0821 St. Johns County; use of nets.—

(1) In addition to all other restrictions imposed by this section, the use of any type of net or seine, other than a common cast net or a recreational net as hereafter defined, is prohibited in the salt waters of St. Johns County, and within ¼ mile seaward of the beaches and coast thereof, between May 1 and September 15 each year. During the remainder of the year, the use of nets or seines, other than common cast nets or recreational nets as hereafter defined, is prohibited on Saturdays, Sundays, and all legal holidays designated as such by the Department of Administration.

(2) In addition to all other restrictions imposed by this section, the use of any net or seine, including a recreational net as hereafter defined, other than a common cast net, is prohibited in the following areas of St. Johns County and adjacent salt waters:

(a) Within a 1-mile, 360-degree radius of a point situated in the center of the A1A bridge across Matanzas Inlet.

(b) In the waters of Salt Run, St. Augustine Inlet, the Matanzas River, North River, or the Intercoastal Waterway, or water adjacent to any of the aforementioned waters, lying north of the Mickler-O'Connell Bridge, south of the Vilano Beach Bridge across the Intercoastal Waterway (North River), and inland of a line drawn from headland to headland across the mouth of St. Augustine Inlet.

(c) On the Atlantic Ocean beaches, and beach areas, within 1 mile north and 1 mile south of the center of St. Augustine Inlet, and within 1 mile seaward of such beaches, and a line drawn from headland to headland across the mouth of St. Augustine Inlet.

(d) On the Atlantic Ocean beaches, and beach areas, within 2 miles north and 2 miles south of the center of the St. Augustine Beach Pier, and within 1 mile seaward of such beaches and beach areas.

(3) In no event shall any manner of seine net used in the salt waters of St. Johns County, or within 1 mile seaward of the beaches and coast thereof, exceed 1,300 feet in length or have mesh of less than 2½ inches.

(4) No person, firm, or corporation shall use, or cause to be used, any manner of seine net, other than a recreational net as hereafter defined, in the salt waters of St. Johns County, or within 1 mile seaward of the Atlantic Ocean beaches and coast thereof, without a permit issued by the Division of Marine Resources of the Department of Natural Resources. Applications for such permits shall be made on forms to be supplied by the division, which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of saltwater conservation. The fee for such permits shall be $250 per year. Each permit shall entitle the holder thereof to use no more than one seine net at any one time, subject to the provisions of subsections (1), (2), and (3). The division may refuse to grant any permit when it is apparent that the best interests of saltwater conservation will be served by such denial. All permits granted shall be in the holder's possession whenever the holder is engaged in using a seine net. Each permit is subject to immediate revocation upon conviction of a violation of any provision of this section or when it is apparent that the best interests of saltwater conservation will be served by such revocation.

(5)(a) The term "recreational net" means a seine or similar net not exceeding 100 feet in length, with mesh no smaller than 2½ inches, set and hauled solely by hand and without use of any motor-driven boat or vehicle.

(b)1. No recreational net may be set or hauled within 100 feet of any other recreational or commercial net.

2. No recreational net shall be used after the hours of sunset and before sunrise between May 1 and September 15 of each year.

3. Unless the user of a recreational net is also a holder of a permit specified in subsection (4), no user of a recreational net shall retain on the beach, in a vehicle on the beach, or in a boat, during the time that such net is in use, more than one bushel container of fish per net in use. All fish in excess of one bushel container per net and all unwanted species taken shall be returned alive to the waters when caught.

(6) Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, any nets, boats, vehicles, or paraphernalia used in violation of the provisions of this section may be seized and, upon conviction of the offender, may be confiscated or destroyed by order of the court as provided by s. 370.061.

History.—s. 1, ch. 77-310; s. 3, ch. 78-404; s. 1, ch. 79-328.

370.083 Special acts prohibited.—Pursuant to s. 11(a)(21) of Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application affecting the sale or pur-

chase of speckled sea trout or weakfish in the state.

History.—s. 2, ch. 75-272.

Note.—House Bill 1803, which became ch. 75-272, was passed by a three-fifths vote in both houses, thereby investing this section with the special quality prescribed by s. 11(a)(21), Art. III, State Constitution.

370.09 Industrial hazards; oil deposits discharge prohibited.—It is unlawful for any person to discharge, flow, drain or deposit oil or to suffer or permit oil to be discharged, flowed, drained or deposited upon or into any of the salt waters of the state, either from or out of any vessel, barge, or other floating craft, or from any wharf, mill, mine, factory or other establishment or place whatever.

History.—s. 2, ch. 28145, 1953.

370.10 Crustacea, marine animals, fish; regulations; general provisions.—

(1) OWNERSHIP OF FISH, SPONGES, ETC.—All fish, shellfish, sponges, oysters, clams, and crustacea found within the rivers, creeks, canals, lakes, bayous, lagoons, bays, sounds, inlets, and other bodies of water within the jurisdiction of the state, and within the Gulf of Mexico and the Atlantic Ocean within the jurisdiction of the state, excluding all privately owned enclosed fishponds not exceeding 150 acres, are the property of the state and may be taken and used by its citizens and persons not citizens, subject to the reservations and restrictions imposed by these statutes. No water bottoms owned by the state shall ever be sold, transferred, dedicated, or otherwise conveyed without reserving in the people the absolute right to fish thereon, except as otherwise provided in these statutes.

(2) TAKING FISH, CRUSTACEA AND ANIMALS FOR SCIENTIFIC PURPOSES.—The Division of Marine Resources may issue certificates, upon such terms, conditions, and restrictions as it may prescribe, to any properly accredited person permitting him to collect and have in possession saltwater fish, including shellfish and aquatic mammals, for experimental, scientific and exhibitional purposes. The certificate issued may permit the holder thereof to take and catch food fish or shellfish for use in feeding specimens of fish or aquatic mammals in aquariums. In order to obtain such certificate the applicant must present to said division evidence of his fitness to be entrusted with such certificate. Certificates issued under the provisions of this section may be forfeited and revoked by the said division upon satisfactory proof that the holder has violated any of the provisions of this section or of the certificate and the holder shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; ss. 25, 35, ch. 69-106; s. 284, ch. 71-136; s. 1, ch. 78-70.

370.101 Saltwater fish; regulations.—

(1) The Division of Marine Resources is authorized to establish weight equivalencies when minimum lengths of saltwater fish are established by law, in those cases where the fish are artificially cultivated.

(2) Permits may be issued by the division for catching and possession of fish protected by law after it has first established that such protected specimens are to be used as stock for artificial cultivation.

(3) No permit may be issued pursuant to subsection (2) until the division determines that the artificial cultivation activity complies with the provisions of ss. 253.67-253.75 and any other specific provisions contained within this chapter regarding leases, licenses, or permits for maricultural activities of each saltwater fish, so that the public interest in such fish stocks is fully protected.

History.—s. 1, ch. 67-546; ss. 25, 35, ch. 69-106; s. 1, ch. 78-78; s. 78, ch. 79-164.

370.102 State preemption of power to regulate.—The power to regulate the taking or possession of saltwater fish, as defined in s. 370.01, is expressly reserved to the state.

History.—s. 1, ch. 73-208.

370.11 Fish; regulation.—

(1) CATCHING FOOD FISH FOR PURPOSES OF MAKING OIL PROHIBITED; PENALTY.—No person shall take any food fish from the waters under the jurisdiction of the state, for the purpose of making oil, fertilizer or compost therefrom. Purse seines may be used, for the taking of nonfood fish for the purpose of making oil, fertilizer or compost. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) LENGTH OF SALTWATER FISH REGULATED.—

(a) No person shall take, have in his possession, buy, offer for sale, sell, or unnecessarily destroy, at any time, any of the following saltwater fish, of less length than that set forth as follows:

1. Bluefish of less length than 10 inches from tip of nose to rear center edge of tail.
2. Pompano of less length than 9½ inches from tip of nose to rear center edge of tail.
3. Fluke or flounder of less than 11 inches from tip of nose to rear center edge of tail.
4. Mackerel, redfish, and saltwater speckled trout or spotted weakfish of less than 12 inches from tip of nose to rear center edge of tail.
5. Snook of less length than 18 inches from tip of nose to rear center edge of tail.
6. Striped bass and bonefish of less length than 15 inches from tip of nose to rear center edge of tail, except that this length limitation shall not apply to cultured striped bass grown pursuant to regulations of the Department of Natural Resources.
7. Black mullet of less length than 11 inches from tip of nose to rear center edge of tail, except:
   a. In waters located west of the Aucilla River to the Alabama line, 9 inches from tip of nose to rear center edge of tail, and
   b. In waters northwesterly of the Citrus-Hernando County line to the Aucilla River, 10 inches from tip of nose to rear center edge of tail.
8. Grouper of the following species of less length than 12 inches from tip of nose to rear center edge of tail:
   a. Red grouper (*Epinephelus morio*);
   b. Jewfish (*E. itajara*);
   c. Nassau grouper (*E. striatus*);
   d. Black grouper (*Mycteroperca bonaci*);

e. Gag (*M. microlepis*).

No more than 10 percent of the individuals of any particular species may be undersized according to legal lengths established for that species.

(b) It shall not be unlawful for any person, firm or corporation to receive, possess, buy, offer for sale, sell, or transport fluke or flounder of a size smaller than indicated in paragraph (a) if proof satisfactory to the Department of Natural Resources can be furnished showing these fish were received in legitimate interstate commerce transactions, were caught in waters other than the territorial waters of Florida, or were caught in a depth of water so great that they could not be returned to the water alive. The Department of Natural Resources shall enact such rules as are necessary relating to the method of providing the proof required for the above exceptions.

(3) REGULATION; FISH; SHAD, PROTECTION DURING SPAWNING SEASON; PENALTY.—No person may use any purse or drag seine, or build or maintain any dike or pound in any stream, river or waters of this state, whereby shad may be prevented from running or passing up or through during their spawning season, between December 31 and March 1 of every year. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(a) *Fishing for shad between Saturday afternoon and Monday morning; penalty.*—Whoever fishes for shad between sundown on Saturday afternoon and sunrise on Monday morning shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083 and by confiscation of the boat and fishing tackle used in such unlawful acts.

(b) *Shad; closed season.*—It is unlawful for any person to take, have in his possession, buy, sell, offer for sale, or ship or for any common carrier to transport any fresh or freshly salted shad, or any fresh or freshly salted shad roe between March 15 and November 15 of each year.

(c) *Use of certain gill net for capture of shad; penalty.*—No person may place in the rivers of this state any gill net, for the capture of shad, of a less size than 2½ inches bar from knot to knot, or 5 inches stretched mesh from knot to knot. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) *Fishing for shad with hook and line.*—

1. Nothing in this section shall prevent the taking of shad at any time by means of pole and line, rod and reel, plug, bob, spinner, spoon, fly, troll or other natural or artificial bait used with hook and line. However, no person is permitted to take, in 1 day, more than 10 shad by the above methods.

2. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) *Shad; limitation on taking.*—

1. As used in this paragraph, "anadromous shad" includes American shad *(Alosa sapidissima)*, Hickory shad *(Alosa mediocris)*, and Alabama shad *(Alosa Alabamae)*.

2. Commercial fishing for anadromous shad shall be for the period from sunup on December 31 until sundown on March 1. Nets or seines shall be clearly marked in such a manner that the identity of the commercial fisherman's boat registration number may be readily determined. The commercial fishing period established herein shall be closed in the streams and rivers of the state for 48 consecutive hours each week, and nets shall be removed from the water during this period. The Department of Natural Resources shall have the authority to set the closed hours each year.

3. It is unlawful for any person other than those listed in subparagraph 2. to use any nets and seines, including haul seines, drift gill nets, and stake or set gill nets, except for handheld landing nets, for the taking of shad. However, no boat shall contain in excess of 1,000 yards of gill nets of any kind for the taking of shad, and it shall be unlawful for anyone to use stop nets, as defined in s. 370.08(2), for any purpose.

4. It is unlawful for any person other than those listed in subparagraph 2. to take in 1 day and have in his possession more than 10 anadromous shad.

5. Any person violating the provisions of this paragraph shall be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083.

(4) REGULATION; FISH; TARPON, ETC.; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase or purchase any species of fish known as tarpon *(Tarpon atlanticus)* provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two tarpon if they are not being transported for sale. The possession of more than two tarpon by any one person is unlawful; provided, however, any person may catch an unlimited number of tarpon if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two tarpon, except as hereinafter provided. It is expressly provided that any lawful established taxidermist, in the conduct of taxidermy, may be permitted to move or transport any reasonable number of tarpon at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment tarpon from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment. The Division of Marine Resources may, in its discretion, upon application issue permits for the taking and transporting of tarpon for scientific purposes. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) REGULATION; FISH; SAILFISH; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either

within or without the state, offer to purchase or purchase any species of fish known as sailfish; provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two sailfish if they are not being transported for sale. The possession of more than two sailfish by any one person is unlawful; provided, however, any person may catch an unlimited number of sailfish if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two sailfish except as hereinafter provided. It is expressly provided that any lawful established taxidermist in the conduct of taxidermy, may be permitted to move or transport any reasonable number of sailfish at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment sailfish from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment.

(6) SAILFISH, TRANSPORTING.—Sailfish being transported shall be kept intact and flesh shall not be removed from the skeleton; provided, however, sailfish after having been delivered to a bona fide taxidermist or smoking establishment, may be dismembered.

History.—s. 2, ch. 28145, 1953; ss. 1, chs. 29869, 29877, ss. 1, 2, ch. 29945, s. 24, ch. 29615, 1955; s. 1, ch. 57-372; s. 1, ch. 57-127; s. 1, ch. 59-384; s. 1, ch. 59-473; s. 1, ch. 61-169; ss. 25, 35, ch. 69-106; s. 1, ch. 70-96; s. 285, ch. 71-136; s. 1, ch. 71-154; ss. 1, 1A, 2, ch. 71-156; s. 1, ch. 73-38; s. 1, ch. 74-220; s. 1, ch. 77-95.

370.111 Snook, regulation.—

(1) It shall be unlawful to take or attempt to take any snook from any of the salt, fresh, or tidal waters of the state, by means of any device except pole and line, bob, spinner lure, or troll manually.

(2) It shall be unlawful for any person, firm or corporation while fishing any net, seine or any other device prohibited by this section to have in his possession any snook; any snook taken by any trap, seine, net, or any other device prohibited by this section shall be immediately returned to the water alive.

(3) It shall be unlawful for any person to have in his possession more than four snook, none of which shall measure less than 18 inches in length.

(4) It shall be unlawful for any wholesale or retail fish dealer to possess, buy, sell or store any snook or permit any snook to be possessed, bought, sold or stored on, in or about the premises where such wholesale or retail fish business is carried on or conducted. It shall be unlawful for any person, firm or corporation to buy and sell snook in any form.

(5) Any person, firm or corporation found guilty of violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-5, ch. 57-275; s. 286, ch. 71-136; s. 1, ch. 71-155.

370.112 Striped bass, regulation.—

(1) Except as provided in subsection (2):

(a) It is unlawful for any person, firm, or corporation to take or attempt to take any striped bass from any of the salt, fresh, or tidal waters of Florida by means of any device except pole and line, bob, spinner lure, or manual troll.

(b) It is unlawful for any person, firm or corporation to have in its possession more than six striped bass taken from any of the salt, fresh, or tidal waters of Florida, by means of any of the devices permitted in paragraph (a).

(c) It is unlawful for any person, firm, or corporation, while fishing with any trap, net, seine or any other device prohibited by this section, to have in his possession any striped bass. Any striped bass taken or attempted to be taken by trap, net, seine, or any other device prohibited by this section shall be immediately returned to the water alive.

(d) It is unlawful for any wholesale or retail fish dealer to have in his possession, to offer to purchase, purchase, offer to sell, sell, barter, or transport for sale any striped bass, or permit any striped bass to be stored, possessed, offered for purchase, purchased, offered for sale or sold in or about the premises where such wholesale or retail fish business is carried on or conducted.

(e) It is unlawful for any person, firm, or corporation to offer to purchase, purchase, offer to sell, or sell striped bass in any form.

(2) The Division of Marine Resources of the Department of Natural Resources may issue a permit to import and to culture live striped bass and to sell striped bass to those persons, firms, or corporations who apply for permission to culture in this state live striped bass, either for sale for human consumption or for sale as sport fishing stock, if the division is satisfied that:

(a) The striped bass will be cultured from imported stock or stock from other sources approved by the division and,

(b) After processing, the striped bass being sold for human consumption will be gill-tagged prior to shipment. The tagging and shipping required herein shall be conducted under the supervision of the division.

(c) The striped bass being sold for sport fishing stock in state waters is authorized pursuant to a permit issued by the state.

(3) Any person, firm, or corporation violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 63-84; s. 287, ch. 71-136; s. 1, ch. 73-10.

370.1121 Bonefish; regulation.—

(1) It is unlawful to take or attempt to take any bonefish *(Albula vulpes)* from any of the waters of the state for the purpose of sale or exchange while fishing with any net, seine, or similar device.

(2) It is unlawful for any wholesale or retail fish dealer to possess, buy, sell, or store any bonefish or permit any bonefish to be possessed, sold, or stored on, in, or about the premises where such wholesale or retail fish business is carried on or conducted. It shall be unlawful for any person, firm, or corporation to buy or sell bonefish in any form.

(3) It is unlawful for any person, firm, or corporation to possess more than two bonefish *(Albula vulpes)* at any time or to have in his possession any bonefish which measures less than 15 inches in length from tip of nose to fork of tail.

(4) Any person, firm, or corporation found guilty of violating the provisions of this section shall be punished by a fine of no more than $500 or by imprisonment of not more than 6 months.

(5) This section shall not apply to taxidermists who have more than two bonefish in their place of business.

History.—ss. 1-5, ch. 72-312.

370.1125 Permits (Trachinotus falcatus); regulation; penalty.—

(1) It is unlawful to take or attempt to take any permit *(Trachinotus falcatus)* 20 inches or larger, measured from tip of nose to center edge of tail, from any waters of the state for the purpose of sale or exchange. Permit 20 inches or larger taken by any trap, seine, or net shall be immediately returned to the water.

(2) It is unlawful for any person, firm, or corporation to possess more than two permits 20 inches or larger.

(3) It is unlawful for any wholesale or retail fish dealer to possess, buy, sell, or store permit 20 inches or larger or to allow permit 20 inches or larger to be possessed, sold, or stored on, in, or about the premises where such wholesale or retail fish business is carried on or conducted.

(4) Any person, firm, or corporation violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) This section shall not apply to taxidermists who have more than two permits in their place of business.

History.—s. 1, ch. 73-149.

370.113 Queen conchs of the species Strombus gigas; regulation.—

(1) It is unlawful for any person to take from any salt, fresh, or tidal waters of this state more than 10 queen conchs of the species *Strombus gigas* in any calendar day, or to have in his possession at any time more than 20 such conchs.

(2) It is unlawful for any wholesale or retail fish dealer to have in his possession, to offer to purchase, purchase, to offer to sell, sell, barter or transport for sale any queen conchs of the species *Strombus gigas* for purposes other than for use as food.

(3) The provisions of subsections (1) and (2) shall not be applicable to any species of queen conchs imported from another country.

(4) Any person, firm, or corporation violating the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-488; s. 1, ch. 69-223; s. 288, ch. 71-136.

370.114 Taking of marine corals and sea fans regulated; penalties.—

(1) It is unlawful for any person, as defined in s. 1.01:

(a) To take, attempt to take, or otherwise destroy, or to sell or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina* or any hard or stony coral (*Scleractinia*) or any fire coral (*Millepora*); or

(b) To possess any fresh, uncleaned, or uncured sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina* or any fresh, uncleaned, or uncured hard or stony coral (*Scleractinia*) or any fresh, uncleaned, or uncured fire coral (*Millepora*);

unless it can be proven by certified invoice that the sea fan or coral was imported from a foreign country or unless it can be proven that the sea fan or coral was lawfully taken before July 1, 1976.

(2) This section shall not apply to any sea fan or coral taken for scientific or educational purposes when the taking is approved and permitted by the department.

(3) It is unlawful to take coral from, or possess it in, the John Pennekamp Coral Reef State Park. The provisions of s. 258.083 shall be in addition to the provisions of this subsection.

(4) A person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 73-145; s. 1, ch. 74-214; s. 1, ch. 75-38; s. 1, ch. 76-30.

370.12 Marine animals; regulation.—

(1) PROTECTION OF MARINE TURTLES, NESTS AND EGGS; PENALTY.—

(a) No person may take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest, or harass any marine turtle nest or eggs at any time. Any person violating this paragraph shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) No person, firm, or corporation shall take, kill, disturb, mutilate, molest, harass, or destroy any marine turtle, unless by accident in the course of normal fishing activities. Any turtle accidentally caught will be returned alive to the water immediately. A violation of this paragraph is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) No person, firm, or corporation may possess any marine turtle or parts thereof unless they are in possession of an invoice evidencing the fact that said marine turtle or parts thereof has been imported from a foreign country or outside the territorial waters of the state, or are possessed under special permit from the Division of Marine Resources for scientific, educational, or exhibitional purposes. Violation of this paragraph is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) PROTECTION OF MANATEES OR SEA COWS; PENALTY.—

(a) This subsection shall be known and may be cited as the "Florida Manatee Sanctuary Act."

(b) The State of Florida is hereby declared to be a refuge and sanctuary for the manatee, the "Florida state marine mammal."

(c) Whenever the department shall be satisfied that the interest of science will be subserved, and that the application for a permit to possess a ma-

natee or sea cow (*Trichechus manatus*) is for a scientific or propagational purpose and should be granted, and after concurrence by the United States Department of the Interior, the Division of Marine Resources may grant to any person making such application a special permit to possess a manatee or sea cow, which permit shall specify the exact number which shall be maintained in captivity.

(d) Except as may be authorized by terms of a valid state permit issued pursuant to paragraph (c) or by terms of a valid federal permit, it shall be unlawful for any person at any time, by any means, or in any manner intentionally or negligently, to annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee; capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee. Any person violating the provisions of this paragraph shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in violation of any provision of paragraph (d) may be forfeited upon conviction. The foregoing provisions relating to seizure and forfeiture of vehicles, vessels, equipment, or supplies shall not apply when such vehicles, vessels, equipment, or supplies are owned by, or titled in the name of, innocent parties, and such provisions shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, equipment, or supplies if such lien, retain title contract, or chattel mortgage is property of public record at the time of the seizure.

(f) In order to protect the manatees or sea cows from harmful collisions with motorboats, the Department of Natural Resources shall adopt rules under chapter 120 regulating the operation and speed of motorboat traffic between the dates of November 15 of each year and March 31 of the succeeding year in the following portions of the waters of the state:

1. In Lee County, the entire Orange River, including the Tice Florida Power and Light Corporation discharge canal and adjoining waters of the Caloosahatchee River within 1 mile of the confluence of the Orange and Caloosahatchee Rivers.

2. In Brevard County, those portions of the Indian River within ¾ of a mile of the Orlando Utilities Commission Delespine power plant effluent and the Florida Power and Light Frontenac power plant effluents.

3. In Indian River County, the discharge canals of the Vero Beach Municipal Power Plant and connecting waters within 1¼ miles thereof.

4. In St. Lucie County, the discharge of the Henry D. King Municipal Electric Station and connecting waters within 1 mile thereof.

5. In Palm Beach County, the discharges of the Florida Power and Light Riviera Beach power plant and connecting waters within 1½ miles thereof.

6. In Broward County, the discharge canal of the Florida Power and Light Port Everglades power plant and connecting waters within 1½ miles thereof and the discharge canal of the Florida Power and Light Fort Lauderdale power plant and connecting waters within 2 miles thereof.

7. In Citrus County, headwaters of the Crystal River, commonly referred to as King's Bay, and the Homosassa River.

8. In Volusia County, Blue Springs Run and connecting waters of the St. Johns River within 1 mile of the confluence of Blue Springs and the St. Johns River.

9. In Hillsborough County, that portion of the Alafia River from the main shipping channel in Tampa Bay to U.S. Highway 41.

(g) The Department of Natural Resources shall adopt rules regulating the operation and speed of motorboat traffic between the dates of November 15 of each year and March 31 of the succeeding year within that portion of the Indian River between the St. Lucie Inlet in Martin County and the Jupiter Inlet in Palm Beach County. The main channel of the Atlantic Intracoastal Waterway within this area shall be exempted from speed restrictions.

(h) In the event any new power plant is constructed or other source of warm water discharge is discovered within the state which attracts a concentration of manatees or sea cows during the period between November 15 of each year and March 31 of the succeeding year, the Department of Natural Resources is directed to adopt rules regulating the operation and speed of motorboat traffic within the area of said discharge, incorporating a zone sufficient in size to protect the concentration of manatees or sea cows which occurs thereby.

(i) The Legislature recognizes that, while the manatee or sea cow is designated a marine mammal by federal law, many of the warm water wintering areas are in freshwater springs and rivers which are under the primary state law enforcement jurisdiction of the Florida Game and Fresh Water Fish Commission. The law enforcement provisions of this section shall be carried out jointly by the department and the commission, with the department serving as the lead agency. The specific areas of jurisdictional responsibility are to be established between the department and the commission by interagency agreement.

(j) For the purpose of this subsection, the term "boat," "vessel," or "motor boat," and the regulation thereof, does not refer to commercial vessels engaged in interstate, intrastate, or foreign commerce entering or leaving the channels and harbors of the port authorities of this state. In addition, the department shall promulgate regulations relating to the operation and speed of motor boat traffic in port waters with due regard to the safety requirements of said traffic and the navigational hazards related to the movement of commercial vessels as defined herein.

(3) PROTECTION OF MAMMALIAN DOLPHINS (PORPOISES); PENALTY.—

(a) It is unlawful to catch, attempt to catch, molest, injure, kill, or annoy, or otherwise interfere

with the normal activity and well-being of, mammalian dolphins (porpoises), except as hereinafter provided.

(b) Any person, firm, or corporation desiring to take one or more mammalian dolphins from the waters of this state for scientific, educational, or exhibitional purposes shall apply for a permit to the Division of Marine Resources. Upon determining that the interests of science or education will be served thereby, the division may issue a permit specifying the number of mammalian dolphins to be taken.

(c) Any person, firm, or corporation desiring to hold one or more mammalian dolphins in captivity shall provide and maintain facilities which meet the requirements of the division.

(d) No mammalian dolphin shall be shipped within or outside the state without a special permit from the division, which may require such information as it deems necessary relative to the adequacy of holding facilities of the recipients, and a permit for such shipment shall be granted only when the division determines the facilities are adequate.

(e) Notwithstanding the other provisions of this section, it is unlawful to capture at anytime any nursing female mammalian dolphin or her calf, or both.

(f) Any person, firm, or corporation violating the provisions of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) PROTECTION OF MANTA RAYS.—

(a) It is unlawful for any person, firm, or corporation intentionally to destroy a manta ray.

(b) Any person violating this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; ss. 1, 2, ch. 57-771; s. 1, ch. 59-483; s. 1, ch. 67-2198; ss. 25, 35, ch. 69-106; s. 1, ch. 70-48; s. 1, ch. 70-357; s. 1, ch. 71-120; s. 289, ch. 71-136; ss. 1, 1A, ch. 71-145; s. 1, ch. 74-20; s. 1, ch. 77-174; s. 1, ch. 78-252; s. 79, ch. 79-164.

370.13 Stone crabs; regulation.—

(1) SEASON, SIZE, SEX.—

(a) It is unlawful for any person, firm, or corporation to catch or have in his possession, regardless of where taken, for his own use or to sell or offer for sale, any stone crab, or parts thereof, of any size between May 15 and October 15 of each year, except as provided by s. 370.141 for storage and distribution of inventory stocks.

(b) It is unlawful to possess, sell, or offer for sale any stone crab claw at any time which has a forearm *(propodus)* of less than 2¾ inches in length, measured by a straight line from the elbow to the tip of the lower immovable finger. The forearm shall be deemed to be the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body of the crab.

(c) It is unlawful for any person, firm, or corporation to possess or transport by boat, land vehicle, airplane, or other conveyance any intact stone crab or stone crab body, whether dead or alive. Only the claws of stone crabs shall be removed, and the live animals shall be returned to the water in the same area where taken. Whole stone crabs, dead or alive, may be possessed or transported solely for educational, exhibitional, or scientific purposes and only when a permit for such possession has been issued by the Division of Marine Resources of the department.

(2) GEAR, TRAPS, BUOYS, PERMIT NUMBERS, SUSPENSION OR REVOCATION OF PERMITS.—

(a) No person, firm, or corporation shall transport on the water, fish with, or cause to be fished with, set, or placed, in taking stone crabs, any trap with throat or entrance to trap exceeding 4 inches in width and 6½ inches in length.

(b) It shall be unlawful to transport on the water, fish with, set, place, or cause to be fished with, set, or placed, any trap or part thereof during the closed stone crab season, except that traps may be placed in the water and baited 10 days prior to the opening of the stone crab season and shall be removed within 5 days after the close of the stone crab season. However, nothing herein shall authorize the landing or sale of any stone crab or stone crab claw during the closed season. Any traps in the water more than 10 days prior to the opening of the stone crab season or more than 5 days after the close of the stone crab season shall be conclusively presumed to be used in the attempted taking of stone crabs out of season and shall be seized and destroyed by the duly appointed officers of the Department of Natural Resources. This provision shall be in addition to any penalty imposed by law.

(c) It is unlawful to use grains, spears, grabs, hooks, or similar devices in the taking of stone crabs.

(d) A buoy or time release buoy shall be attached to each trap or at each end of a trap trotline and must be of sufficient strength and buoyancy to float and of such color, hue, and brilliancy as to be easily distinguished, seen, and located. The color and permit number shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys, in a manner prescribed by the Division of Marine Resources, so as to be readily identifiable from the air and the water.

(e) Each trap used must have a number permanently attached. No numbers shall be permitted other than the current permitholder's numbers except numbers designating federal permits. This permit number may be issued by the Division of Marine Resources of the Department of Natural Resources upon receipt of the application by the owner of the traps. The design of the application and permit shall be determined by the division. The trap permit number shall be affixed in legible figures at least 3 inches high on each buoy used. The stone crab permit must be on board the boat and the permit and stone crab claws shall be subject to inspection at all times. Only one permit shall be issued for each boat.

(f) It is unlawful for any person to place traps in the navigation channels of the intracoastal waterways or navigation channels maintained by the Corps of Engineers or any county or municipal government or willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without permission of the permitholder. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official sunset until 1 hour before official sunrise is prohibited.

(g) Any traps or devices other than the ones described in this subsection used in the taking or attempted taking of stone crabs shall be seized and

destroyed by the duly appointed officers of the Department of Natural Resources.

(h) Upon the arrest and conviction for violation of any of the stone crab regulations or laws other than the provisions of paragraph (1)(a), the permitholder must show just cause why his permit should not be suspended or revoked.

(i) Any law, general or special, in conflict with provisions of this section is hereby expressly repealed to the extent of such conflict.

(j) A person acquiring ownership of stone crab traps must notify the Division of Marine Resources within 5 days of acquiring ownership and request a transfer of the stone crab permit.

(3) PENALTY.—Any person violating this section shall be guilty of a misdemeanor of the second degree upon the first conviction and of a misdemeanor of the first degree upon the second or subsequent conviction, punishable as provided in s. 775.082 or s. 775.083; and in addition any gear, equipment, boats, vehicles, or item used in the violation shall be subject to confiscation. In addition, the Department of Natural Resources shall revoke the permit of any permitholder convicted of a violation of paragraph (1)(a) for a period of 1 year from the date of the conviction, and such permitholder shall be prohibited during such period from catching or having in his possession any stone crab for his own use or to sell or offer to sell, whether or not he is accompanied by the holder of a valid permit and regardless of where taken.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 61-482; s. 1, ch. 63-3; s. 290, ch. 71-136; s. 1, ch. 71-335; s. 1, ch. 73-28; ss. 1, 2, ch. 74-141; s. 1, ch. 76-26; s. 1, ch. 77-142; s. 1, ch. 77-207.

370.135 Blue crab; regulation.—

(1) No person, firm, or corporation shall transport on the water, fish with or cause to be fished with, set, or place any trap designed for taking blue crabs unless such trap has a current state permit number permanently attached to the buoy. The permit number shall be affixed in legible figures at least 1 inch high on each buoy used. The blue crab permit shall be on board the boat, and both the permit and the crabs shall be subject to inspection at all times. Only one permit shall be issued for each boat by the department upon receipt of an application on forms prescribed by it. This subsection shall not apply to an individual fishing with no more than five traps.

(2) A buoy or a time release buoy shall be attached to each trap or at each end of a weighted trot line and shall be of sufficient strength and buoyancy to float and of such color, hue, and brilliancy to be easily distinguished, seen, and located. Such color and permit number shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys, in the manner prescribed by the Division of Marine Resources, so as to be readily identifiable from the air and water. This subsection shall not apply to an individual fishing with no more than five traps.

(3) It is unlawful for any person willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without permission of the permitholder, or to sell or offer for sale any egg-bearing blue crabs. Except when authorized by special permit issued by the department for the soft-shelled crab or bait trade, it is unlawful for any person to possess for sale blue crabs measuring less than 5 inches from point to point across the carapace in an amount greater than 10 percent of the total number of blue crabs in such person's possession. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official sunset until 1 hour before official sunrise is prohibited.

(4) Upon the arrest and conviction for violation of any of the blue crab regulations or laws, the permitholder shall show just cause why his permit should not be suspended or revoked. This subsection shall not apply to an individual fishing with no more than five traps.

(5) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 73-26; s. 1, ch. 76-105; s. 2, ch. 77-142; ss. 1, 2, ch. 78-143.

370.14 Crawfish; regulation.—

(1) INTENT.—It is the intent of the legislature to maintain the crawfish industry for the economy of the state and to conserve the stocks supplying this industry. The provisions of this act regulating the taking of saltwater crawfish are for the purposes of insuring and maintaining the highest possible production of saltwater crawfish.

(2) TAKING OF CERTAIN CRAWFISH PROHIBITED.—

(a)1. No person, firm or corporation shall take or have in his possession at any time, regardless of where taken, any saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus* unless such saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus* shall have a carapace measurement of more than 3 inches or shall have a tail measurement not less than 5½ inches, not including any protruding muscle tissue.

2. The carapace (head, body, or front section) measurement shall be determined by beginning at the anteriormost edge (front) of the groove between the horns directly above the eyes, then proceeding along the middorsal line (middle of the back) to the rear edge of the top part of the carapace. The tail (segmented portion) shall be measured lengthwise along the center of the entire tail until the rearmost extremity is reached; provided, the tail measurement shall be conducted with the tail in a flat straight position with the tip of the tail closed.

(b) Crawfish must remain in a whole condition at all times while on or below the waters of the state, and the practice of wringing or separating the tail (segmented portion) from the body (carapace or head) section shall be prohibited on the waters of this state except by special permit issued by the Division of Law Enforcement. Any tail so separated under the provisions of a special permit shall measure no less than 5½ inches measured lengthwise from the point of separation along the center of the entire tail until the rearmost extremity is reached. The tail measurement shall be conducted with the tail in a flat straight position with the tip of the tail closed. Said measurement shall be applicable on board any vessel used for the taking of crawfish or at the dock where such crawfish are unloaded. It shall also be

applicable where crawfish are in possession of seafood dealers.

(c) Egg-bearing female crawfish shall not be taken or possessed at any time. Egg-bearing female crawfish found in traps shall be immediately returned to the water free, alive and unharmed.

(d) The practice of stripping or otherwise molesting egg-bearing crawfish in order to remove the eggs is prohibited, and the possession of crawfish or crawfish tails from which eggs, swimmerettes, or pleopods have been removed is prohibited, and the possession on the water or the landing of crawfish or crawfish tails from which eggs, swimmerettes, or pleopods have been removed is prohibited unless such products are imported from a foreign country, cleared through U.S. Customs, and accompanied by a valid invoice.

(3) TRAPS; BUOYS; LICENSE NUMBERS; SUSPENSION OR REVOCATION OF LICENSES.—

(a) No person, firm, or corporation shall have in possession at any time, or fish with, set, place, or cause to be fished with, set, or placed, any trap other than those described below:

1. Wood slat traps and traps having biodegradable tops or throats;

2. Ice cans, drums, and similar devices; however, no trapping device shall at any time include grains, spears, grabs, hooks, or similar devices.

The traps and methods of taking crawfish described in subparagraphs 1. and 2. may be used only during those periods of time when such activities are permitted under law and may not be used during those periods when crawfish trapping and taking are prohibited. Traps may be placed in the water and baited 5 calendar days prior to the opening of the crawfish season and shall be removed within 5 days after the close of the crawfish season; however, nothing herein shall authorize the landing or sale of any crawfish during the closed season. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official sunset until 1 hour before official sunrise is prohibited. The traps described in subparagraphs 1. and 2. may be reinforced with 16-gauge, 1-inch poultry wire as a protection against the ravages of turtles. Such reinforcement shall be limited to the sides of the trap. The tops and bottoms shall not be so protected.

(b) A buoy shall be attached to each trap with a timed release mechanism if desired and must be of sufficient strength and buoyancy to float, except when intentionally submerged by a timed float release device, and must be of such color, hue, and brilliancy as to be easily distinguished, seen, and located. Such color shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys in such a manner as to be readily identifiable from the air and water. Each trap, can, drum, and similar device used for taking or attempting to take crawfish must have a license number permanently attached to the device and the buoy. No numbers shall be permitted other than the current licenseholder numbers. The licenseholder may, at his option and in lieu of individual trap buoys, attach the individual traps to a trotline; however, such a trotline must have attached at each end a permanently floating or timed release buoy. This license number may be issued by the Division of Law Enforcement upon the receipt of application by the owner of the traps, cans, drums, buoys, or similar devices and accompanied by the payment of a fee of $50. The design of the applications and of the license number shall be determined by the division. The trap license number shall be painted or affixed in legible figures at least 3 inches high on each buoy, drum, can, trap, or similar device. Any trap, drum, can, buoy, or similar device used in the taking or in attempting to take crawfish, other than the devices listed and described in subparagraphs 1. and 2. of paragraph (a) with license number attached as prescribed in this paragraph, shall be seized and destroyed by the division. The proceeds of the fee imposed by this paragraph shall be used by the Department of Natural Resources for the purposes of enforcing the provisions of this section through aerial and other surveillance. It shall be unlawful to sell crawfish without possession of a valid crawfish license or for a licensed wholesale dealer to buy crawfish from anyone other than the holder of a valid crawfish license. However, a licensed dealer may buy crawfish from a licensed wholesale dealer. The above shall not prohibit retail sales of crawfish by a licensed retail dealer. The Department of Natural Resources is authorized to promulgate rules and regulations to carry out the intent of this section.

(c) The crawfish license must be on board the boat, and both the license and the harvested crawfish shall be subject to inspection at all times. Only one license shall be issued for each boat. The crawfish license number must be prominently displayed above the topmost portion of the boat so as to be easily and readily identified. It is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without permission of the licenseholder.

(d) Any crawfish licenseholder, upon selling licensed crawfish traps, shall furnish the division notice of such sale of all or part of his interest within 15 days thereof. Any holder of said license shall also notify the division within 15 days if his address no longer conforms to the address appearing on the license and shall, as a part of such notification, furnish the division with his new address.

(e) Possession of crawfish traps or parts thereof or other devices for the taking of crawfish, above or below the surface of the water, or the placing or setting of traps or similar devices during the closed season shall be unlawful, except as authorized herein.

(f) Upon the arrest and conviction for violation of any of the crawfish regulations or laws, the licenseholder must show just cause why his license should not be suspended or permanently revoked.

(g) It is unlawful for any person who is not a licenseholder or any boat without a current license prominently displayed as required by this section, in or on the waters of this state, to possess, have on board, or remove from the waters of the state, within any 24-hour period, more than 24 crawfish.

(h) No person, firm, or corporation shall take

crawfish by means of grains, spears, grabs, hooks, or similar devices. The possession of speared, pierced, or punctured crawfish or crawfish tails shall be prima facie evidence of violation of this section.

(i) Upon posting a $250 bond, payable to the Florida Saltwater Products Promotion Trust Fund and approved by the Division of Law Enforcement, a licenseholder may possess, while on the water, undersized crawfish not exceeding 200 per license or 3 per trap aboard each boat, whichever is greater, if used exclusively for luring or decoying noncaptive crawfish into traps. Such undersized crawfish must be kept alive, wet, and shaded while in possession and shall be returned and released to the water alive and unharmed immediately upon leaving the trap lines and prior to 1 hour after official sunset. Any boat or undersized crawfish shall be subject to inspection and search without a search warrant for violation of this section by any authorized agent or employee of the division or by any other law enforcement officer, provided such inspection or search is conducted when the owner or operator is on board such boat. Upon conviction of the illegal possession of undersized crawfish tails, the licenseholder shall forfeit said bond to the fund.

(4) CLOSED SEASON.—No person, firm, or corporation shall take or have in his possession, regardless of where taken, any saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus*, during the closed season of April 1 through July 25 of each year, except by special permit and as provided by s. 370.141, for storage and distribution of inventory stocks.

(a) *Special permit to import saltwater crawfish during closed season.—*

1. By a special permit granted by the Division of Law Enforcement, a Florida licensed seafood dealer may lawfully import, process, and package saltwater crawfish or uncooked tails of the species *Panulirus argus* during the closed season. However, crawfish landed under special permit shall not be sold in the state.

2. The licensed seafood dealer importing any such crawfish under the permit shall, 12 hours prior to the time the seagoing vessel or airplane delivering such imported crawfish enters the state, notify the Division of Law Enforcement as to the seagoing vessel's name or the airplane's registration number and its captain, location, and point of destination.

3. At the time the crawfish cargo is delivered to the permitholder's place of business, the crawfish cargo shall be weighed in the presence of the marine patrol officer, and a signed receipt of such quantity in pounds shall be furnished to said officer, which receipt shall be filed by the marine patrol officer with the Division of Law Enforcement.

4. Within 48 hours from the time the receipt is given to the marine patrol officer, the permitholder shall submit to the Division of Law Enforcement, on forms provided by the division, a sworn report of the quantity, in pounds, of the saltwater crawfish received, which report shall include the location of said crawfish and a sworn statement that said crawfish were taken at least 50 miles from Florida's shoreline. The landing of crawfish or crawfish tails from which the eggs or swimmerettes, pleopods, have been removed; the falsification of information as to area from which crawfish were obtained; or the failure to file the report called for in this section shall be grounds to revoke the permit.

5. Each permitholder shall keep throughout the period of the closed season copies of the bill of sale or invoices covering each transaction involving crawfish imported under this permit. Such invoices and bills shall be kept available at all times for inspection by the division.

(b) *Special permit license fees.—*

1. A Florida licensed seafood dealer may obtain a special permit to import, process, and package uncooked tails of saltwater crawfish upon the payment of the sum of $100 to the Division of Law Enforcement.

2. A special permit must be obtained by any airplane or seagoing vessel other than a common carrier used to transport saltwater crawfish or crawfish tails for purchase by licensed seafood dealers for purposes as provided herein upon the payment of $50.

3. All special permits issued under subparagraphs 1. and 2. are nontransferable.

(5) CARRIERS.—No common carrier or employee of said carrier may carry, knowingly receive for carriage, or permit the carriage of, any crawfish of the species *Panulirus argus*, regardless of where taken, during the closed season of April 1 through July 25 of each year, except of the species *Panulirus argus* lawfully imported from a foreign country for reshipment outside of the territorial limits of the state under U.S. Customs bond or in accordance with subparagraph (4)(a)1.

(6) SPORTS FISHERMEN'S CRAWFISH SEASON.—

(a) Notwithstanding the provisions of this chapter, there is created a sports fishermen's crawfish season to be on July 20 and 21 of each year.

(b) No person may have in his possession more than 6 crawfish on July 20, nor more than 12 crawfish cumulatively for July 20 and 21.

(c) Any vehicle, boat, or other transportation device may, with probable cause, be searched during the sports fishermen's crawfish season.

(7) PENALTY.—

(a) Any person violating the provisions of this section, unless otherwise provided, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person convicted of a violation of this section for a second or more time, unless otherwise provided, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 29896, 1955; s. 1, ch. 65-53; s. 1, ch. 65-251; ss. 25, 35, ch. 69-106; s. 1, ch. 69-228; s. 1, ch. 70-140; s. 1, ch. 70-162; s. 1, ch. 70-369; ss. 292, 293, ch. 71-136; s. 1, ch. 72-76; s. 1, ch. 72-250; s. 1, ch. 73-45; s. 1, ch. 73-211; s. 2, ch. 74-220; s. 1, ch. 76-107; s. 110, ch. 77-104; ss. 3-7, ch. 77-142; s. 1, ch. 77-174.

370.141 Crawfish and stone crab; reports by dealers during closed season required.—

(1) Within 3 days after the commencement of the closed season for the taking of saltwater crawfish and stone crabs, each and every seafood dealer, either retail or wholesale, of the state shall submit to the Division of Marine Resources, on forms provided by the division, a sworn report of the quantity, in

pounds, of frozen saltwater crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crabmeat in his (its) name or possession at the beginning of the aforementioned closed season. This report shall state the location of and describe each as to the number of pounds of frozen crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crabmeat. Any reports postmarked later than midnight of the 3rd day after the commencement of the closed season may not be accepted by the division, and the frozen stocks or crawfish and stone crabs reported therein may be seized by the division.

(2) Whenever any dealer fails to submit a report as described above or should any dealer report a greater or lesser amount of frozen crawfish or stone crabs, frozen crawfish tails or frozen crawfish or stone crabmeat than is actually in his (its) possession or name, said dealer is and shall be considered in violation of the provisions of ss. 370.13 and 370.14, and the division may seize the entire supply of unreported or falsely reported frozen crawfish and stone crabs, tails or meat and shall carry same before the court for disposal as provided for under s. 370.061.

(3) Each and every dealer having reported stocks of frozen crawfish and stone crabs as aforesaid may sell or offer for sale such stocks of frozen crawfish or frozen stone crabs; however, such dealer shall submit an additional report on the 1st and 15th day of each month during the duration of the closed season on forms supplied by the division. Each dealer shall state on this report the number of pounds sold during the report period and the pounds remaining on hand. In every case the amount of frozen crawfish and stone crabs sold and the amount remaining on hand shall total to equal the amount reported on hand in the last submitted report. Reports postmarked later than midnight of the 2nd and 16th of each month during the duration of the closed season may not be accepted by the division. Whenever any dealer fails to submit the semimonthly supplementary report as described above the division may impound said dealer's entire stock of frozen crawfish and stone crabs for the remainder of the closed season.

(4) Each and every seafood dealer shall at all times during the closed season make his stocks of frozen crawfish and stone crabs, frozen crawfish tails or frozen crawfish and stone crabmeat available for inspection by the division.

(5) Each dealer in frozen crawfish or stone crabs, frozen crawfish tails or frozen crawfish and stone crabmeat shall keep throughout the period of the closed season copies of the bill of sale or invoice covering each transaction involving frozen crawfish and stone crabs, tails or meats excepting only retail sale directly to the consumer. Such invoices and bills shall be kept available at all times for inspection by the division.

(6) Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-6, ch. 57-386; ss. 25, 35, ch. 69-106; s. 294, ch. 71-136; s. 1, ch. 76-27.

370.15 Shrimp; regulation.—

(1) GENERAL AUTHORITY; CONSERVATION.—The department is authorized and directed to adopt, promulgate and enforce rules and regulations consistent with the provisions of this section and the general policy of encouraging the production of the maximum sustained yield consistent with the preservation and protection of breeding stock, taking into consideration the recommendations of the various marine laboratories, as well as those of interested and experienced groups of private citizens. Such rules and regulations are to control the method, manner and equipment used in the taking of shrimp or prawn, as well as limiting and defining the areas where taken.

(2) SHRIMP CATCH REGULATION; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to catch, kill, or destroy shrimp or prawn within or without the waters of this state, or have in his possession any small shrimp or prawn taken in such waters, provided such small shrimp or prawn constitute at least 5 percent of all such shrimp or prawn in such possession. "Small shrimp" or "prawn" are defined as those that require more than 47 with the heads, or 70 without the heads, to make a pound by shrimp count. The words "shrimp count" shall refer to the number of shrimp, heads off, 70 to make a pound or 47 with the heads on to make a pound. This count shall be determined by random sampling in five different locations in the catch, at as widely separated distances and depths as practicable. Each sample shall consist of at least 1 pound of shrimp. The average counts of these five samples shall be the established count for the cargo. In the event shrimp, which when caught, landed, and prior to grading were of legal size under the terms of this subsection, are thereafter graded for size for the purpose of packaging, processing, or other lawful purpose; the smaller shrimp making up the average count of such entire lot as herein provided are graded out into separate lot or lots; and such shrimp so segregated from such entire lot are above the average count as herein provided, the possession, purchase, sale, unloading, transporting, or handling of such particular smaller graded shrimp shall not be unlawful. This provision shall exclude any product which has been processed and imported into the state. "Processed" is defined as frozen, canned, or packaged in up to 10-pound packages. This section shall not apply to live bait shrimp.

(b) Any person, firm, or corporation convicted of violating the provisions of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In the event of a second or subsequent conviction of a violation of this subsection within 24 months, the division shall suspend the license of the violator for a period not to exceed 1 year.

(3) REGULATION OF BREEDING AREAS.—Any areas or places as defined in subsection (2) shall be designated sanctuary areas for shrimp and prawn to be opened or closed to the taking of shrimp or prawn according to the provisions of this section or the rules and regulations of the division.

(4) CATCHING SHRIMP AT NIGHT.—It shall be unlawful to catch or attempt to catch shrimp or prawn in the territorial waters of the state in any county whose coastal boundary borders solely on the Atlantic Ocean, by use of trawl nets during night hours except during the months of June, July and August.

(5) SHRIMP TRAPS.—

(a) It is unlawful for any person, firm, or corporation to take or attempt to take shrimp by the use of any trap which:

1. Exceeds the following dimensions: 36 inches long (from rear of the heart to the leading edge of the trap), by 24 inches wide (between the leading edges of the trap, or heart opening), by 12 inches high; or

2. Has external or unattached wings, weirs, or other devices intended to funnel shrimp to the trap heart.

(b) The user of any trap shall affix his name and address securely to each trap. Any such trap not having proper identification shall be subject to confiscation by the department. No person, firm, or corporation shall have more than four traps in use at any time. The department shall have the authority to inspect such traps when being used in or on the waters of the state.

(c) Any person, firm, or corporation which violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) SHRIMP FISHING; PERMITS; PENALTY.—

(a) All persons, firms and corporations desiring to fish for commercial or bait shrimp within areas in which trawling is permitted shall first apply to the Division of Marine Resources for a permit. Such applications shall be made on forms to be supplied by the division and which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of saltwater conservation. Provided, that the division may refuse to grant permit when it shall be apparent that the best interests of saltwater conservation will be served by such denial. Provided further, that permits so granted shall remain on board at all times and will be subject to immediate revocation upon conviction for violation of this section or when it shall be apparent that the best interests of saltwater conservation will be served by such action. Provided further, that due to the varied habitats and types of bottoms and hydrographic conditions embraced by the open fishing area, the division shall have the authority to specify and regulate the types of gear that may be used in the different sections of the open areas.

(b) Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In the event of a second or subsequent conviction of a violation of this subsection within 24 months, the division shall suspend the license of the violator for a period not to exceed 1 year.

(7)(a)1. It is unlawful to take or catch shrimp, other than bait shrimp with any type net or other method, in the following area: That portion of Santa Rosa Sound lying in Escambia, Santa Rosa and Okaloosa Counties and between Brooks Bridge as the east boundary and Bascule Bridge in Santa Rosa County as the west boundary.

2. Live bait shrimp may be caught at any time but only under permit issued by the division. Permittees must fish with gear and under those conditions specified by the division. Application for such permits shall be on forms supplied by the division and no charges may be made for issuing said permits. Permits shall be revocable when holder does not comply with the laws and regulations applicable to saltwater conservation. All vessels fishing for live bait shrimp must be equipped with live bait shrimp tanks, and no more than 5 pounds of dead shrimp will be allowed on board such vessel per day.

(b) Any person convicted of violating the provisions of this subsection shall, for the first or second convictions, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A third or any subsequent violation by any person of this subsection within a 3-year period shall be a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(8) CLOSED AREA FOR SHRIMPING.—

(a) No shrimping except for live bait shrimp shall be permitted in all waters within the following described area: Begin at a point of latitude 24°41'54" North and longitude 81°40'30" West near Snipe Point in Monroe County; thence go North 35°53'16" West approximately 9 nautical miles to a point of approximate latitude 24°41'55" North and longitude 81°46'15" West, 3 marine leagues seaward of Snipe Point; thence easterly and northerly following a line which is 3 marine leagues seaward of the mean low-water line of the seaward-most points in Florida Bay and the Gulf of Mexico to a point at latitude 26°00'00" North and approximate longitude 81°56'30" West; thence east to a point on the mean high-water line at latitude 26°00'00" North and approximate longitude 81°44'06" West; thence southerly and easterly along the mean high-water line of the Florida mainland to its intersection with the westerly right-of-way of the U.S. Highway 1 bridge in Long Sound; thence follow the westerly and northern right-of-way of U.S. Highway 1 to a point on Saddlebunch Key latitude 24°37'06" North and approximate longitude 81°36'42" West; thence on a straight line to the point of beginning.

(b) All persons, firms, and corporations desiring to fish for live bait shrimp within the above described area shall first apply to the Division of Law Enforcement for a permit. Such application shall be made on forms to be supplied by the division which shall require the applicant to furnish such information as may be required by the department.

(c) The division may refuse to grant permits when it is apparent that the best interests of saltwater conservation will be served by such denial.

(d) Permits so granted will be subject to immediate revocation upon conviction for violation of this subsection or when it shall be apparent that the best interests of saltwater conservation will be served by such revocation.

(e) Any person convicted of violating the provisions of this subsection shall for the first conviction be guilty of a misdemeanor of the second degree,

punishable as provided in s. 775.082 or s. 775.083. A second or any subsequent violation by any person of this subsection shall be a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 59-343; s. 1, ch. 61-525; s. 1, ch. 63-338; ss. 1-3, ch. 65-343; ss. 25, 35, ch. 69-106; s. 1, ch. 70-344; s. 295, ch. 71-136; s. 1, ch. 72-54; ss. 1, 2, ch. 74-58; s. 8, ch. 77-142; ss. 1, 3, ch. 79-263.

370.151 Tortugas shrimp beds; closed areas; permits; penalties.—

(1) It is the intention of the Legislature that action should be taken to conserve the supply of shrimp in the large shrimp beds which lie in and around the coast of the Lower Keys of Florida and in the vicinity of the islands of Dry Tortugas in the Florida Keys, hereinafter referred to as the "Tortugas Shrimp Bed," and which furnish more than 50 percent of the shrimp in waters adjacent to the coast of Florida. It is further the sense of this legislature that the shrimp industry is a valuable industry to the economy of this state and deserves adequate protection.

(2) Tortugas Shrimp Bed is described as follows:

(a) Begin at Coon Key Light in Collier County; thence proceed on a straight line to a point which is located at 24°54'30" north latitude and 81°50'30" west longitude; thence proceed on a straight line to a point located at 24°48'00" north latitude and 82°00'00" west longitude; thence proceed on a straight line to a point located at 24°45'00" north latitude and 82°22'30" west longitude; thence proceed on a straight line to Rebecca Shoals Light; thence proceed on a straight line to R. B. Bell Buoy; thence proceed on a straight line to Cosgrove Shoal Light; thence proceed on a straight line to Sand Key Light; thence proceed northerly to the abandoned lighthouse located in the southwest portion of Key West; thence along the south and east meandered shoreline of the Florida Keys and the connecting viaducts between said Keys to 80°30'00" west longitude; thence north until a point on the mainland is reached; thence proceed west and north along the coast of the mainland of Florida until a point is reached which is located due north of the aforementioned Coon Key Light located in Collier County; thence due south to Coon Key Light, the point of beginning.

(b) No shrimping shall be permitted at any time except live bait production as provided in this chapter in the above-described area.

(3)(a) The Division of Law Enforcement is authorized to take title in the name of the state to any vessel or vessels suitable for use in carrying out the inspection and patrol of the Tortugas Bed which may be offered as a gift to the state by any person, firm, corporation, or association in the shrimp industry for the purpose of carrying out the provisions of this section. In the event such title is taken to such vessel or vessels, the division is authorized to operate and keep said vessel or vessels in proper repair.

(b) The division is further authorized to accept the temporary loan of any vessel or vessels, suitable for use in carrying out the provisions of this section, for periods not exceeding 1 year. However, the state shall not assume any liability to the owner or owners of said vessels for any damage done by said vessels to other vessels, persons, or property. In the operation of said loaned vessels, upkeep and repair shall consist only of minor repairs and routine maintenance. The owner or owners shall carry full marine insurance coverage on said loaned vessel or vessels for the duration of the period during which said vessels are operated by the state.

(4) It is unlawful to land or attempt to land any shrimp in the territorial waters of the state without a permit issued by the Division of Law Enforcement. Such permit shall be issued without charge. The division may revoke such landing permit upon a violation of any portion of this section. Such revocation of permit by the division may be reviewed by the Department of Natural Resources.

(5) It is unlawful for any person, firm, or corporation to receive any shrimp from any vessel not in possession of a valid permit issued by the Division of Law Enforcement. Any person violating this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(6) The owner or master of any vessel not equipped with live shrimp bait tanks dragging shrimp nets in the above-defined area without a live bait permit for this area is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping door shall be confiscated. A second violation by any person under this subsection shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A third or any subsequent violation by any person under this subsection within a 3-year period shall be a felony of the third degree, punishable as provided in s. 775.082 and s. 775.083.

(7) Each offense under all subsections, except subsections (5) and (6), shall be a misdemeanor and punishable as follows:

(a) For the first offense the owner or the master shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping door shall be confiscated as provided in s. 370.061.

(b) For the second offense the owner or master shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the vessel shall be confiscated as provided in s. 370.061.

(c) For the third offense within a 3-year period the owner or master shall be guilty of a felony of the third degree, punishable as provided in s. 775.083, and said equipment and instruments shall be confiscated as provided in s. 370.061.

(d) In addition to the fines enumerated above, the court may punish the master as provided in s. 775.082.

(8)(a) Nothing in this section shall apply to the taking of live shrimp for bait. All persons, firms, and corporations desiring to fish for live bait shrimp within any area shall first apply to the Division of Law Enforcement for a permit. Such application shall be made on forms to be supplied by the division which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of saltwater conservation.

(b) The division may refuse to grant permits when it is apparent that the best interests of saltwater conservation will be served by such denial.

(c) Permits so granted will be subject to immedi-

ate revocation upon conviction for violation of this subsection or when it shall be apparent that the best interests of saltwater conservation will be served by such revocation.

(d) Due to the varied habitats and types of bottoms and hydrographic conditions, the division shall have the authority to specify and regulate the types of gear that may be used in the area. Such specifications and regulations shall be consonant with sound saltwater conservation.

History.—ss. 1-10, ch. 57-358; s. 1, ch. 61-470; ss. 25, 35, ch. 69-106; s. 62, ch. 69-353; s. 1, ch. 70-163; s. 296, ch. 71-136; s. 2, ch. 72-54; s. 1, ch. 74-1; s. 23, ch. 78-95; s. 32, ch. 79-65.

370.153 Regulation of shrimp fishing; Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.—

(1) DEFINITIONS.—When used in this section, unless the context clearly requires otherwise:

(a) "Inland waters" means all creeks, rivers, bayous, bays, inlets, and canals.

(b) "Sample" means one or more shrimp taken from an accurately defined part of the area defined.

(c) "Series" means ten or more samples taken within a period of not more than 1 week, each sample being taken at a different station within the pattern.

(d) "Pattern" means ten or more stations.

(e) "Station" means a single location on the water of the areas defined.

(f) "Licensed live bait shrimp producer" means any individual licensed by the Department of Natural Resources to employ the use of any trawl for the taking of live bait shrimp within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties.

(g) "Licensed dead shrimp producer" means any individual licensed by the Department of Natural Resources to employ the use of any trawl for the taking of shrimp within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties.

(2) SHRIMPING PROHIBITED.—It is unlawful to employ the use of any trawl or other net, except a common cast net, designed for or capable of taking shrimp, within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties, except as hereinafter provided.

(3) LIVE BAIT SHRIMP PRODUCTION.—

(a) Any licensed live bait shrimp producer shall be permitted to use a roller frame trawl or an otter trawl not to exceed 20 feet in width for the production of live bait shrimp. No other type or size of trawl shall be permitted.

(b) A live bait shrimp production license shall be issued by the Department of Natural Resources upon the receipt of an application by a person intending to use a boat, not to exceed 35 feet in length in Duval, St. Johns, Putnam, Flagler, and Clay Counties and not to exceed 45 feet in length in Nassau County, for live shrimp production within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties and the payment of a fee of $50. The design of the application and permit shall be determined by the department. The proceeds of the fee imposed by this paragraph shall be used by the Department of Natural Resources for the purposes of enforcement of marine resource laws.

(c) The executive director of the Department of Natural Resources, or his designated representative, may by order close certain areas to live bait shrimp production when sampling procedures justify the closing, based upon sound conservation practices. The revocation of any order to close has the effect of opening the area.

(d) Every live bait shrimp producer shall produce evidence satisfactory to the department that he has the necessary equipment to maintain the shrimp alive while aboard the shrimp fishing vessel. All vessels fishing for live bait shrimp must be equipped with live bait shrimp tanks of a type and capacity satisfactory to the department, and no more than 5 pounds of dead shrimp will be allowed on board such vessel per day.

(e) 1. Each licensed live bait shrimp producer who stores his catch for sale or sells his catch shall either:

a. Maintain onshore facilities which have been annually checked and approved by the local Marine Patrol office to assure the facilities' ability to maintain the catch alive when the live bait shrimp producer produces for his own facility; or

b. Sell his catch only to persons who have onshore facilities which have been annually checked and approved by the local Marine Patrol office to assure the facilities' ability to maintain the catch alive, when the producer sells his catch to an onshore facility. The producer shall provide the Department of Natural Resources with the wholesale number of the facility to which the shrimp have been sold and shall submit this number on a form designed and approved by the department.

2. All persons who maintain onshore facilities as described in this paragraph, whether the facilities are maintained by the licensed live bait shrimp producer or by another party who purchases shrimp from live bait shrimp producers, shall keep records of their transactions in conformance with the provisions of s. 370.07(5).

(4) DEAD SHRIMP PRODUCTION.—Any person may operate as a commercial dead shrimp producer on the St. Johns River provided that:

(a) A dead shrimp production permit is procured from the Department of Natural Resources upon the receipt by the department of a properly filled out and approved application by a person intending to use a boat, not to exceed 35 feet in length in Duval, St. Johns, Putnam, and Clay Counties, and not to exceed 45 feet in length in Nassau County, for dead shrimp production within the inland waters of Nassau County and the inland waters of the St. Johns River of Duval, Putnam, St. Johns, Flagler, or Clay Counties, which permit shall cost $250 and shall be required for each vessel used for dead shrimp production. The design of the application and permit shall be determined by the Department of Natural Resources. The proceeds of the fees imposed by this paragraph shall be deposited into the account of the Motorboat Revolving Trust Fund to be used by the Department of Natural Resources for the purpose of enforcement of marine resource laws.

(b) All commercial trawling shall be restricted to the St. Johns River proper in the area north of Buckman Bridge at Orange Park and at least 100 yards

from the nearest shoreline.

(c) No person shall use any trawl exceeding 35 feet in length or less than a 1½-inch stretch mesh with a 10-pound pull. Length measurement shall be made from the point where the webbing is hung on the corkline at one end of said net to the point where the webbing is hung on the corkline at the opposite end of said net.

(d) No person shall use any tickler chain.

(e) The Department of Natural Resources may, by rule, place additional restrictions upon the types of equipment to be used by dead shrimp producers.

(f) All commercial shrimping activities shall be allowed during daylight hours from Tuesday through Friday each week.

(g) No person holding a dead shrimp production permit issued pursuant to this subsection shall simultaneously hold a permit for noncommercial trawling under the provisions of subsection (5). The number of permits issued by the department for commercial trawling or dead shrimp production in any one year shall be the number issued in the base year, 1976. All permits shall be nontransferable and annually renewable only by the original holder thereof. All permits not renewed shall expire and shall not be renewed under any circumstances.

(h) It is illegal for any person to sell dead shrimp caught in the St. Johns River, unless the seller is in possession of a dead shrimp production license issued pursuant to this subsection.

(i) It is illegal for any person to purchase shrimp for consumption from any seller (with respect to shrimp caught in the St. Johns River) who does not produce his dead shrimp production license prior to the sale of the shrimp.

(j) In addition to any other penalties provided for in this section, any person who violates the provisions of this subsection shall have his license revoked by the department.

(5) NONCOMMERCIAL TRAWLING.—Any person may harvest shrimp in the St. Johns River for his own use as food and may trawl for such shrimp under the following conditions:

(a) Each person who desires to trawl for shrimp for use as food shall obtain a noncommercial trawling permit from the local Marine Patrol office of the Department of Natural Resources upon filling out an application on a form prescribed by the department and upon paying a fee for the permit, which shall cost $50.

(b) Each trawl used for noncommercial trawling shall measure not more than 15 feet from the point where the webbing is hung on the corkline at one end of said net to the point where the webbing is hung on the corkline at the opposite end of said net, and the nets shall be no less than 1½ inches stretch mesh. Only one trawl shall be pulled at a time.

(c) All trawling shall be restricted to the confines of the St. Johns River proper in the area north of Buckman Bridge at Orange Park and at least 100 yards from the nearest shoreline.

(d) Trawling shall be allowed only during daylight hours on Saturdays and Sundays, and at no time shall any person or boat possess more than 50 pounds of shrimp while on the water.

(e) No shrimp caught by a person licensed under the provisions of this subsection shall be sold or offered for sale.

(6) SAMPLING PROCEDURE.—

(a) The executive director of the Department of Natural Resources shall have samples taken at established stations within patterns at frequent intervals.

(b) No area shall be closed to live bait shrimp production unless a series of samples has been taken and it has been determined that the shrimp are undersized or that continued shrimping in this area would have an adverse effect on conservation. Standards for size may be established by rule of the department.

(c) No area shall be opened to dead shrimp production unless a series of samples has been taken and it has been determined that the shrimp are of legal size. Legal-sized shrimp shall be defined as not more than 47 shrimp with heads on, or 70 shrimp with heads off, per pound.

(7) LICENSE POSSESSION.—The operator of a boat employing the use of any trawl for shrimp production must be in possession of a current shrimp production license issued to him pursuant to the provisions of this section.

(8) USE OF TRAWL; LIMITATION.—

(a) The use of a trawl by either a live bait shrimp producer or dead shrimp producer shall be limited to the daylight hours, and the taking of dead shrimp shall not take place on Saturdays, Sundays, or legal state holidays.

(b) The use of a trawl by either a live bait shrimp producer or dead shrimp producer within 100 yards of any shoreline is prohibited. The Department of Natural Resources, by rule or order, may define the area or areas where this subsection shall apply.

(c)1. It is unlawful to employ the use of any trawl designed for, or capable of, taking shrimp within ¼ mile of any natural or manmade inlet in Duval County or St. Johns County.

2. It is unlawful for anyone to trawl in the Trout River west of the bridge on U.S. 17 in Duval County.

(9) PENALTY.—

(a) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.

(b) The license of any shrimp producer convicted of violating any provision of this section shall be suspended for a period of 1 year.

History.—ss. 1-10, ch. 71-460; ss. 1, 2, ch. 72-116; s. 1, ch. 73-150; ss. 1, 2, ch. 74-140; s. 1, ch. 77-174; s. 1, ch. 77-186; s. 80, ch. 79-164.

370.154 Shrimp regulations; closed areas; suspension of license, etc.—Any person convicted of taking shrimp in a closed area who is punishable under s. 370.15(6) or s. 370.151(5) shall, in addition to the penalties set forth therein, have his permit and the permit of the boat involved in the violation, issued pursuant to s. 370.15(5), revoked, if he holds such a permit, and he shall be ineligible to make application for such a permit for a period of 2 years from the date of such conviction. If a person not having a permit is convicted hereunder, that person

and the boat involved in the violation shall not be eligible for such a permit for 5 years.

History.—s. 3, ch. 72-54.

370.155 Regulation of shrimp fishing in a designated area.—

(1) It shall be unlawful to catch or take, or attempt to catch or take, with nets in excess of 18 feet on the cork line, in excess of 24 feet on the lead line, and in excess of 3 feet on the leg line with trawl doors or otter boards which exceed 36 inches in length by 18 inches in width, shrimp from April 1 to June 15 of each year in the following area, to wit: Beginning at a central point on Cape San Blas, proceeding thence 180 degrees to a point 3 miles seaward, thence southeasterly along a meandering line 3 miles from the shoreline to a point 3 miles due south of Cape St. George, proceeding thence zero degrees to Cape St. George, thence follow the shoreline bordering the Gulf of Mexico to the point of beginning. It is unlawful for any person to have in his boat at one time more than one net of the permissible size to take shrimp in the area herein defined. However, the Department of Natural Resources shall issue such permits as are necessary for harvesting roe shrimp in pursuance of mariculture programs.

(2) Any person violating this section shall, upon conviction, be adjudged guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 73-362; s. 1, ch. 75-262; s. 1, ch. 77-174.

370.156 Florida East Coast Shrimp Bed; closed areas; permits; penalties.—

(1) It is the intention of the Legislature that action should be taken to conserve the supply of shrimp in the large shrimp beds that exist from the Florida-Georgia boundary to the southern boundary of St. Lucie County, in both the inland and the coastal territorial waters. This area shall hereinafter be referred to as the "Florida East Coast Shrimp Bed." It is further the sense of this Legislature that the shrimp industry is a valuable component of the state's economy and deserves adequate protection.

(2) The Florida East Coast Shrimp Bed is defined as: All of the inside and outside waters within the territorial limits of the State of Florida, lying and being within Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Volusia, Seminole, Brevard, Indian River, and St. Lucie Counties as defined in chapter 7.

(3) No power trawling for dead shrimp shall be permitted in the Florida East Coast Shrimp Bed between April 1 and June 1 of each year. Only trawling for live bait is allowed in the Florida East Coast Shrimp Bed between April 1 and June 1 of each year, and each vessel shall comply with subsection (5).

(4) It is unlawful for any person, firm, or corporation to receive any shrimp from any vessel not in possession of a valid permit issued by the division.

(5) Any vessel trawling in the Florida East Coast Shrimp Bed for live bait shrimp shall have a live bait shrimping permit for this area, shall be equipped with live bait shrimp tanks, and shall not have in excess of 5 pounds of dead shrimp in its possession.

(6) Violation of any of the provisions of this section shall be a misdemeanor, punishable as follows:

(a) For the first offense, the owner or master, or both, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping doors shall be confiscated.

(b) For the second offense, the owner or master, or both, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the vessel shall be confiscated as provided in s. 370.061.

(c) In addition to the fines, the court may punish the master of the vessel as provided in s. 775.082.

(7)(a) All persons, firms, and corporations desiring to trawl for either live bait shrimp or dead shrimp within the Florida East Coast Shrimp Bed shall first apply to the division for a permit. The application shall be made on forms supplied by the division which shall require the applicant to furnish information as may be deemed pertinent to the best interests of saltwater conservation.

(b) The division may refuse to grant permits when it is apparent that the best interests of saltwater conservation will be served by such denial.

(c) Due to the varied habitats, types of bottoms, and hydrographic conditions, the division shall have the authority to specify and regulate the types of gear that may be used in the Florida East Coast Shrimp Bed. Such specifications and regulations shall be consonant with sound saltwater conservation.

(d) It is unlawful to land or attempt to land any shrimp in the territorial waters of the state without a permit issued by the division. The division shall revoke a permit upon conviction of a violation of any portion of this section. Revocation of a permit by the division may be reviewed by the Department of Natural Resources, and the decision of the department may be reviewed according to the procedure prescribed in the Florida Appellate Rules.

History.—s. 3, ch. 74-140.

370.157 Cedar Key closed area for shrimping.—

(1) It shall be unlawful to catch or take, or attempt to take, except with a single rig boat 35 feet or less in length or with a net not to exceed 35 feet on the cork line, 45 feet on the lead line, and 5 feet on the leg line with trawl doors or other boards which exceed 48 inches in length by 24 inches in width, shrimp from the following area: Beginning at a point on the shoreline of the Gulf of Mexico on the south side of the channel entering the Cross Florida Barge Canal near Port Inglis; thence southwesterly along the line of navigational buoy marking the south side of said channel to sea buoy number "2" marking the outer extent of said channel; thence westerly to navigational buoy number "3"; thence northwesterly to red flashing light number "12" at latitude 29°11'45" North and longitude 83°18'16" West; thence northerly to sea buoy number "2" at the outer limit of the navigational channel entering Horseshoe Beach; thence northeasterly along the south side of the navigational channel to the shoreline of the Gulf of Mexico; thence southerly along the shoreline along the Gulf of Mexico to the point of beginning. This section shall not apply to persons holding live bait shrimp permits issued by the De-

partment of Natural Resources.

(2) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-73; s. 1, ch. 79-168.

370.16 Oysters and shellfish; regulation.—

(1) LEASE, APPLICATION FORM; NOTICE TO RIPARIAN OWNER; LANDS LEASED TO BE COMPACT.—When any qualified person desires to lease a part of the bottom or bed of any of the water of this state, for the purpose of growing oysters or clams, as provided for in this section, he shall present to the Division of Marine Resources a written application setting forth the name and address of the applicant, a reasonably definite description of the location and amount of land covered by water desired, and shall pray that the application be filed; that the water bottoms be surveyed and a plat or map of the survey thereof be made if no plat or map of such bottoms should have been so made thereto, and that the water bottoms described be leased to the applicant under the provisions of this section; such applicant shall accompany with his written application a sufficient sum to defray the estimated expenses of the survey; thereupon the said division shall file such application and shall direct the same surveyed and platted forthwith at the expense of the applicant. When applications are made by two or more persons for the same lands, they shall be leased to the applicant who first filed application for same; but to all applications for leases of any of the bottoms of said waters owned under the riparian acts of the laws of Florida, heretofore enacted, notice of such application shall be given the riparian owner, when known, and when not known, notice of such application shall be given by publication for 4 weeks in some newspaper published in the county in which the water bottoms lie; and when there is no newspaper published in such county, then by posting such notice for 4 weeks at the courthouse door of said county, and preference shall be given to such riparian owners under the terms and conditions herein created, when such riparian owner makes application for such water bottoms for the purpose of planting oysters or clams before the same are leased to another. The lands leased shall be as compact as possible, taking into consideration the shape of the body of water and the condition of the bottom as to hardness, or soft mud or sand, or other conditions which would render the bottoms desirable or undesirable for the purpose of oyster or clam cultivation.

(2) SURVEYS, PLATS AND MAPS OF REEFS.—The Division of Marine Resources shall accept, adopt and use official reports, surveys and maps of oyster, clam or other shellfish grounds made under the direction of any authority of the United States as prima facie evidence of the natural oyster and clam reefs, for the purpose and intent of this chapter. The said division may also make surveys of any natural oyster or clam reefs when it deems such surveys necessary and where such surveys are made pursuant to an application for a lease, the cost thereof may be charged to the applicant as a part of the cost of his application.

(3) EXECUTION OF LEASES; LESSEE TO STAKE OFF BOUNDARIES; PENALTY FOR FAILURE TO COMPLY WITH REGULATIONS.—As soon as the survey has been made and the plat or map thereof filed with the Division of Marine Resources and the cost thereof paid by the applicant, the said division may execute in duplicate a lease of the water bottoms to the applicant. One duplicate, with a plat or map of the water bottoms so leased, shall be delivered to the applicant, and the other, with a plat or map of the bottom so leased shall be retained by the said division, and registered in a lease book which shall be kept exclusively for that purpose by the said division; thereafter such lessees shall enjoy the exclusive use of said lands and all oyster and clams, shell and cultch grown or placed thereon shall be the exclusive property of such lessee as long as he shall comply with the provisions of this chapter. The division shall require the lessee to stake off and mark the water bottoms leased, by such ranges, monuments, stakes, buoys, etc., so placed and made as not to interfere with the navigation, as it may deem necessary to locate the same to the end that the location and limits of the lands embraced in such lease be easily and accurately found and fixed, and such lessee shall keep the same in good condition during the open and closed oyster or clam season. All leases shall be marked according to the standards derived from the uniform waterway markers for safety and navigation as described in s. 371.521. The division may stipulate in each individual lease contract the types, shape, depth, size and height of marker or corner posts. Failure on the part of the lessee to comply with the orders of the division to this effect within the time fixed by it, and to keep the markers, etc., in good condition during the open and closed oyster or clam season, shall subject such lessee to a fine not exceeding $100 for each and every such offense. All lessees shall cause the area of the leased water bottoms and the names of the lessees to be shown by signs as may be determined by the said division, if so required.

(4) LEASES IN PERPETUITY; RENT; STIPULATIONS; TAXES; CULTIVATION, ETC.—

(a) All leases made under the provisions of this chapter shall begin on the day executed and continue in perpetuity under such restrictions as shall herein be stated. The rent for the first 10 years shall be $5 per acre, or any fraction of an acre, per year. However, the rent for any lease currently in effect shall not be increased during the first 10 years of said lease. This rent shall be paid in advance at the time of signing the lease up to January 1 following, and annually thereafter in advance on or before January 1, whether the lease be held by the original lessee or by an heir, assignee, or transferee. No taxes, assessments, or other licenses other than those imposed in this chapter shall be levied or imposed on said leases or leased lands, but the annual rental exacted and paid shall be held and considered all that can or shall be exacted by the state or county, subordinate political corporations, or municipalities.

(b) Effective cultivation shall consist of the growing of the oysters or clams in a density suitable for commercial harvesting over the amount of bottom prescribed by law. This commercial density shall be accomplished by the planting of seed oysters, shell,

and cultch of various descriptions. The Division of Marine Resources may stipulate in each individual lease contract the types, shape, depth, size and height of cultch materials on lease bottoms according to the individual shape, depth, location, and type of bottom of the proposed lease. Each tenant leasing from the state water bottoms under the provisions of this section shall have begun within 1 year from the date of such lease, bona fide cultivation of the same, and shall, by the end of the second year from the commencement of his lease, have placed under cultivation at least one-fourth of the water bottom leased, and shall each year thereafter place in cultivation at least one-fourth of the water bottom leased until the whole, suitable for bedding of oysters or clams, shall have been put in cultivation by the planting thereon of not less than 200 barrels of oysters, shell or its equivalent in cultch to the acre. When leases are granted, or when grants have heretofore been made under existing laws for the planting of oysters or clams, such lessee or grantee is authorized to plant the leased or granted bottoms both in oysters and clams.

(c) These stipulations will apply to all leases granted after the passing of this section. All leases existing prior to the passing of this section will operate under the law which was in effect when the leases were granted.

(d) When evidence is gathered by the division and such evidence conclusively shows a lack of effective cultivation, said division may revoke leases and return the bottoms in question to the public domain.

(e) When evidence obtained by qualified marine biologists is available to the division which indicates that relatively temporary or transient hydrographic or biological conditions preclude the successful cultivation of oysters, lessees may apply to the division for a permit to suspend planting operations. Such permits shall be revocable upon 30 days' notice from the division that growing conditions are again suitable and, upon the revocation of such permits, cultivation will again be mandatory as required by law.

(f) The department has the authority to adopt rules and regulations pertaining to the water column over shellfish leases. All cultch materials in place 6 months after the formal adoption and publication of rules and regulations establishing standards for cultch materials on shellfish leases which do not comply with such rules and regulations may be declared a nuisance by the division. The division shall have the authority to direct the lessee to remove such cultch in violation of this section. The division may cancel a lease upon the refusal by the lessee violating such rules and regulations to remove unlawful cultch materials, and all improvements, cultch, marketable oysters, and shell shall become the property of the state. The division shall have the authority to retain, dispose of, or remove such materials in the best interest of the state.

(5) INCREASE OF RENTALS AFTER 10 YEARS.—After 10 years from the execution of the lease, the rentals shall be increased to a minimum of $1 per acre per annum. The Division of Marine Resources shall assess rental value on the leased water bottoms, taking into consideration their value as oyster-growing or clam-growing water bottoms, their nearness to factories, transportation, and other conditions adding value thereto and placing such valuation upon them in shape of annual rental to be paid thereunder as said condition shall warrant.

(6) LEASES TRANSFERABLE, ETC.—Said leases shall be inheritable and transferable, in whole or in part, and shall also be subject to mortgage, pledge, or hypothecation, and shall be subject to seizure and sale for debts as any other property, rights, and credits in this state, and this provision shall also apply to all buildings, betterments, and improvements thereon. Leases granted under this section cannot be transferred, by sale or barter, in whole or in part, without the written, express acquiescence of the Division of Marine Resources, and such a transferee shall pay a $50 transfer fee before division acquiescence may be given. No lease or part of a lease may be transferred by sale or barter until the lease has been in existence at least 2 years and has been cultivated according to the statutory standards found in paragraph (4)(b), except as otherwise provided by regulation adopted by the Division of Marine Resources. No such inheritance or transfer shall be valid or of any force or effect whatever unless evidenced by an authentic act, judgment, or proper judicial deed, registered in the office of the division in a book to be provided for said purpose. The said division shall keep proper indexes so that all original leases and all subsequent changes and transfers can be easily and accurately ascertained.

(7) PAYMENT OF RENT; FORFEITURE FOR NONPAYMENT; NOTICE, ETC.—All leases shall stipulate for the payment of the annual rent in advance on or before January 1 of each year, and the further stipulation that the failure of the tenant to pay the rent punctually on or before said day, or within 30 days thereafter shall ipso facto, and upon demand, terminate and cancel said lease and forfeit to the state all the works, improvements, betterments, oysters and clams on the said leased water bottoms, and authorize the Division of Marine Resources to at once enter on said water bottom and take possession thereof, and such water bottom shall then be open for lease as herein provided; and the said division shall within 10 days thereafter enter such termination, cancellation and forfeiture on its books and shall give such public notice thereof, and of the fact that the water bottoms are open to lease, as it shall deem proper; provided, that the said division may, in its discretion, waive such termination, cancellation and forfeiture when the rent due, with 10 percent additional, and all costs and expenses growing out of such failure to pay, be tendered to it within 60 days after the same became due; provided, that in all cases of cancellation of lease, the said division shall, after 60 days' notice by publication in some newspaper published in the state, having a general statewide circulation, which said notice shall contain a full description of the leased waters and beds and any parts thereof, sell such lease to the highest and best bidder; and all moneys received over and above the rents due to the state, under the terms of the lease and provisions herein, and costs and expenses growing out of such failure to pay, shall be paid to the lessee forfeiting his rights therein. No leased water bottoms shall be forfeited for

nonpayment of rent under the provisions of this section, unless there shall previously have been mailed by the said division to the last known address of such tenant according to the books of said division, 30 days' notice of the maturity of such lease. Whenever any leased water bottoms are forfeited for nonpayment of rent, and there is a plat or survey thereof in the archives of the said division, when such bedding grounds are re-leased, no new survey thereof shall be made, but the original stakes, monuments and bounds shall be preserved, and the new lease shall be based upon the original survey. This subsection shall also apply to all costs and expenses taxed against a lessee by the division under this section.

(8) CANCELLATION OF LEASES TO NATURAL REEFS.—Any person, within 6 months from and after the execution of any lease to water bottoms, may file a petition with the Division of Marine Resources for the purpose of determining whether a natural oyster or clam reef having an area of not less than 100 square yards existed within the leased area on the date of the lease, with sufficient natural or maternal oysters or clams thereon (not including coon oysters) to have constituted a stratum sufficient to have been resorted to by the public generally for the purpose of gathering the same to sell for a livelihood. The said petition shall be in writing addressed to the Division of Marine Resources of the Department of Natural Resources, verified under oath, stating the location and approximate area of the natural reef and the claim or interest of the petitioner therein and requesting the cancellation of the lease to the said natural reef. No petition may be considered unless it be accompanied by a deposit of $10 to defray the expense of examining into the matter. The petition may include several contemporaneous natural reefs of oysters or clams. Upon receipt of such petition, the division shall cause an investigation to be made into the truth of the allegations of the petition, and, if found untrue, the $10 deposit shall be retained by the division to defray the expense of the investigation, but should the allegations of the petition be found true and the leased premises to contain a natural oyster or clam reef, as above described, the said $10 shall be returned to the petitioner and the costs and expenses of the investigation taxed against the lessee and the lease canceled to the extent of the natural reef and the same shall be marked with buoys and stakes and notices placed thereon showing the same to be a public reef, the cost of said markers and notices to be taxed against the lessee.

(9) WHEN NATURAL REEFS MAY BE INCLUDED IN LEASE.—When an application for oyster or clam bedding grounds is filed and upon survey of such bedding ground, it should develop that the area applied for contains natural oyster or clam reefs or beds less in size than 100 square yards, or oyster or clam reefs or bars of greater size, but not of sufficient quantity to constitute a stratum, and it should further be made to appear to the Division of Marine Resources by the affidavit of the applicant, together with such other proof as the division may require, that the natural reef, bed or bar could not be excluded, and the territory applied for properly protected or policed, the division may, if it deems it for the best interest of the state and the oyster industry so to do, permit the including of such natural reefs, beds, or bars; and it shall fix a reasonable value on the same, to be paid by the applicant for such bedding ground; provided, that no such natural reefs shall be included in any lease hereafter granted to the bottom or bed of waters of this state contiguous to Franklin County. There shall be no future oyster leases issued in Franklin County.

(10) SETTLEMENT OF BOUNDARY DISPUTES; REVIEW.—The Division of Marine Resources shall determine and settle all disputes as to boundaries between lessees of bedding grounds. The division shall, in all cases, be the judge as to whether any particular bottom is or is not a natural reef or whether it is suitable for bedding oysters or clams.

(11) TRESPASS ON LEASED BEDS; GATHERING OYSTERS AND CLAMS BETWEEN SUNSET AND SUNRISE FROM NATURAL REEFS, ETC.—Any person who shall willfully take oysters, shells, cultch or clams bedded or planted by a licensee under this chapter, or grantee under the provisions of heretofore existing laws, or riparian owner who may have heretofore planted the same on his riparian bottoms, or any oysters or clams deposited by anyone making up a cargo for market, or who shall willfully carry or attempt to carry away the same without permission of the owner thereof, or who shall willfully or knowingly remove, break off, destroy, or otherwise injure or alter any stakes, bounds, monuments, buoys, notices or other designations of any natural oyster or clam reefs or beds or private bedding or propagating grounds, or who shall willfully injure, destroy or remove any other protection around any oyster or clam beds, or who shall willfully move any bedding ground stakes, buoys, marks or designations, placed by the division, or who shall gather oysters or clams between sunset and sunrise from the natural reefs or from private bedding grounds, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(12) PROTECTION OF OYSTER AND CLAM REEFS.—The Division of Marine Resources shall improve, enlarge and protect the natural oyster and clam reefs of this state to the extent it may deem advisable and the means at its disposal will permit. Said division shall also, to the same extent, assist in protecting the leased or granted reefs in the hands of lessees or grantees from the state. Said division shall also make a detailed report, to the Legislature at each session, of its efforts in relation to the oyster and clam business, together with recommendations for their development and the proper protection of the rights of the state and private holders therein.

(13) STAKING OFF WATER BOTTOMS OR BEDDING OYSTERS WITHOUT OBTAINING LEASE; PENALTY.—Any person staking off the water bottoms of this state, or bedding oysters on the bottoms of the waters of this state, without previously leasing same as required by law shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall acquire no rights by reason of such staking off. This provision does not apply to grants heretofore made under the provisions of any heretofore existing laws or to artificial beds made heretofore by a riparian owner or his grantees on his riparian bottoms.

(14) CLOSED SEASON FOR OYSTERS; RULES

OF EVIDENCE; PROVISO.—No person may take, gather, or catch oysters on the natural reefs of this state, or have such oysters in his possession, between June 1 and September 1 of each year, except from private leased or granted grounds, or artificial beds of riparian owners and except as otherwise provided in this section. The possession of oysters during said closed season shall be prima facie a violation of this section, and the burden shall be on the possessor of such oysters to prove that they were fished or gathered beyond the jurisdiction of the state or from private oyster beds. The Division of Marine Resources shall, however, have authority to permit the fishing of unculled oysters from the natural oyster reefs as herein provided, from April 1 until October 1, but only for bedding purposes, and then only under such rules as said division may adopt to carry out the provisions of law. The provision prohibiting the harvesting of oysters shall not apply between June 1, 1979, and September 1, 1979, in three areas of Franklin County, described as follows: in that area of East Bay, Franklin County, and located north of the John Gorrie Bridge classified as conditionally approved for the harvesting of shellfish by the Division of Marine Resources; in that area of Apalachicola Bay, Franklin County, and located south of the John Gorrie Bridge, east and north of the Gulf Intracoastal Waterway, and west of the Bryant Patton Bridge classified as conditionally approved for the harvesting of shellfish by the Division of Marine Resources; and in that area of St. George Sound, Franklin County, and located west of a line from the east end of St. George Island due north to the mainland, and located east of a line described as follows: begin at the tip of Shell Point on St. George Island, thence run northwest to Channel Marker No. 31, thence westerly along the Intracoastal Waterway to Channel Marker No. 41, thence north through Marker No. 5 to the mainland, which area is classified as approved for the harvesting of shellfish by the Division of Marine Resources. Provided further, that the provisions of this subsection regarding possession of oysters shall not apply to oysters harvested from the described areas, except that possession of unculled oysters outside of these three designated areas shall be prima facie a violation of this section and the burden of proof shall be upon the possessor of such oysters to prove that they were fished or gathered within the designated areas. Provided further, that all oysters shipped out of Franklin County between June 1, 1979, and September 1, shall be accompanied by invoices, bills of lading, or other similar instruments showing said oysters were produced in Franklin County and the burden of proof shall be on the possessor of said oysters. Any other provision of this section to the contrary notwithstanding, any person who violates any provision with respect to the special season in Franklin County shall be guilty of a misdemeanor and, for the first offense, shall be subject to a fine of not less than $200 and, for the second or subsequent offense, a fine of not less than $500 and a term of imprisonment of not less than 7 days in jail. Furthermore, notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld with respect to any violation of the provisions of the special season in Franklin County.

(15) REMOVING OYSTERS FROM NATURAL REEFS; LICENSES, ETC., PENALTY.—

(a) It is unlawful to use a dredge or any means or implement other than hand tongs in removing oysters from the natural or artificial state reefs, except in bodies of water over a general depth of twelve feet, or where in the opinion of the Division of Marine Resources, the body of water regardless of its depth, is too open and exposed to be ordinarily fished with hand tongs, in which event the said division shall be authorized to issue a license for the use of scrapers or dredges; provided, the applicant shall pay an annual police license fee of $25 for each sailing or power vessel using scrapers or dredges, in addition to its other license, and shall give bond in favor of the Governor of the State of Florida, with good security, to be approved by the division in the sum of $3,000, conditioned that said implements shall not be used on the state reefs contrary to law. Upon the payment of $25 annually, for each vessel or boat using a dredge or machinery in the gathering of clams, a license may be issued by the division for such use to such person.

(b) Lessees of bedding grounds shall have the right to use in such bedding grounds any implements, or appliances that they may desire. The division shall require that such lessees procure a permit from it to use such implements, and shall require of such lessees that they shall furnish a bond payable to the Governor of the State of Florida, to be approved by the said division, in the sum of $3,000, that such implements or appliances shall not be used on the natural oyster reefs contrary to law. When such implements or appliances are used exclusively on private propagating or bedding grounds, no charge shall be made for said permit. Anyone violating the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Oysters may be harvested from natural or public grounds by common hand tongs or by hand without a harvesting method license being required. Oysters may be harvested by hand, by scuba diving, free diving, leaning from vessels, or wading.

(16) CULLING OYSTERS; POSSESSION OF UNDERSIZED OYSTERS REGARDLESS OF SOURCE; REGULATIONS.—

(a) All oysters taken from the waters of this state shall be culled, unless otherwise provided in this section.

(b) In the case of oysters emanating from natural, publicly owned beds, all oysters which measure less than 3 inches in greatest dimensions and all bedding shells shall be immediately replaced and scattered broadcast upon the natural reefs from which they were taken.

(c) In the case of oysters emanating from privately owned or privately controlled beds, all oysters which measure less than 3 inches in greatest dimensions, and all bedding shells may be returned to lease or privately managed area or may be spread broadcast over natural publicly owned reefs.

(d) No person shall be in possession while on the waters of this state of oysters which are less than the

prescribed legal size, regardless of their source, except that oysters which are less than the prescribed legal size may be placed upon the culling board of a vessel while on the bar for the purpose of culling out illegal-sized oysters.

(e) In determining what oysters shall be removed from marketable oysters, no oysters under 3 inches in greatest dimension shall be included in the percentage of oysters undersize, when they adhere to the marketable oysters so closely that to remove the same would destroy either the oyster undersize or the marketable oysters. No person in any vessel shall have in his possession oysters not culled according to law, unless permitted by the Division of Marine Resources for the purpose of planting or relaying as provided by law. An excess of over 15 percent of small oysters estimated as above provided for in any cargo or lot of oysters shall be considered a violation of this section. Any oysters under 3 inches in greatest dimension in any cargo or lot of oysters shall be a violation of this section during the special oyster harvesting season, June 1, 1979, to September 1, 1979, in Franklin County. The Division of Law Enforcement, any marine patrol officer, or any police officer of the state shall cause to be measured to determine the percentage of undersized oysters, 1 sample bushel to be taken at random from the cargo of oysters, while such oysters are in the county from which they were harvested and before said oysters are deposited in an oyster house certified under the rules of the Department of Natural Resources. If a total of undersized oysters from the 1 bushel shall total more than 15 percent of the amount of oysters contained in the 1 bushel, it shall constitute a violation of this section, any other law to the contrary notwithstanding.

(17) FISHING FOR BEDDING PURPOSES, ETC.—

(a) Designation of areas for the taking of oysters and clams to be planted on leases, grants, and public areas is to be made by qualified personnel of the Division of Marine Resources. Oysters and clams may be taken for relaying at any time during the year so long as, in the opinion of the division, the public health will not be endangered. The amount of oysters and clams to be obtained for relaying, the area relayed to, and relaying time periods will be established in each case by the division.

(b) Application for a permit for obtaining oysters and clams must be made to the division. In return, the division may assign an area and a period of time for the oysters and clams to be relayed to be taken. All planting and relaying operations shall take place under the surveillance of the division.

(c) Relayed oysters or clams shall not be subsequently harvested for any reason without written permission or public notice from the division, if oysters or clams were relayed from areas not approved by the division as shellfish harvesting areas.

(18) SEVERANCE TAX ON OYSTERS AND CLAMS; DISPOSITION.—No severance or privilege taxes on oysters and clams shall be collected after June 17, 1959, provided, all moneys in the "oyster severance tax fund" shall be transferred to the "Oyster and Clam Rehabilitation Trust Fund."

(19) LICENSES; OYSTER AND CLAM CANNERIES.—Every person, as a condition precedent to the operation of any oyster or clam canning factory in this state, shall obtain a license therefor and pay a license fee of $50. Said license shall be issued by the Division of Marine Resources upon proper written application on forms to be furnished by it. The moneys paid for licenses under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(20) FALSE RETURNS AS TO OYSTERS OR CLAMS HANDLED.—Each packer, canner, corporation, firm, commission man or dealer in fish shall, on the first day of each month, make a return under oath to the Division of Marine Resources, as to the number of oysters, clams and shellfish purchased, caught or handled during the preceding month. All severance tax as provided for in subsection (18) shall be paid to the division with this report. Whoever is found guilty of making any false affidavit to any such report shall be guilty of perjury and punished as provided by law, and any person who fails to make such report shall be punished by a fine not exceeding $500, or by imprisonment in the county jail not exceeding 6 months.

(21) COLLECTION OF LICENSES AND TAXES. —All taxes and licenses shall be collected by the Division of Marine Resources under such rules and regulations as may be adopted by the division, and by it deposited in the State Treasury to the credit of the General Revenue Fund. The said division shall keep a detailed account of all funds passing through its hands.

(22) WATER PATROL FOR COLLECTION OF TAX.—

(a) The Division of Law Enforcement may establish and maintain necessary patrols of the salt waters of Florida, with authority to use such force as may be necessary to capture any vessel or person violating the provisions of the laws relating to oysters and clams, and may establish ports of entry at convenient locations where the severance or privilege tax levied on oysters and clams may be collected or paid and may make such rules and regulations as it may deem necessary for the enforcement of such tax.

(b) Each person in any way dealing in shellfish shall keep a record, on blanks or forms prescribed by the Division of Marine Resources, of all oysters, clams and shellfish taken, purchased, used or handled by him, with the name of the persons from whom purchased, if purchased, together with the quantity and the date taken or purchased, and shall exhibit said account at all times when requested so to do by the said division or any conservation agent; and he shall, on the first day of each month, make a return under oath to the said division as to the number of oysters, clams and shellfish purchased, caught or handled during the preceding month. The said division may require detailed returns whenever it deems same necessary.

(23) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER AND CLAM LAWS, ETC.— Vessels, with their cargoes, violating the provisions of the laws relating to oysters and clams may be seized by anyone duly and lawfully authorized to make arrests under this section or by any sheriff or

his deputies, and taken into custody, and when not arrested by the sheriff or his deputies, delivered to the sheriff of the county in which the seizure is made, and shall be liable to forfeiture, on appropriate proceedings being instituted by the Division of Marine Resources, before the courts of that county. In such case the cargo shall at once be disposed of by the sheriff, for account of whom it may concern. Should the master or any of the crew of said vessel be found guilty of using dredges or other instruments in fishing oysters on natural reefs contrary to law, or fishing on the natural oyster or clam reefs out of season, or unlawfully taking oysters or clams belonging to a lessee, such vessel shall be declared forfeited by the court, and ordered sold and the proceeds of the sale shall be deposited with the State Treasurer to the credit of the General Revenue Fund; any person guilty of such violations shall not be permitted to have any license provided for in this chapter within a period of 1 year from the date of conviction. Pending proceedings such vessel may be released upon the owner furnishing bond, with good and solvent security in double the value of the vessel, conditioned upon its being returned in good condition to the sheriff to abide the judgment of the court.

(24) OYSTER REHABILITATION COMMISSION.—The Governor of this state may appoint in any county, where natural oyster reefs exist, an oyster rehabilitation commission for such county, the same to be composed of three good and lawful citizens of such county. Such commission shall serve without compensation.

(25) COMMISSION ADVISORY ONLY.—The oyster rehabilitation commission in any county shall constitute an advisory commission to the Division of Marine Resources with reference to all matters pertaining to the replanting and rehabilitation of natural oyster bars in such county and shall have no other power than to advise said division concerning the administration of the shellfish laws in the county in which its members are appointed; and to recommend to such division the manner and method of the expenditure of funds provided for the rehabilitation of natural oyster beds in such county so that the fullest benefit of such oyster beds may be received from said expenditure. The recommendation of the said commission shall not be binding upon the division but is advisory only.

(26) DUTIES OF COMMISSION.—The members of the oyster rehabilitation commission shall acquaint themselves with all conditions affecting the natural beds in the county for which appointed and shall locate, select and recommend to the Division of Marine Resources the natural oyster beds in their respective counties in greatest need of rehabilitation; they shall recommend to said division the ways and means of replanting and rehabilitating said beds, having regard to local conditions, and make such other recommendations concerning the opening and closing of the natural reefs and beds and propagation and care of oysters thereon as may appear to them to be advisable.

(27) CONFERENCE WITH DIVISION OF MARINE RESOURCES.—The Division of Marine Resources shall confer with, receive and consider the recommendations of the several county oyster rehabilitation commissions concerning the shellfish industry of their respective counties and shall be governed thereby only to the extent that the same may be to the best interest of the shellfish industry of the state.

(28) REMOVAL OF COMMISSIONERS.—The Governor may remove any commissioner appointed to any county oyster rehabilitation commission, who shall fail or neglect to diligently perform the duties of such office, and shall fill the vacancy so created by such removal so that there shall be a complete commission of three members in each county, having natural oyster reefs or beds, at all times.

(29) OYSTER AND CLAM REHABILITATION.—The board of county commissioners of the several counties may appropriate and expend such sums as it may deem proper for the purpose of planting or transplanting oysters, clams, oyster shell or clam shell or cultch, or to perform such other acts for the enhancement of the oyster and clam industries of the state, out of any sum in the county treasury not otherwise appropriated.

(30) OYSTER CONSERVATION DISTRICTS.—Whenever it shall appear to the Division of Marine Resources, that any area in the state is in need of special protection, development or encouragement in the planting, propagation, within such area, except private leased or granted oyster grounds. The said area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the division. Notice of the designation of said area or areas as oyster conservation district or districts shall be published once each week for 2 consecutive weeks, and such additional publicity of the creation of such district may be circulated as the division may deem necessary.

(31) REVENUE FROM SALE OF DEAD SHELLS AND LEASE BOTTOMS.—Any and all moneys hereafter received or collected by the Board of Trustees of the Internal Improvement Trust Fund under the provisions of s. 253.45, or any amendments thereof for or on the account of the sale of dead shell or for the right or privilege to take shell or shell deposits from the sovereign lands of the state shall be deposited in the State Treasury in the General Revenue Fund. These moneys shall be appropriated for use in financing biological, marketing, transportation, processing, and promotional research for fisheries, oyster, clams and shrimp within the jurisdiction of this state. The Department of Natural Resources is authorized and directed to spend up to 20 percent of the moneys collected from the sale of dead oyster shell dredged from that county's waters for the sole purpose of oyster and clam rehabilitation.

(32) DREDGING OF DEAD SHELLS FROM LIVE GROUND PROHIBITED.—The dredging of dead shell deposits from living oyster grounds is hereby prohibited in the state. The Division of Marine Resources is hereby empowered to prohibit all dredging of dead oyster shell deposits when in its judgment and discretion the same will adversely affect the said oyster industry. The said division, however, may authorize the dredging of dead oyster shell deposits by permit when in its judgment and discretion the same will not adversely affect the oyster industry of the state.

(33) OYSTER CONSERVATION COMMISSION

WITHIN CONSERVATION DISTRICTS.—The Governor of this state shall appoint in any oyster conservation district which may be created under the provisions of subsection (30) an oyster conservation commission for the said district, the same to be composed of seven outstanding citizens of the said district, two of whom shall be experienced oyster gatherers, two of whom shall be experienced oyster dealers, and two of whom shall be experienced businessmen, not directly connected with the industry, and one of whom shall be the chief conservation agent in the oyster conservation district. The members of such commission shall serve without compensation and shall be vested with the duties, and subject to the limitations, prescribed by subsections (24) through (28) authorizing the creation of oyster rehabilitation commissions.

(34) COOPERATION WITH U. S. FISH AND WILDLIFE SERVICE.—The Division of Marine Resources shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules and regulations, and is authorized to accept donations, grants, and matching funds from said Federal Government under such conditions as are reasonable and proper for the purpose of carrying out subsections (29) through (34) and said division is further authorized to accept any and all donations including funds, oysters, or oyster shells.

(35) OYSTER AND CLAM SHELLS PROPERTY OF DIVISION.—

(a) Except for oysters used directly in the half-shell trade, all shells from oysters and clams shucked commercially in the state shall be and remain the property of the Division of Marine Resources when such shells are needed and required for rehabilitation projects and planting operations, when sufficient resources and facilities exist for handling and planting said shell, and when the collection and handling of such shell is practical and useful, except that bona fide holders of leases and grants who desire to retain such shell as they produce for planting purposes may do so by obtaining a permit from the division. Such storage, transportation, and planting of shells so retained by lessees and grantees shall be carried out under the surveillance of agents of the division and be subject to such reasonable time limits as the division may fix. In the event of an accumulation of an excess of shells, the division is hereby authorized to sell shells only to private growers for use in oyster or clam cultivation on bona fide leases and grants. No profit shall accrue to the division in these transactions, and shells are to be sold for the estimated moneys spent by the division to gather and stockpile said shells. Planting of shells obtained from the division by purchase shall be subject to the surveillance of the division if said division chooses to exercise its right of supervision. Any shells not claimed and used by private oyster cultivators ten years after shells are gathered and stockpiled, may be sold at auction to the highest bidder for any private use.

(b) Whenever the division determines that it is unfeasible to collect oyster or clam shells, the shells become the property of the producer.

(c) Whenever oyster or clam shells are owned by the division and it is not useful, or feasible to use them in the rehabilitation projects, and when no leaseholder has exercised his option to acquire them, the division may sell such shells for the highest price obtainable. The shells thus sold may be used in any manner and for any purpose at the discretion of the purchaser.

(d) Moneys derived from the sale of shell shall be deposited in the State Treasury into the General Revenue Fund.

(e) The division shall annually publish notice, in a newspaper serving the county, of its intention to collect the oyster and clam shells, and shall notify, by certified mail, each shucking establishment from which shells are to be collected. The notice shall contain the period of time the division intends to collect the shells in that county and the collection purpose.

(36) OYSTER CULTURE.—The Division of Marine Resources shall protect all oyster beds, oyster grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting and control the pollution of the waters over or surrounding oyster grounds, beds, or reefs, and to this end the Department of Health and Rehabilitative Services is hereby authorized and directed to lend its cooperation to the division, to make available to it its laboratory testing facilities and apparatus. The division may also do and perform all acts and things within its power and authority necessary to the performance of its duties.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 57-256; s. 1, ch. 57-163; s. 1, ch. 59-346; s. 1, ch. 59-490; s. 1, ch. 61-99; s. 2, ch. 61-58; s. 3, ch. 61-22; s. 2, ch. 61-119; s. 1, ch. 61-100; s. 19, ch. 63-512; ss. 1, 2, ch. 63-120; s. 1, ch. 63-396; s. 3, ch. 65-140; s. 1, ch. 65-436; s. 1, ch. 67-234; ss. 19, 25, 35, ch. 69-106; s. 298, ch. 71-136; s. 1, ch. 71-244; s. 1, ch. 71-245; s. 1, ch. 71-246; s. 129, ch. 71-377; s. 1, ch. 72-204; s. 1, ch. 72-236; s. 102, ch. 73-333; s. 1, ch. 75-120; s. 1, ch. 76-106; s. 1, ch. 77-92; s. 111, ch. 77-104; s. 52, ch. 77-147; s. 1, ch. 77-197; s. 1, ch. 77-206; s. 23, ch. 78-95; s. 1, ch. 78-96; s. 33, ch. 79-65; s. 1, ch. 79-111.

cf.—s. 837.012 Perjury not in an official proceeding.
s. 837.02 Perjury in official proceedings.

370.161 Oyster bottom land grants made pursuant to chapter 3293, Laws of Florida, 1881.—

(1) All grants previously issued by the several boards of county commissioners under the authority of chapter 3293, Laws of Florida, 1881, shall be subject to provisions of s. 370.16, relating to the marking of such lands, the payment of rents, the cultivation of such lands and the forfeiture provisions.

(2) Any grantee of lands referred to in subsection (1) shall mark such lands and begin cultivation thereof as set forth in s. 370.16, within 90 days after the effective date of this act. The rentals prescribed by s. 370.16, shall be payable immediately upon the effective date of this act and in accordance with the provisions of said section.

(3) If any grantee shall fail to comply with the provisions of this act his grant shall become null and void and the lands shall return to the ownership and jurisdiction of the state.

History.—ss. 1-3, ch. 61-502.

370.1611 Oyster depuration plant.—

(1) The Division of Marine Resources is hereby authorized to establish and operate an oyster depuration plant in Brevard County or Indian River County.

(2) The division is authorized to commence the planning of an oyster depuration plant to be located in Brevard County or Indian River County upon the receipt of sufficient funds which may accrue for that purpose or which may otherwise become available.

The division is authorized to accept grants, donations, gifts and moneys from any source whatsoever, including the Federal Government, for the purpose of planning, constructing and operating such a depuration plant.

History.—ss. 1, 2, ch. 67-951; s. 31, ch. 69-353; ss. 25, 35, ch. 69-106.

370.162 Purchase of sponges; state, county or municipality.—All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards and commissions charged with the letting of contracts or the making of purchases shall, in the purchase of sponges, always specify sponges grown, cultivated or otherwise produced in Florida, whenever such sponges are available and price, fitness and quality are equal.

History.—s. 1, ch. 63-42.

370.17 Sponges; regulation.—

(1) NONRESIDENT LICENSE; SPONGE FISHING; PENALTY.—Any nonresident of the state, who desires to engage in the business or occupation of sponge fishing, either for himself or any other person, shall, before entering into said business or occupation, procure a license therefor and pay an annual license tax of $50. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. One-half of any fine collected in any case shall be paid to the party furnishing the necessary proof of the violation of this section.

(2) USE OF DIVING SUITS, ETC., PROHIBITED; PENALTY.—No person may use diving suits, helmets, or other apparatus used by deep sea divers, in taking commercial sponges from any of the waters within the territorial limits of this state. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) USE AND SIZE OF HOOKS; PENALTY.—Any person engaged in gathering sponges by use of a hook shall use a hook 5 inches wide for the purpose of removing sponges from the bottom and no hook of other dimensions may be used. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) TAKING, POSSESSING COMMERCIAL; SIZE; PENALTIES.—

(a) No person may take, by any means or method, from the waters of the Gulf of Mexico, the straits of this state or the other waters within the territorial limits of this state, any commercial sponges, measuring, when wet, less than 5 inches in their maximum diameter.

(b) To make effective the foregoing subsection it is further provided that no person may land, cure, deliver, offer for sale, sell or have in his possession, within the territorial limits of this state, or upon any boat, vessel or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, any commercial sponges measuring, when wet, less than 5 inches in their maximum diameter.

(c) The presence of commercial sponges within the territorial limits of this state, or upon any boat, vessel, or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, measuring, when wet, less than 5 inches in their maximum diameter, shall be evidence that the person having such sponges in his possession has violated this section.

(d) Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) SPONGE CONSERVATION DISTRICTS; CREATION.—Whenever it shall appear to the Division of Marine Resources that any area in the state is in need of special protection, development or encouragement in the planting or propagation of sponges within such area, except private leased or granted sponge grounds, the division may designate such area as a sponge conservation district. The said area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the division. Notice of the designation of said area or areas as sponge conservation district or districts shall be published once each week for 2 consecutive weeks, and such additional publicity of the creation of such district may be circulated as the division may deem necessary. Provided that these provisions shall not apply to privately leased or granted grounds.

(6) POWERS OF THE DEPARTMENT.—The said department is authorized and empowered to make, promulgate, and put into effect all rules and regulations which the department may consider and decide to be necessary to accomplish the purpose of this chapter for the taking and cultivation of sponges, including the power and authority to determine and fix, in its discretion, the seasons and period of time within which public state grounds may be closed to the taking, possessing, buying, selling, or transporting of sponges from the sponge cultivation districts herein provided for and to regulate and prescribe the means and methods to be employed in the harvesting thereof; however, notice of all rules, regulations, and orders, and all revisions and amendments thereto, prescribing closed seasons or prescribing the means and methods of harvesting sponges adopted by the department shall be published in a newspaper of general circulation in the conservation district affected within 10 days from the adoption thereof, in addition to any notice required by chapter 120.

(7) SPONGE CONSERVATION COMMISSION; CREATION; DUTIES.—The Governor of this state shall appoint in any sponge conservation district, which may be created under the provisions of this act, a sponge conservation commission for the said district, the same to be composed of seven outstanding citizens of the said district, two of whom shall be experienced sponge fishermen, two of whom shall be experienced sponge dealers, and two of whom shall be experienced businessmen not directly connected with the industry, and one of whom shall be the chief conservation agent in the sponge conservation district. The members of such commission shall serve without compensation and shall be vested with the duties in regard to sponges and subject to the limita-

tions prescribed by s. 370.16(25) and (26) prescribing the duties of the oyster rehabilitation commission.

(8) COOPERATION WITH U. S. FISH AND WILDLIFE SERVICE.—The department shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules and regulations, and is authorized to accept donations, grants and matching funds from said federal government under such conditions as are reasonable and proper, for the purposes of carrying out this chapter, and said department is further authorized to accept any and all donations including funds and loan of vessels.

(9) RESTRICTIONS.—All sponges grown or cultivated by the state in pursuance of this law shall be the property of the state, the state shall neither lease nor sell any natural sponge areas or beds or any sponge areas or beds cultivated under the provisions of this chapter, and no person may use diving boats, diving suits, helmets or other apparatus used by deep sea divers in taking commercial sponges from any waters within the territorial limits of the state.

(10) PENALTY.—Any person violating any of the foregoing provisions shall, for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the second offense, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and by the confiscation of all boats, tackle and equipment used in the commission of such violation.

History.—s. 2, ch. 28145, 1953; ss. 10, 25, 35, ch. 69-106; s. 299, ch. 71-136; s. 23, ch. 78-95.

370.171 Sponge diving; restricted waters.—

(1) Diving for sponges is hereby regulated in the following territorial waters of Florida, as follows:

Diving for sponges is prohibited in the territorial waters of Florida north of a parallel of latitude running through Piney Point (29° 45' 30" N.); that diving for sponges be prohibited in waters of less than three and a half fathoms between the parallel of latitude that runs through Piney Point, and the parallel of latitude that runs through Beacon No. 5 (29° 16' 36" N.) at the mouth of the Suwannee River; that diving for sponges be prohibited in waters of less than three fathoms, between the parallel of latitude that runs through Beacon No. 5 at the mouth of the Suwannee River and the parallel of latitude that runs through the southern tip of Anclote Key (28° 09' 54"); that diving for sponges be prohibited at distances of less than three miles from shore in the waters between the parallel of latitude that runs through the southern tip of Anclote Key and the parallel of latitude that passes through the northernmost boundary of Monroe County (25° 48' 06").

(2) Any person violating the provisions of this section shall for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the second offense, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and by the confiscation of all boats, tackle, and equipment used in the commission of such violation.

History.—ss. 1, 2, ch. 29907, 1955; s. 300, ch. 71-136.

370.172 Spearfishing; definition; limitations; penalty.—

(1) For the purposes of this section, "spearfishing" means the taking of any saltwater fish through the instrumentality of a spear, gig, or lance operated by a person swimming at or below the surface of the water.

(2) After October 1, 1973, it shall be lawful to spearfish in all salt waters and saltwater tributaries located in this state except as herein provided.

(3) Spearfishing is hereby prohibited:

(a) In the immediate area of all public bathing beaches.

(b) In the immediate area of all commercial or public fishing piers.

(c) In the immediate area beneath any bridge catwalk specifically designated for public fishing usage and all jetties.

(d)1. Within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys, which includes all salt waters under the jurisdiction of the Department of Natural Resources beginning at the county line between Dade and Monroe Counties and running south, including all of the keys down to and including Long Key.

2. For the purposes of this paragraph, the possession in the water of a spear, gig, or lance by a person swimming at or below the surface of the water in a prohibited area shall be prima facie evidence of a violation of the provisions of this paragraph regarding spearfishing.

(4) The taking of fish by spearfishing shall be limited to present and future bag limits as set forth by the Department of Natural Resources, which limits shall be identical to those applicable to other sports fishermen in this state.

(5) The sale of fish taken by spearfishing shall be subject to the same regulations and limitations applicable to other sports fishermen in this state.

(6) The Department of Natural Resources shall have the power to establish restricted areas when it is determined that safety hazards exist or when needs are determined by biological findings. Restricted areas shall be established only after an investigation has been conducted and upon application by the governing body of the county or municipality in which the restricted areas are to be located and one publication in a local newspaper of general circulation in said county or municipality in addition to any other notice required by law. Prior to promulgation of regulations, the local governing body of the area affected shall agree to post and maintain notices in the area affected.

(7) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Pursuant to s. 11(a)(21) of Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application in conflict with this act, but only such parts thereof as are

in conflict with this act, affecting spearfishing in salt waters and saltwater tributaries.

History.—s. 1, ch. 57-303; ss. 25, 35, ch. 69-106; s. 301, ch. 71-136; ss. 1, 2, ch. 73-141; s. 1, ch. 77-174; s. 1, ch. 77-381; s. 23, ch. 78-95.

Note.—Chapter 73-141, which created subsection (8), was passed by the requisite vote in each house. See s. 11(a)(21), Art. III, State Const.

370.18 Compacts and agreements; generally.—The Department of Natural Resources may enter into agreements of reciprocity with the fish commissioners or other departments or other proper officials of other states, whereby the citizens of the state may be permitted to take or catch shrimp or prawn from the waters under the jurisdiction of such other states, upon similar agreements to allow such nonresidents or aliens to fish for or catch seafood products within the jurisdiction of the state regardless of residence.

History.—s. 2, ch. 28145, 1953; ss. 25, 35, ch. 69-106.

370.19 Atlantic States Marine Fisheries Compact; implementing legislation.—

(1) FORM.—The governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Florida with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell, and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating a monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the Governor thereof. The second shall be a member of the legislature of such state designated by the House Committee on Commerce and Reciprocal Trade of such state. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the Governor. This Commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the Governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the Governor of the State its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the States party hereto and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

ARTICLE V

The Commission shall elect from its number a Chairman and a Vice Chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but

must meet at least once a year.

ARTICLE VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the saltwater anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions to conserve its fisheries.

ARTICLE X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the Governor thereof.

ARTICLE XI

The States party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	$700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

ARTICLE XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto.

(2) COMMISSIONERS; APPOINTMENT AND REMOVAL.—In pursuance of Article III of said compact there shall be three members (hereinafter called commissioners) of the Atlantic State Marine Fisheries Commission (hereinafter called commission) from this state. The first commissioner from this state shall be the executive director of the Department of Natural Resources, ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of executive director of the Department of Natural Resources, and his successor as commissioner shall be his successor as executive director. The second commissioner from this state shall be a legislator and member of the house committee on commerce and reciprocal trade (of the State of Florida, ex officio, designated by said house committee on commerce and reciprocal trade), and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The Governor (subject to confirmation by the Senate), shall appoint a citizen as a third commissioner who shall have a knowledge of, and interest in, the marine fisheries problem. The term of said commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the governor (subject to confirmation by the Senate), for the unexpired term. The executive director of the Department of Natural Resources as ex

officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise, they shall begin upon the date upon which said compact shall become effective in accordance with said Article II. Any commissioner may be removed from office by the governor upon charges and after a hearing.

(3) SAME; POWERS OF COMMISSION.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) SAME; POWERS OF COMMISSION SUPPLEMENTAL.—Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida or by the Congress or the terms of said compact.

(5) SAME; ACCOUNTS TO BE KEPT BY COMMISSIONERS; EXAMINATION.—

(a) The commission shall keep accurate accounts of all receipts and disbursements and shall report to the governor and the legislature of the State of Florida on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

(b) The Department of Banking and Finance is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such department may deem proper and to report the results of such examination to the governor of such state.

(6) SAME; APPROPRIATION.—The sum of six hundred dollars, annually, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the expenses of the commission created by the compact authorized by this law. The moneys hereby appropriated shall be paid out of the state treasury on the audit and warrant of the comptroller upon vouchers certified by the chairman of the commission in the manner prescribed by law.

History.—s. 2, ch. 28145, 1953; ss. 12, 35, ch. 69-106; s. 130, ch. 71-377; s. 9, ch. 77-85.

370.20 Gulf States Marine Fisheries Compact; implementing legislation.—

(1) FORM.—The Governor of this state is hereby authorized and directed to execute the compact on behalf of the State of Florida with any one or more of the States of Alabama, Mississippi, Louisiana and Texas, and with such other state as may enter into a compact, legal joining therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the gulf coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to article I, s. 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator

shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the gulf coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdiction to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states.

To that end the commission shall draft and recommend to the governors and the legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the gulf seaboard. The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of the state in furthering the interest and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define which shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said fish and wildlife service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in article II of this compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of article II, the participation of such state in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers or the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more states party hereto may further amend this compact by acts of their respective legislatures subject to approval of Congress as provided in article I, s. 10, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such states as shall be compact, and at their joint expense. The representatives of such states shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted but the creation of such section shall not be deemed to deprive the states so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the Governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine

Fisheries Commission shall be borne by the states party hereto. Such initial appropriations as are set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$3,500
Alabama	1,000
Mississippi	1,000
Louisiana	5,000
Texas	2,500
Total	$13,000

The proration and total cost per annum of thirteen thousand dollars, above-mentioned, is estimated only, for initial operations, and may be changed when found necessary by the commission and approved by the legislatures of the respective states. Each state party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given to the other states party hereto by the secretary of state of the compacting state so renouncing upon passage of the act.

(2) MEMBERS OF COMMISSION; TERM OF OFFICE.—In pursuance of article III of said compact, there shall be three members (hereinafter called commissioners) of the Gulf States Marine Fisheries Commission (hereafter called commission) from the State of Florida. The first commissioner from the State of Florida shall be the executive director of the Department of Natural Resources, ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of executive director of the Department of Natural Resources, and his successor as commissioner shall be his successor as executive director. The second commissioner from the State of Florida shall be a legislator and a member of the house committee on commerce and reciprocal trade (of the State of Florida ex officio, designated by said house committee on commerce and reciprocal trade), and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The Governor (subject to confirmation by the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the Governor (subject to confirmation by the Senate) for the unexpired term. The executive director of the Department of Natural Resources, as ex officio commissioner, may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said article II.

Any commissioner may be removed from office by the governor upon charges and after a hearing.

(3) COMMISSION; POWERS.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) SAME; SUPPLEMENTAL.—Any powers herein granted to the commissioner shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the States of Alabama, Mississippi, Louisiana, Texas and Florida or by the Congress or the terms of said compact.

(5) SAME; ACCOUNTS TO BE KEPT BY COMMISSIONERS; EXAMINATION.—The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Florida on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Department of Banking and Finance is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such de-

partment may deem proper and to report the results of such examination to the governor of such state.

History.—s. 2, ch. 28145, 1953; ss. 12, 35, ch. 69-106; s. 131, ch. 71-377; s. 10, ch. 77-85.

370.21 Florida Territorial Waters Act; alien-owned commercial fishing vessels; prohibited acts; enforcement.—

(1) This act may be known and cited as the "Florida Territorial Waters Act."

(2) It is the purpose of this act to exercise and exert full sovereignty and control of the territorial waters of the state.

(3) No license shall be issued by the Division of Marine Resources of the Department of Natural Resources under s. 370.06, to any vessel owned in whole or in part by any alien power, which subscribes to the doctrine of international communism, or any subject or national thereof, who subscribes to the doctrine of international communism, or any individual who subscribes to the doctrine of international communism, or who shall have signed a treaty of trade, friendship and alliance or a nonaggression pact with any communist power. The division shall grant or withhold said licenses where other alien vessels are involved on the basis of reciprocity and retorsion, unless the nation concerned shall be designated as a friendly ally or neutral by a formal suggestion transmitted to the Governor of Florida by the Secretary of State of the United States. Upon the receipt of such suggestion licenses shall be granted under s. 370.06, without regard to reciprocity and retorsion, to vessels of such nations.

(4) It is unlawful for any unlicensed alien vessel to take by any means whatsoever, attempt to take, or having so taken to possess, any natural resource of the state's territorial waters, as such waters are described by Art. II of the State Constitution.

(5) It is the duty of all harbormasters of the state to prevent the use of any port facility in a manner which they reasonably suspect may assist in the violation of this act. Harbormasters shall endeavor by all reasonable means, which may include the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types other than warships of the United States, the presence of alien commercial fishing vessels within the territorial waters of the state, and shall transmit such information promptly to the Department of Natural Resources and such law enforcement agencies of the state as the situation may indicate. Harbormasters shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

(6) All licensed harbor pilots are required to promptly transmit any knowledge coming to their attention regarding possible violations of this act to the harbormaster of the port or the appropriate law enforcement officials.

(7) All law enforcement agencies of the state, including but not limited to sheriffs and agents of the Department of Natural Resources are empowered and directed to arrest the masters and crews of vessels who are reasonably believed to be in violation of this law, and to seize and detain such vessels, their equipment and catch. Such arresting officers shall take the offending crews or property before the court having jurisdiction of such offenses. All such agencies are directed to request assistance from the United States Coast Guard in the enforcement of this act when having knowledge of vessels operating in violation or probable violation of this act within their jurisdictions when such agencies are without means to effectuate arrest and restraint of vessels and their crews.

(8) The fine or imprisonment of persons and confiscation proceedings against vessels, gear and catch prescribed for violations of this chapter, shall be imposed for violation of this act; provided that nothing herein shall authorize the repurchase of property for a nominal sum by the owner upon proof of lack of complicity in the violation or undertaking.

(9) No crew member or master seeking bona fide political asylum shall be fined or imprisoned hereunder.

(10) Harbormasters and law enforcement agencies are authorized to request assistance from the Civil Air Patrol in the surveillance of suspect vessels. Aircraft of the Division of Forestry of the Department of Agriculture and Consumer Services or other state or county agencies which are conveniently located and not otherwise occupied may be similarly utilized.

History.—ss. 1-10, ch. 63-202; ss. 14, 25, 35, ch. 69-106.

370.22 Venue for proceedings against citizens and residents of Florida charged with violations outside state boundaries.—

(1) In any proceeding against a resident or citizen of the state to enforce the provisions of this chapter with respect to alleged violations occurring beyond the territorial waters of the state, the proper venue shall be the county within the state which is nearest the site of the violation.

(2) For the purpose of this section, any person having embarked from, or having docked his vessel in, a port within this state who violates any provision of this chapter with respect to the unlawful landing of saltwater life, whether or not outside the territorial waters of the state, shall be considered a citizen of the state for the purpose of subjecting him to the police powers of the state.

History.—s. 1, ch. 75-82.

370.23 Sale of unlawfully landed product; jurisdiction.—It is unlawful for any person to bring to port, sell, or offer to sell any saltwater life landed in violation of the provisions of this chapter. Any person committing such a violation and docking his vessel at any port in the state, whether or not such product was landed in the territorial waters of the state, shall be deemed to have submitted himself to the jurisdiction of the courts of this state for the purpose of the enforcement of the provisions of this chapter.

History.—s. 2, ch. 75-82.

CHAPTER 371

REGULATION OF BOATS; TITLE CERTIFICATES

PART I REGULATION OF BOATS (ss. 371.011-371.68)

PART II BOATS; TITLE CERTIFICATES (ss. 371.75-371.84)

PART I

REGULATION OF BOATS

371.011 Short title.—Part I of chapter 371 shall be known as "the Florida Boat Registration and Safety Law."

History.—s. 1, ch. 59-399; s. 1, ch. 65-361.

371.021 Definitions.—As used in this part, unless the context clearly requires a different meaning:

(1) "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and means a motor or artificially propelled vehicle registered as provided herein as property and includes every description of watercraft, barges, and air boats, other than a seaplane on the water, used or capable of being used as a means of transportation on water. However, live-aboard vessels are expressly excluded from the term "boat" for purposes of s. 1(b), Art. VII of the State Constitution and for purposes of license fees imposed by this part, if assessed as tangible personal property.

(2) "Motorboat" means any boat or vessel propelled or powered by machinery.

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers and canals under the jurisdiction of this state.

(5) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(6) "Operate" means to navigate or otherwise use a boat or a vessel.

(7) "Division" means the Division of Marine Resources of the Department of Natural Resources.

(8) "Registration license fee" means a state license on motorboats which are issued an identifying number, an annual certificate of registration, and a tag or decal designating the year the fee is paid.

(9) "Length" means the measurement from end to end over the deck parallel to the centerline excluding sheer.

(10) "Commercial vessel" means:

(a) Any resident vessel engaged in the taking of saltwater fish or saltwater products, freshwater fish

or freshwater products for sale either to the consumer, retail dealer or wholesale dealer;

(b) Any vessel engaged in any activity wherein a fee is paid by the user, either directly or indirectly, to the owner, operator, or custodian of the vessel.

(11) "Noncommercial vessel" means any boat other than a commercial boat or vessel as defined in this section.

(12) "Dealer" means any person engaged in the business of buying and selling, or manufacturing for sale, boats and vessels.

(13) "Sailboat" means any boat whose source of propulsion is the natural element (i.e., wind).

(14) "Prohibited activity" means such activity as will impede or disturb navigation or creates a safety hazard on waterways of this state.

(15) "Regulatory markers" means any anchored or fixed marker in, on, or over the water, or anchored platform on the surface of the water, other than markers provided in s. 371.521, and shall include, but not be limited to, bathing beach markers, speed zone markers, information markers, restricted zone markers, congested area markers, or warning markers.

(16) "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section (using Gulf of Mexico); the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee and Flint Rivers in Florida.

(17) "Department" means the Department of Natural Resources.

(18) "Live-aboard vessel" means:

(a) Any vessel used principally as a residence; or

(b) Any vessel represented as a place of business, a professional or other commercial enterprise, or legal residence, and providing or serving on a long-term basis the essential services or functions typically associated with a structure or other improvement to real property, and, if used as a means of transportation, said use is clearly a secondary or subsidiary use; or

(c) Any vessel used by any club or any other association of whatever nature when clearly demonstrated to serve a purpose other than a means of transportation.

Commercial fishing boats are expressly excluded from the term "live-aboard vessel".

History.—s. 1, ch. 59-399; s. 1, ch. 63-103; s. 1, ch. 65-361; s. 17, ch. 69-216; ss. 25, 35, ch. 69-106; s. 3, ch. 70-336; s. 132, ch. 71-377; s. 1, ch. 72-16; s. 1, ch. 72-55; ss. 1, 15, ch. 74-327; s. 23, ch. 79-334.

371.031 Administration, sale of certificates.—(1) The administration of this part is under the Department of Natural Resources, which shall provide for issuing, handling and recording of all applications and all motorboat registration certificates, including the receipt and accounting of registration license fees and payments into the state treasury.

(2) The department shall record all accidents and perform such other clerical duties as required.

(3) All records made or kept by the department under this law shall be public records except confidential reports.

History.—s. 1, ch. 59-399; s. 2, ch. 63-103; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 2, ch. 74-327.

371.041 Operation of unnumbered motorboats prohibited.—Every motorboat using the waters of this state shall be registered and numbered within 10 days after purchase by the owner except as specifically exempt. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is registered within 10 days after purchase by the owner and numbered with the identifying number set forth in the certificate of registration, displayed on each side of the bow of such motorboat, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless the certificate of number awarded to such motorboat is in full force and effect.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361; s. 1, ch. 74-62; s. 3, ch. 74-327.

371.051 Application, certificate, number, decal, duplicate certificate.—

(1)(a) The department shall issue all licenses. The tax collectors of the state shall be agents of the department for the purpose of issuing licenses and collecting the fee therefor. The owner of each boat required by this law to pay a registration license fee and secure an identification number shall file an application with the tax collector of the county or the department. The application shall be signed by the owner of the boat and shall be accompanied by a payment of the required fee.

(b) The owner may establish proof of ownership by submitting with his application a bill of sale of the boat, a builder's contract, a verification of ownership on a custom-built boat, or any other document acceptable by the department and presented at the time of registration to the agency issuing the registration certificate.

(2) The annual certificate of registration and identification numbers for noncommercial vessels shall be issued in the county by the tax collector of each county or his agent. The certificate and registration shall be renewable on July 1 of each year upon payment of the registration license fee. Each tax collector shall be assigned a block of numbers, certificates, and annual decals which, upon issue in conformity with this chapter and with any rules and regulations of the department, shall be valid as if issued directly by the department. The county tax collector or agent authorized to issue a certificate of registration, decal and number and the department shall be allowed a fee of 50 cents for each certificate issued or renewed. All moneys collected, except the 50-cent fee, shall be remitted to the department not later than 40 days following the last day of the month when the moneys were collected. The department shall transmit all moneys received to the state treasurer for deposit.

(3) The department shall issue certificates of registration and numbers to commercial boat owners.

(4) The department shall issue certificates of registration and numbers for city, county and state-owned boats at no charge.

(5) Each certificate of registration issued shall state among other items the number awarded to the boat, the name and address of the owner, and a description of the boat. The numbers shall be placed on each side of the forward half of the vessel in such position as to provide clear legibility for identification. The numbers shall read from left to right and shall be in block characters of good proportion not less than 3 inches in height. The numbers shall be of a solid color which will contrast with the color of the background and so maintained as to be clearly visible and legible; i.e., dark numbers on a light background or light numbers on a dark background. The certificate of registration shall be pocket-size and shall be available for inspection on the boat for which issued whenever such boat is in operation.

(6)(a) When the ownership of a registered vessel changes, an application for transfer of ownership shall be filed with the department within 15 days, with a fee of $1.

(b) Vessels registered as commercial shall file a certificate within 15 days for a transfer of ownership with the agency issuing the original certificate and license and pay a fee of $1.

(c) In making application for a transfer of ownership of either noncommercial or commercial vessels, the registered owner shall sign his name and address and shall certify that the boat to be transferred is debt-free or is subject to a lien. Where a lien exists the owner shall furnish to the new owner, on forms supplied by the department, the name and address of the lienholder and the amount due on the boat, together with a statement from the lienholder that the lienholder has knowledge of and consents to the transfer to the new owner.

(7) A decal signifying the year or years during which the certificate is valid shall be furnished by the department with each registration certificate issued. The decal shall be displayed by affixing it to the port (left) side of the boat either before or after the registration number. Any decal for a previous year shall be removed.

(8) Duplicate certificates to replace lost or misplaced certificates may be obtained by mailing $1 with a request for such a duplicate certificate to the department. No duplicate certificate shall be issued except upon written request of the registered owner or persons authorized by such owner to make such a request. The department shall supply application forms for such duplicate certificates and require such information or documents as are necessary to secure reasonable proof of authority of the person making the request.

(9) Should the classification of a boat change from noncommercial to commercial, or from commercial to noncommercial and a current certificate has been issued to a resident owner, the owner shall forward his certificate to the department with a fee of $1 and a new certificate shall be issued.

(10) Anyone guilty of falsely certifying any facts relating to application, certificate, transfer, number, decal, duplicate certificates or any information required under this section shall be punished as provided under this part.

History.—s. 1, ch. 59-399; s. 1, ch. 61-511; s. 3, ch. 63-103; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; ss. 4, 15, ch. 74-327.

371.055 Reregistration by mail.—The Department of Natural Resources shall promulgate rules and regulations to permit the reregistration of boats by mail.

History.—s. 7, ch. 70-336.

371.071 Special manufacturers' and dealers' number.—

(1) The description of the boat used in demonstration purposes by a manufacturer or dealer shall be omitted. In lieu of the description, the word manufacturer or dealer, as appropriate, shall be plainly marked on each certificate.

(2) The manufacturer or dealer shall have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of this part.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361.

371.081 Reciprocity of foreign boats.—The owner of any boat already covered by a number in full force and effect which has been awarded to it pursuant to the operative federal law or a federally approved numbering system of another state shall record the number prior to operating the boat on the waters of this state in excess of the 90-day reciprocity period provided for in this part. Such recordation shall be pursuant to the procedure required for the award of an original number, except that no additional or substitute number shall be issued.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361.

371.082 Military personnel, registration.—

(1) All military personnel on active duty in this state operating a boat that has a valid certificate of registration pursuant to the operative federal law or a federally approved numbering system of another state while such certificate of registration remains valid shall not be required to register his boat in this state; provided that at the expiration of such registration certificate all reregistration shall be issued by the state.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 5, ch. 67-586; s. 302, ch. 71-136.

371.091 Federal numbering system adopted.—

(1) The boat identification number issued shall be of the pattern prescribed by regulations of the United States Coast Guard and shall be divided into parts. The first part shall consist of the symbols identifying the state followed by a combination of numerals and letters which furnish individual vessel identification. The group of digits appearing between let-

ters shall be separated from those letters by hyphens or equivalent spaces.

(2) The first part of the number shall be a symbol indicating Florida which shall be FL.

(3) The remainder of the boat number shall consist of not more than four Arabic numerals and two capital letters or not more than three Arabic numerals and three capital letters, in sequence, separated by a hyphen or equivalent space, in accordance with the serials, numerically and alphabetically.

(4) Since the letters I, O and Q may be mistaken for Arabic numerals, all letter sequences using I, O and Q shall be omitted. Objectionable words formed by the use of two or three letters shall not be used.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361.

371.101 Change of interest and address.—

(1) The owner shall furnish the department notice of the transfer of all or any part of his interest other than the creation of a security interest in a boat numbered in this state pursuant to this part or of the destruction or abandonment of such boat, within 15 days thereof. Such transfer, destruction, or abandonment shall terminate the certificate for such boat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such boat, such transfer shall not terminate the certificate.

(2) Any holder of a certificate shall notify the department within 15 days, if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with his new address. The department may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 5, ch. 74-327.

371.111 Only authorized number to be used. —No number other than the number awarded to a boat or granted reciprocity pursuant to this part shall be painted, attached or otherwise displayed on either side of the bow of such boat.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361.

371.131 Exemption from numbering provisions.—A boat shall not be required to be numbered under this part if it is in one of the following classifications:

(1) Undocumented vessels used exclusively for racing.

(2) Vessels operating under valid temporary certificate of number.

(3) A vessel already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided that such boat shall not have been within this state for a period in excess of 90 consecutive days.

(4) A boat from a country other than the United States temporarily using the waters of this state.

(5) A boat whose owner is the United States.

(6) A ship's lifeboat.

(7) A boat holding a valid marine document issued by the United States Bureau of Customs or any agency successor thereto.

(8) A boat used exclusively on a privately owned lake.

History.—s. 1, ch. 59-399; ss. 2, 3, ch. 61-511; s. 1, ch. 65-361.

371.141 Collisions, accidents, and casualties.—

(1) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. The operator of a vessel involved in an accident with an unattended vessel shall take all reasonable steps to locate and notify the owner or person in charge of such vessel of the foregoing accident, furnishing to such owner his name, address, and registration number and reporting as required under this section.

(2) In the case of collision, accident, or other casualty involving a vessel, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or property damage of $50 or more to another vessel or dock, the operator shall within 10 days report such accident to the sheriff of the county wherein such accident occurred, or to the Division of Law Enforcement or to the Game and Fresh Water Fish Commission or to the authorized agent of any of the aforementioned, who shall immediately transmit a copy of the report to the Division of Law Enforcement. A copy of every accident report shall be sent to the sheriff of the county. In the event report is not made, it shall be the responsibility of the investigating officer to file a report.

(3) All accident reports required by this section made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the division or other governmental agencies having use of the record, except that the division may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies his presence at such accident. No report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the division shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the division solely to prove a compliance or a failure to comply with the requirements that such a report be made to the division.

(4) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to persons involved, or without making a reasonable effort to locate the owner or persons affected and subsequently complying with and notifying the

appropriate law enforcement official as required under this section.

History.—s. 1, ch. 59-399; s. 4, ch. 61-511; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 34, ch. 79-65.

371.151 Transmittal of information.—In accordance with any request made by an authorized official or agency of the United States, any information compiled or otherwise available to the Division of Marine Resources concerning accidents or other data shall be transmitted to said official or agency of the United States and annual statistics shall be assembled as required by federal law.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106.

371.161 Rules and regulations.—The Department of Natural Resources shall make, adopt, promulgate, amend or repeal rules and regulations necessary for carrying out the administrative duties, obligations and powers conferred on the division by this part.

History.—s. 1, ch. 59-399; s. 4, ch. 63-103; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106.

371.171 Motorboat Revolving Trust Fund; appropriation.—

(1) All funds collected from the registration of boats through the department and the tax collectors of the state shall be deposited by the department in a Motorboat Revolving Trust Fund, in order to provide for the administrative cost of this part and for recreational channel marking, public launching facilities, law enforcement and quality control programs, and aquatic weed control. Two dollars from each noncommercial vessel registration license fee, except that for class A-1 motorboats, shall be transferred to the Aquatic Plant Control Trust Fund for aquatic weed research and control. Forty percent of the license fees from commercial vessels shall be transferred to the Florida Saltwater Products Promotion Trust Fund to be used for law enforcement and quality control programs. Forty percent of the license fees from commercial vessels shall be transferred to the Aquatic Plant Control Trust Fund for aquatic plant research and control.

(2) From the funds collected through boat registration and deposited in the Motorboat Revolving Trust Fund, the Legislature shall appropriate sufficient funds to the department for the administration of this part and for recreational channel marking, public launching facilities, law enforcement and quality control programs, and aquatic weed control.

History.—s. 1, ch. 59-399; s. 2, ch. 61-119; s. 1, ch. 63-105; s. 1, ch. 65-361; ss. 12, 25, 35, ch. 69-106; s. 1, ch. 69-400; s. 5, ch. 70-336; s. 5, ch. 74-327; s. 1, ch. 77-174.

371.50 Reckless or negligent operation of vessel.—It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device in willful or wanton disregard for the safety of persons or property, or without due regard, caution and circumspection, or at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person.

History.—s. 1, ch. 59-400; s. 3, ch. 63-105; s. 1, ch. 65-361.

371.503 Interference with navigation.—No person shall anchor, operate or permit to be anchored, except in case of emergency, or operated a vessel or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

History.—s. 4, ch. 63-105; s. 1, ch. 65-361; s. 2, ch. 72-16.

371.504 Incapacity of operator.—It is unlawful for the owner of any vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such vessel under the prevailing circumstances. Nothing in this section shall be construed to prohibit operation of boats by paraplegics who are licensed to operate motor vehicles on the highways.

History.—s. 4, ch. 63-105; s. 1, ch. 65-361.

371.51 Operating vessel while under influence of intoxicating liquor or a controlled substance.—It is unlawful for any person who is under the influence of an alcoholic beverage, any substance controlled under chapter 893, or any chemical substance set forth in s. 877.11, when affected to the extent that his normal faculties are impaired, to operate or be in actual physical control of any vessel on the waters of this state.

History.—s. 2, ch. 59-400; s. 5, ch. 63-105; s. 1, ch. 65-361; s. 1, ch. 71-81; s. 22, ch. 73-331.

371.52 Boat declared dangerous instrumentality; civil liability.—All boats, of whatever classification, shall be considered dangerous instrumentalities in this state and any operator of such boats shall, during any utilization of said boats, exercise the highest degree of care in order to prevent injuries to others. Liability for negligent operation of a boat shall be confined to the person in immediate charge or operating the boat and not the owner of the boat, unless he is the operator or present in the boat when any injury or damage is occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state, or negligence in observing such care and such operation as the rules of the common law require.

History.—s. 3, ch. 59-400; s. 1, ch. 65-361.

371.521 Uniform waterway markers for safety and navigation.—

(1) Waterways in Florida, unmarked by the Coast Guard, which need marking for safety or navigation purposes, shall be marked under the Uniform Safety and Navigation System adopted by the advisory panel of state officials to the Merchant Marine Council of the United States Coast Guard.

(2) Application for marking inland lakes and state waters and any navigable waters under concurrent jurisdiction of the Coast Guard and the division shall be made to the division, accompanied by a map locating the approximate placement of markers, a

statement concerning the purpose of marking and the names of persons responsible for the placement and upkeep of such markers. The division will secure the proper permission from the Coast Guard where required, make such investigations as needed and issue a permit. The division shall furnish the applicant with the information concerning the system adopted and regulations existing for placing and maintaining the uniform safety and navigation markers. The division shall keep records of all approvals given and counsel with individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes in Florida.

History.—s. 6, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106.

371.522 Restricted area.—

(1) The division shall have the power to establish any restricted area when it is determined that a safety hazard exists or there is interference with navigation. Restricted areas shall be established only after an investigation has been conducted and upon application by the governing body of the county or municipality in which the restricted areas are to be located, and one publication in a local newspaper of general circulation in said county or municipality, in addition to any other notice required by law, and if on navigable waters of the United States, after consultation and coordination with the district engineer, United States Army Corps of Engineers.

(2) It is unlawful for any person to operate a vessel or to carry on any prohibited activity as defined in this chapter deemed a safety hazard or interference with navigation as provided above within a restricted water area which has been clearly marked by buoys or some other distinguishing device as a bathing or otherwise restricted area in accordance with and marked as authorized under this part; provided, that this section shall not apply in the case of an emergency, or to patrol or rescue craft.

History.—s. 7, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

371.523 Uniform waterway regulatory markers.—

(1) The Department of Natural Resources shall, on or before July 1, 1972, adopt rules and regulations establishing a uniform system of regulatory markers for the Florida Intracoastal Waterway compatible with the system of regulatory markers prescribed by the United States Coast Guard, and shall give due regard to the System of Uniform Waterway Markers approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard.

(2) Any county or municipality which has been granted a restricted area designation, pursuant to s. 371.522, for a portion of the Florida Intracoastal Waterway within its jurisdiction may apply to the Department of Natural Resources for permission to place regulatory markers within the restricted area.

(3) Application for placing regulatory markers on the Florida Intracoastal Waterway shall be made to the Division of Marine Resources, accompanied by a map locating the approximate placement of the markers, a statement of the specification of the markers, a statement of purpose of the markers, and a statement of the city or county responsible for the placement and upkeep of the markers.

(4) No person or municipality, county or other governmental entity shall place any regulatory markers in, on, or over the Florida Intracoastal Waterway without a permit from the Division of Marine Resources.

(5) All regulatory markers in, on, or over the Florida Intracoastal Waterway in place on December 1, 1972, which were not placed pursuant to a permit issued by the Division of Marine Resources or which do not comply with the standards adopted by the Department of Natural Resources, shall be declared a nuisance. The Division of Marine Resources shall have the authority to direct immediate removal of any regulatory marker in violation of this section.

History.—s. 2, ch. 72-55.

371.524 Mooring to or damaging of markers or buoys prohibited.—

(1) No person shall moor or fasten a vessel to a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy, placed or erected by any governmental agency, except in case of emergency.

(2) No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy.

History.—s. 1, ch. 72-20.

371.53 Skiing prohibited while under influence of liquor or narcotics.—No person shall manipulate any water skis, aquaplane, or similar device from a vessel while intoxicated or under the influence of any narcotic drug, barbiturate or marihuana, to the extent that his normal faculties are impaired.

History.—s. 4, ch. 59-400; s. 8, ch. 63-105; s. 1, ch. 65-361.

371.54 Water skis and aquaplanes regulated.—

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate in an official regatta, boat race, marine parade, tournament or exhibition.

(4) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, or similar device may be affected or controlled, in such a w[illegible] as to cause the water skis, aquaplane, or si[illegible]

device, or any person thereon to collide or strike against any object, except slalom buoys, ski jumps or like objects used normally in competitive or recreational skiing.

History.—s. 5, ch. 59-400; s. 9, ch. 63-105; s. 1, ch. 65-361.

371.55 Regattas, races, marine parades, tournaments or exhibitions.—Any person directing the holding of a regatta, tournament or marine parade or exhibition, shall secure a permit from the Coast Guard when such event is held in navigable waters of the United States. A person directing any such affair in any county shall notify the sheriff of the county, the Game and Fresh Water Fish Commission, or the department at least 15 days prior to any event in order that appropriate arrangements for safety and navigation may be assured. Any person or organization sponsoring a regatta or boat race, marine parade, tournament or exhibition shall be responsible for providing adequate protection to the participants, spectators and other users of the water.

History.—s. 6, ch. 59-400; s. 10, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 6, ch. 74-327.

371.56 Muffling devices.—The exhaust of every internal combustion engine used on any vessel shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.

History.—s. 7, ch. 59-400; s. 11, ch. 63-105; s. 1, ch. 65-361.

371.561 Boat liveries; safety regulations; penalty.—

(1) No boat livery shall knowingly lease, hire, or rent a boat to any person:

(a) When the number of persons intending to use the boat shall exceed the number deemed to constitute a maximum safety load for the boat.

(b) When the horsepower of the motor exceeds the capacity of the boat, making the boat unsafe to operate.

(c) When the boat does not contain a Coast Guard approved lifesaving device for each person occupying the boat, and other equipment as required for the class of vessel as set forth in s. 371.57.

(d) When the boat does not contain a suitable anchor and anchor line of appropriate size and length.

(e) When the boat does not contain an appropriate paddle or oar.

(f) When the boat is not seaworthy.

(2) No boat livery shall close until the last boat has returned. If boat is unnecessarily overdue, the livery shall notify the proper authorities.

(3) Any person convicted of violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(4) Where the boat livery has complied with subsections (1) and (2) his liability shall cease and a person leasing the boat from the livery shall be liable for any violations of this part and shall be personally liable for any accident or injury occurring while in charge of such boat.

History.—s. 12, ch. 63-105; s. 1, ch. 65-361; s. 303, ch. 71-136.

371.57 Boat safety regulations; equipment requirements; lighting.—Every boat on the waters of Florida shall carry safety equipment. The following requirements shall be applicable to the respective classes of boats as indicated:

(1) CLASS A MOTORBOATS (UNDER 16 FEET) SHALL HAVE THE FOLLOWING EQUIPMENT.—

(a) *Safety equipment.*—

1. One lifesaving device in good and serviceable condition, approved by the Coast Guard, for each person on board.

2. One oar or paddle.

3. One anchor and line of appropriate size and length.

4. One Coast Guard approved or Underwriters Laboratory "marine type," type B size 1 fire extinguisher, unless propelled by outboard motor, not carrying passengers for hire and the motorboat is of open construction.

(b) *Lighting requirements between sunset and sunrise.*—

1. One white light aft, such light not to be obstructed by any part of the vessel so as to be visible in all directions.

2. One combination red and green light on fore part of boat showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

3. Any motorboat may carry and exhibit the lights required by the international rules of the road (33 USC 143-147d), in lieu of the lights prescribed in this paragraph.

(2) CLASS 1 MOTORBOATS (16 FEET TO LESS THAN 26 FEET) SHALL HAVE THE FOLLOWING EQUIPMENT.—

(a) *Safety equipment.*—

1. One wearable lifesaving device in good and serviceable condition, approved by the Coast Guard, for each person on board and one Coast Guard approved throwable device in each boat.

2. One Coast Guard approved or Underwriters Laboratory "marine type," type B size 1 fire extinguisher, unless propelled by outboard motor, not carrying passengers for hire and the motorboat is of open construction.

3. One anchor and line of appropriate size and length.

4. One hand or power-operated whistle or horn capable of producing a blast of 2 seconds duration and audible for a distance of one-half mile.

(b) *Lighting requirements between sunset and sunrise.*—

1. One white light aft, such light to be unobstructed by any part of the vessel so as to be visible from all directions.

2. One combination red and green light on fore part of boat showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

3. Any motorboat may carry and exhibit the lights required by the international rules of the road

(33 USC 143-147d), in lieu of the lights prescribed in this paragraph.

(3) CLASS 2 MOTORBOATS (26 FEET TO LESS THAN 40 FEET) SHALL HAVE THE FOLLOWING EQUIPMENT.—

(a) *Safety equipment.*—

1. One wearable lifesaving device in good and serviceable condition, approved by the Coast Guard, for each person on board and one Coast Guard approved throwable device in each boat.

2. Two Coast Guard approved or Underwriters Laboratory "marine type," type B size 1 fire extinguishers, or one B2 "marine type" fire extinguisher, unless propelled by outboard motor, not carrying passengers for hire and the motorboat is of open construction.

3. One anchor and line of appropriate size and length.

4. One hand or power-operated whistle or horn capable of producing a blast of 2 seconds duration and audible for a distance of 1 mile.

5. One bell producing a clear bell-like tone.

(b) *Lighting requirements between sunset and sunrise.*—

1. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

2. A bright white light aft to show all around the horizon and higher than the white light forward.

3. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

4. Any motorboat may carry and exhibit the lights required by the international rules of the road (33 USC 143-147d), in lieu of the lights prescribed in this paragraph.

(4) CLASS 3 MOTORBOATS (40 FEET TO LESS THAN 65 FEET) SHALL HAVE THE FOLLOWING EQUIPMENT.—

(a) *Safety equipment.*—

1. One wearable life preserver in good and serviceable condition, approved by the Coast Guard, for each person on board and one Coast Guard approved throwable device in each boat.

2. Three underwriter approved class B-I extinguishers or one class B-II and one class B-I extinguisher.

3. One anchor and line of appropriate size and length.

4. One power-operated whistle or horn capable of producing a blast of 2 seconds duration and audible for a distance of 1 mile.

5. One bell producing a clear bell-like tone.

(b) *Lighting requirements between sunset and sunrise.*—

1. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

2. A bright white light aft to show all around the horizon and higher than the white light forward.

3. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

4. Any motorboat may carry and exhibit the lights required by the international rules of the road (33 USC 143-147d), in lieu of the lights prescribed in this paragraph.

(5) The use of sirens on any vessel except police or fire boats is prohibited.

(6) The use of flashing red lights on any vessel except police or fire boats is prohibited.

(7)(a) Motorboats of classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of classes 2 and 3, when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this section.

(b) Every vessel shall, between sunset and sunrise, carry a lighting device capable of shining a white light all around the horizon and shall display such light in sufficient time to avoid collision with another vessel.

(8) Every vessel shall be equipped with at least one adequate Coast Guard approved lifesaving device for each occupant.

History.—s. 8, ch. 59-400; s. 13, ch. 63-105; s. 1, ch. 65-361; s. 7, ch. 74-327.

371.571 Ventilator ducts; backfire flame control.—

(1) All motorboats, except open boats, the construction or decking over of which was commenced after April 25, 1940, and which use fuel having a flash point of 110° F. or less shall have at least two ventilator ducts fitted with cowls or their equivalent for the efficient removal of explosive or inflammable gases from the bilges of every engine and fuel tank compartment. There shall be at least one exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one intake duct installed so as to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake. The cowls shall be located and trimmed for maximum effectiveness so as to prevent fumes from being recirculated. As used in this subsection, the term "open boats" means those vessels with bilges under the engines and fuel

tanks, and bilges interconnected therewith, open throughout so as to prevent the entrapment of explosive or inflammable gases and vapors within the vessel.

(2) Every gasoline engine installed in a motorboat after April 25, 1940, except outboard motors, shall be equipped with an efficient means of backfire flame control. Installations made before November 19, 1952, need not meet the detailed requirements of this subsection and may be continued in use as long as they are in good condition. The following are acceptable means of backfire flame control for gasoline engines:

(a) A backfire flame arrestor specifically approved by the United States Coast Guard. The flame arrestor shall be suitably secured to the air intake with flame-tight connection.

(b) An engine air and fuel intake system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an approved flame arrestor. A gasoline engine which has such an air and fuel intake system and which is to be operated without an approved flame arrestor shall be labeled to meet requirements of the United States Coast Guard.

(c) Any attachment to the carburetor or location of the engine air intake by means of which flames caused by engine backfire will be dispersed to the atmosphere outside the vessel in such a way that the flames will not endanger the vessel or persons on board. All attachments shall be of metallic construction with flame-tight connections and firmly secured to withstand vibration, shock and engine backfire. Such installations do not require formal approval but will be accepted by the law enforcement officers on the basis of this item.

History.—s. 1, ch. 65-361; s. 7, ch. 74-327.

371.58 Safety inspections; qualified.—No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or is occurring.

History.—s. 9, ch. 59-400; s. 14, ch. 63-105; s. 1, ch. 65-361.

371.59 Local regulation qualified.—The provisions of ss. 371.011-371.051, 371.071-371.171, 371.50-371.58, shall govern the operation, equipment and all other matters relating thereto whenever any vessel shall be operated upon the waterways or when any activity regulated hereby shall take place thereon. Nothing in these sections shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, except that no such ordinance or local law may apply to the Florida Intracoastal Waterway and except that such ordinances or local laws shall be operative only when they are not in conflict with this chapter or any amendments thereto or regulations thereunder.

History.—s. 10, ch. 59-400; s. 16, ch. 63-105; s. 1, ch. 65-361; s. 3, ch. 72-55.

371.60 Maximum safety load plate attached.—All vessels sold in Florida shall have attached thereto a plate stating the recommended number of persons or maximum weight load consistent with safe operation of the vessel. This shall not apply to resales but it is the intent of this section to require manufacturers to furnish this information upon the original sale.

History.—s. 11, ch. 59-400; s. 17, ch. 63-105; s. 1, ch. 65-361.

371.62 Legislative intent.—It is the legislative intent that boats be licensed uniformly throughout the state. The purpose of ss. 371.63-371.68 is to make licensing and registration procedures similar to those of automobiles and airplanes, all of which are power-driven either on land or air or water, as motor vehicles or motorboats and to provide for a boat registration license fee and certificate so as to determine the ownership of boats which travel the waters of this state and to aid in the advancement of maritime safety.

History.—s. 1, ch. 65-361; s. 8, ch. 74-327.

371.63 Legislative declaration.—All boats registered as provided herein, except live-aboard vessels assessed as tangible personal property, are hereby declared to be motor vehicles and shall be taxed and certified as motor vehicles; however, nothing in this section shall be construed to prohibit any municipality that expends money for the patrol, regulation, and maintenance of any lakes, rivers, or waters in such municipality from regulating such boats resident in such municipalities and charging a license fee therefor. All moneys received from such fee shall be expended for the patrol, regulation, and maintenance of the lakes, rivers, and waters of such municipality.

History.—s. 1, ch. 65-361; s. 8, ch. 74-327; s. 112, ch. 77-104; s. 24, ch. 79-334.

[1]371.64 Exemption from personal property tax.—All boats and vessels registered as provided herein, and outboard motors capable of propelling any such boat or vessel, shall be exempt from any personal property tax and in lieu thereof shall pay a boat registration certificate license fee. However, live-aboard vessels are subject to the tax on tangible personal property and shall be annually exempt from the license fee under this part if assessed as tangible personal property for the current year. A certificate of registration shall be issued for any documented vessel, the owner of which has paid the boating registration certificate license fee, but no state registration number shall be issued to said vessel.

History.—s. 1, ch. 65-361; s. 8, ch. 74-327; s. 25, ch. 79-334.

[1]Note.—As amended by ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

371.645 Intent of legislature.—It is declared to be the intent of the legislature that all vessels in the state shall be subject to a uniform registration license fee at a rate based on the length of the vessels. It is also declared to be the intent of the legislature that all separate classes of vessels, such as saltwater commercial, freshwater commercial, and private pleasure craft or motorboat be abolished, and that

all such vessels be licensed according to the provisions of s. 371.65.

History.—s. 1, ch. 70-336; s. 8, ch. 74-327.

371.65 Classification and license.—Vessels shall be classified for license purposes according to the following schedule and the registration certificate license fee shall be in the following amounts:

(1) MOTORBOATS.—	
Class A-1—All boats less than 12 feet, and all canoes to which propulsion motors have been attached, regardless of length ..	$ 2.00
Class A-2—12 feet or more and less than 16 feet in length	6.00
(To county)	1.50
Class 1—16 feet or more and less than 26 feet in length	11.00
(To county)	6.50
Class 2—26 feet or more and less than 40 feet in length	31.00
(To county)	26.50
Class 3—40 feet or more and less than 65 feet in length	51.00
(To county)	46.50
Class 4—65 feet or more and less than 110 feet in length	61.00
(To county)	56.50
Class 5—110 feet or more in length	76.00
(To county)	71.50
Dealer classification	10.00

(2) SERVICE FEES.—In addition, the boat owner shall pay to the issuing agent a 50-cent service fee for each registration or reregistration as provided for in s. 371.051. There shall be no duplication of fees and boats registered under this law. Boats may travel in salt or fresh water at will.

(3) DISTRIBUTION OF FEES.—Moneys deposited pursuant to s. 371.171 to be returned to the counties are appropriated to the department for grants to the county general governments for the sole purposes of providing recreational channel marking, public launching facilities, and other boating-related activities. The department shall ascertain, as a guideline in determining amounts of grants each county may receive, the number of noncommercial vessels registered in the county during the preceding license year according to the license fee schedule provided in subsection (1), and shall promulgate rules and regulations to effectuate this.

(4) FRACTIONAL REGISTRATION FEE.—Any boat registered for the first time between January 1 and June 30 shall be charged one-half the annual registration rate. The above fractional rate does not apply to boats subject to registration prior to December 31, providing that a boat shall not be considered subject to reregistration prior to December 31 if purchased by a new owner after December 31.

(5) REGISTRATION DATE.—The registration and reregistration of boats and payment of above fees for the ensuing year shall begin on June 1 and end on June 30 except that the governor may extend the period of registration for an additional 30 days when such extension is desirable. All motorboats previously exempt from the registration requirements of s. 371.041 shall be registered by January 1, 1975. The operation of any boat after July 1, unless the period is extended, without a current registration as provided under this law is a misdemeanor and shall subject the owner and operator thereof to arrest and punishment as provided by law.

[1](6) EXEMPTION.—Vessels and motorboats owned and operated by Sea Explorer or Sea Scout units of the Boy Scouts of America, the Girl Scouts of America, the Associated Marine Institutes, Inc., and its affiliates, live-aboard vessels assessed as tangible personal property, and any boat used exclusively for commercial fishing and not propelled or powered by machinery of any horsepower are exempt from the provisions of subsection (1). Such vessels or motorboats shall be issued certificates of registration and numbers upon application and payment of the service fee provided in subsection (2). However, for live-aboard vessels proof of assessment by the county property appraiser as tangible personal property must be shown upon application in order to qualify for said exemption. Vessels assessed as live-aboard vessels on the 1980 assessment rolls shall be eligible for exemption from the registration fees imposed by this section beginning June 1, 1980. Similarly, any live-aboard vessel deleted from an assessment roll shall be subject to said registration fees commencing in the year of deletion.

(7) ALIEN OR NONRESIDENT FEE.—An additional license fee of $50 shall be required of all aliens or nonresidents of the state on all boats, vessels, schooners, or launches used for commercial purposes and owned in whole or in part by such alien or nonresident in addition to the boat license fee required by this section.

History.—s. 1, ch. 65-361; s. 2, ch. 67-586; s. 1, ch. 69-300; s. 4, ch. 70-336; s. 1, ch. 73-146; ss. 9, 15, ch. 74-327; s. 1, ch. 77-174; s. 81, ch. 79-164; s. 1, ch. 79-307; ss. 26, 30, ch. 79-334; s. 1, ch. 79-364.

[1]Note.—As amended by ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Similar provisions in former s. 371.0104.

371.66 Jurisdiction.—The safety regulations included under this part shall apply to all boats except as specifically excluded, operating upon the navigable waterways or inland lakes, ponds, streams, or any other waters in Florida. However, only s. 371.57(7), (8) shall apply to rowboats and canoes without motors, sailboats less than 10 feet in length, airboats, and similar specialty watercraft. All applicable safety regulations and registration requirements under this part shall apply to live-aboard vessels. Live-aboard vessels shall be exempt from only the license fee provisions of this part if assessed as tangible personal property.

History.—s. 1, ch. 65-361; s. 27, ch. 79-334.

371.67 Enforcement.—

(1) This part shall be enforced by the Division of Law Enforcement of the department and its officers, the Game and Fresh Water Fish Commission and its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement

officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this part, or cause any inspections to be made of all boats in accordance with this part, in the water of this state.

(2) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this part as are necessary to effectuate the intent and purpose of this part.

History.—s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 3, ch. 72-16; s. 10, ch. 74-327; s. 3, ch. 78-181.

371.68 Penalties.—

(1) Any violation of the provisions of subparagraphs 371.57(1)(a)1. and 2. shall be deemed a noncriminal violation, as defined in s. 775.08(3), punishable by a fine of $25.

(2) Any person failing to comply with the provisions of this part not specified in subsection (1) or not paying the fine specified in subsection (1) within 10 days is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-361; s. 304, ch. 71-136; s. 1, ch. 78-181.

PART II

BOATS; TITLE CERTIFICATES

371.75 Application for certificate of title.—

(1) The owner of a motorboat required to pay the boat registration certificate license fee under this chapter shall apply to the department for a certificate of title.

(2) The application shall include the true name of the owner, the residence or business address of owner and a description of the boat. The application shall be signed by the owner and shall be accompanied by the prescribed fee.

(3) The owner of any vessel or motorboat exempt from the boat registration certificate license fee may apply to the department for a certificate of title by filing the prescribed application accompanied by the prescribed fee.

History.—s. 4, ch. 67-586; ss. 25, 35, ch. 69-106; s. 11, ch. 74-327.

371.76 Certificate of title required.—

(1) Except in the case of amphibious vessels which have a valid title issued by the Department of Highway Safety and Motor Vehicles or a boat owned by a bona fide dealer, no person shall operate a boat unless the owner has applied to the department for a certificate of title for such boat.

(2) A certificate of title is prima facie evidence of the ownership of a boat. A certificate of title is good for the life of the boat so long as the certificate is owned or held by the legal holder.

(3) The department shall make regulations necessary and convenient to carry out the provisions of this part.

(4) The department shall charge a fee of $2 for issuing each certificate of title, and if the title application or application for a transfer of title is received by a county tax collector, then said tax collector shall be entitled to retain 50 cents of said fee.

(5) The department shall provide a labeled place on the title where the seller's price can be indicated when a boat is sold. However, the department shall not be expected to provide a labeled place for the seller's price until such time as new boat title forms are ordered. It is the intent of the Legislature that, except as provided in this subsection, all certificates of title issued after the effective date of this act shall contain a labeled place for the seller's price to be indicated, and no notary public shall notarize a title transfer until the seller properly indicates the sales price, if a labeled place is provided on the title. It is the further intent of the Legislature that no title shall be accepted for transfer by any county tax collector or other agent of the state unless the sales price is entered in the appropriately labeled place on the title by the seller, if a labeled place is provided on the title.

History.—s. 4, ch. 67-586; ss. 24, 25, 35, ch. 69-106; s. 12, ch. 74-327; ss. 7, 8, ch. 79-359.

371.77 Hull serial number required.—No person shall operate a motorboat on the waters of this state for which the department has issued a certificate of title unless the boat has a hull serial number. Hull serial numbers shall be clearly imprinted in the stern transom or on the hull by stamping, impressing or marking with pressure. In lieu of imprinting, the serial number may be displayed on a plate in a permanent manner. If the serial number is displayed in a location other than the stern transom, the department must be notified by the manufacturer as to such location. No person, firm, association or corporation shall destroy, remove, alter, cover or deface the manufacturer's serial number or plate bearing such serial number, on any motorboat. Boats for which the manufacturer has provided no serial number and boats constructed or assembled by the owner shall have assigned a serial number by the department, said number to be the identifying number assigned the boat when registered or documented.

History.—s. 4, ch. 67-586; ss. 25, 35, ch. 69-106; s. 13, ch. 74-327.

371.78 Refusal to issue or cancellation of certificate of number or title.—

(1) If the department determines at any time that an applicant for a certificate of title or a certificate of number has given a false statement or false information in applying for the certificate or otherwise failed to comply with the applicable provisions pertaining to application for certificates, it may refuse to issue the certificate.

(2) If the department determines at any time that an owner or dealer named in a certificate of title

or certificate of number gave a false statement or false information in applying for the certificate or otherwise failed to comply with the applicable provisions pertaining to applications for certificates, it may cancel the certificate.

History.—s. 4, ch. 67-586; ss. 25, 35, ch. 69-106; s. 13, ch. 74-327; s. 23, ch. 78-95.

371.79 Duplicate certificate of number or title.—The department may issue a duplicate certificate of number or title upon application by the person entitled to hold such a certificate if the department is satisfied that the original certificate has been lost, destroyed or mutilated. The department shall charge a fee of $1 for issuing a duplicate certificate.

History.—s. 4, ch. 67-586; ss. 25, 35, ch. 69-106; s. 13, ch. 74-327.

371.791 Manufacturer's certificate of origin to be furnished.—All dealers selling boats in this state shall furnish a manufacturer's certificate of origin to the purchaser of any boat.

History.—s. 1, ch. 69-167.

371.81 Notice of lien on motorboats; recording.—

(1) No liens for purchase money or as security for a debt in the form of retain title contract, conditional bill of sale or chattel mortgage, or otherwise, on a motorboat shall be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration and without notice unless a sworn notice of such lien is recorded. The lien certificate shall contain the following information:

(a) Name and address of the registered owner;

(b) Date and amount of lien;

(c) Description of the motorboat to include make, type, motor and serial number; and

(d) Name and address of lienholder.

The lien shall be recorded in the office of the department, which filing is in lieu of all filing and recording now required or authorized by law, and shall be effective as constructive notice when filed.

(2) The department shall not enter any lien upon its lien records, whether it be a first lien or a subordinate lien, unless the official certificate of title issued for the motorboat is furnished with the notice of lien, so that the record of lien, whether original or subordinate, may be noted upon the face thereof.

(3) Upon the payment of any such lien the debtor, or the registered owner of the motorboat, shall be entitled to demand and receive from the lienholder a satisfaction of the lien which shall likewise be filed with the department.

(4) The department under precautionary rules and regulations to be promulgated by it may permit the use, in substitution of the formal satisfaction of lien, of other methods of satisfaction, such as perforation, appropriate stamp, or otherwise, as it deems reasonable and adequate.

(5) The Department of Natural Resources shall make such rules and regulations as it deems necessary or proper for the effective administration of this law and shall prepare the forms of the notice of liens and satisfactions thereof, to be supplied, at not to exceed 50 percent more than cost to any applicant, for recording the liens or satisfactions and shall keep a permanent record of such notice of liens and satisfactions in a book in its office open to the inspection of the public at all reasonable times. The division is hereby authorized to furnish certified copies of such notices or satisfactions for a fee of $1, which certified copies shall be admissible in evidence in all courts of this state under same conditions and to same effect as certified copies of other public records.

(6) The department shall be entitled to a fee of 50 cents for the recording of each notice of lien and each satisfaction thereof. All of the fees collected shall be paid into the Motorboat Revolving Trust Fund.

(7) Should any person, firm or corporation holding such lien, which has been recorded in the office of the department, upon payment of such lien and on demand, fail or refuse, within 30 days after such payment and demand, to furnish the debtor or the registered owner of such motorboat a satisfaction thereof, then, in that event, he, it or they, shall be held liable for all costs, damages, and expenses, including reasonable attorney's fees, lawfully incurred by the debtor or the registered owner of such motorboat in any suit which may be brought in the courts of this state for the cancellation of such lien.

History.—s. 4, ch. 67-586; ss. 25, 35, ch. 69-106; s. 14, ch. 74-327.

371.82 Penalty.—Any person convicted of violating any of the provisions of part II of chapter 371 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 67-586; s. 305, ch. 71-136.

371.83 Legislative intent.—It is declared to be the legislative intent that if any section, subsection, sentence, clause or provision of part II of chapter 371 is held invalid the remainder of chapter 371 shall not be affected.

History.—s. 4, ch. 67-586.

371.84 Nonjudicial sale of boats or vessels held for storage.—

(1) Provisions in written leases for the storage of boats or vessels, between a business which is authorized to operate as a marina in this state and persons who own boats or vessels, which authorize the marina to sell the boat or vessel at a nonjudicial sale in the event of nonpayment of rent for a period of 6 months are valid and enforceable under the following conditions:

(a) The written lease contains a provision indicating where notice of the nonjudicial sale should be mailed to the boat or vessel owner.

(b) The marina sends written notice by certified mail to the address of the boat or vessel owner as set forth in the lease at least 30 days prior to the proposed sale.

(c) The marina sends written notice of intent to sell the described boat or vessel at public auction, a copy of the written lease signed by the marina and the boat or vessel owner, and a copy of the certified letter sent to the boat or vessel owner to the Department of Natural Resources at least 30 days prior to the sale.

(d) The marina publishes a notice in a newspaper of general circulation in the county in which the

marina is located at least 10 days prior to the date of the sale, indicating the time and place of the sale, a description of the boat or vessel, and an announcement that the sale will be a public sale at auction to the highest bidder.

(e) No boat or vessel shall be sold at a nonjudicial sale for less than 50 percent of the fair market value of said boat or vessel. Fair market value shall be determined by two independent appraisals done by licensed property appraisers. Copies of the appraisals shall be submitted to the department 30 days prior to the sale.

(2) In any event where the proceeds from a sale conducted in conformance with the provisions of subsection (1) exceed the rent due and owing on the boat or vessel as of the date of sale, together with the costs of the sale, including publication costs, the balance of the proceeds shall be deposited with the clerk of the circuit court of the county in which the sale is held, to be returned to the owner of the boat or vessel sold upon application by the owner, less any fee charged by the clerk for such deposit, as allowed by law.

(3) The department shall provide certification forms for sales as authorized in subsection (1), and upon receipt of said forms from a purchaser, the department shall cause the title to said boat or vessel to be transferred to the purchaser thereof pursuant to this chapter.

(4) All sales as described in subsection (1) shall be subject to prior perfected liens against the boat or vessel sold.

History.—s. 1, ch. 78-264.

CHAPTER 372

GAME AND FRESHWATER FISH

372.001 Definitions.—In construing these statutes, when applied to salt and freshwater fish, shellfish, crustacea, sponges, wild birds and wild animals, where the context permits, the word, phrase or term:

(1) "Residents of Florida" includes citizens of the United States who have continuously resided in the state for 1 year and in the county for 6 months; provided, however, members of the armed services stationed in Florida are deemed residents of this state.

(2) "Fish and game" shall include all fresh and saltwater fish, shellfish, crustacea, sponges, wild birds and wild animals.

(3) "Game animals" shall include deer and squirrels.

(4) "Fur-bearing animals" shall include muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, bear, panther and opossum.

(5) "Game birds" shall include the anatidae, commonly known as swans, geese, brant and river and sea ducks; rallidae, commonly known as rails or marsh hens, coots and gallinules; limcolae, commonly known as shore birds, plovers, surf birds, snipe, woodcocks, sandpipers, tattlers and curlews; gallinae commonly known as wild turkeys, grouse, pheasants and quail; and the species of columbae, known as mourning doves (commonly called turtle doves).

(6) "Nongame birds" shall include all wild birds other than game birds.

(7) "Freshwater fish" shall include all classes of pisces that are indigenous to fresh water.

(8) "Saltwater fish" shall include all classes of pisces, shellfish, sponges and crustacea indigenous to salt water.

(9) "Open season" shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(10) "Closed season" shall be that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(11) "Fresh water," except where otherwise provided by law, includes all lakes, rivers, canals, and other waterways of Florida, to such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable and unfit for human consumption, because of the saline content, or to such point or points as may be fixed by the Commission of Game and Fresh Water Fish, by and with the consent of the board of county commissioners of the county or counties to be affected by such order. The Steinhatchee River shall be considered fresh water from its source to mouth.

(12) "Salt water" shall include all bodies of water, streams, rivers, canals and waterways not defined as fresh water.

(13) Wherever it is made "lawful to take" game, nongame birds, freshwater fish or fur-bearing animals or parts thereof or birds' nests or eggs, it shall mean the pursuit, hunting, capturing or killing thereof in the manner and at the time and by means specifically permitted.

(14) Wherever it is made "unlawful to take" game, nongame birds, freshwater fish or fur-bearing animals or parts thereof or birds' nests or eggs, the phrase shall include pursuing, shooting, hunting, killing, trapping, capturing, snaring, netting, gigging, and collecting and all lesser acts such as worrying the same or placing or using any net or other device for the purpose of taking same, whether or not they result in the intended taking.

(15) The phrase "common carrier" shall include any person, firm or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his services to all such as may choose to employ him and pay his charges.

(16) "Transport" shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

(17) The word "guide" shall include any person engaged in the business of guiding hunters or hunting parties, fishermen or fishing parties, for compensation.

(18) "Shellfish" shall include oysters, clams and whelks.

(19) "Coon oysters" are oysters found growing in bunches along the shore between high and low-water mark.

(20) "Reef bunch oysters" are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

(21) "Food fish" shall include mullet, trout, red fish, sheephead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption.

(22) A "natural" oyster or clam reef, or bed, or bar, shall be considered and defined as an area containing not less than 100 square yards of the bottom where oysters or clams are found in a stratum.

(23) "Private hunting preserve" shall include any area set aside by a private individual or concern on which artificially propagated game or birds are taken.

(24) "A fish management area" is a pond, lake or other water within a county or within several counties designated to improve fishing for public use and established and specifically circumscribed for authorized management by the Game and Fresh Water Fish Commission and the board of county commissioners of the county in which such waters lie under agreement between the commission and an owner with approval by the board of county commissioners or under agreement with the board of county commissioners for use of public waters in the county in which such waters lie.

History.—s. 7, ch. 3147, 1879; ss. 1, 2, 3, ch. 3292, 1881; RS 2761, 2762; ss. 1, 18, 21, ch. 6532, 1913; ss. 11, 17, ch. 6877, 1915; RGS 1230, 1247, 1249, 1272, 5830; s. 1, ch. 8588, 1921; s. 1, ch. 11838, 1927; CGL 1788, 1805, 1807, 1840, 1902, 8063; s. 1, ch. 13644, 1929; CGL 1936 Supp. 1977(1); s. 1, ch. 19226, 1939; CGL 1940 Supp. 1977(1-a); s. 1, ch. 59-73; s. 1, ch. 63-30; s. 1, ch. 69-166.
Note.—Former s. 371.01.

372.01 Game and Fresh Water Fish Commission.—

(1) The Game and Fresh Water Fish Commission shall consist of five members who shall be appointed by the Governor, subject to confirmation by the Senate, for staggered terms of 5 years.

(2) Members so appointed shall annually select one of their members as chairman. Such chairman may be removed at any time for sufficient cause, by the affirmative vote of the majority of the members of the commission. In case the said office of chairman becomes vacant by removal or otherwise, the same may be filled for the unexpired term at any time by the commission from its members.

(3) Commission members shall receive no compensation for their services as such, but shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 1, ch. 26766, 1951; s. 19, ch. 63-400; s. 105, ch. 71-355; s. 1, ch. 78-125.
cf.—s. 9, Art. IV, State Const.

372.021 Powers, duties, and authority of commission; rules, regulations, and orders.—

The Game and Fresh Water Fish Commission may exercise the powers, duties, and authority granted by s. 9, Art. IV of the Constitution of Florida by the adoption of rules, regulations, and orders in accordance with chapter 120.

History.—ss. 4, 5, ch. 21945, 1943; s. 7, ch. 69-216; ss. 10, 35, ch. 69-106; s. 103, ch. 73-333; s. 16, ch. 78-95.
Note.—Former s. 372.82.

372.0225 Freshwater organisms.—

(1) The Division of Fisheries of the Game and Fresh Water Fish Commission, in order to manage the promotion, marketing, and quality control of all freshwater organisms produced in Florida and utilized commercially so that such organisms shall be used to produce the optimum sustained yield consistent with the protection of the breeding stock, is directed and charged with the responsibility of:

(a) Providing for the regulation of the promotion, marketing, and quality control of freshwater organisms produced in Florida and utilized commercially.

(b) Regulating the processing of commercial freshwater organisms on the water or on the shore.

(c) Providing documentation standards and statistical record requirements with respect to commercial freshwater organism catches.

(d) Regulating aquacultural facilities.

(e) Conducting scientific, economic, and other studies and research on all freshwater organisms produced in the state and used commercially.

(2) The responsibility with which the Division of Fisheries is charged under subsection (1) shall in no way supersede or duplicate the responsibilities of the Department of Agriculture and Consumer Services under chapter 500, the Florida Food, Drug, and Cosmetic Law, and the rules promulgated thereunder.

History.—ss. 1, 2, ch. 78-310.

372.023 J. W. Corbett and Cecil M. Webb Wildlife Management Areas.—

(1) The Game and Fresh Water Fish Commission of this state is neither authorized nor empowered to do the following as to the J. W. Corbett Wildlife Management Area in Palm Beach County or the Cecil M. Webb Wildlife Management Area without the approval of the Board of Trustees of the Internal Improvement Trust Fund that such action is in the best interest of orderly and economical development of said area, viz.:

(a) To trade, barter, lease, or exchange lands therein for lands of greater acreage contiguous to said wildlife management areas.

(b) To grant easements for construction and maintenance of roads, railroads, canals, ditches, dikes and utilities, including but not limited to telephone, telegraph, oil, gas, electric power, water and sewers.

(c) To convey or release all rights in and to the phosphate, minerals, metals and petroleum that is or may be in, on or under any lands traded, bartered, leased or exchanged pursuant to paragraph (a).

(2) The Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education and all and every board, state department or state agency of the state having any title, right and interest in or to the land including oil and mineral rights in the lands to be traded, bartered, leased or exchanged within the J. W. Corbett Wildlife Management Area in Palm Beach County, is authorized and empowered to convey this interest of whatsoever nature to the record owner.

(3) Moneys received from the sale of lands within either wildlife management area, less reasonable expenses incident to the sale, shall be used by the Game and Fresh Water Fish Commission to acquire acreage contiguous to the wildlife management area or lands of equal wildlife value. The sale shall be made directly to the state, notwithstanding the procedures of ss. 270.08 and 270.09 to the contrary.

History.—ss. 1, 2, ch. 31410, 1956; ss. 27, 35, ch. 69-106; s. 1, ch. 70-60; s. 1, ch. 75-304.
cf.—s. 253.03 Title to state lands.

372.025 Everglades recreational sites; definitions; Everglades Recreational Planning Board.—

(1) PURPOSE.—It is the intent of the Legislature to provide for the development and management of recreational sites in the water conservation areas of the Florida Everglades when such development:

(a) Can be accomplished without endangering the water quality and quantity of supply and where environmental impact will be minimal.

(b) Is located on the exterior fringes of the Everglades to discourage extensive uncontrolled use of the interior regions.

(c) Is located where convenient access is possible for the millions of Floridians living in urban areas.

(d) Offers recreational potential for nature trails, bird study, picnic areas, boating, fishing, hunting, and target shooting.

(e) Is located where proper management and law enforcement can be provided.

(2) DEFINITIONS.—As used in this section:

(a) "Commission" means the Game and Fresh Water Fish Commission.

(b) "Flood control district" means the Central and Southern Florida Flood Control District Board.

(c) "Indian reservations" means lands as designated by chapter 285.

(d) "Buffer zone" means an area located between developed and wilderness areas where some restrictions on the type of future development shall be imposed.

(e) "Preliminary plan" means those suggested guidelines as herein provided to be considered by the Everglades Recreational Planning Board in arriving at its final plan for implementation.

(f) "Development of recreational sites" means any improvements to existing facilities or sites and also such new selection and improvements as are needed for the various recreational activities as herein provided.

(3) RECREATIONAL SITES.—The Game and Fresh Water Fish Commission is directed to develop, manage, and enforce laws on certain recreational sites in the water conservation areas of the Everglades from funds to be appropriated by the legislature and in accordance with plans and assistance to be provided by the Everglades Recreational Planning Board as hereafter created.

[1](4) EVERGLADES RECREATIONAL PLANNING BOARD.—

(a) The Governor shall appoint a board of 13 members to be known as the Everglades Recreational Planning Board in accordance with the following procedures:

1. The members of the board shall be appointed with the confirmation of the Florida Senate and serve at the pleasure of the Governor. They shall serve without compensation, but shall be reimbursed for travel expenses incurred in connection with their duties as provided by law.

2. The Governor shall appoint such members of the board as to insure that a minimum of two members are appointed to represent each of the Counties of Broward, Dade, and Palm Beach.

3. The Governor shall appoint to the board two members from the Central and Southern Florida Flood Control District Board, two members from the Game and Fresh Water Fish Commission, and one member from the Division of Recreation and Parks, Department of Natural Resources.

4. The Governor shall appoint to the board a minimum of one member to represent each of the two Indian reservations of south Florida.

5. The Governor shall appoint such members of the board as to attempt to provide representation on the board for such recreational interests as in nature trails, picnic areas, arboretums, camping, bird study, boating, fishing, hunting, and target shooting.

6. The Governor shall appoint such members as to attempt to provide representation on the board in the fields of biology or habitat management and hydrology.

(b) A chairman of the board to be chosen from among the 13 members shall be appointed by, and serve at the pleasure of, the Governor.

(c) The duties of the board will be to:

1. Meet at the call of the chairman whenever he determines that to be necessary.

2. Hold public hearings at the call of the chairman for interested groups and individuals when the chairman determines that to be of value.

3. Prepare a first-year plan and a five-year plan for development of recreational sites in the water conservation areas of the Florida Everglades.

4. Include in its plans a determination of the advisability of creating buffer zones to protect water conservation areas and Indian reservation areas from possible harmful use or development and insure that these plans conform as much as possible with the preliminary plan for location and development of specified recreation sites.

5. Provide the Game and Fresh Water Fish Commission with a copy of the first-year plan no later than October 1, 1973, and provide the commission with a copy of the proposed five-year plan no later than January 1, 1974.

6. Provide advice and assistance to the commission during the implementation of such plans.

7. Provide coordination among the commission, the flood control district, and other parties that may be involved in the design and implementation of these plans.

8. Report to the Governor and Legislature prior to January 1, 1974, on the progress of these plans.

(5) No recreational site will be developed on any Indian reservations as created by chapter 285 without first obtaining written approval for such development from the Indians of the particular reservation lands affected.

History.—ss. 1-5, ch. 73-249; s. 1, ch. 77-174; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

372.03 Headquarters of commission.—The Game and Fresh Water Fish Commission is located at the state capital, and, when suitable adequate office space cannot be provided in the state capitol building, or other buildings owned by the state, the commission may rent or lease suitable office space in Tallahassee. Said commission may also rent or lease suitable and adequate space in other cities and towns of the state for branch or division offices and headquarters and store rooms for equipment and supplies, as the business of the commission may require or necessitate, payment for said rented or

leased premises to be made from the state game trust fund.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 2, ch. 61-119.

372.04 Director of commission.—The commission shall appoint, fix the salary of, and at pleasure remove, a suitable person, not a member of the commission, as director. Said director shall be reimbursed for traveling and other expenses incurred in the discharge of his official duties. The director shall give bond in the sum of $10,000, conditioned upon the faithful performance of his official duties, payable to the governor and his successors in office, with some reputable bonding corporation authorized to do business in this state as surety, said bond to be approved by the Department of Banking and Finance. Said director shall maintain his headquarters and reside in Tallahassee.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 2, ch. 26766, 1951; ss. 12, 35, ch. 69-106.

372.05 Duties of director.—The director shall:

(1) Keep full and correct minutes of the proceedings of said commission at its meetings, which minutes shall be open for public inspection.

(2) Purchase such supplies and employ such help and assistants as may be reasonably necessary in the performance of his duties.

(3) Have full authority to represent the commission in its dealings with other state departments, county commissioners, and the federal government.

(4) Submit to the commission at each of its meetings a report of all his actions and doings as official representative of the commission.

(5) Visit each county in the state at least once each year and oftener if it appears to him to be necessary.

(6) Appoint, fix salaries of, and at pleasure remove, subject to the approval of the commission, assistants and other employees who shall have such powers and duties as may be assigned to them by the commission or director.

(7) Have such other powers and duties as may be prescribed by the commission in pursuance of its duties under s. 9, Art. IV, of the State Constitution.

History.—ss. 2, 3, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2), 1977(3); s. 3, ch. 26766, 1951; s. 7, ch. 69-216.

372.051 Seal of commission; certificate as evidence.—The Game and Fresh Water Fish Commission shall adopt and use a common seal, and a certificate under the seal of the commission, signed by its chairman and attested by its director shall constitute sufficient evidence of the action of the commission; and copies of the minutes of the commission, or any part thereof, or of any record or paper of said commission, or any part thereof, or of any rule, regulation, or order of the commission, or any part thereof, or of any code of rules, regulations or orders of the commission, or any part thereof, certified by the director of the commission under its seal, shall be admissible in evidence in all cases and proceedings in all courts, boards and commissions of this state without further authentication.

History.—s. 3, ch. 21945, 1943; s. 4, ch. 26766, 1951.
Note.—Former s. 372.81.

372.06 Meetings of the commission.—At least four meetings of the Game and Fresh Water Fish Commission shall be held at the state capital no less frequently than once every 3 months, which meetings shall be known as the quarterly meetings of the commission; other meetings may be held at such times and places as may be decided upon or as provided by rules of the commission, such meetings to be called by the executive secretary on not less than 1 week's notice to all members of the commission; or meetings may be held upon the request in writing of three members of the commission, at a time and place to be designated in the request, and notice of such meetings shall be given at least 1 week in advance thereof to all members of the commission by the executive secretary. Three members shall constitute a quorum at any meeting of the commission. No action shall be binding when taken up by the commission, except at a regular or call meeting and duly recorded in the minutes of said meeting.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2).

372.061 Meetings; authority to hold at any point in state.—From and after June 15, 1953, the Game and Fresh Water Fish Commission of the state is hereby authorized and empowered to hold its meetings at any point in the state.

History.—ss. 1, 2, ch. 28319, 1953; s. 16, ch. 78-95.

372.07 Police powers of commission and its agents.—

(1) The Game and Fresh Water Fish Commission, the director and his assistants designated by him, and each wildlife officer are constituted peace officers with the power to make arrests for violations of the laws of this state when committed in the presence of the officer or when committed on lands under the supervision and management of the commission. The general laws applicable to arrests by peace officers of this state shall also be applicable to said director, assistants, and wildlife officers. Such persons may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry shall not constitute a trespass.

(2) Said officers shall have power and authority to enforce throughout the state all laws relating to game, nongame birds, freshwater fish, and fur-bearing animals and all rules and regulations of the Game and Fresh Water Fish Commission relating to wild animal life and freshwater aquatic life, and in connection with said laws, rules, and regulations, in the enforcement thereof and in the performance of their duties thereunder, to:

(a) Go upon all premises, posted or otherwise;

(b) Execute warrants and search warrants for the violation of said laws;

(c) Serve subpoenas issued for the examination, investigation, and trial of all offenses against said laws;

(d) Carry firearms or other weapons, concealed or otherwise, in the performance of their duties;

(e) Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of said laws or, in pursuit immediately following such violations, to examine any person, boat, conveyance, vehicle, game bag, game coat, or

other receptacle for wild animal life or freshwater aquatic life, or any camp, tent, cabin, or roster, in the presence of any person stopping at or belonging to such camp, tent, cabin, or roster, when said officer has reason to believe, and has exhibited his authority and stated to the suspected person in charge his reason for believing, that any of the aforesaid laws have been violated at such camp;

(f) Secure and execute search warrants and in pursuance thereof to enter any building, enclosure, or car and to break open, when found necessary, any apartment, chest, locker, box, trunk, crate, basket, bag, package, or container and examine the contents thereof;

(g) Seize and take possession of all wild animal life or freshwater aquatic life taken or in possession or under control of, or shipped or about to be shipped by, any person at any time in any manner contrary to said laws.

(3) It is unlawful for any person to resist an arrest authorized by this section or in any manner to interfere, either by abetting, assisting such resistance, or otherwise interfering with said director, assistants, or wildlife officers while engaged in the performance of the duties imposed upon them by law or regulation of the Game and Fresh Water Fish Commission.

History.—s. 3, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(3); s. 7, ch. 22858, 1945; s. 1, ch. 70-404.

372.071 Powers of arrest by agents of Department of Natural Resources or Game and Fresh Water Fish Commission.—Any certified law enforcement officer of the Department of Natural Resources or the Game and Fresh Water Fish Commission, upon receiving information, relayed to him from any law enforcement officer stationed on the ground, on the water, or in the air, that a driver, operator, or occupant of any vehicle, boat, or airboat has violated any section of chapter 370, chapter 371, or chapter 372, may arrest the driver, operator, or occupant for violation of said laws when reasonable and proper identification of the vehicle, boat, or airboat and reasonable and probable grounds to believe that the driver, operator, or occupant has committed or is committing any such offense have been communicated to the arresting officer by the other officer stationed on the ground, on the water, or in the air.

History.—s. 1, ch. 70-396; s. 1, ch. 79-217.

372.072 Endangered and Threatened Species Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Endangered and Threatened Species Act of 1977."

(2) DECLARATION OF POLICY.—The Legislature recognizes that the State of Florida harbors a wide diversity of fish and wildlife and that it is the policy of this state to conserve and wisely manage these resources, with particular attention to those species defined by the Game and Fresh Water Fish Commission, the Department of Natural Resources, or the U.S. Department of Interior, or successor agencies, as being endangered or threatened. As Florida has more endangered and threatened species than any other continental state, it is the intent of the Legislature to provide for research and management to conserve and protect these species as a natural resource.

(3) DEFINITIONS.—As used in this section:

(a) "Fish and wildlife" means any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.

(b) "Endangered species" means any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; over-utilization for commercial, sporting, scientific or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.

(c) "Threatened species" means any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.

[1](4) ESTABLISHMENT OF AN ADVISORY COUNCIL.—

(a) The Director of the Game and Fresh Water Fish Commission shall establish an Endangered and Threatened Species Advisory Council consisting of 10 members. Six members shall be appointed by the Director of the Game and Fresh Water Fish Commission, and four members shall be appointed by the Executive Director of the Department of Natural Resources. The council shall be composed of representatives from appropriate state agencies and private conservation groups and private citizens with knowledge and experience in fish and wildlife conservation and management. Each member shall be appointed for 2 years and shall be eligible for reappointment.

(b) The Director of the Game and Fresh Water Fish Commission shall call an organizational meeting of the Endangered and Threatened Species Advisory Council as soon as possible to elect a chairman to preside over council meetings and perform any other duties directed by the council or required by its duly adopted policies and operating procedures. The primary responsibilities of the council shall be to:

1. Provide a communications liaison between council representatives and the staffs of the Game and Fresh Water Fish Commission and the Department of Natural Resources for inventorying, reviewing, and supporting endangered and threatened species conservation and management.

2. Formulate and recommend to the Director of the Game and Fresh Water Fish Commission and the Executive Director of the Department of Natural Resources rules and policies for endangered and threatened species research and management.

(c) Members of the council shall be entitled to receive per diem and expenses for travel, as provided for in s. 112.061, while carrying out official business with the council, from funds provided to the Game and Fresh Water Fish Commission under this section.

(5) INTERAGENCY COORDINATION.—

(a)1. The Game and Fresh Water Fish Commission shall be responsible for research and manage-

ment of freshwater and upland species.

2. The Department of Natural Resources shall be responsible for research and management of marine species.

(b) Recognizing that citizen awareness is a key element in the success of this plan, the Game and Fresh Water Fish Commission, the Department of Natural Resources, and the Office of Environmental Education of the Department of Education are encouraged to work together to develop a public education program with emphasis on, but not limited to, both public and private schools.

(6) ANNUAL REPORT.—The Director of the Game and Fresh Water Fish Commission, in consultation with the Executive Director of the Department of Natural Resources, shall, at least 30 days prior to the 1978 Session of the Legislature, transmit to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the appropriate Senate and House committees, a plan for management and conservation of endangered and threatened species, including:

(a) Criteria for research and management priorities.

(b) A description of the educational program.

(c) Statewide policies pertaining to protection of endangered and threatened species.

(d) Additional legislation which may be required.

(e) The recommended level of funding for the following year.

A revision and update of this overall management and conservation plan shall be submitted annually, along with a progress report and budget request.

History.—ss. 1-6, ch. 77-375; s. 4, ch. 78-323; s. 82, ch. 79-164.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

372.073 Endangered and Threatened Species Reward Trust Fund.—

(1) There is established within the Game and Fresh Water Fish Commission the Endangered and Threatened Species Reward Trust Fund to be used exclusively for the purposes of this section. The fund shall be for the primary purpose of posting rewards to persons responsible for providing information leading to the arrest and conviction of persons illegally killing or wounding or wrongfully possessing any of the endangered and threatened species listed on the official Florida list of such species maintained by the commission or the arrest and conviction of persons who violate s. 372.667 or s. 372.671. The fund shall be credited with money collected pursuant to s. 372.72(2). Additional funds may be provided by donations from interested individuals and organizations and from legislative appropriations. The reward program is to be administered by the commission under the advisement of the Florida Endangered and Threatened Species Advisory Council. The commission shall establish a schedule of rewards after considering any recommendations of the council.

(2) Proceeds from the fund shall be expended only for the following purposes:

(a) The payment of rewards to persons, other than law enforcement officers, commission personnel, and members of their immediate families, for information as specified in subsection (1); or

(b) The promotion of public recognition and awareness of the endangered and threatened species reward program.

History.—s. 2, ch. 79-217.

372.09 State Game Trust Fund established.— The funds resulting from the operation of the commission and from the administration of the laws and regulations pertaining to birds, game, fur-bearing animals, freshwater fish, reptiles, and amphibians, together with any other funds specifically provided for such purposes shall constitute the State Game Trust Fund and shall be used by the commission as it shall deem fit in carrying out the provisions hereof and for no other purposes. The commission may not obligate itself beyond the current resources of the State Game Trust Fund unless specifically so authorized by the Legislature.

History.—s. 13, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(3); s. 7, ch. 22858, 1945.

372.12 Acquisition of state game lands.—The Game and Fresh Water Fish Commission, with the approval of the Governor, may acquire, in the name of the state, lands and waters suitable for the protection and propagation of game, fish, nongame birds or fur-bearing animals, or for hunting purposes, game farms, by purchase, lease, gift or otherwise to be known as state game lands. The said commission may erect such buildings and fences as may be deemed necessary to properly maintain and protect such lands, or for propagation of game, nongame birds, freshwater fish or fur-bearing animals. The title of land acquired by purchase, lease, gift or otherwise, shall be approved by the Department of Legal Affairs. The deed to such lands shall be deposited as are deeds to other state lands. No such lands shall be purchased at a price to exceed $10 per acre. No property acquired under this section shall be exempt from state, county or district taxation.

History.—ss. 6, 67, ch. 13644, 1929; CGL 1936 Supp. 1977(6), 1977 (67); s. 7, ch. 22858, 1945; s. 25, ch. 29615, 1955; ss. 11, 35, ch. 69-106.

cf.—s. 253.03 Title to state lands.

s. 372.19 Preserves, refuges, etc., not tax exempt.

372.121 Control and management of state game lands.—

(1) The Game and Fresh Water Fish Commission is authorized to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or development of lands or waters owned by, leased by, or otherwise assigned to, the commission for fish or wildlife management purposes, including but not being limited to the right of ingress and egress. Before any such rule or regulation is adopted, other than one relating to wild animal life or freshwater aquatic life, the commission shall obtain the consent and agreement, in writing, of the owner, in the case of privately owned lands or waters, or the owner or primary custodian, in the case of public lands or waters, and the formal approval of the board of county commissioners of the county or counties in which such areas are situated.

(2) Any person violating or otherwise failing to comply with any rule or regulation so adopted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 70-40; s. 306, ch. 71-136.

372.16 Private game preserves and farms; penalty.—

(1) Any person owning land in this state may, after having secured a license therefor from the Game and Fresh Water Fish Commission, establish, maintain and operate within the boundaries thereof, a private preserve and farm, not exceeding an area of six hundred forty acres, for the protection, preservation, propagation, rearing and production of game birds and animals for private and commercial purposes, provided that no two game preserves shall join each other or be connected.

(2) All private game preserves or farms established under the provisions of this section shall be fenced in such manner that domestic game thereon may not escape and wild game on surrounding lands may not enter and shall be subject at any time to inspection by the Game and Fresh Water Fish Commission, or its conservation officers. Such private preserve or farm shall be equipped and operated in such manner as to provide sufficient food and humane treatment for the game kept thereon. Game reared or produced on private game preserves and farms shall be considered domestic game and private property and may be sold or disposed of as such and shall be the subject of larceny. Live game may be purchased, sold, shipped and transported for propagation and restocking purposes only at any time. Such game may be sold for food purposes only during the open season provided by law for such game. All game killed must be killed on the premises of such private game preserve or farm and must be killed by means other than shooting, except during the open season. All domestic game sold for food purposes must be marked or tagged in a manner prescribed by the Game and Fresh Water Fish Commission and the owner or operator of such private game preserve or farm shall report to the said commission, on blanks to be furnished by it, each sale or shipment of domestic game, such reports showing the quantity and kind of game shipped or sold and to whom sold. Such report shall be made not later than 5 days following such sale or shipment. Game reared or produced as aforesaid may be served as such by hotels, restaurants or other public eating places during the open season provided by law on such particular species of game, under such regulations as the commission may prescribe.

(3) It is unlawful for any common carrier to knowingly transport or receive for transportation any domestic game unless the package or container containing such shipment has attached thereto a permit for such shipment and such package or container shall be marked on the outside showing quantity and kind of game enclosed.

(4) Any person violating the provisions of this section shall for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted of violating the provisions of this section shall forfeit, to the Commission of Game and Fresh Water Fish, any license or permit issued under the provisions hereof and no further license or permit shall be issued to such person for a period of one year following such conviction. Before any private game preserve or farm is established the owner or operator shall secure a license from the Game and Fresh Water Fish Commission, the fee for which shall be $5 per annum.

History.—s. 70-A, ch. 13644, 1929; ss. 1-9, ch. 14515, 1929; CGL 1936 Supp. 1901(5)-(15), 1977(71); s. 307, ch. 71-136.

372.19 Preserves, refuges, etc., not tax exempt.—No property acquired by purchase, lease, gift, contract to purchase or lease, or otherwise, under the provisions of this chapter, as state game lands, or any private lands used as game refuges, shooting grounds, privileges, hatcheries or breeding grounds for fish, game, birds or fur-bearing animals, except state-owned lands being used for the protection of game, fish or fur-bearing animals under the provisions of this chapter, shall be exempt from state, county or district taxation. Any contract, lease, gift or purchase of land for such purposes which attempts to exempt or partially exempt such property from taxation shall be null and void and of no effect.

History.—s. 67, ch. 13644, 1929; CGL 1936 Supp. 1977(67).
cf.—s. 372.12 Acquisition of state game lands.

372.26 Imported fish.—No person shall import into the state or place in any of the fresh waters of the state any freshwater fish of any species without having first obtained a permit from the Game and Fresh Water Fish Commission. This restriction shall not apply to the Department of Natural Resources, acting under authority of s. 372.925(4).

History.—s. 37, ch. 13644, 1929; CGL 1936 Supp. 1977(37); s. 1, ch. 71-294.

372.265 Regulation of foreign animals.—

(1) It is unlawful to import for sale or use, or to release within this state, any species of the animal kingdom not indigenous to Florida without having obtained a permit to do so from the Game and Fresh Water Fish Commission. This restriction shall not apply to the Department of Natural Resources, acting under authority of s. 372.925(4).

(2) The Game and Fresh Water Fish Commission is authorized to issue or deny such a permit upon the completion of studies of the species made by it to determine any detrimental effect the species might have on the ecology of the state.

(3) Persons in violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 70-145; s. 308, ch. 71-136; s. 2, ch. 71-294.

372.27 Silver Springs and Rainbow Springs, etc., closed to all fishing.—It is unlawful for any person to take any fish within Marion County, from the waters of Rainbow Springs and Rainbow River (formerly known as Blue Springs and Blue Springs River) within a radius of 1 mile from the head of said spring or from the waters of Silver Springs or Silver Springs Run from the head of said spring to its junction with the Oklawaha River; provided, that the Commission of Game and Fresh Water Fish may

remove or cause to be removed any gar, mud fish or other predatory fish when in its judgment their removal is desirable.

History.—ss. 34, 34-A, ch. 13644, 1929; s. 1, ch. 17002, 1935; CGL 1936 Supp. 1977(34), (34-a); s. 6, ch. 26766, 1951; s. 1, ch. 28059, 1953.

372.31 Disposition of illegal fishing devices.—

(1) In all cases of arrest and conviction for use of illegal nets or traps or fishing devices, as provided in this chapter, such illegal net, trap, or fishing device is declared to be a nuisance and shall be seized and carried before the court having jurisdiction of such offense and said court shall order such illegal trap, net or fishing device forfeited to the Game and Fresh Water Fish Commission immediately after trial and conviction of the person in whose possession they were found. When any illegal net, trap or fishing device is found in the fresh waters of the state, and the owner of same shall not be known to the officer finding the same, such officer shall immediately procure from the county court judge an order forfeiting said illegal net, trap or fishing device to the Game and Fresh Water Fish Commission. The Game and Fresh Water Fish Commission may destroy such illegal net, trap or fishing device, if in its judgment said net, trap or fishing device is not of value in the work of the department.

(2) When any nets, traps, or fishing devices are found being used illegally as provided in this chapter, the same shall be seized and forfeited to the Game and Fresh Water Fish Commission as provided in this chapter.

History.—s. 25, ch. 13644, 1929; CGL 1936 Supp. 1977(25); s. 1, ch. 59-81; s. 103, ch. 73-333.

372.311 Disposition and appraisal of property seized under this chapter.—

(1) Every officer seizing illegally used property pursuant to the provisions of this law shall forthwith make return of the seizure thereof and deliver the said property to the board of county commissioners of the county wherein the said property was seized. The said return to the board of county commissioners shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, said property was being used for and in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When any illegally used property is seized by any officer pursuant to this law and delivered to the board of county commissioners as aforesaid, the board shall forthwith fix the approximate value thereof and make return thereof to the Clerk of the Circuit Court as hereinafter provided.

(3) The return of the board of county commissioners shall contain a schedule of the property seized, describing the same in reasonable detail and giving in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps, or fishing devices; and a statement of the names of all persons, firms and corporations known to be interested in the seized property and shall attach to their said return as exhibit thereto, the return of the seizing officer to the board.

(4) The board of county commissioners shall hold the said seized property pending its disposal by the court as hereinafter provided.

History.—s. 2, ch. 59-81.

372.312 Forfeiture proceedings.—

(1) The return of the board aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction, without regard to value. The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the Legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE ..... JUDICIAL CIRCUIT, IN AND FOR ..... COUNTY, FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter 372, as amended, and is now in the possession of the board of county commissioners of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the circuit court of the ..... Judicial Circuit, in and for ..... County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before ....., 19....., if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said

property should not be forfeited pursuant to said chapter. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at ....., Florida, this ..... 19.....

(COURT SEAL) (Clerk of the above mentioned court)

By (Deputy Clerk)

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days, from the posting or publication thereof, and as to those personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the board's return to have an appraised value of $400 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the board's return to have an approximate value of more than $400, the citation shall be published once a week for 3 consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county, and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—s. 3, ch. 59-81; s. 6, ch. 73-299.

372.313 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the board of county commissioners and posting with said board, to be approved by it, a surety bond, payable to the governor of the state, in twice the amount of the value of the said property as fixed in the board's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the board of county commissioners the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the board and the release of the property to the applicant the cause shall proceed to final judgment in the same manner, as it would have, had no such bond been filed, except that any exception to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—s. 4, ch. 59-81.

372.314 Proceeding when no claim filed.—When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—s. 4, ch. 59-81.

372.315 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting the illegal use of nets, traps or fishing devices, and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner or user of the property has been convicted of a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and the burden of proof shall be upon each claimant to satisfy the court that he was without knowledge of such conviction, providing, however, the prima facie presumption of knowledge of a previous conviction of a violation of this law shall only apply to a subsequent proceeding involving the forfeiture of nets, traps or fishing devices, when owned by such previous offender and upon which a lien is held by the same lienee involved in the first claim proceedings. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—s. 5, ch. 59-81.

372.316 State Attorney to represent state.—Upon the filing of the board's return with the Clerk of the Circuit Court the said clerk shall furnish the State Attorney with a copy thereof and the said State Attorney shall represent the state in the forfeiture proceeding. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the Supreme Court. The state may appeal any judgment denying forfeiture in

whole or in part or that may be otherwise adverse to the state.

History.—s. 6, ch. 59-81; ss. 11, 35, ch. 69-106.

372.317 Judgment of forfeiture.—On final hearing the return of the board to the Clerk of the Circuit Court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimant to show that the property was not so used, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after 2 weeks' public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—s. 7, ch. 59-81.

372.318 Service charges.—Service charges required hereunder shall be the same as provided for sheriffs and clerks under law for similar services in other cases and matters.

History.—s. 8, ch. 59-81; s. 22, ch. 70-134.

372.319 Disposition of proceeds of forfeiture.—All sums received from sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof.

History.—s. 9, ch. 59-81.

372.321 Exercise of police power.—It is deemed by the Legislature that this law (ss. 372.31 to 372.319, both inclusive) is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices and a lawful exercise of the police power of the state for the protection of the public welfare, health, and safety of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.

History.—s. 10, ch. 59-81.

372.561 Issuance of hunting and fishing licenses.—The county tax collector shall issue all hunting and fishing licenses of the county as provided by this chapter.

History.—s. 18, ch. 72-404.

372.57 Fishing, hunting, and trapping licenses.—No persons, except residents more than 65 years of age and children under 15 years of age, shall take or attempt to take game, freshwater fish, or fur-bearing animals within the state without having first obtained a license and paid the license fee hereinafter set out. Said license shall be dated when issued; when issued in the closed season, shall authorize the person named therein to take game, freshwater fish, or fur-bearing animals only during the open season next following; and, when issued during the open season, shall authorize the person named therein to take game, freshwater fish, or fur-bearing animals only during the remainder of such open season. The license issued shall be in the personal possession of the person to whom issued while taking or attempting to take game, freshwater fish, or fur-bearing animals, and his failure to exhibit such license to the Game and Fresh Water Fish Commission or any of its conservation officers, when found taking or attempting to take game, freshwater fish, or fur-bearing animals, shall be considered a violation of this chapter. The license fees for fishing in the fresh waters of the state and for hunting and trapping in the state for residents and nonresidents, which shall not include aliens who are required to obtain a special license hereinafter mentioned, are as follows:

(1) Fishing license for a nonresident of the state to take freshwater fish for noncommercial purposes in the waters of the state at large by any lawful methods prescribed by rules and regulations of the Game and Fresh Water Fish Commission shall be $10 per annum.

(2) Fishing license for a nonresident of the state, for 14 consecutive days only, to take freshwater fish for noncommercial purposes from the waters of the state at large by any lawful method prescribed by rules and regulations of the Game and Fresh Water Fish Commission shall be $7. Fishing license for a nonresident for 5 consecutive days shall be $5.

(3) Fishing license for a resident of the state to take freshwater fish with pole and line, rod and reel, plug, bob, spinner, spoon, fly, troll, trotline, or other artificial bait or lure in the fresh waters of the state shall be $6. A special license may be issued for a 12-month period at a cost of $1 more than the cost of a regular license.

(4)(a) No license shall be required for any resi-

dent of the state when fishing with not more than three poles or lines for noncommercial purposes in the county of his residence, except on legally established fish management areas. This paragraph, as amended by chapter 76-156, Laws of Florida, may be cited as the "Dempsey J. Barron, W. D. Childers, and Joe Kershaw Cane Pole Tax Repeal Act of 1976."

(b) No license shall be required for any person fishing in a man-made fishpond not to exceed 20 acres and located entirely within private property of the pond owner unless fish management services or fish stocking have been furnished for such pond by any public agency after the effective date of this act.

(c) No license shall be required for any person fishing in a man-made fishpond of more than 20 acres but less than 150 acres and located entirely within private property of the pond owner, even though fish-management services or fish stocking have been furnished for the pond if the pond owner shall have paid an annual private fishpond license fee of $3 per surface acre of pond, not to exceed $300 maximum for total acreage.

(d) No license shall be required for military service personnel who are Florida residents while they are home on leave for a period of 30 days or less, provided that such military service personnel shall exhibit a copy of their leave orders upon request of authorities.

(e) No fishing license shall be required for any person who is a resident of the state and who is totally and permanently disabled, as defined in subsection 196.012(10). Each such person, while fishing, shall possess documentation of his condition of total and permanent disability.

(f) No fishing license shall be required for any person who has been accepted as a client by the Department of Health and Rehabilitative Services for retardation services and who is a resident of a Sunland Center, a resident of a residential habilitation center, or a client of a service facility that has contracted with the department to provide services for retarded clients of the department. The superintendent of the center at which the retarded person resides, or the administrator of the service facility of which the retarded person is a client, shall provide such person with a standard certificate as approved by the Department of Health and Rehabilitative Services attesting that the client meets the requirements of this paragraph.

(5) Hunting license for a nonresident, for the state at large, $50.

(6) Hunting license for a nonresident, for 10 consecutive days only, for the state at large, $15.

(7) Hunting license for a resident for the state at large, $11.

(8) Hunting license for a resident for county of legal residence, $4.

(9) No license shall be required of a resident to take game in the county of his residence, on his homestead or the homestead of his spouse or minor child, or minor children, to take game on the homestead of their parents.

(10) License for a nonresident to take fur-bearing animals in the state at large, $100.

(11) License for a nonresident to take fur-bearing animals in one or more counties, $25 for each county in which taken.

(12) License for a resident to take fur-bearing animals in the state at large, $25. Provided, however, that residents or nonresidents taking fur-bearing animals by guns or by dogs only, and not by the use of traps or other devices, and not for commercial purposes, who shall have paid the license fees provided for hunting and taking game, shall not be required to pay the license fees provided for taking fur-bearing animals.

(13) License for a resident to take fur-bearing animals in one or more counties, other than the county of his residence, $10 for each county in which taken.

(14) License for a resident to take fur-bearing animals in the county of his legal residence, $3.

(15) Special hunting license for hunting in private hunting preserves for a resident or nonresident, $5, provided that any person may hunt on a private hunting preserve with any valid resident or nonresident license.

(16)(a) The aforesaid licenses for the state may be issued by any county tax collector in the state; all other licenses must be issued by the county tax collector of the county wherein the license is to be effective or used. The official seal of the county tax collector issuing the license shall be affixed thereto. To cover the cost of issuing the license the county tax collector issuing the same shall collect and retain as his costs, in addition to the license fee above mentioned, the sum of 25 cents for each license costing $3 or less and 50 cents for each license costing more than $3.

(b) Aliens, or persons not citizens of the United States, must obtain special licenses before hunting or fishing in this state as follows:

1. To take fish in the state at large, the fee and license for which shall be the same as that charged nonresidents for fishing licenses. These licenses shall be issued by the county tax collectors.

2. To take wild game or birds in the state at large, the fee for which shall be $50. These licenses shall be issued by the Game and Fresh Water Fish Commission.

(c) Paragraph (b) shall not apply to aliens who are bona fide residents of the state and who hold a valid alien registration receipt card as provided by the United States immigration laws. Such resident aliens may obtain licenses under this section as though they were citizen residents, provided such resident alien meets the residence requirements for citizen residents.

(17) Any person fishing in a fish management area, as defined in s. 372.001(24), shall be required to purchase only a regular fishing license as provided in subsection (3).

(18) The Game and Fresh Water Fish Commission is authorized to reduce the hunting and fishing license fees for nonresidents prescribed in this section for residents of those states which have entered into reciprocal agreements with this state with respect to such fees.

History.—ss. 15, 19-21, ch. 13644, 1929; s. 1, ch. 17015, 1935; s. 1, ch. 17018, 1935; CGL 1936 Supp. 1977(15); s. 1, ch. 19509, 1939; s. 1, ch. 20886, 1941; s. 1, ch. 23087, 1945; s. 1, ch. 26943, 1951; s. 1, ch. 26944, 1951; s. 1, ch. 29672, 1955;

s. 1, ch. 57-185; s. 2, ch. 59-73; s. 1, ch. 61-366; s. 1, ch. 61-392; s. 2, ch. 63-30; s. 1, ch. 65-373; s. 1, ch. 69-40; s. 1, ch. 70-26; s. 1, ch. 71-142; s. 103, ch. 73-333; s. 1, ch. 76-67; ss. 1, 2, ch. 76-156; ss. 1, 2, ch. 77-405; s. 1, ch. 78-6; s. 1, ch. 78-163; ss. 1, 2, ch. 79-107; s. 83, ch. 79-164; s. 143, ch. 79-400.

372.571 Expiration of licenses.—Each license issued under this chapter shall be dated when issued and shall expire on June 30 following; except that each license having a validity of less than 1 year shall expire at the end of the period specified for the license; and except that nothing therein or in such license shall be construed as entitling the holder thereof to take wildlife or fish contrary to the rules and regulations of the Game and Fresh Water Fish Commission. In addition to the above, special 12-month freshwater fishing licenses shall be dated when issued and shall expire 12 months after date of issuance.

History.—s. 1, ch. 23148, 1945; s. 26, ch. 29615, 1955; s. 1, ch. 65-536; s. 2, ch. 78-163.

cf.—s. 372.57 Fishing, hunting and trapping license.

372.5712 Waterfowl stamp required for taking wild ducks or geese.—

(1) Any person, except a resident more than 65 years of age [1]or a child under 15 years of age, taking or attempting to take wild ducks or geese within this state or its coastal waters shall, in addition to the appropriate hunting license for taking game as described in s. 372.57, possess a Florida waterfowl stamp. Said stamp shall not be transferable, shall be signed across the face by the bearer and fixed adhesively to the back of the regular hunting license of the bearer, and shall be carried at all times upon the person while hunting wild ducks or geese.

(2) Such stamp may be obtained for the sum of $3 and shall be valid for the period specified in s. 372.571. The stamp may be issued by any county tax collector in the state. To cover the cost of issuing the stamp, the county tax collector shall collect and retain as his costs, in addition to the stamp fee provided by this subsection, the sum of 25 cents.

(3) The Game and Fresh Water Fish Commission shall determine the form of the stamp and shall administer all revenues generated by the sale of the stamp. Said revenue shall be expended as follows: A maximum of 5 percent of the gross revenues shall be expended for administrative costs; a maximum of 25 percent of the gross revenues shall be expended for waterfowl research approved by the commission; and a maximum of 70 percent of the gross revenues shall be expended for projects approved by the commission, in consultation with the Waterfowl Advisory Committee, for the purpose of protecting and propagating migratory waterfowl and for the development, restoration, maintenance, and preservation of wetlands within the state.

(4) The intent of this section is to expand waterfowl research and management and increase waterfowl populations in the state without detracting from other programs. The commission shall prepare an annual report documenting the use of funds generated under the provisions of this section, to be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before September 1 of each year.

History.—s. 1, ch. 79-285.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

[1]372.5714 Waterfowl Advisory Committee.—

(1) There is created a Waterfowl Advisory Committee consisting of three members, one appointed by the Governor, one appointed by the Speaker of the House of Representatives, and one appointed by the President of the Senate. Members may be representative of appropriate state agencies, private conservation groups, or private citizens and shall possess knowledge and experience in the area of waterfowl management and protection. Members shall be appointed for terms of 2 years and shall be eligible for reappointment.

(2) As soon as possible after appointment of its members, the committee shall meet to organize and elect a chairman to preside over its meetings and perform any other duties directed by the committee. The Game and Fresh Water Fish Commission shall provide such staff support as is necessary to the committee to carry out its duties. Members of the committee shall serve without compensation, but shall be reimbursed for per diem and traveling expenses as provided in s. 112.061 when carrying out the official business of the committee.

(3) It shall be the duty of the committee to advise the commission regarding the administration of revenues generated by the sale of the Florida waterfowl stamp provided for by s. 372.5712. In particular, the committee shall consult with and advise the commission with respect to the establishment and operation of projects for the protection and propagation of migratory waterfowl and the development, restoration, maintenance, and preservation of wetlands within the state, to be financed by such revenues as specified in said section.

History.—ss. 2, 3, ch. 79-285.

[1]**Note.**—Section 3, ch. 79-285, provides that, in accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, this section, as created by ch. 79-285, shall be repealed on October 1, 1985, and the Waterfowl Advisory Committee shall be subject to legislative review as required by s. 11.611(4),(5), and (6), Florida Statutes, 1978 Supplement.

372.573 Permits, land owned, etc., by state; fee.—

(1) The director of the Game and Fresh Water Fish Commission is authorized to issue permits to persons to hunt, fish, camp, or otherwise use for outdoor recreational purposes lands owned, managed, or leased by the Game and Fresh Water Fish Commission or by the state for the use and benefit of the commission. Before any such permit, other than one for hunting and fishing, is issued, the commission shall obtain, in writing the consent of the owner, in the case of privately owned lands, or the owner or primary custodian, in the case of public lands.

(2) The director shall charge a fee for such permit set by the Game and Fresh Water Fish Commission but not to exceed $10, and the same shall be over and above the license fee for hunting required by law. To cover the cost of taking the application and issuing the permit, the county tax collector shall retain 50 cents of each permit fee. The revenue resulting from the increase in the hunting fee and the addition of other fees as provided by this section shall be expended as follows: 60 percent for the purchase of lands for public hunting, fishing, and other outdoor recreation and 40 percent for the lease, management, and protection of lands for public hunting, fishing, and other outdoor recreation. All persons 65

years of age and older shall be exempt from the payment of such fees for such permit, provided such persons shall obtain a permit before hunting in such areas from the tax collector of the county of their residence by attesting to the fact that they are 65 years of age or older. All persons who are residents of the state and who are totally and permanently disabled, as defined in s. 196.012(10), shall be exempt from the payment of permit fees with regard to permits issued for the purpose of fishing on recreational lands. However, before fishing in such areas, such persons shall obtain a permit from the tax collector of the county of their residence by attesting to the fact that they are totally and permanently disabled.

History.—ss. 1, 2, ch. 25463, 1949; s. 1, ch. 59-390; s. 1, ch. 72-337; s. 103, ch. 73-333; s. 2, ch. 76-67; s. 1, ch. 79-372.

372.574 Appointment of subagents for issuance and sale of hunting, fishing and trapping licenses.—

(1) The county tax collector shall be authorized to appoint any person, firm, partnership or corporation as a subagent for the sale and issuance of fishing, hunting and trapping licenses, giving due consideration to its moral character, business ability, financial responsibility and proper facilities for the proper issuance of said licenses, and shall serve at the pleasure of said county tax collector. Neither the employees of the county tax collector, nor their relatives or next of kin by blood, or otherwise, shall be appointed as a subagent.

(2) Subagents shall issue and sell fishing, hunting and trapping licenses upon the posting of an adequate bond payable to the county tax collector in an amount to be fixed and approved by the tax collector under such rules and regulations as may be prescribed by the county tax collector and required by the existing laws or any subsequent enacted legislation.

(3) Subagents shall be authorized to sell and issue fishing, hunting and trapping licenses at such specific locations within the county in which the appointing county tax collector shall exercise jurisdiction as, in the judgment of said county tax collector, will best serve the public interest and convenience in obtaining fishing, hunting and trapping licenses.

(4) It shall be unlawful for any individual, firm, partnership or corporation to act as a subagent for the sale and issuance of fishing, hunting and trapping licenses, or to handle in any manner, fishing, hunting and trapping licenses for a fee or compensation of any kind unless they have been appointed as a subagent by the county tax collector as prescribed in this section.

(5) Any individual, firm, partnership or corporation who shall willfully violate any of the provisions of this law shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Every individual, firm, partnership or corporation acting as a subagent for the sale and issuance of fishing, hunting and trapping licenses under the provisions of this section may charge and receive as its compensation a service charge of 25 cents for the issuance of every fishing, hunting and trapping license. This service charge shall be an additional sum over and above the sum required by law to be collected for the issuance of each license.

(7) Subagents shall be required to report on the first of each month the sale and issuance of fishing, hunting and trapping licenses during the preceding month. Said report to be accompanied with the proper remittance covering the sale of licenses on said report.

(8) Nothing contained herein shall be construed to relieve any county tax collector of any counties of the state of the duty of issuing fishing, hunting and trapping licenses to the public without the payment of any service charge as required by law.

History.—ss. 1-8, ch. 59-494; s. 1, ch. 65-509; s. 310, ch. 71-136; s. 106, ch. 71-355; s. 103, ch. 73-333.

372.576 Archery or muzzle-loading gun permit for hunting; fee.—The director of the Game and Fresh Water Fish Commission of the state is authorized to issue permits to persons to hunt with bow and arrow or muzzle-loading gun during special seasons set by the commission, provided that such persons have a license to hunt as provided by s. 372.57. The cost of such permit shall not exceed $5.

History.—s. 1, ch. 67-200; s. 1, ch. 78-147.

372.58 False statement in application for license.—Any person who shall swear or affirm to any false statement in any application for license provided by this chapter, shall be guilty of violation of this chapter, and upon conviction thereof, shall be subject to the penalty provided in s. 372.71, and any false statement contained in any application for such license shall render the license null and void.

History.—s. 16, ch. 13644, 1929; CGL 1936 Supp. 1977(16).

372.581 Entering false information on licenses.—Whoever knowingly and willfully enters false information on, or allows or causes false information to be entered on or shown upon any license issued under the provisions of this chapter in order to avoid prosecution or to assist another to avoid prosecution, or for any other wrongful purpose shall be punished as provided by this chapter.

History.—s. 1, ch. 65-159.

372.59 License not transferable.—No person shall alter or change in any manner, or loan or transfer to another, any license issued pursuant to the provisions of this chapter, nor shall any other person, other than the person to whom it is issued, use the same.

History.—s. 17, ch. 13644, 1929; CGL 1936 Supp. 1977(17).

372.60 Issuing of duplicate license.—The Game and Fresh Water Fish Commission shall furnish to each county tax collector a form for issuing of duplicate license. Application for such duplicate license shall be made under oath, stating that the licensee has lost or destroyed his original license. Such application shall be made to the county tax collector from whom original license was purchased and a fee of 25 cents shall be collected by county tax collector issuing such duplicate license. This fee shall cover both the taking of application and the issuing of license.

History.—s. 18, ch. 13644, 1929; CGL 1936 Supp. 1977(18); s. 103, ch. 73-333.

372.61 Reports and remittances of county tax collectors.—The license fees and other fees provided to be paid under this chapter shall be remitted by the several county tax collectors by the tenth of each month to the Game and Fresh Water Fish Commission, and each county tax collector shall retain his fee for issuing said licenses. The Game and Fresh Water Fish Commission shall keep an accurate and up-to-date record of all licenses consigned to the various county tax collectors, giving credit to each account upon receipt of the monthly report of licenses sold or voided, and at the proper time close and balance the seasonal accounts. The tax collector's report shall be a schedule setting forth the total number of licenses sold, the total number of licenses voided, and the net amount of the report. Forms for making these reports are to be furnished by the Game and Fresh Water Fish Commission. The various county tax collectors will retain a file of copies of licenses sold to aid in issuing duplicates.

History.—s. 14, ch. 13644, 1929; CGL 1936 Supp. 1977(14); s. 1, ch. 26930, 1951; s. 103, ch. 73-333.

372.62 Guide license and regulations.—No person shall engage in the business of guiding hunters or hunting parties until he has secured a license to do so from the Game and Fresh Water Fish Commission. Application for guide license shall be made to the said commission upon blanks furnished by it. The cost of guide license shall be $10 per open season, which license shall permit the holder to guide or act as guide for hunters or for hunting parties in the state. An applicant for guide license on making application must state his name, age, address, physical description, and qualifications to act as guide. No guide while acting as guide to hunters or hunting parties shall take any game or carry shotgun or rifle. When a guide is found guilty of violating any provisions of the laws of this state relative to game, birds, freshwater fish or fur-bearing animals, his license shall be revoked.

History.—s. 65, ch. 13644, 1929; CGL 1936 Supp. 1977(65).

372.65 Freshwater fish or frog dealer's, etc., license.—

(1) No person shall engage in the business of taking for sale or selling any frogs or freshwater fish of any species or size, or importing any exotic or nonindigenous fish, until such person has obtained a license and paid the fee therefor as set forth herein. The license issued shall be in the possession of the person to whom issued while such person is engaging in the business of taking for sale or selling freshwater fish or frogs and shall be displayed to officers of the Game and Fresh Water Fish Commission upon request. The license fees and activities permitted under particular licenses are as follows:

(a) The fee for a resident commercial fishing license, which permits a resident to take freshwater fish or frogs by any lawful method prescribed by the Game and Fresh Water Fish Commission for the purpose of sale, shall be $8 per annum.

(b) The fee for a fish or frog farm license, which permits a licensee to produce freshwater fish or frogs in a farm or in artificial ponds for sale to wholesale fish or frog dealers for food, bait, or other use, shall be $5 per annum.

(c) The fee for a resident retail fish or frog dealer's license, which permits a resident to sell freshwater fish or frogs to a consumer, shall be $5 per annum.

(d) The fee for a resident wholesale fish or frog dealer's license, which permits a resident to sell freshwater fish or frogs to a retail fish or frog dealer, shall be $50 per annum.

(e) The fee for an exotic fish dealer's license, which permits a licensee to import, export, or sell exotic, indigenous or nonindigenous fish, shall be $50 per annum.

(f) The fee for a nonresident commercial fishing license, which permits a nonresident to take freshwater fish or frogs as provided in paragraph (a), shall be $50 per annum.

(g) The fee for a nonresident retail fish or frog dealer's license, which permits a nonresident to sell freshwater fish or frogs as provided in paragraph (c), shall be $50 per annum.

(h) The fee for a nonresident wholesale fish or frog dealer's license, which permits a nonresident to sell or buy freshwater fish or frogs as provided in paragraph (d), shall be $500 per annum.

(i) There is levied, in addition to any other license fee thereon, an annual gear license fee of $50 upon each person fishing with trawl seines used in the fresh waters of the state.

(j) There is levied, in addition to any other license fee thereon, an annual gear license fee of $100 upon each person fishing with haul seines used in the fresh waters of the state.

(2)(a) A resident or nonresident wholesale fish or frog dealer's license shall also serve in lieu of a resident or nonresident commercial fishing license without payment of additional fees.

(b) An exotic fish dealer's license shall also serve in lieu of a fish or frog farm license.

(3) All licenses as provided in paragraphs (1)(a)-(e) shall be issued by the tax collectors of the several counties of the state, who shall retain a fee of 50 cents per license to cover the costs of issuance. Licenses as provided in paragraphs (1)(f)-(j) shall be issued by the Game and Fresh Water Fish Commission. Reports of sales and moneys collected shall be remitted to the Game and Fresh Water Fish Commission as provided by s. 372.61, and all moneys derived from this source shall be deposited by the Game and Fresh Water Fish Commission in the State Treasury to the credit of the State Game Trust Fund.

(4) All boats engaged in commercial fishing shall have at least one licensed commercial fisherman on board.

(5) It shall be unlawful for any wholesale or retail dealer to buy freshwater fish or frogs from any unlicensed person.

(6) Any person licensed pursuant to this act must have a method of catch preservation which meets the requirements and standards set forth by rule by the Game and Fresh Water Fish Commission.

History.—s. 31, ch. 13644, 1929; CGL 1936 Supp. 1977(31); s. 2, ch. 61-119;

ss. 1, 2, ch. 78-189.

372.651 Haul seine and trawl permits; freshwater lakes in excess of 500 square miles; fees.—

(1) The Game and Fresh Water Fish Commission is authorized to issue permits for each haul seine or trawl used in freshwater lakes in the state having an area in excess of 500 square miles.

(2) The commission may charge an annual fee for the issuance of such permits which shall not exceed:

(a) For a resident trawl permit, $50.

(b) For a resident haul seine permit, $100.

(c) For a nonresident or alien trawl or haul seine permit, $500.

History.—s. 1, ch. 76-182.

372.653 Required tagging of fish; lakes in excess of 500 square miles; tag fee; game fish taken in lakes of 500 square miles or less.—

(1)(a) No game fish taken from, or caught in, a lake in this state the area of which is in excess of 500 square miles shall be sold for consumption in this state unless it is tagged in the manner required by the Game and Fresh Water Fish Commission. Bass or pickerel taken by any method other than hook and line shall be returned immediately to the water. Trawls and haul seines shall not be operated within 1 mile of rooted aquatic vegetation.

(b) In order that such program of tagging be self-sufficient, the Game and Fresh Water Fish Commission is authorized to assess a fee of not more than 5 cents per tag, payable at the time of delivery of the tag.

(2) No freshwater game fish shall be taken from a lake in this state the area of which is 500 square miles or less other than with pole and line; rod and reel; or plug, bob, spinner, spoon, or other artificial bait or lure.

(3) No freshwater game fish taken from a lake in this state the area of which is 500 square miles or less shall be offered for sale or sold.

History.—s. 1, ch. 76-216.

372.66 License required for fur and hide dealers.—

(1) It is unlawful for any person to engage in the business of a dealer or buyer in alligator skins or green or dried furs in the state or purchase such skins within the state until such person has been licensed as herein provided.

(2) Any resident dealer or buyer who solicits business through the mails, or by advertising, or who travels to buy or employs or has other agents or buyers, shall be deemed a resident state dealer and shall be required to pay a license fee of $100 per annum and shall pay an agent's license fee of $5 per annum for each agent or traveling buyer employed by or buying for such licensed state dealer.

(3) Any resident dealer or buyer who does not solicit by mail, advertise, travel to buy or employ or have agents or traveling buyers shall be deemed a resident local dealer and shall be required to pay a license fee of $10 per annum.

(4) A nonresident dealer or buyer shall be required to pay a license fee of $500 per annum and shall pay a license fee of $100 per annum for each agent, resident buyer or traveling buyer employed by or buying for or acting as agent for such nonresident buyer.

(5) All agents' licenses shall be applied for by, and issued to, a resident state dealer or nonresident dealer and shall show name and residence of such agent and shall be in possession of such agent at all times when engaged in buying furs or hides. Application for such licenses shall be made to the Game and Fresh Water Fish Commission on blanks furnished by it.

(6) All dealers and buyers shall forward to the Game and Fresh Water Fish Commission each 2 weeks during open season a report showing number and kind of hides bought and name of trapper from whom bought and his license number, or if trapper is exempt from license under any of the provisions of this chapter, such report shall show the nature of such exemption. No common carrier shall knowingly ship or transport or receive for transportation any hides or furs unless such shipments have marked thereon name of shipper and the number of his fur-animal license or fur dealer's license.

History.—s. 61, ch. 13644, 1929; CGL 1936 Supp. 1977(61).

372.661 Private hunting preserve, license; exception.—Any person who operates a private hunting preserve commercially or otherwise shall be required to pay a license fee of $25 for each such preserve; provided, however, that during the open season established for wild game of any species a private individual may take artificially propagated game of such species up to the bag limit prescribed for the particular species without being required to pay the license fee required by this section; provided further that if any such individual shall charge a fee for taking such game he shall be required to pay the license fee required by this section and to comply with the rules and regulations of the Game and Fresh Water Fish Commission relative to the operation of private hunting preserves.

History.—s. 3, ch. 59-73.

372.662 Unlawful sale, possession or transporting of alligators or alligator skins.—Whenever the sale, possession or transporting of alligators or alligator skins is prohibited by any law of this state, or by the rules, regulations or orders of the Game and Fresh Water Fish Commission adopted pursuant to s. 9, Art. IV of the State Constitution, the sale, possession or transporting of alligators or alligator skins shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-160; s. 7, ch. 69-216; s. 311, ch. 71-136.

372.663 Alligator poachers; punishment; confiscation of equipment.—

(1) Any person who is convicted of poaching alligators or any crocodilia by killing or capturing, or attempting to kill or capture, such animals shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, in addition to such other punishment as may be provided by law. Any equipment, including but not limited to weapons, vehicles, boats, and lines, used by a person in the commission of a violation of any law, rule, regulation, or order relating to alligators or any

crocodilia shall, upon conviction of such person, be confiscated by the Game and Fresh Water Fish Commission and disposed of according to rules and regulations of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(2) The commission shall promptly fix the value of the property and make return to the Clerk of the Circuit Court of the county wherein same was seized. Upon proper showing that any such property is owned by, or titled in the name of, any innocent party, such property shall be promptly returned to such owner.

(3) The provisions of this section shall not vitiate any valid lien, retain title contract, or chattel mortgage on such property in effect as of the time of such seizure.

History.—s. 1, ch. 70-1; s. 1, ch. 70-439; s. 312, ch. 71-136.

372.664 Prima facie evidence of intent to violate laws protecting alligators.—The display or use of a light in a place where alligators might be known to inhabit in a manner capable of disclosing the presence of alligators, together with the possession of firearms, spear guns, gigs, and harpoons customarily used for the taking of alligators, during the period between 1 hour after sunset and 1 hour before sunrise shall be prima facie evidence of an intent to violate the provisions of law regarding the protection of alligators.

History.—s. 1, ch. 70-2.

372.6645 Sale of alligator products unlawful; penalty.—

(1) The Legislature declares that it is in the public interest, and is the legislative intent, to curb the activities of the increasing number of poachers who illegally kill and skin alligators for profit and to protect the alligator from ultimate extinction.

(2) Definitions as used in this section:

(a) "Alligator" means any reptile commonly known or classified as an alligator or crocodile.

(b) "Alligator products" mean and include, but are not limited to, such refined products made from any part of an alligator hide as handbags, wallets, shoes, suitcases, wearing apparel, and any other product which is wholly or partly composed of alligator hide.

(3) Alligator products shall not be sold or offered for sale in this state.

(4) Possession of alligator products in a store warehouse or retail place of business shall be prima facie evidence of violation of subsection (3). Any person convicted of violation of subsection (3) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, or by a fine of up to $2,000, or both.

History.—s. 1, ch. 70-3; s. 313, ch. 71-136; s. 1, ch. 71-299; s. 107, ch. 71-355.

372.665 Word "alligator," etc., not to be used in certain sales.—It is unlawful for any person to use the word "gator" or "alligator" in connection with the sale of any product derived or made from the skins of other crocodilia or in connection with the sale of other crocodilia. Any person violating this section shall, upon conviction, be guilty of a misdemeanor.

History.—s. 1, ch. 69-312.

372.667 Feeding or enticement of alligators or crocodiles unlawful; penalty.—

(1) No person shall intentionally feed, or entice with feed, any wild American alligator (*Alligator mississippiensis*) or American crocodile (*Crocodylus acutus*). However, the provisions of this section shall not apply to:

(a) Those persons feeding alligators or crocodiles maintained in protected captivity for educational, scientific, commercial, or recreational purposes.

(b) Game and Fresh Water Fish Commission personnel, persons licensed or otherwise authorized by the commission, or county or municipal animal control personnel when relocating alligators or crocodiles by baiting or enticement.

(2) For the purposes of this section, the term "maintained in protected captivity" means held in captivity under a permit issued by the Game and Fresh Water Fish Commission pursuant to s. 372.921 or s. 372.922.

(3) Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-101.

372.671 Florida panther; killing prohibited; penalty.—

(1) It is unlawful for any person to kill that member of Florida's "endangered species," as defined in s. 372.072(3), known as the Florida panther.

(2) Any person convicted of unlawfully killing a Florida panther is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-173.

372.68 Freshwater fish dealers to report.—All dealers in freshwater fish shall, at the end of each month, report to the Game and Fresh Water Fish Commission the amount of the different kinds of freshwater fish that they have sold during the past month. Failure to make such report shall cause such dealer to be denied license for ensuing year.

History.—s. 63, ch. 13644, 1929; CGL 1936 Supp. 1977(63).

372.69 Game and Fresh Water Fish Commission to furnish forms.—The blank forms and other printed matter necessary to carry out the provisions of this chapter shall be furnished by the Game and Fresh Water Fish Commission, which is required to make up forms of licenses or other blanks necessary, the same to be uniform throughout the state, and to furnish the same to the county tax collectors of the several counties and authorized agents. The said license shall contain on the back thereof a synopsis of the game trapping or freshwater fishing laws of the state. All licenses shall be consecutively numbered.

History.—s. 22, ch. 13644, 1929; CGL 1936 Supp. 1977(22); s. 103, ch. 73-333.

372.70 Prosecutions.—The prosecuting officers of the several courts of criminal jurisdiction of this state shall investigate and prosecute all violations of the laws relating to game, freshwater fish, nongame birds and fur-bearing animals which may be brought to their attention by the Game and Fresh Water Fish Commission or its conservation officers, or which may otherwise come to their knowledge.

History.—s. 11, ch. 13644, 1929; CGL 1936 Supp. 1977(11).

372.701 Arrest by officers of the Game and Fresh Water Fish Commission; recognizance; cash bond; citation.—

(1) In all cases of arrest by officers of the Game and Fresh Water Fish Commission and the Department of Natural Resources the person arrested shall be delivered forthwith by said officer to the sheriff of the county, or shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested.

(2) All officers of the commission and the department are hereby directed to deliver all bonds accepted and approved by them to the sheriff of the county in which the offense is alleged to have been committed.

(3) Any person so arrested and released on his own recognizance by an officer and who shall fail to appear or respond to the proper citation to appear, shall, in addition to the charge relating to wildlife or freshwater fish, be charged with that offense of failing to respond to such citation and, upon conviction, be punished as for a misdemeanor. A written warning to this effect shall be given at the time of arrest of such person.

History.—s. 1, ch. 65-229; ss. 25, 35, ch. 69-106.

372.71 Fines and penalties; forfeiture of license.—Any person violating the provisions of this chapter, shall, unless otherwise provided, for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted as aforesaid shall forfeit any license or permit that may have been issued to him under the provisions of this chapter and shall forthwith surrender the same to the court. If such violation occurs in the open season no license or permit shall be issued under the provisions of this chapter to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season next following.

History.—s. 70, ch. 13644, 1929; CGL 1936 Supp. 1977(70), 8092(1); s. 314, ch. 71-136.

372.72 Disposition of fines, penalties, and forfeitures.—

(1) All moneys collected from fines, penalties, or forfeitures of bail of persons convicted under this chapter shall be deposited in the fine and forfeiture fund of the county where such convictions are had, except for the disposition of moneys as provided in subsection (2).

(2) All moneys collected from fines, penalties, or forfeitures of bail of persons convicted of violations of rules, regulations, or orders of the Game and Fresh Water Fish Commission concerning endangered or threatened species or of violation of s. 372.662, s. 372.663, s. 372.6645, s. 372.667, or s. 372.671 shall be deposited in the Endangered and Threatened Species Reward Trust Fund.

History.—s. 12, ch. 13644, 1929; CGL 1936 Supp. 1977(12); s. 2, ch. 61-119; s. 1, ch. 70-370; s. 3, ch. 79-217.
cf.—Ch. 939 Costs.

372.73 Confiscation and disposition of illegally taken game, etc.—All game and freshwater fish seized under the authority of this chapter shall, upon conviction of the offender or sooner if the court so orders, be forfeited and given to some hospital or charitable institution and receipt therefor sent to the Commission of Game and Fresh Water Fish. All furs or hides or fur-bearing animals seized under the authority of this chapter shall, upon conviction of the offender, be forfeited and sent to the said commission, which shall sell the same and deposit the proceeds of such sale to the credit of the State Game Trust Fund. If any such hides or furs are seized and the offender is unknown, the court shall order such hides or furs sent to the Game and Fresh Water Fish Commission, which shall sell such hides and furs and deposit the proceeds of such sale to the credit of the State Game Trust Fund.

History.—s. 66, ch. 13644, 1929; CGL 1936 Supp. 1977(66); s. 2, ch. 61-119.

372.74 Cooperative agreements with U. S. Forest Service; penalty.—The Game and Fresh Water Fish Commission is authorized and empowered:

(1) To enter into cooperative agreements with the United States Forest Service for the development of game, bird, fish, reptile or fur-bearing animal management and demonstration projects on and in the Osceola National Forest in Columbia and Baker Counties, and in the Ocala National Forest in Marion, Lake and Putnam Counties and in the Apalachicola National Forest in Liberty County. Provided, however, that no such cooperative agreements shall become effective in any county concerned until confirmed by the board of county commissioners of such county expressed through appropriate resolution.

(2) In cooperation with the United States Forest Service, to make, adopt, promulgate, amend and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the above National Forests or parts thereof; to shorten seasons and reduce bag limits, or shorten or close seasons on any species of game, bird, fish, reptile, or fur-bearing animal within the limits prescribed by the Florida law, in the above enumerated National Forests or parts thereof, when it shall find after investigation that such action is necessary to assure the maintenance of an adequate supply of wildlife.

(3) To fix a charge not to exceed $5, for persons 18 years of age and over, and not to exceed $2 for persons under the age of 18 years, over and above the license fee for hunting now required by law. This additional fee is to apply only on areas covered by

above cooperative agreements. The proceeds from this additional license fee shall be used in the development, propagation of wildlife and protection of the areas covered by the cooperative agreements as the commission and the United States Forest Service may deem proper. Nothing in this section shall be construed as authorizing the commission to change any penalty prescribed by law or to change the amount of general license fees or the general authority conferred by licenses prescribed by law.

(4) In addition to the requirements of chapter 120, notice of the making, adoption, and promulgation of the above rules and regulations shall be given by posting said notices, or copies of the rules and regulations, in the offices of the county judges and in the post offices within the area to be affected and within 10 miles thereof. In addition to the posting of said notices, as aforesaid, copies of said notices or of said rules and regulations shall also be published in newspapers published at the county seats of Baker, Columbia, Marion, Lake, Putnam, and Liberty Counties, or so many thereof as have newspapers, once not more than 35 nor less than 28 days and once not more than 21 nor less than 14 days prior to the opening of the state hunting season in said areas. Any person violating any rules or regulations promulgated by the commission to cover these areas under cooperative agreements between the State Commission of Game and Fresh Water Fish and the United States Forest Service, none of which shall be in conflict with the laws of Florida, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-4, 7, 8, ch. 17939, 1937; CGL 1940 Supp. 1977(117), 8135(9-a); s. 1, ch. 23090, 1945; s. 315, ch. 71-136; s. 16, ch. 78-95.

372.75 Use of explosives and other substances prohibited.—No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes.

History.—s. 29, ch. 13644, 1929; CGL 1936 Supp. 1977(29).

372.76 Search and seizure authorized and limited.—The Game and Fresh Water Fish Commission and its conservation officers shall have authority when they have reasonable and probable cause to believe that the provisions of this chapter have been violated, to board any vessel, boat or vehicle or to enter any fishhouse or warehouse or other building, exclusive of residence, in which game, hides, fur-bearing animals, fish or fish nets are kept and to search for and seize any such game, hides, fur-bearing animals, fish or fish nets had or held therein in violation of law. Provided, however, that no search without warrant shall be made under any of the provisions of this chapter, unless the officer making such search has such information from a reliable source as would lead a prudent and cautious man to believe that some provision of this chapter is being violated.

History.—s. 30, ch. 13644, 1929; CGL 1936 Supp. 1977(30).

372.761 Issuance of warrant for search of private dwelling.—

(1) A search warrant may be issued on application by a commissioned officer of the Game and Fresh Water Fish Commission to search any private dwelling occupied as such when it is being used for the unlawful sale or purchase of wildlife or freshwater fish being unlawfully kept therein. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodging house. No warrant for the search of any private dwelling shall be issued except upon probable cause supported by sworn affidavit of some creditable witness that he has reason to believe that the said conditions exist, which affidavit shall set forth the facts on which such reason for belief is based.

(2) This section shall not be construed as being in conflict with, but is supplemental to, chapter 933.

History.—s. 1, ch. 70-383.

cf.—Ch. 933 Search warrants.

372.77 Assent to provisions of Act of Congress of September 2, 1937.—

(1) The state hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in Wildlife Restoration Projects, and for other purposes," approved September 2, 1937 (Public No. 415, 75th Congress), and the Game and Fresh Water Fish Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said Act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder.

(2) From and after the passage of this section it shall be unlawful to divert any funds accruing to the state from license fees paid by hunters for any purpose other than the administration of the Game and Fresh Water Fish Commission of the state.

History.—ss. 1, 2, ch. 20223, 1941.

372.771 Federal conservation of fish and wildlife; limited jurisdiction.—

(1) Consent of the State of Florida is hereby given, to the United States for acquisition of lands, waters, or lands and waters or interests therein, for the purpose of managing, protecting and propagating fish and wildlife and for other conservation uses in the state, providing prior notice has been given by the federal government to the Board of Trustees of the Internal Improvement Trust Fund, the board of county commissioners of the county where the lands proposed for purchase are located, of such proposed action stating the specific use to be made of and the specific location and description of such lands desired by the federal government for any such conservation use, and that such plans for acquisition and use of said lands be approved by the Board of Trustees of the Internal Improvement Trust Fund, the

board of county commissioners of the county where the lands proposed for purchase are located; provided further that nothing herein contained shall be construed to give the consent of the State of Florida to the acquisition by the United States of lands, waters, or lands and waters, or interests therein, through exercise of the power of eminent domain; provided further that the provisions of this act shall not apply to lands owned by the several counties or by public corporations.

(2) The United States may exercise concurrent jurisdiction over lands so acquired and carry out the intent and purpose of the authority except that the existing laws of Florida relating to the Department of Natural Resources or the Game and Fresh Water Fish Commission shall prevail relating to any area under their supervision.

History.—ss. 1, 2, ch. 61-242; s. 2, ch. 61-119; ss. 25, 27, 35, ch. 69-106.

372.83 Penalties for violation of rules, regulations and orders relating to game and freshwater fish.—Any person violating any rule, regulation or order of the Game and Fresh Water Fish Commission adopted pursuant to s. 9, Art. IV of the State Constitution and this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 21945, 1943; s. 1, ch. 23750, 1947; s. 11, ch. 25035, 1949; s. 9, ch. 26766, 1951; s. 7, ch. 69-216; s. 316, ch. 71-136.

372.84 Forfeiture of licenses, permits, etc.—Any person convicted as aforesaid shall forfeit to the state any license or permit that may have been issued to him under the provisions of this law, or other law of this state relating to game shall forthwith surrender the same to the court. If such violation occurs in the open season, relating to game, no license or permit shall be issued under the provisions of this law to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season on game next following.

History.—s. 7, ch. 21945, 1943.

372.85 Contaminating fresh waters.—

(1) It shall be unlawful for any person or persons, firm or corporation to cause any dyestuff, coal tar, oil, sawdust, poison or deleterious substances to be thrown, run or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish which may inhabit the same at or below the point where any such substances are discharged, or caused to flow or be thrown into such waters; provided, that it shall not be a violation of this section for any person, firm or corporation engaged in any mining industry to cause any water handled or used in any branch of such industry to be discharged on the surface of land where such industry or branch thereof is being carried on under such precautionary measures as shall be approved by the Game and Fresh Water Fish Commission.

(2) Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first offense, and for the second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 22009, 1943; s. 317, ch. 71-136.

cf.—ss. 533.01-533.06 Waste from mines escaping into waters of the state.

372.86 Possessing, exhibiting poisonous or venomous reptile; license required.—No person, firm, or corporation shall keep, possess or exhibit any poisonous or venomous reptile without first having obtained a special permit or license therefor from the Florida Game and Fresh Water Fish Commission as herein provided.

History.—s. 1, ch. 28263, 1953.

372.87 License fee; renewal, revocation.—The Florida Game and Fresh Water Fish Commission is hereby authorized and empowered to issue a license or permit for the keeping, possessing or exhibiting of poisonous or venomous reptiles, upon payment of an annual fee of $5 and upon assurance that all of the provisions of ss. 372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Florida Game and Fresh Water Fish Commission upon violation of any of the provisions of ss. 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the keeping, possessing and exhibiting of any poisonous and venomous reptiles. Such permits or licenses shall be for an annual period to be prescribed by the said commission and shall be renewable from year to year upon the payment of said $5 fee and shall be subject to the same conditions, limitations and restrictions as herein set forth.

History.—s. 2, ch. 28263, 1953.

372.88 Bond required, amount.—No person, party, firm or corporation shall exhibit to the public either with or without charge, or admission fee any poisonous or venomous reptile without having first posted a good and sufficient bond in writing in the penal sum of $1,000 payable to the governor of the state, and his successors in office, conditioned that such exhibitor will indemnify and save harmless all persons from injury or damage from such poisonous or venomous reptiles so exhibited and shall fully comply with all laws of the state and all rules and regulations of the Florida Game and Fresh Water Fish Commission governing the keeping, possessing or exhibiting of poisonous or venomous reptiles; provided, however, that the aggregate liability of the surety for all such injuries or damages shall, in no event, exceed the penal sum of said bond. The surety for said bond must be a surety company authorized to do business under the laws of the state or in lieu of such a surety, cash in the sum of $1,000 may be posted with the said commission to insure compliance with the conditions of said bond.

History.—s. 3, ch. 28263, 1953.

372.89 Safe housing required.—All persons, firms, or corporations licensed under this law to keep, possess or exhibit poisonous or venomous reptiles shall provide safe, secure and proper housing for said reptiles in cases, cages, pits or enclosures. It shall be unlawful for any person, firm or corpora-

tion, whether licensed hereunder or not, to keep, possess or exhibit any poisonous or venomous reptiles in any manner not approved as safe, secure and proper by the Florida Game and Fresh Water Fish Commission.

History.—s. 4, ch. 28263, 1953; s. 1, ch. 57-415.

372.90 Transportation.—Poisonous or venomous reptiles may be transported only in the following fashion: The reptile, or reptiles shall be placed in a stout closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which holes shall be screened. Boxes containing poisonous or venomous snakes or other reptiles shall be prominently labeled "Danger —Poisonous Snakes" or "Danger—Poisonous Reptiles."

History.—s. 5, ch. 28263, 1953; s. 1, ch. 57-415.

372.901 Inspection.—Poisonous or venomous reptiles, held in captivity, shall be subject to inspection by an inspecting officer from the Florida Game and Fresh Water Fish Commission. The inspecting officer shall determine whether the said reptiles are securely, properly and safely penned. In the event that the reptiles are not safely penned, the inspecting officer shall report the situation in writing to the person or firm owning the said reptiles. Failure of the owner or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the license or permit of said owner or exhibitor.

History.—s. 2, ch. 57-415.

372.91 Opening cages, etc., housing poisonous or venomous reptiles.—No person except the licensee or his authorized employee shall open any cage, pit or other container which contains poisonous or venomous reptiles.

History.—s. 7, ch. 28263, 1953.

372.911 Penalty.—Any person violating any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Game and Fresh Water Fish Commission is authorized to offer rewards of up to $500 to any person furnishing information leading to the arrest and conviction of any person who has inflicted or attempted to inflict bodily injury upon any wildlife officer engaged in the enforcement of the provisions of this chapter or the rules and regulations of the Game and Fresh Water Fish Commission.

History.—s. 2, ch. 57-415; s. 1, ch. 59-352; s. 318, ch. 71-136.

372.912 Organized poisonous reptile hunts.—

(1) All persons, firms, and corporations sponsoring and conducting any organized poisonous reptile hunt for whatever purpose shall comply with the provisions of ss. 372.86-372.91.

(2) All persons participating in any organized poisonous reptile hunt in the state which is sponsored and conducted by a nonprofit organization registered with the Department of State under the provisions of chapter 617 shall be exempt from the licensing provisions contained in ss. 372.86, 372.87, and 372.88, only for the duration of said organized hunt.

(3) All organized poisonous reptile hunts in the state shall be registered with the Game and Fresh Water Fish Commission and be subject to reasonable rules and regulations promulgated by said commission.

History.—s. 1, ch. 74-144.

372.92 Rules and regulations.—The Florida Game and Fresh Water Fish Commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of poisonous and venomous reptiles, either in connection of construction of such cages or otherwise to carry out the intent of ss. 372.86-372.91.

History.—s. 6, ch. 28263, 1953.

372.921 Exhibition of wildlife.—

(1) In order to provide humane treatment and sanitary surroundings for wild animals kept in captivity no person, firm, corporation or association shall have or be in possession of, in captivity for the purpose of public display with or without charge or for public sale any wildlife, specifically birds, mammals and reptiles, whether indigenous to Florida or not, without having first secured a permit from the Game and Fresh Water Fish Commission authorizing such person, firm or corporation to have in its or their possession in captivity the species and number of wildlife specified within such permit; provided that this section shall not apply to any wildlife not protected by law and the regulations of the Game and Fresh Water Fish Commission.

[2](2) There is created a Wildlife Exhibitors Criteria Committee which shall consist of the director of the Game and Fresh Water Fish Commission, the [1]director of the Division of Health of the Department of Health and Rehabilitative Services, the president of the Florida Attraction Association or representatives designated by them, and a recognized zookeeper employed in the State of Florida. This committee shall develop and approve standards for the care and treatment of captive wildlife and shall review all cases of violation of the provisions of this section which might lead to the confiscation of said wildlife.

(3) The fees to be paid for the issuance of permits required by subsection (1) of this section shall be as follows:

(a) For not more than 10 individual specimens in the aggregate of all species, the sum of $5 per annum.

(b) For over 10 individual specimens in the aggregate of all species, the sum of $25 per annum.

(c) Fees prescribed by this section shall be submitted to the Game and Fresh Water Fish Commission with application for permit required by subsection (1) and deposited in the State Game Fund.

(4) Applicants for permits shall be required to include in their application a statement showing the place, number and species of wildlife to be held in captivity by them, and shall be required upon request of the Game and Fresh Water Fish Commission to show when, where and in what manner they came into possession of any wildlife, acquired subsequent to the effective date of this act. The source of acquisition of such wildlife shall not be divulged by

the commission except in connection with a violation of this section or a regulation of the commission in which information as to source of wildlife is required as evidence in the prosecution of such violation.

(5) Permits issued pursuant to this section and places where wildlife is kept or held in captivity shall be subject to inspection by officers of the Game and Fresh Water Fish Commission at all times. The commission shall have the power to release or confiscate any specimens of any wildlife, specifically birds, mammals, or reptiles, whether indigenous to the state or not, when it is found that conditions under which they are being confined are unsanitary, or unsafe to the public in any manner, or that the species of wildlife are being maltreated, mistreated, or neglected or kept in any manner contrary to the provisions of chapter 828, said permit to the contrary notwithstanding. Before any said wildlife is confiscated or released under the authority of this section, the owner thereof shall have been advised in writing of the existence of such unsatisfactory conditions; shall have been given 30 days in which to correct said conditions; shall have failed to correct said conditions; shall have had an opportunity for a proceeding pursuant to chapter 120; and the commission after approval by said Wildlife Exhibitors Criteria Committee shall have ordered such confiscation or release after careful consideration of all evidence in the particular case in question. Disapproval by said Wildlife Exhibitors Criteria Committee of any recommendation of confiscation or release, or approval by said committee of any recommendation of no confiscation or release, shall constitute final agency action; otherwise the final order of the commission shall constitute final agency action.

(6) Any animal on exhibit of a type capable of contracting or transmitting rabies shall be immunized against rabies.

(7) The provisions of this section relative to licensing shall not apply to any municipal, county, state or other publicly owned wildlife exhibit. The provisions of this section shall not apply to any traveling zoo, circus or exhibit licensed as provided by chapter 205.

(8) A violation of this section shall be punishable as provided by s. 372.71.

History.—s. 1, ch. 67-290; ss. 19, 35, ch. 69-106; s. 16, ch. 78-95; s. 4, ch. 78-323; s. 84, ch. 79-164.

[1]**Note.**—Division of Health abolished by s. 3, ch. 75-48.

[2]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

372.922 Personal possession of wildlife.—

(1) It is unlawful for any person or persons to possess any wildlife as defined in this act, whether indigenous to Florida or not, until he has obtained a permit as provided by this section from the Game and Fresh Water Fish Commission.

(2) The classifications of types of wildlife and fees to be paid for the issuance of permits shall be as follows:

(a) *Class I*—Wildlife which, because of its nature, habits, or status, shall not be possessed as a personal pet.

(b) *Class II*—Wildlife considered to present a real or potential threat to human safety, the sum of $100 per annum.

(3) The commission shall promulgate regulations defining Class I and II types of wildlife. The commission shall also establish regulations and requirements necessary to insure that permits are granted only to persons qualified to possess and care properly for wildlife and that permitted wildlife possessed as personal pets will be maintained in sanitary surroundings and appropriate neighborhoods.

(4) Any person, firm, corporation, or association exhibiting or selling wildlife and being duly permitted as provided by s. 372.921 shall be exempt from the requirement to obtain a permit under the provisions of this section.

(5) Persons in violation of this section shall be punishable as provided in s. 372.71.

History.—s. 1, ch. 74-309.

372.925 Florida Aquatic Weed Control Act.—

(1) This act shall be known as the Florida Aquatic Weed Control Act.

(2) The Department of Natural Resources is vested with the authority to direct the control, eradication, and regulation of noxious aquatic weeds and the research and planning related to said activities, as provided by law, so as to protect human health, safety, and recreation and, to the greatest degree practicable, prevent injury to plant and animal life and property.

(3) It shall be the duty of the department to guide and coordinate the activities of all public bodies, authorities, agencies, and special districts charged with the control or eradication of aquatic weeds and plants. It may delegate all or part of such functions to the Division of Game and Fresh Water Fish.

(4) The department shall also promote, develop, and support research activities directed toward the more effective and efficient control of aquatic plants. In the furtherance of this purpose, the division is authorized to:

(a) Accept donations and grants of funds and services from both public and private sources;

(b) Contract or enter into agreements with public or private agencies or corporations for research and development of aquatic plant control methods or for the performance of aquatic plant control activities;

(c) Construct, acquire, operate, and maintain facilities and equipment; and

(d) Enter upon, or authorize the entry upon, private property for purposes of making surveys and examinations and to engage in aquatic plant control activities, and such entry shall not be deemed a trespass.

(5) The Department of Natural Resources may disburse funds to any special district or other local authority charged with the responsibility of controlling or eradicating aquatic plants, upon:

(a) Receipt of satisfactory proof that such district or authority has sufficient funds on hand to match the state funds herein referred to on an equal basis;

(b) Approval by the department of the control techniques to be used by the district or authority; and

(c) Review and approval of the program of the district or authority by the department to be in conformance with the state control plan.

History.—ss. 1, 2, ch. 70-203.

372.932 Nonindigenous aquatic plant control.—

(1) This section shall be known as the "Florida Nonindigenous Aquatic Plant Control Act."

(2) For the purpose of this section, the following words and phrases shall have the following meanings:

(a) "Department" means the Department of Natural Resources.

(b) "Aquatic plant" is any plant growing in, or closely associated with, the aquatic environment and includes "floating," "emersed," "submersed" and "ditch bank" species.

(c) "Nonindigenous aquatic plant" is any aquatic plant that is nonnative to the State of Florida and has certain characteristics, such as massive productivity, choking density, or an obstructive nature, which render it detrimental, obnoxious, or unwanted in a particular location.

(d) A "maintenance program" is a method for the control of nonindigenous aquatic plants in which control techniques are utilized in a coordinated manner on a continuous basis in order to maintain the plant population at the lowest feasible level as determined by the department.

(e) An "eradication program" is a method for the control of nonindigenous aquatic plants in which control techniques are utilized in a coordinated manner in an attempt to kill all the aquatic plants on a permanent basis in a given geographical area.

(f) A "complaint spray program" is a method for the control of nonindigenous aquatic plants in which weeds are allowed to grow unhindered to a given level of undesirability, at which point eradication techniques are applied in an effort to restore the area in question to a relatively low level of infestation.

(g) "Waters" means rivers, streams, lakes, navigable waters and associated tributaries, canals, meandered lakes, enclosed water systems, and any other bodies of water.

(h) "Intercounty waters" means any waters which lie in more than one county or form any part of the boundary between two or more counties, as determined by the department.

(i) "Intracounty waters" means any waters which lie wholly within the boundaries of one county as determined by the department.

(j) "Districts" means the six water management districts created by law and named, respectively, the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, the Central and Southern Florida Flood Control District, and the Ridge and Lower Gulf Coast Water Management District; and on July 1, 1975, shall mean the five water management districts created by chapter 73-190, Laws of Florida, and named, respectively, the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District.

(3) The Legislature recognizes that the uncontrolled growth of nonindigenous aquatic plants in the waters of Florida poses a variety of environmental, health, safety, and economic problems. The Legislature acknowledges the responsibility of the state to cope with the uncontrolled and seemingly never ending growth of nonindigenous aquatic plants in the waters throughout Florida. It is, therefore, the intent of the Legislature that the state policy for the control of nonindigenous aquatic plants in waters of state responsibility are to be carried out under the general supervision and control of the Department of Natural Resources, and that the state itself shall be responsible for the control of said plants in all intercounty waters but that control of said plants in intracounty waters be the designated responsibility of the appropriate unit of local or county government, special district, authority, or other public body. It is the intent of the Legislature that the control of nonindigenous aquatic plants be carried out primarily by means of maintenance programs, rather than eradication or complaint spray programs, for the purpose of achieving more effective control at a lower long-range cost. It is also the intent of the Legislature that the department shall guide, review, approve, and coordinate all nonindigenous aquatic plant control programs within each of the water management districts as defined in subsection (2)(j). It is the intent of the Legislature to account for the costs of nonindigenous aquatic plant maintenance programs by watershed for comparison management purposes.

(4) The Department of Natural Resources is vested with the authority to supervise and direct all maintenance programs of control of nonindigenous aquatic plants, as provided by law, so as to protect human health, safety, and recreation and, to the greatest degree practicable, prevent injury to plant, fish, and animal life and property.

(5) Where state funds are involved, or where waters of state responsibility are involved, it shall be the duty of the department to guide, review, approve, and coordinate the activities of all public bodies, authorities, state agencies, units of local or county government, commissions, districts, and special districts engaged in operations to maintain, control, or eradicate nonindigenous aquatic plants. It may delegate all or part of such functions to any appropriate state agency, special district, unit of local or county government, commission, authority, or other public body. However, special attention shall be given to the keeping of accounting and cost data in order to prepare the annual fiscal report as required in subsection (7).

(6) The department may disburse funds to any district, special district, or other local authority for the purpose of operating a maintenance program for controlling nonindigenous aquatic plants and other noxious aquatic plants in the waters of state responsibility upon:

(a) Receipt of satisfactory proof that such district or authority has sufficient funds on hand to match the state funds herein referred to on an equal basis;

(b) Approval by the department of the maintenance control techniques to be used by the district or authority; and

(c) Review and approval of the program of the district or authority by the department to be in con-

formance with the state maintenance control plan.

(7) The department shall submit a fiscal year report on the status of the nonindigenous aquatic plant maintenance program to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet by January 1 of the following year. This report shall include a statement of the degree of maintenance control achieved by individual nonindigenous aquatic plant species in the intercounty waters of each of the water management districts for the preceding calendar year, together with an analysis of the costs of achieving this degree of control. This cost accounting shall include the expenditures by all governmental agencies in the waters of state responsibility. If the level of maintenance control achieved falls short of that which is deemed adequate by the department, then the report shall include an estimate of the additional funding that would have been required to achieve this level of maintenance control. All measures of maintenance program achievement and the related cost shall be presented by water management districts so that comparisons may be made among the water management districts, as well as with the state as a whole.

(8) The department shall have the authority to cooperate with the United States and to enter into such cooperative agreements or commitments as the department may determine necessary to carry out the maintenance, control, or eradication of water hyacinths, alligator weed, and other noxious aquatic plant growths from the waters of the state and to enter into contracts with the United States obligating the state to indemnify and save harmless the said United States from any and all claims and liability arising out of the initiation and prosecution of any project undertaken under this section. However, any claim or claims required to be paid under this section shall be paid from money appropriated to the nonindigenous aquatic plant control program.

(9) The department may delegate various nonindigenous aquatic plant control and maintenance functions to the Game and Fresh Water Fish Commission. The commission shall, in accepting commitments to engage in nonindigenous aquatic plant control and maintenance activities, be subject to the rules and regulations of the department. In addition, the commission shall render technical and other assistance to the department in order to carry out most effectively the purposes of s. 372.925. However, nothing herein shall diminish or impair the regulatory authority of the commission with respect to the powers granted to it by s. 9, Art. IV of the State Constitution.

(10) The department is hereby directed to use biological agents for the control of nonindigenous aquatic plants.

History.—ss. 1, 2, ch. 74-65.

372.97 Jim Woodruff Dam; reciprocity agreements.—The Game and Fresh Water Fish Commission of the state is hereby authorized to enter into an agreement of the reciprocity with the game and fish commissioners or the appropriate officials or departments of the State of Georgia and the State of Alabama relative to the taking of game and freshwater fish from the waters of the lake created by the Jim Woodruff Dam by permitting reciprocal license privileges.

History.—s. 1, ch. 57-193.

372.971 St. Mary's River; reciprocity agreements.—The Game and Fresh Water Fish Commission of the state is hereby authorized to enter into an agreement of reciprocity with the game and fish commissioner or the appropriate officials or departments of the State of Georgia relative to the taking of game and freshwater fish from the waters of the St. Mary's River by permitting reciprocal agreement license privileges.

History.—s. 1, ch. 61-523.

372.98 Possession of nutria, license, inspection, penalty for violation.—

(1) No person shall release, permit to be released, or be responsible for the release of, within the state, any animal of the species *myocastor coypu* and known commonly in Florida and referred to herein as nutria.

(2) No person shall have in his possession for sale or otherwise any nutria until such person has obtained a license as provided herein. The fee for such license shall be $25 per year. Application for such license shall be made with the Game and Fresh Water Fish Commission on forms providing therefor.

(3) All persons licensed under this law to keep, possess or exhibit nutria shall provide safe, secure and proper housing for said nutria which will adequately safeguard against the escape of any nutria. Requirements for the construction of such pens or housing shall be as prescribed by the Game and Fresh Water Fish Commission.

(4) All premises upon which nutria are kept shall be subject to inspection by authorized representatives of the Game and Fresh Water Fish Commission. Such officers shall determine whether the said nutria are securely, properly and safely housed. In the event the said nutria are not securely, properly and safely housed, the inspecting officer shall so advise in writing the person owning said nutria. Failure of the owner to provide within 30 days after such written notice secure, proper, and safe housing as prescribed by the Game and Fresh Water Fish Commission shall be grounds for revocation of the license herein provided and confiscation and disposal of the said nutria as a public nuisance.

(5) Any person violating any provision of this section or any rule and regulation of the Game and Fresh Water Fish Commission pursuant hereto shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-5, ch. 59-398; s. 319, ch. 71-136.

372.981 Regulation of importation of caiman.—The Game and Fresh Water Fish Commission shall promulgate regulations to control the importation of caiman.

History.—s. 2, ch. 71-299.

372.99 Illegal taking and possession of deer and wild turkey; evidence; penalty.—

(1) Whoever takes or kills any deer or wild turkey, or possesses a freshly killed deer or wild turkey, during the closed season prescribed by law or by the

rules and regulations of the Game and Fresh Water Fish Commission, or whoever takes or attempts to take any deer or wild turkey by the use of gun and light in or out of closed season, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall forfeit any license or permit issued to him under the provisions of this chapter. No license shall be issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(2) The display or use of a light in a place where deer might be found, and in a manner capable of disclosing the presence of deer, together with the possession of firearms or other weapons customarily used for the taking of deer, between 1 hour after sunset and 1 hour before sunrise, shall be prima facie evidence of an intent to violate the provisions of subsection (1). This subsection does not apply to an owner or his employee when patrolling or inspecting the land of the owner, provided the employee has satisfactory proof of employment on his person.

(3) Whoever takes or kills any doe deer; fawn or baby deer; or deer, whether male or female, which does not have one or more antlers at least 5 inches in length, except as provided by law or the rules of the Game and Fresh Water Fish Commission, during the open season prescribed by the rules of the commission, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and may be required to forfeit any license or permit issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(4) Any person who cultivates agricultural crops may apply to the Game and Fresh Water Fish Commission for a permit to take or kill deer on land which that person is currently cultivating. When said person can show, to the satisfaction of the Game and Fresh Water Fish Commission, that such taking or killing of deer is justified because of damage to his crops caused by deer, the Game and Fresh Water Fish Commission may issue a limited permit to the applicant to take or kill deer without being in violation of subsection (1) or subsection (3).

(5) Whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-340; s. 320, ch. 71-136; s. 1, ch. 77-1; ss. 1, 2, ch. 77-311; s. 2, ch. 78-173; s. 144, ch. 79-400.

372.9901 Seizure of illegal devices; disposition; appraisal; forfeiture.—

(1) Any vehicle, vessel, animal, gun, light, or other hunting device used in the commission of an offense prohibited by s. 372.99, shall be seized by the arresting officer, who shall promptly make return of the seizure and deliver the property to the Director of the Game and Fresh Water Fish Commission. The return shall describe the property seized and recite in detail the facts and circumstances under which it was seized, together with the reason that the property was subject to seizure. The return shall also contain the names of all persons known to the officer to be interested in the property.

(2) The director of the commission, upon receipt of the property, shall promptly fix its value and make return thereof to the Clerk of the Circuit Court of the county wherein the article was seized; after which on proper showing of ownership of the property by someone other than the person arrested the property shall be returned to the said owner.

(3) Upon conviction of the violator, the property, if owned by the person convicted, shall be forfeited to the state under the procedure set forth in ss. 372.312 through 372.318, where not inconsistent with this section. All amounts received from the sale or other disposition of the property shall be paid into the State Game Trust Fund. If the property is not sold or converted, it shall be delivered to the director of the Game and Fresh Water Fish Commission.

History.—s. 1, ch. 65-340.
Note.—Former s. 372.0100.

372.9902 Inapplicability of ss. 372.99 and 372.9901.—The provisions of ss. 372.99 and 372.9901 relating to seizure and forfeiture of vehicles, vessels and animals shall not apply when such vehicles, vessels or animals are owned by, or titled in the name of, innocent parties and provided further that such provisions shall not vitiate any valid lien, retain title contract or chattel mortgage on such vehicles, vessels or animals if such lien, retain title contract or chattel mortgage is properly of public record at the time of the seizure.

History.—s. 2, ch. 65-340; s. 104, ch. 73-333.
Note.—Former s. 372.0101.

372.9903 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.—

(1) Whoever possesses, moves, or transports any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities in violation of law or the rules of the Game and Fresh Water Fish Commission shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For the purposes of this section "commercial quantities" shall be deemed to be a quantity of freshwater game fish of 150 or more pounds, and the possession, movement, or transportation of freshwater game fish in excess of such weight shall constitute prima facie evidence of possession or transportation for commercial purposes.

History.—s. 1, ch. 70-380; s. 321, ch. 71-136.

372.9904 Seizure of illegal devices; disposition; appraisal; forfeiture.—

(1) Any vehicle, vessel, or other transportation device used in the commission of the offense prohibited by s. 372.9903, except a vehicle, vessel, or other transportation device duly registered as a common carrier and operated in lawful transaction of business as such carrier, shall be seized by the arresting officer, who shall promptly make return of the seizure and deliver the property to the director of the Game and Fresh Water Fish Commission. The re-

turn shall describe the property seized and recite in detail the facts and circumstances under which it was seized, together with the reason that the property was subject to seizure. The return shall also contain the names of all persons known to the officer to be interested in the property.

(2) The commission, upon receipt of the property, shall promptly fix its value and make return thereof to the clerk of the circuit court of the county wherein the article was seized; after which, on proper showing of ownership of the property by someone other than the person arrested, the property shall be returned by the court to the said owner.

(3) Upon conviction of the violator, the property, if owned by the person convicted, shall be forfeited to the state under the procedure set forth in ss. 372.312-372.318, when not inconsistent with this section. All amounts received from the sale or other disposition of the property shall be paid into the state game trust fund. If the property is not sold or converted, it shall be delivered to the director of the Game and Fresh Water Fish Commission.

History.—s. 2, ch. 70-380.

372.9905 Applicability of ss. 372.9903 and 372.9904.—The provisions of ss. 372.9903 and 372.9904 relating to seizure and forfeiture of vehicles, vessels, or other transportation devices shall not apply when such vehicles, vessels, or other transportation devices are owned by, or titled in the name of, innocent parties. The provisions of said sections shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, or other transportation devices if such lien, retain title contract, or chattel mortgage is properly of public record at the time of the seizure.

History.—s. 3, ch. 70-380; s. 145, ch. 79-400.

CHAPTER 373

WATER RESOURCES

PART I STATE WATER RESOURCE PLAN (ss. 373.012-373.197)

PART II PERMITTING OF CONSUMPTIVE USES OF WATER (ss. 373.203-373.249)

PART III REGULATION OF WELLS (ss. 373.303-373.342)

PART IV MANAGEMENT AND STORAGE OF SURFACE WATERS (ss. 373.403-373.443)

PART V FINANCE AND TAXATION (ss. 373.495-373.589)

PART VI MISCELLANEOUS PROVISIONS (ss. 373.603-373.617)

PART I

STATE WATER RESOURCE PLAN

tion project; measures authorized.

373.012 Topographic mapping.—

(1) In order to accelerate topographic mapping in this state by the United States Geological Survey, the Department of Transportation is hereby authorized and directed to set aside, to pledge, and to make available annually out of its State Transportation Trust Fund the sum of $30,000; and the Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and directed to set aside, to pledge and to make available annually out of the Land Acquisition Trust Fund the sum of $10,000; and the South Florida Water Management District out of its funds to be derived out of the proceeds of special assessments of its flood control taxes, is authorized and directed to set aside, to pledge and to make available annually such sum as may be required to meet the needs for topographic mapping of areas affecting said district. Such sums shall be delivered to the Treasurer of the United States or to other proper officer, to be applied by the Department of the Interior, U. S. Geological Survey, as to said Department of Transportation and to said Board of Trustees of the Internal Improvement Trust Fund, toward the payment of not exceeding one-half the cost of standard topographic mapping in this state conducted by the United States Geological Survey and as to said flood control district to be applied toward the payment of such proportion or part of such cost as said district may determine. Provided, however, that said sums authorized in this section for the Department of Transportation and for the Board of Trustees of the Internal Improvement Trust Fund shall not prevent either of said agencies from providing additional amounts for topographic mapping of areas which either agency may consider of priority status in the interest of said agencies.

(2) To further accelerate the rate at which topographic mapping may be carried on in Florida, any state agency having funds available for the purpose, any county or drainage or reclamation or flood control district organized under the laws of this state, any person, firm or corporation, is authorized to contribute to the cost of such mapping by depositing with the Department of Transportation such amounts as may be determined to be applied in like manner toward topographic mapping in this state as set forth in subsection (1).

(3) The Department of Transportation, the Board of Trustees of the Internal Improvement Trust Fund of this state, and the South Florida Water Management District are hereby authorized to make such arrangements or enter into such agreements with the United States as may be necessary to carry out the purposes of this section.

(4) The Board of Trustees of the Internal Improvement Trust Fund, as and when copies of topographic maps are made available to it, shall file such maps in the same manner as other maps and plats of land surveys by the United States, and the maps shall be available for examination by any interested person.

History.—ss. 1-4, ch. 57-775; s. 2, ch. 61-119; s. 1, ch. 65-475; ss. 23, 27, 35, ch. 69-106; ss. 2, 3, ch. 73-57; s. 35, ch. 79-65.

373.013 Short title.—This chapter shall be known as the "Florida Water Resources Act of 1972."

History.—s. 1, part I, ch. 72-299.

373.016 Declaration of policy.—

(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To prevent damage from floods, soil erosion, and excessive drainage;

(e) To preserve natural resources, fish and wildlife;

(f) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(g) Otherwise to promote the health, safety, and general welfare of the people of this state.

(3) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Regulation or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

History.—s. 2, part I, ch. 72-299; s. 36, ch. 79-65.

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

(1) "Department" means the Department of Environmental Regulation or its successor agency or agencies.

(2) "Water management district" means any flood control, resource management, or water management district operating under the authority of this chapter.

(3) "Governing board" means the governing board of a water management district.

(4) "Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

(5) "Person" means any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business trust, cor-

poration, company, the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof. The enumeration herein is not intended to be exclusive or exhaustive.

(6) "Domestic use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

(7) "Nonregulated use" means any use of water which is exempted from regulation by the provisions of this chapter.

(8) "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

(9) "Ground water" means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(10) "Surface water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(11) "Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel shall have been dredged or improved does not prevent the watercourse from being a stream.

(12) "Other watercourse" means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.

(13) "Coastal waters" means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(14) "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

History.—s. 3, part I, ch. 72-299; s. 37, ch. 79-65.

373.023 Scope and application.—

(1) All waters in the state are subject to regulation under the provisions of this chapter unless specifically exempted by general or special law.

(2) No state or local government agency may enforce, except with respect to water quality, any special act, rule, regulation, or order affecting the waters in the state controlled under the provisions of this act, whether enacted or promulgated before or after the effective date of this act, until such special act, rule, regulation, or order has been filed with the department. However, any agency empowered to issue emergency orders affecting such waters may enforce such emergency orders prior to filing such orders with the department. Any rule or regulation in effect on the effective date of this act which is not filed with the department within 180 days after the effective date of this act shall be deemed repealed if the notice hereinafter called for shall have been received by the state or local agency issuing such rule or regulation. The department is directed to notify by certified or registered mail every state or local government agency known to be authorized to enforce any special act, rule, regulation or order affecting the waters of the state regarding the provisions of this subsection. The department is directed to review periodically such special acts, rules, regulations, and orders and to recommend to the appropriate agencies or the legislature the amendment, consolidation, or revocation of inconsistencies or duplications therein.

(3) Any state or local governmental agency or other person having the power of eminent domain or condemnation under the laws of this state must notify the department or the governing board of a water management district prior to exercising that power.

History.—s. 4, part I, ch. 72-299; s. 1, ch. 73-190.

373.026 General powers and duties of the department.—The Department of Environmental Regulation, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, the department may enter into interagency agreements with any other state agency conducting programs related to or materially affecting the water resources of the state. All such interagency agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department is authorized:

(1) To conduct, independently or in cooperation with other agencies, topographic surveys, research, and investigations into all aspects of water use and water quality.

(2) To collect, compile, and analyze, for its use and guidance in administering the water resource laws of this state, scientific and factual data from the United States Geological Survey or any state agency. State agencies are directed to cooperate with the department or its agents in making available to it for this purpose such scientific and factual data as they may have.

(3) To cooperate with other state agencies, water management districts, and regional, county, or other local governmental organizations or agencies created for the purpose of utilizing and conserving the waters in this state; to assist such organizations and agencies in coordinating the use of their facilities; and participate in an exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose the department may maintain an advisory staff of experts.

(4) To prepare and provide for dissemination to the public of current and useful information relating to the water resources of the state.

(5) To identify by continuing study those areas of the state where saltwater intrusion is a threat to freshwater resources and report its findings to the water management districts, boards of county commissioners, and public concerned.

(6) To conduct, either independently or in cooperation with any person or governmental agency, a program of study, research, and experimentation and evaluation in the field of weather modification.

(7) To exercise general supervisory authority over all water management districts. The depart-

ment may exercise any power herein authorized to be exercised by a water management district. [1]The department shall review, and may rescind or modify, any policy, rule, regulation, or order of a water management district, except those policies, rules, or regulations which involve only the internal management of the district, to insure compliance with the provisions and purposes of this chapter. Such review may be initiated at any time either by the department or by an interested person aggrieved by such policy, rule, regulation, or order by filing a request for such review with the department and serving a copy on the water management district. Such request for review is not a precondition to the effectiveness of such policy, rule, regulation, or order, or to the seeking of judicial review as otherwise provided.

(8)(a) To provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the Federal Government in connection with or concerning the waters in the state. Unless otherwise provided by state or federal law, the department shall, subject to confirmation by the Legislature, have the power to approve or disapprove such federal plans or projects on behalf of the state.

(b) The department, subject to confirmation by the Legislature, shall act on behalf of the state in the negotiation and consummation of any agreement or compact with another state or other states concerning waters of the state.

(9)(a) To hold annually a conference on water resources developmental programs. Each agency, commission, district, municipality, or political subdivision of the state responsible for a specific water resources development program requiring federal assistance shall present at such conference its programs and projects and the needs thereof. Notice of the time and place of the annual conference on water resources developmental programs shall be extended by mail at least 30 days prior to the date of such conference to any person who has filed a written request for notification with the department. Adequate opportunity shall be afforded for participation at the conference by interested members of the general public.

(b) Upon termination of the water conference, the department shall select those projects for presentation in the Florida program of public works which best represent the public welfare and interest of the people of the state as required for the proper development, use, conservation, and protection of the waters of the state and land resources affected thereby. Thereafter, the department shall present to the appropriate committees and agencies of the Federal Government a program of public works for Florida, requesting authorization for funds for each project.

History.—s. 5, part I, ch. 72-299; s. 4, ch. 74-114; s. 38, ch. 79-65.

[1]**Note.**—See s. 11, ch. 75-22 (s. 373.114), which vests exclusive authority to review policies, rules, regulations, and orders of water management districts in the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission.

373.029 Southeast River Basins Resources Advisory Board.—

(1) The Governor of this state shall have authority to appoint a representative of this state to serve on the Resources Advisory Board, Southeast River Basins, as said board is now, or may hereafter be, authorized, designated, and constituted. This power of appointment shall include the authority to fill vacancies in the position of representative of this state on said board from whatever cause existing and, from time to time, to make appointments for successive terms.

(2) The representative of this state on said board shall be reimbursed by this state for his necessary travel expenses while engaged in the business of said board, as provided by s. 112.061.

(3) For the purpose of paying Florida's pro rata share of the expense of maintaining and operating the Resources Advisory Board, Southeast River Basins, the department may expend an amount not in excess of $25,000 per annum out of moneys allocated the department.

(4) The Resources Advisory Board, Southeast River Basins, is hereby authorized to enter into whatever agreement or agreements are necessary for the purpose of extending old-age and survivors insurance coverage to the employees of said board. Funds appropriated to or available to said board may be expended for such purpose. The board is hereby authorized to take whatever action or actions deemed necessary to provide the aforesaid coverage.

History.—ss. 1-3, ch. 63-407; s. 1, ch. 65-510; s. 1, ch. 67-595; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 39, ch. 79-65.

Note.—Former s. 373.193.

373.033 Saltwater barrier line.—

(1) The department may, at the request of the board of county commissioners of any county, at the request of the governing board of any water management district, or any municipality or water district responsible for the protection of a public water supply, or, having determined by adoption of an appropriate resolution that saltwater intrusion has become a matter of emergency proportions, by its own initiative, establish generally along the seacoast, inland from the seashore and within the limits of the area within which the petitioning board has jurisdiction, a saltwater barrier line inland of which no canal shall be constructed or enlarged, and no natural stream shall be deepened or enlarged, which shall discharge into tidal waters without a dam, control structure or spillway at or seaward of the saltwater barrier line, which shall prevent the movement of salt water inland of the saltwater barrier line. Provided, however, that the department is authorized, in cases where saltwater intrusion is not a problem, to waive the requirement of a barrier structure by specific permit to construct a canal crossing the saltwater barrier line without a protective device and provided, further that the agency petitioning for the establishment of the saltwater barrier line shall concur in the waiver.

(2) Application by a board of county commissioners or by the governing board of a water management district, a municipality or a water district for the establishment of a saltwater barrier line shall be made by adoption of an appropriate resolution, agreeing to:

(a) Reimburse the department the cost of necessary investigation, including, but not limited to, subsurface exploration by drilling, to determine the proper location of the saltwater barrier line in that county or in all or part of the district over which the

applying agency has jurisdiction.

(b) Require compliance with the provisions of this law by county or district forces under their control; by those individuals or corporations filing plats for record and by individuals, corporations or agencies seeking authority to discharge surface or subsurface drainage into tidal waters.

(3) The board of county commissioners of any county or the governing board of any water management district, municipality or water district desiring to establish a saltwater barrier line is authorized to reimburse the department for any expense entailed in making an investigation to determine the proper location of the saltwater barrier line, from any funds available to them for general administrative purposes.

(4) The department, any board of county commissioners, and the governing board of any water management district, municipality, or water district having competent jurisdiction over an area in which a saltwater barrier is established shall be charged with the enforcement of the provisions of this section, and authority for the maintenance of actions set forth in s. 373.129 shall apply to this section.

(5) The provisions of s. 373.191 shall apply specifically to the authority of the board of county commissioners, or to the governing board of a water management district, a municipality, or a water district having jurisdiction over an area in which a saltwater barrier line is established, to expend funds from whatever source may be available to them for the purpose of constructing saltwater barrier dams, dikes, and spillways within existing canals and streams in conformity with the purpose and intent of the board in establishing the saltwater barrier line.

History.—s. 2, ch. 63-210; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 14, ch. 78-95; s. 40, ch. 79-65; s. 85, ch. 79-164.

Note.—Former s. 373.194.

373.036 State water use plan.—

(1) The department shall proceed as rapidly as possible to study existing water resources in the state; means and methods of conserving and augmenting such waters; existing and contemplated needs and uses of water for protection and procreation of fish and wildlife, irrigation, mining, power development, and domestic, municipal, and industrial uses; and all other related subjects, including drainage, reclamation, flood-plain or flood-hazard area zoning, and selection of reservoir sites. The department shall cooperate with the Executive Office of the Governor, or its successor agency, progressively to formulate, as a functional element of a comprehensive state plan, an integrated, coordinated plan for the use and development of the waters of the state, based on the above studies. This plan, with such amendments, supplements, and additions as may be necessary from time to time, shall be known as the state water use plan.

(2) In the formulation of the state water use plan, the department shall give due consideration to:

(a) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (1).

(b) The maximum economic development of the water resources consistent with other uses.

(c) The control of such waters for such purposes as environmental protection, drainage, flood control, and water storage.

(d) The quantity of water available for application to a reasonable-beneficial use.

(e) The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.

(f) Presently exercised domestic use and permit rights.

(g) The preservation and enhancement of the water quality of the state and the provisions of the state water quality plan.

(h) The state water resources policy as expressed by this chapter.

(3) During the process of formulating or revising the state water use plan, the department shall consult with, and carefully evaluate the recommendations of, concerned federal, state, and local agencies, particularly the governing boards of the water management districts, and other interested persons.

(4) Each governing board is directed to cooperate with the department in conducting surveys and investigations of water resources, to furnish the department with all available data of a technical nature, and to advise and assist the department in the formulation and drafting of those portions of the state plan applicable to the district.

(5) The department shall not adopt or modify the state water use plan or any portion thereof without first holding a public hearing on the matter. At least 90 days in advance of such hearing, the department shall notify any affected governing boards, and shall give notice of such hearing by publication within the affected region pursuant to the provisions of chapter 120, except such notice by publication shall be extended at least 90 days in advance of such hearings.

(6) For the purposes of this plan the department may, in consultation with the affected governing board, divide each water management district into sections which shall conform as nearly as practicable to hydrologically controllable areas and describe all water resources within each area.

(7) The department shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The department may prohibit or restrict other future uses on certain designated bodies of water which may be inconsistent with these objectives.

(8) The department may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the governing board may deny a permit.

(9) The department may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in the event of competing applications under the permitting systems authorized by this chapter.

(10) The department, in cooperation with the Executive Office of the Governor, or its successor agency, may add to the state water use plan any other

information, directions, or objectives it deems necessary or desirable for the guidance of the governing boards or other agencies in the administration and enforcement of this chapter.

History.—s. 6, part I, ch. 72-299; ss. 2, 3, ch. 73-190; s. 122, ch. 79-190.

373.039 Florida water plan.—The state water use plan together with the water quality standards and classifications of the department or its successor agency shall constitute the Florida water plan. The state water use plan should be developed in coordination with the water quality standards system.

History.—s. 7, part I, ch. 72-299; s. 41, ch. 79-65.

373.042 Minimum flows and levels.—Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(1) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(2) Minimum water level. The minimum water level shall be the level of ground water in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

History.—s. 6, part I, ch. 72-299; s. 2, ch. 73-190.
Note.—Former s. 373.036(7).

373.043 Adoption and enforcement of regulations by the department.—The department shall adopt, promulgate, and enforce such regulations and review procedures as may be necessary or convenient to administer the provisions of this chapter.

History.—s. 8, part I, ch. 72-299; s. 5, ch. 74-114.

373.044 Rules and regulations; enforcement.—In administering this chapter the governing board of the district is authorized to make and adopt reasonable rules, regulations and orders consistent with law and such rules, regulations and orders may be enforced by mandatory injunction, or other appropriate action in the courts of the state.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.151.

373.046 Interagency agreements.—The department may enter into interagency agreements with or among any other state agencies conducting programs or exercising powers related to or affecting the water resources of the state. Such agreements may establish principal-agency or contract relationships, provide for cross-deputization of enforcement personnel, provide for consolidation of facilities, equipment or personnel, or such other relationships as may be deemed beneficial to the public interest. Such interagency agreements shall be promulgated in the same manner as rules and regulations, subject to chapter 120. All state agencies conducting programs or exercising powers relating to or affecting the water resources of the state are hereby authorized to delegate such authority to the department or any of the several water management districts pursuant to such interagency agreements.

History.—s. 9, part I, ch. 72-299.

373.047 Cooperation between districts.—Any flood control district created under the authority of chapter 378 is authorized to advise other flood control districts or water management districts of the state in processing matters with the federal government and to render such technical assistance as may be helpful to the efficient operation of such other districts.

History.—s. 1, ch. 61-245; s. 25, ch. 73-190.
Note.—Former s. 378.52.

373.056 State agencies, cities, etc., authorized to convey land to flood control districts.—

(1)(a) When it is found to be in the public interest and for the public convenience and welfare, and for the public benefit, and necessary for carrying out the works of improvement of any flood control district referred to in this chapter for the protection of property and the inhabitants in said district against the effects of water, either from its surplus or deficiency, and for assisting said district in acquiring land for the purposes of said district at least public expense, any state agency, any county, any drainage district, any municipality or any governmental agency or public corporation in this state holding title to land, is hereby authorized, in the discretion of the proper officer or officers, the county commissioners of any county, or the governing board of any agency referred to in this section, to convey the title to or to dedicate land, title to which is in such agency, including tax reverted land, or to grant use rights therein to any flood control district created under any law enacted by the Legislature at its 1949 session.

(b) The land to which this section shall apply shall be located within the boundaries of said flood control district.

(2) Land granted or conveyed to said district or dedicated to the purposes thereof, or use rights in said land granted thereto, shall be for the public purposes of said district, and may be made subject to the condition that in the event said land is not so used, or if used and subsequently its use for said purpose is abandoned, that granted shall cease as to said district and shall automatically revert to the granting agency.

(3) Any county, municipality, drainage district, or other taxing agency holding title to land through tax reversion, foreclosure, forfeiture, or through other procedure by which tax title vested in such agency, may, pending the determination of needs of said district, withhold from sale or other disposition from time to time such land as in the judgment of such agency may be needed or helpful in facilitating the purposes of this chapter. In the event more than one taxing agency holds tax title to the same land, resulting in multiple reversion, each of said agencies may

grant to said district such right, title or interest as it may have in said land.

(4) Any flood control district within this chapter shall have authority to convey to any other agency described herein land or rights in land owned by said district not required for its purposes, under such terms and conditions as the governing board of said district may determine.

(5) Any land granted or conveyed to such district, or dedicated to the purposes thereof, or the use right of which has been granted thereto, shall not be subject to the district taxes, or other taxes or special assessments so long as said title or said rights remain in said district.

(6) All rights of way of a flood control district, which are within the boundaries of a drainage district, shall not be liable for maintenance taxes of the drainage district.

History.—ss. 1-5, ch. 25213, 1949; s. 6, ch. 61-497; s. 25, ch. 73-190.
Note.—Former s. 378.46.

373.069 Creation of water management districts.—

(1) At 11:59 p.m. on December 31, 1976, the state shall be divided into the following water management districts:

(a) Northwest Florida Water Management District.

(b) Suwannee River Water Management District.

(c) St. Johns River Water Management District.

(d) Southwest Florida Water Management District.

(e) South Florida Water Management District.

(2) Notwithstanding the provisions of any other special or general act to the contrary, the boundaries of the respective districts named in subsection (1) shall include the areas within the following boundaries:

(a) *Northwest Florida Water Management District.*—Begin at the point where the section line between Sections 26 and 27, Township 4 South, Range 3 East intersects the Gulf of Mexico; thence north along the section line to the northwest corner of Section 2, Township 1 South, Range 3 East; thence east along the Tallahassee Base Line to the southeast corner of Section 36, Township 1 North, Range 4 East; thence north along the range line to the northwest corner of Section 6, Township 1 North, Range 5 East; thence east along the township line to the southeast corner of Section 36, Township 2 North, Range 5 East; thence north along the range line to the northeast corner of Section 24, Township 2 North, Range 5 East; thence west along the section line to the southwest corner of the east ½ of Section 13, Township 2 North, Range 5 East; thence north to the northwest corner of the east ½ of Section 13, Township 2 North, Range 5 East; thence east along the section line to the southeast corner of Section 12, Township 2 North, Range 5 East; thence north along the range line to the northeast corner of Section 24, Township 3 North, Range 5 East; thence west along the Watson Line to the southwest corner of Lot Number 168; thence north along the line between Lot Numbers 168 and 169, 154 and 155 to the Georgia line; thence westward along the Georgia-Florida line to the intersection of the south boundary of the State of Alabama; thence west along the Alabama-Florida line to the intersection of the northwest corner Alabama-Florida Boundary; thence south along the Alabama-Florida line to the Gulf of Mexico; thence east along the Gulf of Mexico, including the waters of said Gulf within the jurisdiction of the State of Florida, to the Point of Beginning.

(b) *Suwannee River Water Management District.*—Begin in the Gulf of Mexico on the section line between Sections 29 and 32, Township 15 South, Range 15 East; thence east along the section lines to the southwest corner of Section 27, Township 15 South, Range 17 East; thence north along the section line to the northwest corner of Section 3, Township 15 South, Range 17 East; thence east along the section line to the easterly right of way line of State Road No. 337; thence northerly along said easterly right of way line of State Road No. 337 to the southerly right of way line of State Road No. 24; thence northeasterly along said southerly right of way line of State Road No. 24 to the Levy-Alachua county line; thence south along the Levy-Alachua county line, also being the range line between Range 17 and 18 East to the southeast corner of Section 36, Township 11 South, Range 17 East; thence easterly along the Levy-Alachua county line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 18 East; thence north along the range line to the northwest corner of Section 19, Township 9 South, Range 19 East; thence east along the section line to the southeast corner of Section 13, Township 9 South, Range 19 East; thence north along the range line to the northwest corner of Section 6, Township 9 South, Range 20 East; thence eastward along the township line to the southeast corner of Section 36, Township 8 South, Range 20 East; thence north along the township line to the northwest corner of Section 18, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 15, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of Section 23, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 26, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of the north ½ of Section 25, Township 8 South, Range 21 East; thence east along a line to the northeast corner of the south half of Section 25, Township 8 South, Range 21 East; thence south along the range line to the southwest corner of Section 30, Township 8 South, Range 22 East; thence east along the section line to the northeast corner of Section 32, Township 8 South, Range 22 East; thence south along the section line to the southwest corner of Section 16, Township 9 South, Range 22 East; thence eastward along the section line to the southeast corner of the west ⅛ of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west ⅛ of Section 18, Township 9 South, Range 23 East; thence west to the southwest corner of Section 7, Township 9 South, Range 23 East; thence northward along the Bradford-Clay County line to the northeast corner of Section 36, Township 8 South, Range 22 East; thence west along the section line to the southwest corner

of the east ½ of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west ½ of Section 24, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of Section 13, Township 8 South, Range 22 East; thence north along the section line to the northwest corner of Section 25, Township 7 South, Range 22 East; thence east along the section line to the southeast corner of Section 24, Township 7 South, Range 22 East; thence north along the Bradford-Clay County line to the intersection of the south boundary of Baker County; thence west along the Baker-Bradford County line to the intersection of the east boundary of Union County; thence west along the Union-Baker County line to the southwest corner of Section 18, Township 4 South, Range 20 East; thence north along the range line to the northeast corner of Section 1, Township 3 South, Range 19 East; thence west along the township line to the intersection of the east boundary of Columbia County; thence north along the Baker-Columbia County line to the intersection of the north boundary line of the State of Florida; thence westward along the Georgia-Florida line to the northwest corner of Lot Number 155; thence south along the line between Lot Number 154 and 155, 168 and 169 to the Watson Line; thence east along the Watson Line to the northeast corner of Section 24, Township 3 North, Range 5 East; thence south along the range line between Ranges 5 and 6 East to the southeast corner of Section 12, Township 2 North, Range 5 East; thence west along the section line to the northwest corner of the east ½ of Section 13, Township 2 North, Range 5 East; thence south to the southwest corner of the east ½ of Section 13, Township 2 North, Range 5 East; thence east along the section line to the northeast corner of Section 24, Township 2 North, Range 5 East; thence south along the range line between Ranges 5 and 6 East to the southeast corner of Section 36, Township 2 North, Range 5 East; thence west along the township line between Townships 1 and 2 North to the northwest corner of Section 6, Township 1 North, Range 5 East; thence south along the range line between Ranges 4 and 5 East to the southeast corner of Section 36, Township 1 North, Range 4 East; thence west along the Tallahassee Base Line to the northwest corner of Section 2, Township 1 South, Range 3 East; thence south along the section line to the Gulf of Mexico; thence along the shore of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of the beginning.

(c) *St. Johns River Water Management District.*—Begin at the intersection of the south boundary of Indian River County with the Atlantic Ocean; thence west along the Indian River-St. Lucie County line to the intersection of the west boundary of St. Lucie County; thence south along the Okeechobee-St. Lucie County line to the southeast corner of Section 1, Township 34 South, Range 36 East; thence west along the section line to the northwest corner of Section 10, Township 34 South, Range 36 East; thence south along the section line to the southeast corner of Section 9, Township 34 South, Range 36 East; thence west along the section line to the northwest corner of Section 18, Township 34 South, Range 36 East; thence south along the range line between Ranges 35 and 36 East to the southeast corner of Section 12, Township 34 South, Range 35 East; thence west along the section line to the northwest corner of Section 13, Township 34 South, Range 35 East; thence south along the section line to the southeast corner of Section 35, Township 34 South, Range 35 East; thence west along the township line between Townships 34 and 35 south to the southwest corner of Section 35, Township 34 South, Range 34 East; thence north along the section line to the Okeechobee-Osceola County line; thence west along the Okeechobee-Osceola County line to the southwest corner of Section 34, Township 32 South, Range 33 East; thence north along the section line to the northwest corner of Section 3, Township 31 South, Range 33 East; thence east along the township line between Townships 30 and 31 South to the southeast corner of Section 36, Township 30 South, Range 33 East; thence north along the range line between Ranges 33 and 34 East to the northeast corner of Section 1, Township 30 South, Range 33 East; thence west along the township line between Townships 29 and 30 south to the southwest corner of Section 31, Township 29 South, Range 33 East; thence north along the range line between Ranges 32 and 33 East to the northwest corner of Section 6, Township 28 South, Range 33 East; thence east along the township line between Townships 27 and 28 south to the southeast corner of Section 36, Township 27 South, Range 32 East; thence north along the range line between Ranges 32 and 33 East to the northeast corner of Section 1, Township 26 South, Range 32 East; thence west along the township line between Townships 25 and 26 South to the southwest corner of Section 33, Township 25 South, Range 32 East; thence north along the section line to the Orange-Osceola County line; thence westerly along the Orange-Osceola County line to the Southwest corner of Section 31, Township 24 South, Range 32 East; thence north along the range line to the intersection with the northerly right-of-way line of State Road 528, also known as the Bee Line Expressway; thence westerly along the northerly right-of-way line of State Road 528 to the intersection with the northerly right-of-way line of State Road 528A; thence westerly along the northerly right-of-way line of State Road 528A to the westerly right-of-way line of U.S. Highway 441; thence northerly along the right-of-way line to the section line between sections 22 and 27 of Township 22 South, Range 29 East; thence west along the section lines to the Northeast corner of Section 25, Township 22 South, Range 28 East; thence south along the range line between Ranges 28 and 29 East to the Southeast corner of Section 36, Township 22 South, Range 28 East; thence west along the township line between Townships 22 and 23 South to the Northeast corner of Section 2, Township 23 South, Range 27 East; thence south to the Southeast corner of Section 11, Township 23 South, Range 27 East; thence west along the section lines to the Southwest corner of Section 7, Township 23 South, Range 27 East, also being the Lake-Orange County line; thence south along the range line between Ranges 26 and 27 East to the southwest corner of Section 18, Township 26 South, Range 27 East;

thence east along the section line to the northeast corner of Section 19, township 26 South, Range 27 East; thence south along the section line to the southwest corner of Section 32, Township 26 South, Range 27 East; thence east along the township line between Townships 26 and 27 South to the northeast corner of Section 5, Township 27 South, Range 27 East; thence south along the section lines to the southerly right-of-way line of State Road 600; thence westerly along the southerly right-of-way line of said State Road No. 600 to the west boundary of Section 27, Township 27 South, Range 26 East; thence north along the section lines to the northeast corner of Section 16, Township 25 South, Range 26 East; thence west along the section line to the southwest corner of Section 9, Township 25 South, Range 26 East; thence north along the section lines to the Lake-Polk County line; thence west along the county line to the southwest corner of Section 32, Township 24 South, Range 26 East; thence into Lake County, north along the section lines to the northeast corner of Section 30, Township 24 South, Range 26 East; thence west along the section lines to the northeast corner of Section 28, Township 24 South, Range 25 East; thence north along the section lines to the northeast corner of Section 16, Township 24 South, Range 25 East; thence west along the section line to the northwest corner of Section 16, Township 24 South, Range 25 East; thence north along the section line to the northeast corner of Section 8, Township 24 South, Range 25 East; thence west along the section lines to the range line between Ranges 24 and 25; thence north along the range line to the northeast corner of Section 1, Township 23 South, Range 24 East, also being on the township line between Townships 22 and 23 South; thence west along the township line to the northwest corner of Section 6, Township 23 South, Range 24 East, also being on the Sumter-Lake County line; thence north along the Sumter-Lake County line, also being the range line between Ranges 23 and 24 East, to the northeast corner of Section 1, Township 18 South, Range 23 East, and the Marion County line; thence west along the Sumter-Marion County line, also being the township line between Townships 17 and 18 South, to the westerly right-of-way line of Interstate Highway 75; thence northerly along the westerly right-of-way line of Interstate Highway 75 to the Alachua-Marion County line, said line also being the township line between Townships 11 and 12 South; thence west along the Alachua-Marion County line to the northwest corner of Section 3, Township 12 South, Range 19 East, and the Levy County line; thence westerly along the Levy-Alachua County line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 18 East; thence north along the range line between Ranges 18 and 19 East to the northwest corner of Section 19, Township 9 South, Range 19 East; thence east along the section line to the southeast corner of Section 13, Township 9 South, Range 19 East; thence north along the range line between Ranges 19 and 20 East to the northwest corner of Section 6, Township 9 South, Range 20 East; thence easterly along the township line between Townships 8 and 9 South to the southeast corner of Section 36, Township 8 South, Range 20 East; thence north along the range line between Ranges 20 and 21 East to the northwest corner of Section 18, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 15, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of Section 23, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 26, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of the north ½ of Section 25, Township 8 South, Range 21 East; thence east to the northeast corner of the south ½ of Section 25, Township 8 South, Range 21 East; thence south along the range line between Ranges 21 and 22 East to the southwest corner of Section 30, Township 8 South, Range 22 East; thence east along the section line to the northeast corner of Section 32, Township 8 South, Range 22 East; thence south along the section line to the southwest corner of Section 16, Township 9 South, Range 22 East; thence eastward along the section line to the southeast corner of the west ½ of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west ⅛ of Section 18, Township 9 South, Range 23 East; thence west to the southwest corner of Section 7, Township 9 South, Range 23 East; thence northward along the Bradford-Clay County line to the northeast corner of Section 36, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of the east ½ of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west ½ of Section 24, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of Section 13, Township 8 South, Range 22 East; thence north along the section line to the northwest corner of Section 25, Township 7 South, Range 22 East; thence east along the section line to the Bradford-Clay County line; thence north along the Bradford-Clay County line to the intersection of the south boundary of Baker County; thence west along the Baker-Bradford County line to the intersection of the east boundary of Union County; thence west along the Baker-Union County line to the southwest corner of Section 18, Township 4 South, Range 20 East; thence north along the range line between Ranges 19 and 20 East to the northeast corner of Section 1, Township 3 South, Range 19 East; thence west along the township line between Townships 2 and 3 South to the Baker-Columbia County line; thence north along the Baker-Columbia County line to the north boundary line of the State of Florida; thence easterly along the Florida-Georgia line to the Atlantic Ocean; thence southerly along the Atlantic Ocean, including the waters of said ocean within the jurisdiction of the State of Florida to the point of beginning.

(d) *Southwest Florida Water Management District.*—Begin at the intersection of the north boundary of Lee County with the Gulf of Mexico; thence eastward along the Lee-Charlotte County line to the Southeast corner of Section 33, Township 42 South, Range 24 East; thence North into Charlotte County, along the section lines to the Northeast corner of Section 4, Township 42 South, Range 24 East; thence

East along the township line between Townships 41 and 42 South to the Southeast corner of Section 36, Township 41 South, Range 25 East; thence north along the section line to the northwest corner of Section 6, Township 41 South, Range 26 East; thence east along the section line to the southeast corner of Section 36, Township 40 South, Range 26 East; thence North along the range line between Ranges 26 and 27 to the Northeast corner of Section 1, Township 40 South, Range 26 East, and the Charlotte-Desoto County line; thence east along the Charlotte-Desoto County line to the southeast corner of Section 36, Township 39 South, Range 27 East; thence north along the DeSoto-Highlands County line to the intersection of the South boundary of Hardee County; thence north along the Hardee-Highlands County line to the southwest corner of Township 35 South, Range 28 East; thence east along the north boundary of Township 36 South to the northeast corner of Section 1, Township 36 South, Range 28 East; thence south along the range line to the southeast corner of Section 12, Township 37 South, Range 28 East; thence east along the section line to the northeast corner of Section 15, Township 37 South, Range 29 East; thence south along the section line to the southeast corner of Section 34, Township 37 South, Range 29 East; thence east along the township line to the northeast corner of Section 1, Township 38 South, Range 29 East; thence south along the range line to the southeast corner of Section 1, Township 39 South, Range 29 East; thence east along the section line to the northwest corner of Section 11, Township 39 South, Range 30 East; thence north along the section line to the southwest corner of Section 35, Township 38 South, Range 30 East; thence east along the township line to the southeast corner of the west 1/4 of Section 35, Township 38 South, Range 30 East; thence north along the ¼-section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west ¼ section of Section 23, Township 38 South, Range 30 East; thence west along the section line to the northwest corner of Section 23, Township 38 South, Range 30 East; thence north along the section line to the northwest corner of Section 2, Township 37 South, Range 30 East; thence west along the township line to the southwest corner of Section 34, Township 36 South, Range 30 East; thence north along the section line to the northwest corner of Section 3, Township 36 South, Range 30 East; thence west along the township line to the southwest corner of Section 31, Township 35 South, Range 30 East; thence north along the range line between Ranges 29 and 30 East, through Townships 35, 34, and 33 South, to the northeast corner of Township 33 South, Range 29 East, being on the Highlands-Polk County line; thence west along the Highlands-Polk County line to the southeast corner of Township 32 South, Range 28 East; thence north along the range line between Ranges 28 and 29 East, in Townships 32 and 31 South, to the northeast corner of Section 12 in Township 31 South, Range 28 East; thence east along the section line to the northeast corner of Section 7, Township 31 South, Range 29 East; thence north along the section line to the northwest corner of Section 17, Township 30 South, Range 29 East; thence east along the section line to the northeast corner of the west ½ of Section 17, Township 30 South, Range 29 East; thence north along the ½-section line to the northeast corner of the west ½ of Section 5, Township 30 South, Range 29 East; thence west along the section line to the southwest corner of Section 32, Township 29 South, Range 29 East; thence north along the section line to the northeast corner of Section 19 in Township 29 South, Range 29 East; thence west along the north boundaries of Section 19, Township 29 South, Range 29 East, and Sections 24, 23, 22, 21, and 20, Township 29 South, Range 28 East, to the northwest corner of said Section 20; thence north along the section line to the intersection of said section line with the west shore line of Lake Pierce in Township 29 South, Range 28 East; thence following the west shore of Lake Pierce to its intersection again with the west section line of Section 5, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 29 South, Range 28 East; thence east along the township line to the southwest corner of Section 33, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of the southwest ¼ of the southwest ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ¼-section line to the intersection of said ¼-section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the ½-section line of Section 28, Township 28 South, Range 28 East; thence north on the ½-section line to the northwest corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence east to the northeast corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence south along the section line to the northwest corner of Section 3, Township 29 South, Range 28 East; thence east along the section line to the northeast corner of Section 3, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 23, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 16, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 16, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 8, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 28 South, Range 28 East; thence west along the township line to the intersection of said township line with Lake Marion; thence following the south shore line of Lake Marion to its intersection again with said township line; thence west along the township line to the southeast corner of Section 36, Township 37 South, Range 27 East; thence north along the range line between Ranges 27 and 28 East to the intersection of said range line with Lake Marion; thence following the west shore of Lake Marion to its intersection again with the range line between Ranges 27 and 28 East; thence north along said range line, in Townships 27 and 26 South, to the northeast corner of Township 26 South, Range 27 East, being on the Polk-Osceola County line; thence west along the Polk-Osceola County line to the northwest corner of Township 26 South,

Range 27 East; thence south along the range line between Ranges 26 and 27 East to the southwest corner of Section 18 in Township 26 South, Range 27 East; thence east along the section line to the southeast corner of said Section 18; thence south along the section lines to the southwest corner of Section 32 in Township 26 South, Range 27 East; thence east along the section line to the southeast corner of said Section 32; thence south along the section lines to the southerly right-of-way line of State Road 600 (U.S. Route 17 and 92) in Township 27 South, Range 27 East; thence westerly along the southerly right-of-way line of said State Road No. 600 to the West boundary of Section 27, Township 27 South, Range 26 East; thence north along the section line to the northeast corner of Section 16, Township 25 South, Range 26 East; thence west along the section line to the southwest corner of Section 9, Township 25 South, Range 26 East; thence north along the section line to the Lake-Polk County line; thence west along the county line to the southwest corner of Section 32, Township 24 South, Range 26 East; thence into Lake County, north along the section lines to the northeast corner of Section 30, Township 24 South, Range 26 East; thence west along the section lines to the northeast corner of Section 28, Township 24 South, Range 25 East; thence north along the section lines to the northeast corner of Section 16, Township 24 South, Range 25 East; thence west along the section line to the northwest corner of Section 16, Township 24 South, Range 25 East; thence north along the section line to the northeast corner of Section 8, Township 24 South, Range 25 East; thence west along the section lines to the range line between Ranges 24 and 25; thence north along the range line to the northeast corner of Section 1, Township 23 South, Range 24 East, also being on the township line between Townships 22 and 23 South; thence west along the township line to the northwest corner of Section 6, Township 23 South, Range 24 East also being on the Sumter-Lake County line; thence north along the Sumter-Lake County line, also being the range line between Ranges 23 and 24, to the northeast corner of Section 1, Township 18 South, Range 23 East and the Marion County line; thence west, along the Sumter-Marion County line, also being the township line between Townships 17 and 18 South, to the westerly right-of-way line of Interstate Highway 75; thence northerly along the westerly right-of-way line of Interstate Highway 75 to the Alachua-Marion County line, said line also being the township line between Townships 11 and 12 South; thence west along the Alachua-Marion County line to the northwest corner of Section 3, Township 12 South, Range 19 East and the Levy County line; thence westerly along the Levy-Alachua County line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 17 East; thence north along the Levy-Alachua County line, also being the range line between Ranges 17 and 18 East, to the southerly right-of-way line of State Road No. 24; thence southwesterly along said southerly right-of-way line to the easterly right-of-way line of State Road No. 337; thence southerly, along said easterly right-of-way line of State Road No. 337, to the south line of Section 35, Township 14 South, Range 17 East; thence west along the section line to the northwest corner of Section 3, Township 15 South, Range 17 East; thence south along the section lines to the southwest corner of Section 27, Township 15 South, Range 17 East; thence west to the Gulf of Mexico; thence south along the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

(e) *South Florida Water Management District.*—Begin at the intersection of the north boundary of Lee County with the Gulf of Mexico; thence easterly along the Lee-Charlotte County line to the southwest corner of Section 34, Township 42 South, Range 24 East; thence northerly along the section lines to the northwest corner of Section 3, Township 42 South, Range 24 East; thence easterly along the Township line between Townships 41 and 42 South to the southwest corner of Section 31, Township 41 South, Range 26 East; thence northerly along the Range line between Ranges 25 and 26 East to the northwest corner of Section 6, Township 41 South, Range 26 East; thence easterly along the Township line between Townships 40 and 41 South to the southwest corner of Section 31, Township 40 South, Range 27 East; thence northerly along the Range line between Ranges 26 and 27 East to the Charlotte-DeSoto County line; thence easterly along the Charlotte-Desoto County line to the west line of Highlands County; thence northerly along the Highlands-Desoto County line and along the Highlands-Hardee County line to the northwest corner of Township 36 South, Range 28 East; thence east along the north boundary of Township 36 South to the northeast corner of Section 1, Township 36 South, Range 28 East; thence south along the range line to the southeast corner of Section 12, Township 37 South, Range 28 East; thence east along the section line to the northeast corner of Section 15, Township 37 South, Range 29 East; thence south along the section line to the southeast corner of Section 34, Township 37 South, Range 29 East; thence east along the township line to the northeast corner of Section 1, Township 38 South, Range 29 East; thence south along the range line to the southeast corner of Section 1, Township 39 South, Range 29 East; thence east along the section line to the northwest corner of Section 11, Township 39 South, Range 30 East; thence north along the section line to the southwest corner of Section 35, Township 38 South, Range 30 East; thence east along the township line to the southeast corner of the west ¼ of Section 35, Township 38 South, Range 30 East; thence north along the ¼-section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west ¼ section of Section 23, Township 38 South, Range 30 East; thence west along the section line to the northwest corner of Section 23, Township 38 South, Range 30 East; thence north along the section line to the northwest corner of Section 2, Township 37 South, Range 30 East; thence west along the township line to the southwest corner of Section 34, Township 36 South, Range 30 East; thence north along the section line to the northwest corner of Section 3, Township 36 South, Range 30 East; thence west along the township line to the southwest corner of Section 31,

Township 35 South, Range 30 East; thence north along the range line between Ranges 29 and 30 East, through Townships 35, 34, and 33 South, to the northwest corner of Township 33 South, Range 30 East, being on the Highlands-Polk County line; thence west along the Highlands-Polk County line to the southwest corner of Township 32 South, Range 29 East; thence north along the range line between Ranges 28 and 29 East, in Townships 32 and 31 South, to the northwest corner of Section 7 in Township 31 South, Range 29 East; thence east along the section line to the northeast corner of Section 7, Township 31 South, Range 29 East; thence north along the section line to the northwest corner of Section 17, Township 30 South, Range 29 East; thence east along the section line to the northeast corner of the west ½ of Section 17, Township 30 South, Range 29 East; thence north along the ½-section line to the northeast corner of the west ½ of Section 5, Township 30 South, Range 29 East; thence west along the section line to the southwest corner of Section 32, Township 29 South, Range 29 East; thence north along the section line to the northeast corner of Section 19 in Township 29 South, Range 29 East; thence west along the south boundaries of Section 18, Township 29 South, Range 29 East and Sections 13, 14, 15, 16, and 17 in Township 29 South, Range 28 East, to the southwest corner of said Section 17; thence north along the section line to the intersection of said section line with the west shore line of Lake Pierce in Township 29 South, Range 28 East; thence following the west shore of Lake Pierce to its intersection again with the west section line of Section 5, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 29 South, Range 28 East; thence east along the township line to the southwest corner of Section 33, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of the southwest ¼ of the southwest ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ¼-section line to the intersection of said ¼-section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the ½-section line of Section 28, Township 28 South, Range 28 East; thence north on the ½-section line to the northwest corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ½-section line to the northeast corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence south along the section line to the northwest corner of Section 3, Township 29 South, Range 28 East; thence east along the section line to the northeast corner of Section 3, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 23, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 16, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 16, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 8, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 28 South, Range 28 East; thence west along the township line to the intersection of said township line with Lake Marion; thence following the south shore line of Lake Marion to its intersection again with said township line; thence west along the township line to the southeast corner of Section 36, Township 27 South, Range 27 East; thence north along the range line between Ranges 27 and 28 East to the intersection of said range line with Lake Marion; thence following the west shore of Lake Marion to its intersection again with the range line between Ranges 27 and 28 East; thence north along said range line, in Townships 27 and 26 South, to the northwest corner of Township 26 South, Range 28 East, being on the Polk-Osceola County line; thence west along the Polk-Osceola County line to the southwest corner of Township 25 South, Range 27 East; thence northerly along the range line between Ranges 26 and 27 East to the northwest corner of Section 18, Township 23 South, Range 27 East; thence easterly along the section lines to the southwest corner of Section 12, Township 23 South, Range 27 East; thence northerly along the section lines to the northwest corner of Section 1, Township 23 South, Range 27 East; thence easterly along the Township line between Townships 22 and 23 South to the southwest corner of Section 31, Township 22 South, Range 29 East; thence northerly along the Range line between Ranges 28 and 29 East to the northwest corner of Section 30, Township 22 South, Range 29 East; thence easterly along the section lines to the westerly right-of-way line of U.S. Highway 441; thence southerly along the westerly right-of-way line to the intersection with the northerly right-of-way line of State Road 528A; thence easterly along the northerly right-of-way line to the intersection with the northerly right-of-way line of State Road 528, also known as the Bee Line Expressway; thence easterly along the northerly right-of-way line of State Road 528 to the intersection with the range line between Township 23 South, Range 31 East and Township 23 South, Range 32 East; thence southerly along the Range line between Ranges 31 and 32 East to the Orange-Osceola County line; thence easterly along said county line between Townships 24 and 25 South to the northeast corner of Section 5, Township 25 South, Range 32 East; thence southerly along the section lines to the southeast corner of Section 32, Township 25 South, Range 32 East; thence easterly along the Township line between Townships 25 and 26 South to the northeast corner of Section 1, Township 26 South, Range 32 East; thence southerly along the Range line between Ranges 32 and 33 East to the southeast corner of Section 36, Township 27 South, Range 32 East; thence westerly along the township line between Townships 27 and 28 South, to the northeast corner of Section 1, Township 28 South, Range 32 East; thence southerly along the Range line between Ranges 32 and 33 East to the southeast corner of Section 36, Township 29 South, Range 32 East; thence easterly along the Township line between Townships 29 and 30 South to the northeast corner of Section 1, Township 30 South, Range 33 East; thence southerly along the Range line between Ranges 33 and 34 East to the southeast corner of Section 36, Township 30 South, Range 33 East; thence westerly along the Township line between

Townships 30 and 31 South to the northeast corner of Section 4, Township 31 South, Range 33 East; thence southerly along the section lines to the Osceola-Okeechobee County line; thence easterly along said county line to the northeast corner of Section 3, Township 33 South, Range 34 East; thence southerly along the section lines to the southeast corner of Section 34, Township 34 South, Range 34 East; thence easterly along the Township line between Townships 34 and 35 South to the southwest corner of Section 36, Township 34 South, Range 35 East; thence northerly along the section lines to the northwest corner of Section 13, Township 34 South, Range 35 East; thence easterly along the section line to the Range line between Ranges 35 and 36 East; thence northerly along said Range line to the northwest corner of Section 18, Township 34 South, Range 36 East; thence easterly along the section lines to the southwest corner of Section 10, Township 34 south, Range 36 East; thence northerly along the section line to the northwest corner of said Section 10; thence easterly along the section lines to the Okeechobee-St. Lucie County line; thence northerly along said county line to the south line of Indian River County; thence easterly along the St. Lucie-Indian River County line to the Atlantic Ocean; thence southerly along the Atlantic Ocean to the Gulf of Mexico; thence northerly along the Gulf of Mexico, including the waters of said Ocean and of said Gulf and the islands therein within the jurisdiction of the State of Florida, to the point of beginning.

History.—s. 12, part 1, ch. 72-299; s. 6, ch. 73-190; s. 1, ch. 75-125; s. 1, ch. 76-243; s. 113, ch. 77-104; s. 1, ch. 78-65.

373.0691 Transfer of areas.—

(1) At the time of change of boundaries of the respective districts under subsection 373.069(3), all contractual obligations with respect to an area being transferred to another district shall be assumed by the district receiving such area; all real property interests owned by a district within an area to be transferred shall be conveyed to the district receiving such area; and all equipment, vehicles, other personal property, and records owned, located, and used by a district solely within an area being transferred shall be delivered to the district receiving such area. However, if an area is transferred from a district with a contractual obligation to the United States of America for the operation and maintenance of works within such area, then the deliveries and conveyances required in this section shall be deferred until the United States has approved the assumption of the contractual obligations by the receiving district.

(2) The change of boundaries shall not affect the continuing authority, obligations, and commitments of the water management districts, except as set forth in this section.

History.—s. 2, ch. 76-243.

373.0693 Basins; basin boards.—

(1) Any areas within a district may be designated by the district governing board as subdistricts or basins. The designation of such basins shall be made by the district governing board by resolutions thereof. The governing board of the district may change the boundaries of such basins, or create new basins, by resolution. No subdistrict or basin in the St. Johns Water Management District other than established by this act shall become effective until approved by the Legislature.

(2) Each basin shall be under the control of a basin board which shall be composed of not less than three members, but shall include one representative from each of the included counties in the basin.

(3) Each member of the various basin boards shall serve for a period of 3 years or until his successor is appointed, except that the board membership of each new basin shall be divided into three groups as equally as possible, with members in such groups to be appointed for 1, 2, and 3 years, respectively. Each basin board shall choose a vice chairman and a secretary to serve for a period of 1 year. The term of office of a basin board member shall be construed to commence on July 1 preceding the date of his appointment and to terminate June 30 of the year of the end of his term.

(4) Members of basin boards shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature, and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

(5) Basin board members shall receive no compensation for such services, but while officially on work for the district shall receive their actual traveling expenses and subsistence and lodging, not to exceed the statutory amount allowed state officers and employees, and other expenses in the actual amount incurred.

(6) Notwithstanding the provisions of any other general or special law to the contrary, a member of the governing board of the district residing in the basin or, if no member resides in the basin, a member of the governing board designated by the chairman of the governing board shall be the ex officio chairman of the basin board. The ex officio chairman shall preside at all meetings of the basin board, except that the vice chairman may preside in his absence. The ex officio chairman shall have no official vote, except in case of a tie vote being cast by the members, but shall be the liaison officer of the district in all affairs in the basin and shall be kept informed of all such affairs.

(7) At 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District, which is annexed to the Southwest Florida Water Management District by change of its boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the Southwest Florida Water Management District, subject to the same provisions as the other basins in such district. Such subdistrict shall be designated initially as the Manasota Basin. The members of the governing board of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District shall become members of the governing board of the Manasota Basin of the Southwest Florida Water Management District.

(8)(a) At 11:59 p.m. on December 31, 1976, the area being transferred from the Southwest Florida Water Management District to the St. Johns River

Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the St. Johns River Water Management District. Such basin shall be designated as the Oklawaha River Basin. The members of the governing board of the Oklawaha River Basin of the Southwest Florida Water Management District shall become the members of the governing board of the newly formed basin. The governing board of the St. Johns River Water Management District may change the boundaries, but may not abolish the basin.

(b)1. On July 1, 1977, the entire area of the St. Johns River Water Management District, less those areas in the Oklawaha Basin, shall be formed into a subdistrict or basin of the St. Johns River Water Management District. Such area shall be designated as the Greater St. Johns River Basin.

2. The governing board of the St. Johns River Water Management District shall also serve as the governing board of the Greater St. Johns River Basin.

(9) At 11:59 p.m. on December 31, 1976, a portion of the Big Cypress Basin of the Ridge and Lower Gulf Coast District which is being annexed into the South Florida Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such portion shall be designated as the Big Cypress Basin. On or before December 31, 1976, the Governor shall appoint not fewer than five persons residing in the area to serve as members of the governing board of the basin, effective at the time of transfer and subject to confirmation by the Senate as provided in subsection (4).

(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District.

(c) The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

(10) At 11:59 p.m. on December 31, 1976, the entire area of the South Florida Water Management District, including all areas being annexed into the district pursuant to chapter 76-243, Laws of Florida, but less those areas in the Big Cypress Basin, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such area shall be designated as the Okeechobee Basin.

(a) The governing board of the South Florida Water Management District shall also serve as the governing board of the Okeechobee Basin.

(b) The governing board of the South Florida Water Management District may change the boundaries of the Okeechobee Basin or may subdivide the basin into smaller basins to be governed by basin boards to be appointed by the Governor, subject to confirmation by the Senate as provided in subsection (4). However, the basin may not be enlarged to include the area included within the initial boundaries of the Big Cypress Basin.

(c) The local effort required in connection with construction, operation, and maintenance of the cooperative federal project referred to as the Central and Southern Florida Flood Control Project, which remains after the upper St. Johns portion is transferred to the St. Johns River Water Management District, shall be funded by tax levies on all taxable property within the Okeechobee Basin. In the event the Okeechobee Basin is subdivided into smaller basins, as authorized in paragraph (b), the governing board shall ascertain the equitable pro rata share for each smaller basin and charge back such share so as to insure that the portion of the Central and Southern Florida Flood Control Project remaining in the South Florida Water Management District shall continue to be funded on an equal basis throughout the entire Okeechobee Basin as initially described on December 31, 1976.

History.—s. 6, ch. 73-190; s. 3, ch. 76-243; s. 1, ch. 77-382; s. 1, ch. 79-50.

373.0695 Duties of basin boards; authorized expenditures.—

(1) The various boards shall be responsible for discharging the following described functions in their respective basins:

(a) The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.

(b) The development and preparation of overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.

(c) The preparation of the annual budget for the basin and the submission of such budget to the governing board of the district for inclusion in the district budget.

(d) The consideration and prior approval of final construction plans of the district for works to be constructed in the basin.

(e) The administration of the affairs of the basin.

(f) Planning for and, upon request by a county, municipality, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, and regional water supply authorities within or serving the basin.

(2) Basin board moneys shall be utilized for:

(a) Engineering studies of works of the basin.

(b) Payment for the preparation of final plans and specifications for construction of basin works executed by the district.

(c) Payment of costs of construction of works of the basin executed by the district.

(d) Payment for maintenance and operation of basin works as carried out by the district.

(e) Administrative and regulatory activities of the basin.

(f) Payment for real property interests for works of the basin.

(g) Payment of costs of road, bridge, railroad, and utilities modifications and changes resulting from basin works.

(3) The works of the basin shall be those adopted by the respective basin boards. Such works may be adopted jointly with other basins and may be within or without the area of the basin.

(4) In the exercise of the duties and powers granted herein, the basin boards shall be subject to all the limitations and restrictions imposed on the water management districts in s. 373.1961.

History.—s. 6, ch. 73-190; s. 3, ch. 74-114.

373.0697 Basin taxes.—The respective basins may, pursuant to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed one mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

History.—s. 6, ch. 73-190; s. 2, ch. 75-125; s. 5, ch. 76-243.

373.073 Governing board.—

(1)(a) The governing board of each water management district shall be composed of nine members who shall reside within the district. The term of office of members of the board shall be 4 years; however, four of the members composing each of the initial boards in the districts newly established by this chapter shall be appointed for terms expiring in July, 1973, and five shall be appointed for terms expiring in July, 1975. Members of the governing boards continued under this chapter shall be appointed from the district at large as vacancies occur on the governing boards. Such vacancies shall be filled according to the residency requirements of paragraph (b). Any governing board member serving on December 31, 1976, who continues to reside in the district to which he was appointed, subsequent to the changes in boundaries set forth in subsection 373.069(3), shall continue to serve until his term of office expires.

(b) After December 31, 1976, and notwithstanding the provisions of any other general or special law to the contrary, vacancies in the governing boards of the water management districts shall be filled according to the following residency requirements, representing areas designated by the U. S. Water Resources Council in U. S. Geological Survey, River Basin and Hydrological Unit Map of Florida—1975, Map Series No. 72:

1. Northwest Florida Water Management District:

a. One member shall reside in the area generally designated as the "Perdido River Basin-Perdido Bay Coastal Area-Lower Conecuh River-Escambia River Basin" hydrologic units.

b. One member shall reside in the area generally designated as the "Blackwater River Basin-Escambia Bay Coastal Area-Yellow River Basin-Choctawhatchee Bay Coastal Area" hydrologic units.

c. One member shall reside in the area generally designated as the "Choctawhatchee River Basin-St. Andrews Bay Coastal Area" hydrologic units.

d. One member shall reside in the area generally designated as the "Lower Chattahoochee-Apalachicola River-Chipola River Basin-Coastal Area between Ochlockonee River Apalachicola Rivers-Apalachicola Bay coastal area and offshore islands" hydrologic units.

e. One member shall reside in the area generally designated as the "Ochlockonee River Basin-St. Marks and Wakulla Rivers and coastal area between Aucilla and Ochlockonee River Basin" hydrologic units.

f. Four members shall be appointed at large, except that no county shall have more than two members on the governing board.

2. Suwannee River Water Management District:

a. One member shall reside in the area generally designated as the "Aucilla River Basin" hydrologic unit.

b. One member shall reside in the area generally designated as the "Coastal Area between Suwannee and Aucilla Rivers" hydrologic unit.

c. One member shall reside in the area generally designated as the "Withlacoochee River Basin-Alapaha River Basin-Suwannee River Basin above the Withlacoochee River" hydrologic units.

d. One member shall reside in the area generally designated as the "Suwannee River Basin below the Withlacoochee River excluding the Santa Fe River Basin" hydrologic unit.

e. One member shall reside in the area generally designated as the "Santa Fe Basin-Waccasassa River

and coastal area between Withlacoochee and Suwannee River" hydrologic units.

f. Four members shall be appointed at large, except that no county shall have more than two members on the governing board.

3. St. Johns River Water Management District:

a. One member shall reside in the area generally designated as the "St. Mary River Basin-Coastal area between St. Marys and St. Johns Rivers" hydrologic units.

b. One member shall reside in the area generally designated as the "St. Johns River Basin below Oklawaha River-Coastal area between the St. Johns River and Ponce de Leon Inlet" hydrologic units.

c. One member shall reside in the area generally designated as the "Oklawaha River Basin" hydrologic unit.

d. One member shall reside in the area generally designated as the "St. Johns River Basin above the Oklawaha River" hydrologic unit.

e. One member shall reside in the area generally designated as the "Coastal area between Ponce de Leon Inlet and Sebastian Inlet-Coastal area Sebastian Inlet to St. Lucie River" hydrologic units.

f. Four members shall be appointed at large, except that no county shall have more that two members on the governing board.

4. South Florida Water Management District:

a. Two members shall reside in Dade County.

b. One member shall reside in Broward County.

c. One member shall reside in Palm Beach County.

d. One member shall reside in Collier, Lee, Hendry, or Charlotte Counties.

e. One member shall reside in Glades, Okeechobee, Highlands, Polk, Orange, or Osceola Counties.

f. Two members, appointed at large, shall reside in an area consisting of St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe Counties.

g. One member, appointed at large, shall reside in an area consisting of Collier, Lee, Charlotte, Hendry, Glades, Osceola, Okeechobee, Polk, Highlands, and Orange Counties.

h. No county shall have more than three members on the governing board.

5. Southwest Florida Water Management District:

a. One member shall reside in the river basin generally designated as the Withlacoochee River.

b. One member shall reside in the area generally comprised of the Hillsborough, Alafia, and Little Manatee River basins.

c. One member shall reside in the river basin generally designated as the Peace River.

d. One member shall reside in the area generally comprised of the Manatee and Myakka River basins.

e. One member shall reside in the watershed basins lying north of the Anclote River basin and west of the Oklawaha River basin, excluding the Withlacoochee River.

f. One member shall reside in the watershed basins lying south of the northern limits of the Anclote River basin and west of the Hillsborough River basin, including all of Pinellas County.

g. Three members shall be appointed at large, except that no county shall have more than two members on the governing board, and Pinellas County and Hillsborough County shall each have two members.

(2) Members of the governing boards shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature, and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

(3) Nothing in the transfer of functions from the Department of Natural Resources to the Department of Environmental Regulation by s. 11, chapter 75-22, Laws of Florida, shall affect the existence of, or membership on, any water management district board.

History.—s. 13, part I, ch. 72-299; s. 11, ch. 75-22; s. 6, ch. 76-243; s. 1, ch. 77-72.

373.074 Transitional provisions; chapter 76-243, Laws of Florida.—

(1) It is the intent of the Legislature to make the transfer of areas, and concomitant transfer of duties, responsibilities, assets, and related matters, as smooth and equitable as possible, preserving continuity wherever possible and desirable.

(2) As soon as practical, the Governor shall designate one member of the governing board of the Ridge and Lower Gulf Coast Water Management District who resides within the Manasota Basin, which is to be transferred to the Southwest Florida Water Management District, to serve ex officio as a voting member of the Southwest Florida Water Management District, subject to all the rights, privileges, duties, and responsibilities of other board members, while continuing to serve as a member of the governing board of the Ridge and Lower Gulf Coast Water Management District. Such designee shall serve in this dual capacity until December 31, 1976, at which time his membership on the governing board of the Ridge and Lower Gulf Coast Water Management District shall terminate; but he shall continue to serve as a member of the governing board of the Southwest Florida Water Management District until July, 1978. Such member shall be in addition to the nine regular governing board members.

(3) As soon as practical, the Governor shall designate one member of the governing board of the Southwest Florida Water Management District who resides within the area to be transferred to the St. Johns River Water Management District to serve ex officio as a voting member of the St. Johns River Water Management District, subject to all the rights, privileges, duties, and responsibilities of other board members, while continuing to serve as a member of the governing board of the Southwest Florida Water Management District. Such designee shall serve in this dual capacity until December 31, 1976, at which time his membership on the governing board of the Southwest Florida Water Management District shall terminate; but he shall continue to serve as a member of the governing board of the St. Johns River Water Management District until July, 1979. Such member shall be in addition to the nine regular governing board members.

(4) As soon as practical, the Governor shall designate one member of the governing board of the Ridge and Lower Gulf Coast Water Management District

who resides within the area to be transferred to the Central and Southern Florida Flood Control District to serve ex officio as a voting member of the Central and Southern Florida Flood Control District, subject to all the rights, privileges, duties, and responsibilities of other board members, while continuing to serve as a member of the governing board of the Ridge and Lower Gulf Coast Water Management District. Such designee shall serve in this dual capacity until December 31, 1976, at which time his membership on the governing board of the Ridge and Lower Gulf Coast Water Management District shall terminate; but he shall continue to serve as a member of the governing board of the receiving water management district until July, 1979. Such member shall be in addition to the nine regular governing board members.

History.—s. 4, ch. 76-243.

373.076 Vacancies in the governing board; removal from office.—

(1) Vacancies occurring in the governing board of a district prior to the expiration of the affected term shall be filled for the unexpired term.

(2) The Governor shall have authority to remove from office any officer of said district in the manner and for cause defined by the laws of this state applicable to situations which may arise in said district.

History.—s. 14, part I, ch. 72-299.

373.079 Members of governing board; oath of office; etc.—

(1) Each member of the governing board of the district, before entering upon his official duties, shall take and subscribe to an oath, before some officer authorized by law to administer oaths, that he will honestly, faithfully and impartially perform the duties devolving upon him in office as member of the governing board of the district to which he was appointed and that he will not neglect any of the duties imposed upon him by this chapter.

(2) Immediately after their appointment, and every 2 years thereafter, members composing the governing board shall meet at some convenient place and choose one of their number chairman of the board, and some suitable person secretary, who may or may not be a member of the governing board, and who may be required to execute bond for the faithful performance of his duties as the governing board may determine. Such board shall adopt a seal with a suitable device, and shall keep a well bound book entitled, in effect, "Record of Governing Board of ..... District," in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which book shall at reasonable times be open to the inspection of any citizen of Florida or taxpayer in the district or his agent or attorney.

(3) The chairman and members of the board shall receive no compensation for such services, but while officially on work for the district shall receive their actual traveling expenses and subsistence and lodging, not to exceed the statutory amount allowed state officers and employees, and other expenses in the actual amount incurred therefor.

(4) The governing board of the district is authorized to employ an executive director and such engineers, other professional persons, and other personnel and assistants as the board may deem necessary and under such terms and conditions as it may determine, and to terminate such employment.

(5) The governing board may employ a legal staff for the purposes of:

(a) Providing legal counsel on matters relating to the exercise of its powers and duties;

(b) Representing it in all proceedings of an administrative or judicial nature; and

(c) Otherwise assisting in the administration of the provisions of this chapter.

(6) By resolution the governing board may determine the location of its principal office and provide for the change thereof.

(7) The governing board shall meet at least once a month and upon call of the chairman.

History.—s. 15, part I, ch. 72-299.

373.083 General powers and duties of the governing board.—In addition to other powers and duties allowed it by law, the governing board is authorized to:

(1) Contract with public agencies, private corporations, or other persons; sue and be sued; and appoint and remove agents and employees, including specialists and consultants.

(2) Issue orders to implement or enforce any of the provisions of this chapter or regulations thereunder.

(3) Make surveys and investigations of the water supply and resources of the district and cooperate with other governmental agencies in similar activities.

History.—s. 16, part I, ch. 72-299.

373.084 District works, operation by other governmental agencies.—The district may permit governing bodies of water conservation districts, drainage and other improvement districts, and federal, state and local governments, authorities or agencies to operate and maintain the works of the district under conditions which the governing board may deem advisable.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.161.

373.085 Use of works by other districts.—

(1) The governing board shall have authority to prescribe the manner in which local works provided by other districts or by private persons shall connect with and make use of the works of the district, to issue permits therefor, and to cancel the same for noncompliance with the conditions thereof, or for other cause. It shall be unlawful to connect with or make use of the works of said district without consent in writing from its governing board, and said board shall have authority to prevent, or if done to estop or terminate the same.

(2) Damage resulting from unlawful use of such works, or from violations of the conditions of permit issued by the board shall, if made by other than a public agency, be subject to such penalty as is or may be prescribed by law and in addition thereto by a date and in a manner prescribed by the board, repair of said damage to the satisfaction of said board, or deposit with said board a sum sufficient therefor,

and if by a public agency, then at the expense of such agency the repair of said damage to the satisfaction of the board or the deposit with said board of a sum sufficient therefor.

History.—s. 17, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.17.

373.086 Providing for district works.—

(1) In order to carry out the works for the district, and for effectuating the purposes of this chapter, the governing board is authorized to clean out, straighten, enlarge or change the course of any waterway, natural or artificial, within or without the district; to provide such canals, levees, dikes, dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, bridges, highways and other works and facilities which the board may deem necessary; establish, maintain and regulate water levels in all canals, lakes, rivers, channels, reservoirs, streams or other bodies of water owned or maintained by the district; to cross any highway, or railway with works of the district and to hold, control and acquire by donation, lease or purchase, or to condemn any land, public or private, needed for rights-of-way or other purposes, and may remove any building or other obstruction necessary for the construction, maintenance and operation of the works, and to hold and have full control over the works and rights-of-way of the district.

(2) The works of said district shall be those adopted by the governing board of the district. The district may require or take over for operation and maintenance such works of other districts as the governing board may deem advisable under agreement with such districts.

History.—s. 16, ch. 25209, 1949; s. 2, ch. 29790, 1955; s. 1, ch. 61-147; s. 3, ch. 61-497; s. 2, ch. 63-224; s. 1, ch. 67-206; s. 1, part VI, ch. 72-299; s. 25, ch. 73-190.
Note.—Former s. 378.16.

373.087 District works using aquifer for storage and supply.—The governing board may establish works of the district for the purpose of introducing water into, or drawing water from, the underlying aquifer for storage or supply. However, only water of a compatible quality shall be introduced directly into such aquifer.

History.—s. 1, ch. 72-318.

373.089 Sale of lands.—The governing board of the district may sell lands to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands determined by the governing board to be surplus may be sold by the district, at any time for the highest price obtainable.

(2) All sales of land shall be for cash or upon terms and security to be approved by the governing board, but a deed therefor shall not be executed and delivered until full payment is made.

(3) Before selling any land, except as provided in subsection (5) hereof, it shall be the duty of the district to cause a notice of intention to sell to be published in a newspaper published in the county in which said land is situated once each week for 3 successive weeks (three insertions being sufficient), the first publication of which shall be not less than 30 nor more than 45 days prior to any sale, which notice shall set forth the time and place of the sale and a description of lands to be offered for sale.

(4) All sales shall be conducted at the county courthouse in the county in which the land is located on any day of the week except Sunday and at any time specified in the notice between the hours of 11 a.m. and 2 p.m.

(5) Public sale shall not be required where surplus lands are being resold to the then owner of that adjacent parcel from which the surplus land was originally parted; provided such sale is made within 1 year from the time the land is declared surplus; and the owner of the adjacent parcel shall be notified by registered mail to the address shown on the county tax roll within 30 days after the land is declared surplus.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.48.

373.093 Lease of lands or interest in land.—The governing board of the district may lease any lands or interest in land, including but not limited to oil and mineral rights, to which the district has acquired title, or to which it may hereafter acquire title in the following manner:

(1) For the best price and terms obtainable, to be determined by the board.

(2) Before leasing any land, or interest in land including but not limited to oil and mineral rights, the district shall cause a notice of intention to lease to be published in a newspaper published in the county in which said land is situated and such other places as the board may determine once each week for 3 successive weeks (three insertions being sufficient), the first publication of which shall be not less than 30 nor more than 45 days prior to any lease, which said notice shall set forth the time and place of leasing and a description of the lands to be leased.

(3) It shall not be necessary to publish the notice as provided by subsection (2) where the lease is made to a person in connection with land acquisition by the district and the lease results in a diminution of the cost to the district in the acquisition of the land.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.49.

373.096 Releases.—The governing board of the district may release any canal easement, reservation or right-of-way interests, conveyed to it for which it has no present or apparent future use under terms and conditions determined by the board.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.50.

373.099 Execution of instruments.—Any instruments of sale, lease, release or conveyance executed pursuant to the provisions of this chapter shall be executed in the name of the district by its governing board acting by the chairman or vice chairman of said board and shall have the corporate seal of the board affixed thereto attested by its secretary and any such instrument shall be effective to pass the title or interest of the district in the property conveyed; provided, the district shall not warrant the

title to any property sold, leased, released or conveyed.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.51.

373.103 Powers which may be vested in the governing board at the department's discretion.—In addition to the other powers and duties allowed it by law, the governing board of a water management district may be specifically authorized by the department to:

(1) Administer and enforce all provisions of this chapter, including the permit systems established in parts II, III, and IV of this chapter.

(2) Cooperate with the United States in the manner provided by Congress for flood control, reclamation, conservation, and allied purposes in protecting the inhabitants, the land, and other property within the district from the effects of a surplus or a deficiency of water when the same may be beneficial to the public health, welfare, safety, and utility.

(3) Plan, construct, operate, and maintain works of the district as hereinafter defined.

(4) Determine, establish, and control the level of waters to be maintained in all canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water controlled by the district; to maintain such waters at the levels so determined and established by means of dams, locks, flood gates, dikes, and other structures; and to regulate the discharge into, or withdrawal from, the canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water controlled by the district or which are a work of the district, including review of small watershed projects (Public Law 83-566).

(5) Expend, at the discretion of the governing board, for purposes of promotion, advertisement, and improvement of the program and objectives of the district, a yearly sum not to exceed one-fourth of 1 percent of the moneys collected by taxation within the district.

(6) Exercise such additional power and authority compatible with this chapter and other statutes and federal laws affecting the district as may be necessary to perform such duties and acts and to decide such matters and dispose of the same as are not specifically defined in or covered by statute.

(7) Prepare, in cooperation with the department, that part of the state water use plan applicable to the district.

History.—s. 17, part I, ch. 72-299; s. 7, ch. 73-190.

373.106 Permit required for construction involving underground formation.—

(1) No construction may be begun on a project involving artificial recharge or the intentional introduction of water into any underground formation except as permitted in chapter 377, without the written permission of the governing board of any water management district within which the construction will take place. Such application shall contain the detailed plans and specifications for the construction of the project.

(2) A water management district may do any act necessary to replenish the ground water of said district. The district may, among other things, for the purposes of replenishing the ground water supplies within the district:

(a) Buy water;

(b) Exchange water;

(c) Distribute water to persons in exchange for ceasing or reducing ground water extractions;

(d) Spread, sink, and inject water into the underground;

(e) Store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property within the district; and

(f) Build the necessary works to achieve ground water replenishment.

History.—s. 18, part I, ch. 72-299; s. 14, ch. 78-95.

373.107 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 3, ch. 79-161.

373.109 Permit application fees.—When a water management district governing board implements a permit system under part II, III, or IV of this chapter, it shall establish a schedule of fees for filing applications for the required permits. Such fees shall reflect the cost to the district for processing the application. However, permit fees shall not be required from any governmental entity.

(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district and shall be in addition to moneys otherwise appropriated in any general appropriation act.

(2) The failure of any person to pay the fees established hereunder shall constitute grounds for revocation of his permit.

History.—s. 19, part I, ch. 72-299; s. 7, ch. 76-243.

373.113 Adoption of regulations by the governing board.—In administering the provisions of this chapter the governing board shall adopt, promulgate, and enforce such regulations as may be reasonably necessary to effectuate its powers, duties, and functions pursuant to the provisions of chapter 120.

History.—s. 20, part I, ch. 72-299.

373.114 Land and Water Adjudicatory Commission; review of district policies, rules, and orders.—The Governor and cabinet, sitting as the Land and Water Adjudicatory Commission, shall have the exclusive power by a vote of four of the members, to review, and may rescind or modify, any rule or order of a water management district, except those rules which involve only the internal management of the water management district, to insure compliance with the provisions and purposes of this chapter. Such review may be initiated at any time by the Governor and cabinet, by the secretary, by the Environmental Regulation Commission, or by an in-

terested party aggrieved by such rule or order, by filing a request for such review with the Land and Water Adjudicatory Commission and serving a copy on the water management district. Such request for review is not a precondition to the effectiveness of such rule or order, or to the seeking of judicial review as provided by ss. 373.133 and 120.68.

History.—s. 11, ch. 75-22.

373.116 Procedure for water use and impoundment construction permit applications.—

(1) Applications for water use permits, under part II of this chapter, and for permits for construction or alteration of dams, impoundments, reservoirs, and appurtenant works, under part IV of this chapter, shall be filed with the water management district on appropriate forms provided by the governing board.

(2) Upon receipt of an application for a permit of the type referred to in subsection (1), the governing board shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. In addition, the governing board shall send, by regular mail, a copy of such notice to any person who has filed a written request for notification of any pending applications affecting this particular designated area.

History.—s. 21, part I, ch. 72-299; s. 14, ch. 78-95.

373.117 Certification by professional engineer.—

(1) If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by chapter 471, the department or governing board of a water management district may require, as a condition of granting a permit or license, that a professional engineer licensed under chapter 471 certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board.

(2) The cost of such certification by a professional engineer shall be borne by the permittee.

(3) No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

History.—s. 4, ch. 79-160.

373.119 Administrative enforcement procedures; orders.—

(1) Whenever the executive director of a water management district has reason to believe that a violation of any provision of this chapter or any regulation promulgated thereunder or permits or order issued pursuant thereto has occurred, is occurring, or is about to occur, the executive director may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision or provisions of this chapter or regulation or permit or order alleged to be violated or about to be violated and the facts alleged to constitute a violation thereof, and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person or persons named therein request by written petition a hearing no later than 14 days after the date such order is served.

(2) Whenever the executive director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses, the executive director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the executive director deems necessary to meet the emergency.

(3) Any person to whom an emergency order is directed pursuant to subsection (2) shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

History.—s. 22, part I, ch. 72-299; s. 14, ch. 78-95.

373.123 Penalty.—Any person, real or artificial, that shall construct or enlarge, or cause to be constructed or enlarged, a canal or shall enlarge or deepen a natural stream in such a manner as to permit salt water to move inland of an established saltwater barrier line, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day such movement of salt water shall continue, shall constitute a separate offense of the provisions of this law.

History.—s. 3, ch. 63-210; s. 324, ch. 71-136; s. 25, ch. 73-190.
Note.—Former s. 373.195.

373.129 Maintenance of actions.—The department, the governing board of any water management district, or any local board is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(1) To enforce rules, regulations and orders adopted or issued pursuant to this law.

(2) To enjoin or abate violations of the provisions of this law or rules, regulations and orders adopted pursuant thereto.

(3) To protect and preserve the water resources of the state.

(4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.

History.—s. 16, ch. 57-380; s. 16, ch. 63-336; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 42, ch. 79-65.
Note.—Former s. 373.221.

373.136 Enforcement of regulations and orders.—

(1) The governing board may enforce its regulations and orders adopted pursuant to this chapter, by suit for injunction or other appropriate action in the courts of the state.

(2) Any action by a citizen of the state to seek judicial enforcement of any of the provisions of this chapter shall be governed by the Florida Environmental Protection Act, s. 403.412.

History.—s. 25, part I, ch. 72-299.

373.139 Acquisition of real property.—

(1) The Legislature declares it to be necessary for the public health and welfare that water and water-related resources be conserved and protected. The acquisition of real property for this objective shall constitute a public purpose for which public funds may be expended.

(2) The governing board of the district is empowered and authorized to acquire fee title to real property and easements therein by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water storage, water management, and preservation of wetlands, streams and lakes, except that eminent domain powers may be used only for acquiring real property for flood control and water storage.

(3) Lands acquired for the purposes enumerated in subsection (2) may also be used for recreational purposes, and whenever practicable such lands shall be open to the general public for recreational uses.

(4) For the purpose of introducing water into, or drawing water from, the underlying aquifer for storage or supply, the governing board is authorized to hold, control, and acquire by donation, lease, or purchase any land, public or private.

(5) This section shall not limit the exercise of similar powers delegated by statute to any state or local governmental agency or other person.

History.—s. 26, part I, ch. 72-299; s. 1, ch. 72-318.

373.146 Publication of notices, process, and papers.—Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise provided by law, the publication thereof in some newspaper or newspapers as defined in chapter 50 having general circulation within the area to be affected shall be taken and considered as being sufficient.

History.—s. 44, ch. 25209, 1949; s. 27, part I, ch. 72-299; s. 25, ch. 73-190; s. 14, ch. 78-95.

Note.—Former s. 378.44.

373.149 Existing districts preserved.—The enactment of this act shall not affect the existence of the Central and Southern Florida Flood Control District created by chapter 25270, Laws of Florida, 1949, or the Southwest Florida Water Management District, created by chapter 61-691, Laws of Florida, or any contract or obligation of such districts entered into prior to the effective date of this act. The two districts shall continue to exercise the taxing powers authorized to them in the territories within their respective boundaries, except that nothing herein shall limit the department in considering and recommending to the 1973 session of the legislature changes in the boundaries and transfers of funds, appropriations, personnel, property, or equipment between or among the existing districts and districts created by this chapter. The two districts shall continue to exercise the powers presently authorized by chapters 378 and 373, notwithstanding provisions contained to the contrary in this chapter, until any such powers shall be specifically revoked or modified by the department pursuant to this chapter, except that the provisions of s. 373.139 relating to acquisition of real property shall apply.

History.—s. 28, part I, ch. 72-299.

373.171 Rules and regulations.—

(1) In order to obtain the most beneficial use of the water resources of the state and to protect the public health, safety, and welfare and the interests of the water users affected, governing boards, by action not inconsistent with the other provisions of this law and without impairing property rights, may:

(a) Establish rules, regulations, or orders affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area.

(b) Regulate the use of water within the affected area by apportioning, limiting, or rotating uses of water or by preventing those uses which the governing board finds have ceased to be reasonable or beneficial.

(c) Make other rules, regulations, and orders necessary for the preservation of the interests of the public and of affected water users.

(2) In promulgating rules and regulations and issuing orders under this law, the governing board shall act with a view to full protection of the existing rights to water in this state insofar as is consistent with the purpose of this law.

(3) No rule, regulation or order shall require any modification of existing use or disposition of water in the district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or to the water resources of the state.

(4) All rules and regulations adopted by the governing board shall be filed with the Department of State as provided in chapter 120. An information copy will be filed with the Department of Environmental Regulation.

History.—s. 11, ch. 57-380; s. 8, ch. 63-336; ss. 10, 25, 35, ch. 69-106; s. 8, ch. 76-243; s. 1, ch. 77-117; s. 14, ch. 78-95.

373.175 Declaration of water shortage; emergency orders.—

(1) The governing board of the district may by order declare that a water shortage exists within all or part of the district when insufficient ground or surface water is available to meet the needs of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm.

(2) The governing board may impose such restrictions on one or more users of the water resource as may be necessary to protect the water resources of the area from serious harm.

(3) When a water shortage is declared, the governing board shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice shall serve as notice to all users in the area of the condition of water shortage.

(4) If an emergency condition exists due to a water shortage within any area of the district and the executive director of the district, with the concurrence of the governing board, finds that the exercise of powers under this section is not sufficient to protect the public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, he may, pursuant to

the provisions of chapter 120, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the executive director, with the concurrence of the governing board, deems necessary to meet the emergency.

[1](5) The Department of Natural Resources shall review, and may rescind, modify, or approve, any policy rule, regulation, or order of a water management district authorized by this section.

History.—s. 1, ch. 72-730; s. 25, ch. 73-190; s. 1, ch. 73-295; s. 14, ch. 78-95.

[1]**Note.**—See s. 11, ch. 75-22 (s. 373.114), which vests exclusive authority to review policies, rules, regulations, and orders of water management districts in the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission.

Note.—Former s. 378.152.

373.191 County water conservation projects.—The several counties of the state may cooperate with the division by engaging in county water development and conservation projects and may use county funds and equipment for this purpose and to do all other things necessary in connection with the development and conservation of the county's water resources consistent with the provisions of this law and the rules and regulations adopted pursuant thereto.

History.—s. 13, ch. 57-380; ss. 25, 35, ch. 69-106.

373.196 Legislative findings.—

(1) It is the finding of the Legislature that cooperative efforts between municipalities, counties, water management districts, and the Department of Environmental Regulation are mandatory in order to meet the water needs of rapidly urbanizing areas in a manner which will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from whence such water is withdrawn. Such efforts should utilize all practical means of obtaining water, including, but not limited to, withdrawals of surface water and ground water, recycling of waste water, and desalinization, and will necessitate not only cooperation but also well-coordinated activities. The purpose of this act is to provide additional statutory authority for such cooperative and coordinated efforts.

(2) Municipalities and counties are encouraged to create regional water supply authorities as authorized herein. It is further the intent that municipalities, counties, and regional water supply authorities are to have the primary responsibility for water supply, and water management districts and their basin boards are to engage only in those functions that are incidental to the exercise of their flood control and water management powers.

(3) Nothing herein shall be construed to preclude the various municipalities and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other municipalities and counties for the purpose of meeting their respective needs for dependable and adequate supplies of water, provided the obtaining of water through such operations shall not be done in a manner which results in adverse effects upon the areas from whence such water is withdrawn.

History.—s. 1, ch. 74-114; s. 43, ch. 79-65.

373.1961 Water production.—In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to chapter 373:

(1) May engage in planning to assist counties, municipalities, and regional water supply authorities in meeting the water supply needs of the rapidly urbanizing areas within its district in such manner as will give priority to reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(2) Upon request of a county, municipality, or regional water supply authority, shall assist such counties and municipalities and water supply authorities in meeting the water supply needs of the rapidly urbanizing areas within its district in such manner as will give priority to reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(3) At the request of a county, municipality, or regional water supply authority, may establish water production and transmission facilities for the purpose of supplying water to such counties, municipalities, and regional water supply authorities.

(4) Shall not engage in local distribution.

(5) Shall not deprive, directly or indirectly, any county wherein water is withdrawn of the prior right to the reasonable and beneficial use of water which is required to supply adequately the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.

(6) May provide water and financial assistance to regional water supply authorities, but may not provide water to counties and municipalities which are located within the area of such authority without the specific approval of the authority or, in the event of the authority's disapproval, the approval of the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission. The district may supply water at rates and upon terms mutually agreed to by the parties or, if they do not agree, as set by the governing board and specifically approved by the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission.

(7) May acquire title to such interest as is necessary in real property, by purchase, gift, devise, lease, eminent domain, or otherwise, for water production and transmission consistent with this section. However, the district shall not use any of the eminent domain powers herein granted to acquire water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county, municipality, or regional water supply authority.

History.—s. 2, ch. 74-114; s. 14, ch. 76-243.

373.1962 Regional water supply authorities.—

(1) By agreement between local governmental units created or existing pursuant to the provisions of Art. VIII of the State Constitution, pursuant to the Florida Interlocal Cooperation Act of 1969, s. 163.01, and upon the approval of the [1]Governor and

Cabinet sitting as head of the Department of Natural Resources to insure that such agreement will be in the public interest and complies with the intent and purposes of this act, regional water supply authorities may be created for the purpose of developing, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. In approving said agreement the [1]Governor and Cabinet, sitting as head of the Department of Natural Resources, shall consider, but not be limited to, the following:

(a) Whether the geographic territory of the proposed authority is of sufficient size and character to reduce the environmental effects of improper or excessive withdrawals of water from concentrated areas.

(b) The maximization of economic development of the water resources within the territory of the proposed authority.

(c) The availability of a dependable and adequate water supply.

(d) The ability of any proposed authority to design, construct, operate, and maintain water supply facilities in the locations, and at the times necessary, to insure that an adequate water supply will be available to all citizens within the authority.

(e) The effect or impact of any proposed authority on any municipality, county, or existing authority or authorities.

(f) The existing needs of the water users within the area of the authority.

(2) In addition to other powers and duties agreed upon, and notwithstanding the provisions of s. 163.01, such authority may:

(a) Upon approval of the electors residing in each county or municipality within the territory to be included in any authority, levy ad valorem taxes, not to exceed one-half mill, pursuant to s. 9(b), Art. VII of the State Constitution. No tax authorized by this paragraph shall be levied in any county or municipality without an affirmative vote of the electors residing in such county or municipality.

(b) Acquire water and water rights; develop, store, and transport water; provide, sell and deliver water for county or municipal uses and purposes; provide for the furnishing of such water and water service upon terms and conditions and at rates which will apportion to parties and nonparties an equitable share of the capital cost and operating expense of the authority's work to the purchaser.

(c) Not engage in local distribution.

(d) Exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to acquire title to such interest in real property as is necessary to the exercise of the powers herein granted, except water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county or municipality.

(e) Issue revenue bonds in the manner prescribed by the Revenue Bond Act of 1953, as amended, part I, chapter 159, to be payable solely from funds derived from the sale of water by the authority to any county or municipality. Such bonds may be additionally secured by the full faith and credit of any county or municipality, as provided by s. 159.16 or by a pledge of excise taxes, as provided by s. 159.19. For the purpose of issuing revenue bonds, an authority shall be considered a "unit" as defined in s. 159.02(2) and as that term is used in the Revenue Bond Act of 1953, as amended. Such bonds may be issued to finance the cost of acquiring properties and facilities for the production and transmission of water by the authority to any county or municipality, which cost shall include the acquisition of real property and easements therein for such purposes. Such bonds may be in the form of refunding bonds to take up any outstanding bonds of the authority or of any county or municipality where such outstanding bonds are secured by properties and facilities for production and transmission of water, which properties and facilities are being acquired by the authority. Refunding bonds may be issued to take up and refund all outstanding bonds of said authority that are subject to call and termination, and all bonds of said authority that are not subject to call or redemption, when the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the authority. Such refunding bonds may be issued at any time when, in the judgment of the authority, it will be to the best interest of the authority financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds or, for any other reason, in the judgment of the authority, advantageous to said authority.

(f) Sue and be sued in its own name.

(g) Borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness.

(h) Join with one or more other public corporations for the purpose of carrying out any of its powers and for that purpose to contract with such other public corporation or corporations for the purpose of financing such acquisitions, construction, and operations. Such contracts may provide for contributions to be made by each party thereto, for the division and apportionment of the expenses of such acquisitions and operations, and for the division and apportionment of the benefits, services, and products therefrom. Such contract may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof.

(3) When it is found to be in the public interest, for the public convenience and welfare, for a public benefit, and necessary for carrying out the purpose of any regional water supply authority, any state agency, county, water control district existing pursuant to chapter 298, water management district existing pursuant to chapter 373, municipality, governmental agency, or public corporation in this state holding title to any interest in land is hereby authorized, in its discretion, to convey the title to or dedicate land, title to which is in such entity, including tax reverted land, or to grant use-rights therein, to any regional water supply authority created pursuant to this section. Land granted or conveyed to such authority shall be for the public purposes of such authority and may be made subject to the condition that in the event said land is not so used, or if used and subsequently its use for said purpose is aban-

doned, the interest granted shall cease as to such authority and shall automatically revert to the granting entity.

(4) Each county or municipality which is a party to an agreement pursuant to subsection (1) shall have a preferential right to purchase water from the regional water supply authority for use by such county or municipality.

(5) In carrying out the provisions of this section, any county wherein water is withdrawn by the authority shall not be deprived, directly or indirectly, of the prior right to the reasonable and beneficial use of water which is required adequately to supply the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.

(6) Upon a resolution adopted by the governing body of any county or municipality, the authority may, subject to a majority vote of its voting members, include such county or municipality in its regional water supply authority upon such terms and conditions as may be prescribed.

(7) The authority shall design, construct, operate, and maintain facilities in the locations and at the times necessary to insure that an adequate water supply will be available to all citizens within the authority.

History.—s. 7, ch. 74-114; s. 1, ch. 77-174; s. 35, ch. 79-5.

[1]Note.—Section 11, ch. 75-22 transferred powers, duties, and functions of the Department of Natural Resources relating to water management to the Department of Environmental Regulation.

373.1963 Assistance to West Coast Regional Water Supply Authority.—

(1) In lieu of the provisions in paragraph 373.1962(2)(a), the Southwest Florida Water Management District shall assist the West Coast Regional Water Supply Authority for a period of 5 years, terminating December 31, 1981, by levying an ad valorem tax, upon request of the authority, of not more than 0.05 mill on all taxable property within the limits of the authority. During such period the corresponding basin board ad valorem tax levies shall be reduced accordingly.

(2) The authority shall prepare its annual budget in the same manner as prescribed for the preparation of basin budgets, but such authority budget shall not be subject to review by the respective basin boards or by the governing board of the district.

(3) The annual millage for the authority shall be the amount required to raise the amount called for by the annual budget when applied to the total assessment on all taxable property within the limits of the authority, as determined for county taxing purposes.

(4) The authority may, by resolution, request the governing board of the district to levy ad valorem taxes within the boundaries of the authority. Upon receipt of such request, together with formal certification of the adoption of its annual budget and of the required tax levy, the authority tax levy shall be made by the governing board of the district to finance authority functions.

(5) The taxes provided for in this section shall be extended by the property appraiser on the county tax roll in each county within, or partly within, the authority boundaries and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district which shall forthwith pay them over to the authority. Until paid, such taxes shall be a lien on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(6) The governing board of the district shall not be responsible for any actions or lack of actions by the authority.

History.—s. 13, ch. 76-243; s. 1, ch. 77-174.

373.1965 Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin; coordinating council on restoration; project implementation.—

(1) There is created the Coordinating Council on the Restoration of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. The council shall be composed of the Executive Director of the Department of Natural Resources, the Executive Director of the Florida Game and Fresh Water Fish Commission, the Executive Director of the Central and Southern Florida Flood Control District, and the Commissioner of the Department of Agriculture and Consumer Services, or their designees, and the Secretary of the Department of Environmental Regulation, who shall serve as chairman.

(2) In recognition of the complete findings of the Special Project to Prevent the Eutrophication of Lake Okeechobee, the council shall develop measures which are to be taken by the Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Central and Southern Florida Flood Control District to restore the water quality of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. Such measures shall be designed to minimize and ultimately remove the threats to the agricultural industry, the wildlife, and the people of central and southern Florida, posed by land uses and water-management practices which cause the degradation of water quality in such area and shall be designed to alleviate excessive nutrient loading from the Taylor Creek-Nubbins Slough Basin. In developing such measures, the council shall seek to:

(a) Conserve and improve ground and surface water supplies throughout the region.

(b) Improve the quality of water for all beneficial purposes throughout the region, and in Lake Okeechobee.

(c) Restore the natural seasonal water level fluctuations in the lakes of the Kissimmee River and in its natural flood plains and marshlands.

(d) Recreate conditions favorable to increases in production of wetland vegetation, native aquatic life, and wetland wildlife.

(e) Protect presently developed areas from unnatural floods, to the extent that such protection is now achievable.

(f) Utilize the natural and free energies of the river system to the greatest extent possible, so as to hold to a minimum all recurring annual needs of petroleum energy supplies.

(g) Provide for the effective enforcement of exist-

ing laws designed to prevent excessive nutrient loading of area waters.

(3) The Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Central and Southern Florida Flood Control District shall each implement and enforce those measures developed by the council which are within its jurisdiction. The Secretary of the Department of Environmental Regulation shall be responsible for the overall supervision of the enforcement of such measures.

(4) The Central and Southern Florida Flood Control District or its successor agency shall establish a Special Trust Fund for the Restoration of the Kissimmee River Valley and Lake Okeechobee, which shall be funded from State General Revenue, federal matching funds, donations, and district funds, provided that district funds shall equal 20 percent of State General Revenue funds.

(5) The Secretary of the Department of Environmental Regulation shall present to the Legislature, within 1 year of the effective date of this act, the council's comprehensive report and complete plans for implementation of the corrective actions required, including fund requirements, and the implementation of the program within 5 years after the effective date of this act. During the 5-year implementation period, the Secretary of the Department of Environmental Regulation shall present to the Legislature an annual, comprehensive, interim progress report.

(6) Upon completion of the entire program to the satisfaction of the council and the Legislature, the council shall cease to exist, and all funds and moneys remaining in the Special Fund shall be immediately paid over to the General Revenue Fund.

History.—s. 1, ch. 76-113.

373.197 Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin restoration project; measures authorized.—

(1) The Legislature hereby directs the Florida Department of Environmental Regulation, in conjunction with the South Florida Water Management District, to seek appropriate authorization by the Congress of the United States for a restudy of the Kissimmee River Valley and the Taylor Creek-Nubbins Slough Basin.

(2) The Legislature recommends that the authorization provide that the Board of Engineers for Rivers and Harbors, created under s. 3 of the Rivers and Harbors Act, approved June 13, 1902, be directed to review the report of the Chief of Engineers on Central and Southern Florida, published as House Document Numbered 643, Eightieth Congress, and other pertinent reports, with a view to determining whether any modification of the recommendations contained therein and of the system of works constructed pursuant thereto is advisable with respect to questions of the quality of water entering the Kissimmee River and Taylor Creek-Nubbins Slough and Lake Okeechobee therefrom, flood control, recreation, navigation, loss of fish and wildlife resources, other current and forseeable environmental problems, and loss of environmental amenities in those areas. Potential modification alternatives, if any, shall include, but not be limited to, consideration of restoration of all or parts of the Kissimmee River below Lake Kissimmee and of the Taylor Creek-Nubbins Slough Basin.

(3) The Department and the Water Management District shall also seek to assure that this restudy be conducted by the Corps of Engineers in close cooperation with the Coordinating Council on the Restoration of the Kissimmee River Valley and the Taylor Creek-Nubbins Slough Basin and that the study be responsive to the problems and needs identified by the Coordinating Council and consider development of detailed physical and mathematical models to assess and predict these identified problems.

History.—s. 1, ch. 77-404.

PART II

PERMITTING OF CONSUMPTIVE USES OF WATER

373.203 Definitions.—

(1) An "artesian well" is defined as an artificial hole in the ground from which water supplies may be obtained and which penetrates any water-bearing rock, the water in which is raised to the surface by natural flow, or which rises to an elevation above the top of the water-bearing bed. "Artesian wells" are defined further to include all holes, drilled as a source of water, that penetrate any water-bearing beds that are a part of the artesian water system of Florida, as determined by representatives of the Florida Geological Survey or Department of Environmental Regulation.

(2) "Waste" is defined to be the causing, suffering or permitting any water flowing from, or being pumped from, an artesian well to run into any river, creek, or other natural watercourse or channel, or into any bay or pond (unless used thereafter for the beneficial purposes of irrigation of land, mining or other industrial purposes of domestic use), or into any street, road or highway, or upon the land of any person, or upon the public lands of the United States or of the state, unless it be used thereon for the

beneficial purposes of the irrigation thereof, industrial purposes, domestic use, or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land shall be restricted to a minimum by the use of proper structural devices in the irrigation system.

History.—ss. 3, 4, ch. 28253, 1953; s. 1, ch. 59-248; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 44, ch. 79-65.
Note.—Former ss. 370.051, 373.021.

373.206 Artesian wells; flow regulated.—Every person, stock company, association or corporation, county or municipality owning or controlling the real estate upon which is located a flowing artesian well in this state shall, within 90 days after June 15, 1953, provide each such well with a valve capable of controlling the discharge from the well, and shall keep the valve so adjusted that only a supply of water shall be available as is necessary for ordinary use by the owner, tenant, occupant or person in control of the land for personal use and on conducting his business. However, if the water in a well is so highly mineralized or otherwise of such poor quality that it is no longer a usable water supply, as determined by the Department of Environmental Regulation, then it shall be plugged in accordance with the department's specifications for well plugging.

History.—s. 1, ch. 28253, 1953; s. 1, ch. 65-460; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 45, ch. 79-65.
Note.—Former ss. 370.052, 373.031.

373.209 Artesian wells; penalties for violation.—

(1) No owner, tenant, occupant, or person in control of an artesian well shall knowingly and intentionally:

(a) Allow the well to flow continuously without a valve or mechanical device for checking or controlling the flow.

(b) Permit the water to flow unnecessarily.

(c) Pump a well unnecessarily.

(d) Permit the water from the well to go to waste.

(2) A well is exempt from the provisions of this section unless the Department of Environmental Regulation can show that the uncontrolled flow of water from the well does not have a reasonable and beneficial use, as defined in s. 373.019(5).

(3) Any person who violates any provision of this section shall be subject to either:

(a) The remedial measures provided for in s. 373.436; or

(b) A civil penalty of $100 a day for each and every day of such violation and for each and every act of violation. The civil penalty may be recovered by the water management board of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating any provision of this section.

(4) The penalties provided by this section shall apply notwithstanding any provisions of law to the contrary.

History.—s. 2, ch. 28253, 1953; s. 323, ch. 71-136; s. 25, ch. 73-190; s. 1, ch. 74-279; s. 46, ch. 79-65; s. 146, ch. 79-400.
Note.—Former ss. 370.053, 373.041.

373.213 Certain artesian wells exempt.—Nothing in ss. 370.051-370.055 shall be construed to apply to an artesian well feeding a lake already in existence prior to June 15, 1953, which lake is used or intended to be used for public bathing and/or the propagation of fish, where the continuous flow of water is necessary to maintain its purity for bathing and the water level of said lake for fish.

History.—s. 6, ch. 28253, 1953; s. 25, ch. 73-190.
Note.—Former ss. 370.055, 373.061.

373.216 Implementation of program for regulating the consumptive use of water.—The department may authorize the governing board of a water management district to implement a program for the issuance of permits authorizing the consumptive use of particular quantities of water. Notice of any required hearing on the proposed implementation of these regulations shall be published at least once a week for 2 weeks in a newspaper of general circulation in the area to be affected by such regulations, the last notice appearing no less than 10 days prior to the date of the public hearing, in addition to any notice required by chapter 120.

History.—s. 1, part II, ch. 72-299; s. 8, ch. 73-190; s. 14, ch. 78-95.

373.217 Superseded laws and regulations.—

(1) It is the intent of the Legislature to provide a means whereby reasonable programs for the issuance of permits authorizing the consumptive use of particular quantities of water may be authorized by the Department of Environmental Regulation, subject to judicial review and also subject to review by the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission as provided in s. 373.114.

(2) It is the further intent of the Legislature that Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, shall provide the exclusive authority for requiring permits for the consumptive use of water and for authorizing transportation thereof pursuant to s. 373.223(2).

(3) If any provision of Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, is in conflict with any other provision, limitation, or restriction which is now in effect under any law or ordinance of this state or any political subdivision or municipality, or any rule or regulation promulgated thereunder, Part II shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purpose of regulating the consumptive use of water. However, this section shall not be construed to supersede the provisions of the Florida Electrical Power Plant Siting Act.

(4) Other than as provided in subsection (3) of

this section, Part II of the Florida Water Resources Act of 1972, as amended, preempts the regulation of the consumptive use of water as defined in this act.

History.—s. 9, ch. 76-243; s. 1, ch. 77-174.

373.219 Permits required.—

(1) The governing board or the department may require such permits for consumptive use of water and may impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the district or department and is not harmful to the water resources of the area. However, no permit shall be required for domestic consumption of water by individual users.

(2) In the event that any person shall file a complaint with the governing board or the department that any other person is making a diversion, withdrawal, impoundment, or consumptive use of water not expressly exempted under the provisions of this chapter and without a permit to do so, the governing board or the department shall cause an investigation to be made, and if the facts stated in the complaint are verified the governing board or the department shall order the discontinuance of the use.

History.—s. 2, part II, ch. 72-299; s. 9, ch. 73-190.

373.223 Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

(a) Is a reasonable beneficial use as defined in s. 373.019(5); and

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

(2) The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(3) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

History.—s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243.

373.224 Existing permits.—Any permits or permit agreements for consumptive use of water executed or issued by an existing flood control, water management, or water regulatory district pursuant to chapter 373 or chapter 378 prior to December 31, 1976, shall remain in full force and effect in accordance with its terms until otherwise modified or revoked as authorized herein.

History.—s. 11, ch. 73-190; s. 3, ch. 75-125.

373.226 Existing uses.—

(1) All existing uses of water, unless otherwise exempted from regulation by the provisions of this chapter, may be continued after adoption of this permit system only with a permit issued as provided herein.

(2) The governing board or the department shall issue an initial permit for the continuation of all uses in existence before the effective date of implementation of this part if the existing use is a reasonable beneficial use as defined in s. 373.019(5) and is allowable under the common law of this state.

(3) Application for permit under the provisions of subsection (2) must be made within a period of 2 years from the effective date of implementation of these regulations in an area. Failure to apply within this period shall create a conclusive presumption of abandonment of the use, and the user, if he desires to revive the use, must apply for a permit under the provisions of s. 373.229.

History.—s. 4, part II, ch. 72-299; s. 12, ch. 73-190.

373.229 Application for permit.—

(1) All permit applications filed with the governing board or the department under this part and notice thereof required under s. 373.116 shall contain:

(a) The name of the applicant and his address or, in the case of a corporation, the address of its principal business office;

(b) The date of filing;

(c) The date set for a hearing, if any;

(d) The source of the water supply;

(e) The quantity of water applied for;

(f) The use to be made of the water and any limitation thereon;

(g) The place of use;

(h) The location of the well or point of diversion; and

(i) Such other information as the governing board or the department may deem necessary.

(2) The notice shall state that written objections to the proposed permit may be filed with the governing board or the department by a specified date. The governing board or the department, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

(3) If the proposed application is for less than 100,000 gallons per day, the governing board or the department may consider the application and any objections thereto without a hearing. If the proposed application is for 100,000 gallons per day or more and no objection is received, the governing board or the department, after proper investigation by its staff, may, at its discretion, approve the application without a hearing.

History.—s. 5, part II, ch. 72-299; s. 13, ch. 73-190; s. 11, ch. 76-243; s. 1, ch. 77-174.

373.232 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation,

failure to provide such information cannot be grounds to deny a permit.

History.—s. 4, ch. 79-161.

373.233 Competing applications.—

(1) If two or more applications which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the governing board or the department shall have the right to approve or modify the application which best serves the public interest.

(2) In the event that two or more competing applications qualify equally under the provisions of subsection (1), the governing board or the department shall give preference to a renewal application over an initial application.

History.—s. 6, part II, ch. 72-299.

373.236 Duration of permits.—

(1) Permits may be granted for any period of time not exceeding 20 years. The governing board or the department may base duration of permits on a reasonable system of classification according to source of supply or type of use, or both.

(2) The governing board or the department may authorize a permit of duration of up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.

History.—s. 7, part II, ch. 72-299.

373.239 Modification and renewal of permit terms.—

(1) A permittee may seek modification of any terms of an unexpired permit.

(2) If the proposed modification involves water use of 100,000 gallons or more per day, the application shall be treated under the provisions of s. 373.229 in the same manner as the initial permit application. Otherwise, the governing board or the department may at its discretion approve the proposed modification without a hearing, provided the permittee establishes that:

(a) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's need, or

(b) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

(3) All permit renewal applications shall be treated under this part in the same manner as the initial permit application.

History.—s. 8, part II, ch. 72-299; s. 14, ch. 73-190.

373.243 Revocation of permits.—The governing board or the department may revoke a permit as follows:

(1) For any material false statement in an application to continue, initiate, or modify a use, or for any material false statement in any report or statement of fact required of the user pursuant to the provisions of this chapter, the governing board or the department may revoke the user's permit, in whole or in part, permanently.

(2) For willful violation of the conditions of the permit, the governing board or the department may permanently or temporarily revoke the permit, in whole or in part.

(3) For violation of any provision of this chapter, the governing board or the department may revoke the permit, in whole or in part, for a period not to exceed 1 year.

(4) For nonuse of the water supply allowed by the permit for a period of 2 years or more, the governing board or the department may revoke the permit permanently and in whole unless the user can prove that his nonuse was due to extreme hardship caused by factors beyond his control.

(5) The governing board or the department may revoke a permit, permanently and in whole, with the written consent of the permittee.

History.—s. 9, part II, ch. 72-299; s. 14, ch. 78-95.

373.244 Temporary permits.—

(1) The governing board of a water management district may issue, or may authorize its executive director to issue, temporary permits for the consumptive use of water while an application is pending for a permit pursuant to ss. 373.219 and 373.229.

(2) Such a temporary permit shall be issued for a period of time to expire on the day following the next regular meeting of the governing board. At such meeting, the governing board shall consider whether it appears that the proposed use meets the criteria set forth in s. 373.223(1) and that such temporary permit is necessary for consumptive use of water prior to final action on an application for a permit pursuant to ss. 373.219 and 373.229.

(3) The governing board may summarily extend the term of a temporary permit for subsequent periods of time to expire on or before the day following the next regular meeting of the governing board.

(4) The board shall review temporary permits at each regular meeting and may terminate a temporary permit or refuse to extend it further upon a finding that the water use does not meet the criteria set forth in s. 373.223(1) or that adverse effects are occurring as a result of water use under the temporary permit or that the water authorized to be used under such permit is no longer required by the permitholder.

(5) The notice and hearing that might otherwise be required pursuant to s. 373.116(2) and chapter 120 shall not be required prior to issuance or extension of a temporary permit pursuant to the provisions of this section.

(6) Issuance of a temporary permit pursuant to the provisions of this section shall not in any way be construed as a commitment to issue a permit pursuant to ss. 373.219 and 373.229. No action taken by the governing board, or by the executive director if so authorized, shall be construed to estop the governing board from subsequently denying an application for a permit pursuant to ss. 373.219 and 373.229.

History.—s. 1, ch. 79-160.

373.246 Declaration of water shortage or emergency.—

(1) The governing board or the department by regulation shall formulate a plan for implementation during periods of water shortage. As a part of

this plan the governing board or the department shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(2) The governing board or the department by order may declare that a water shortage exists within all or part of the district when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm. Such orders shall be final agency action.

(3) In accordance with the plan adopted under subsection (1), the governing board or the department may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by the governing board or the department.

(5) When a water shortage is declared, the governing board or the department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice shall serve as notice to all users in the area of the condition of water shortage.

(6) The governing board or the department shall notify each permittee in the district by regular mail of any change in the condition of his permit or any suspension of his permit or of any other restriction on his use of water for the duration of the water shortage.

(7) If an emergency condition exists due to a water shortage within any area of the district, and if the department, or the executive director with the concurrence of the governing board, finds that the exercise of powers under subsection (1) are not sufficient to protect the public health, safety, or welfare, the health of animals, fish or aquatic life, a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, it or he may, pursuant to the provisions of s. 373.119, issue orders reciting the existence of such an emergency and requiring that such action, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the department or the executive director deems necessary to meet the emergency.

(8) An affected party to whom an emergency order is directed under subsection (7) shall comply immediately, but may challenge such an order in the manner set forth in s. 373.119.

History.—s. 10, part II, ch. 72-299; s. 14, ch. 78-95.

373.249 Existing regulatory districts preserved.—The enactment of this chapter shall not affect any existing water regulatory districts pursuant to chapter 373, or orders issued by said regulatory districts, unless specifically revoked, modified, or amended by such regulatory district or by the department.

History.—s. 11, part II, ch. 72-299.

PART III

REGULATION OF WELLS

373.303 Definitions.—As used in this part:

(1) "Abandoned water well" means a well the use of which has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair, as determined by a representative of the department, that continued use for the purpose of obtaining groundwater or disposing of water or liquid wastes is impracticable.

(2) "Construction of water wells" means all parts necessary to obtain groundwater by wells, including the location and excavation of the well, but excluding the installation of pumps and pumping equipment.

(3) "Department" means the Department of [1][Environmental Regulation].

(4) "Political subdivision" means a city, town, county, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

(5) "Repair" means any action which involves the physical alteration or replacement of any part of a well, but does not include the alteration or replacement of any portion of a well which is above ground surface.

(6) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, development, or artificial recharge of groundwater, but such term does not include sand-point wells as herein defined, or any well for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying, for inserting media to dispose of oil brines or to repressure oil-or natural gas-bearing formation, or for storing petroleum, natural gas, or other products.

(7) "Water well contractor" means any person, firm, or corporation engaged in the business of constructing water wells.

(8) "Well seal" means an approved arrangement or device to prevent contaminants from entering the well at the upper terminal.

(9) "Sand-point well" means any device which is driven into place and which consists of a pipe with

an attached perforated metal tube or screen designed to permit the passage of water.

History.—s. 1, part III, ch. 72-299.

[1]Note.—Bracketed words substituted by the editors for "Natural Resources."

373.306 Scope.—No person shall construct, repair, abandon, or cause to be constructed, repaired, or abandoned, any water well contrary to the provisions of this part and applicable rules and regulations. This part shall not apply to equipment used temporarily for dewatering purposes or to the process used in dewatering.

History.—s. 2, part III, ch. 72-299; s. 15, ch. 73-190.

373.308 Implementation of programs for regulating water wells.—

(1) The department may authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.

(2) The department may authorize the governing board of a water management district to exercise any power authorized to be exercised by the department under ss. 373.309, 373.313, 373.316, 373.319, 373.323, 373.326, 373.329, and 373.333 and may withhold from delegation such power as the department chooses not to delegate.

(3) Notwithstanding the provision in this section for delegation of authority to a water management district, the department may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state, as may be determined by the department.

History.—s. 2, ch. 79-160.

373.309 Authority to adopt rules, regulations, and procedures.—The department shall adopt, and may from time to time amend, rules and regulations governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto it shall:

(1) Enforce the provisions of this part and any rules and regulations adopted pursuant thereto.

(2) Delegate, at its discretion, to any political subdivision any of its authority under this part in the administration of the rules and regulations adopted hereunder.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this part.

(4) Require at its discretion the making and filing of logs, and the saving of cuttings and cores, which shall be delivered to the [1][Department of Environmental Regulation].

(5) Issue such additional regulations and take such other actions as may be necessary to carry out the provisions of this part.

History.—s. 3, part III, ch. 72-299.

[1]Note.—Bracketed word substituted by the editors for "Division of Interior Resources of the department." See s. 11, ch. 75-22, which transferred all powers, duties, and functions of the Department of Natural Resources relating to water management, as set forth in ch. 373, to the Department of Environmental Regulation and also s. 13, ch. 75-22, which in effect abolished the Division of Interior Resources.

373.313 Prior permission and notification.—

(1) Taking into consideration other applicable state laws, in any geographical area where the department determines such permission to be reasonably necessary to protect the groundwater resources, prior permission shall be obtained from the department for each of the following:

(a) The construction of any water well;

(b) The repair of any water well; or

(c) The abandonment of any water well.

However, in any area where undue hardship might arise by reason of such requirement, prior permission will not be required.

(2) The department shall be notified of any of the following whenever prior permission is not required:

(a) The construction of any water well;

(b) The repair of any water well; or

(c) The abandonment of any water well.

History.—s. 4, part III, ch. 72-299.

373.314 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 5, ch. 79-161.

373.316 Existing installations.—No well in existence on the effective date of this part shall be required to conform to the provisions of s. 373.313 or any rules or regulations adopted pursuant thereto. However, any well now or hereafter abandoned or repaired as defined in this part shall be brought into compliance with the requirements of this part and any applicable rules or regulations with respect to abandonment of wells, and any well which is determined by the department to be a hazard to the groundwater resources must comply with the provisions of this part and applicable rules and regulations within a reasonable time after notification of such determination has been given.

History.—s. 5, part III, ch. 72-299.

373.319 Inspections.—

(1) The department is authorized to inspect any water well or abandoned water well. Duly authorized representatives of the department may at reasonable times enter upon and shall be given access to any premises for the purpose of such inspection.

(2) If upon the basis of such inspections the department finds applicable laws, rules, or regulations have not been complied with, it shall disapprove the well. If disapproved, no well shall thereafter be used until brought into compliance with the rules and regulations promulgated under this law.

History.—s. 6, part III, ch. 72-299; s. 14, ch. 78-95.

373.323 Licenses.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the department a license to conduct such business.

(2) The department may adopt and from time to time amend rules and regulations governing applications for water well contractor licenses. The department shall license as a water well contractor any person properly making application therefor who is an adult for all legal purposes, has knowledge of rules and regulations adopted under this part, and has had not less than 2 years' experience in the work for which he is applying for a license. The department shall prepare an examination which each such applicant must pass in order to qualify for such license.

(3) This section shall not apply to any person who performs labor or services at the direction and under the supervision of a licensed water well contractor.

(4) A political subdivision engaged in well-drilling shall be licensed under this part but shall be exempt from paying the license fees for the drilling done by regular employees of, and with equipment owned by, it.

(5) Licenses issued pursuant to this section are not transferable and shall expire on July 1 of each year. A license may be renewed without examination for an ensuing year by making application not later than 30 days after the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until a new license is received or the applicant is notified by the department that it has refused to renew his license. After July 31 of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of $50.

(6) Whenever the department determines that the holder of any license issued pursuant to this section has violated any provision of this part or any rule or regulation adopted pursuant thereto, the department is authorized to suspend or revoke any such license. Any order issued pursuant to this subsection shall become effective 30 days after service thereof unless a written petition requesting hearing under the procedure provided in chapter 120 is filed sooner.

(7) No application for a license issued pursuant to this section may be made within 1 year after revocation thereof.

History.—s. 7, part III, ch. 72-299; s. 114, ch. 77-104; s. 14, ch. 78-95.

373.326 Exemptions.—

(1) When the department finds that compliance with all requirements of this part would result in undue hardship, an exemption from any one or more such requirements may be granted by the department to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this part.

(2) Nothing in this part shall prevent a person who has not obtained a license pursuant to s. 373.323 from constructing a well that is 2 inches or under in diameter, on his own or leased property, intended for use only in a single family house which is his residence, or intended for use only for farming purposes on his farm, and when the waters to be produced are not intended for use by the public or any residence other than his own. Such persons shall comply with all rules and regulations as to construction of wells adopted under this part.

History.—s. 8, part III, ch. 72-299.

373.329 Fees.—The following fees are required:

(1) A fee of $100 shall accompany each new application for a license required under s. 373.323.

(2) A fee of $25 shall accompany each application for a renewal of license under s. 373.323.

History.—s. 9, part III, ch. 72-299; s. 16, ch. 73-190.

373.333 Enforcement.—

(1) Whenever the department has reasonable grounds for believing that there has been a violation of this part or any rule or regulation adopted pursuant thereto, it shall give written notice to the person alleged to be in violation. Such notice shall identify the provision of this part or regulation issued hereunder alleged to be violated and the facts alleged to constitute such violation.

(2) Such notice shall be served in the manner required by law for the service of process upon persons in a civil action and shall be accompanied by an order of the department requiring described remedial action which, if taken within the time specified in such order, will effect compliance with the requirements of this part and regulations issued hereunder. Such order shall become final unless a request for hearing as provided in chapter 120 is made within 30 days from the date of service of such order.

History.—s. 10, part III, ch. 72-299.

373.336 Penalties.—Any person who violates any provision of this part or regulation or order issued hereunder shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083. Continuing violation after notice thereof shall constitute a separate violation for each day so continued.

History.—s. 11, part III, ch. 72-299; s. 17, ch. 73-190.

373.339 Existing regulations preserved.—The enactment of this chapter shall not apply in any area where water wells are regulated by a water regulatory district pursuant to the authority of chapter 373 unless and until the department shall modify or revoke such regulations and provide that such area will thereafter be governed by the provisions of this part.

History.—s. 12, part III, ch. 72-299.

373.342 Permits.—

(1) The governing board of any water regulatory district which, pursuant to the authority of s. 373.339 or pursuant to authority delegated to it by the department under s. 373.308 or s. 373.309(2), regulates water wells may in its discretion authorize its executive director to issue permits for the construction, repair, or modification of any water well.

(2) In granting authority to its executive director under subsection (1), the governing board shall prescribe those certain circumstances in which such a permit may be issued.

History.—s. 3, ch. 79-160.

PART IV

MANAGEMENT AND STORAGE OF SURFACE WATERS

373.403 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following terms shall mean:

(1) "Dam" means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(2) "Appurtenant works" means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

(3) "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(4) "Reservoir" means any artificial or natural holding area which contains or will contain the water impounded by a dam.

(5) "Works" means all artificial structures not included in subsections (1) and (2), including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across, the waters in the state, but not including wells as defined in part III.

(6) "Closed system" means any reservoir or works located entirely within lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof.

(7) "Alter" means to extend a dam or works beyond maintenance in its original condition, including changes which may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works.

(8) "Maintenance" or "repairs" means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, appurtenant work or works, but excluding routine custodial maintenance.

History.—s. 1, part IV, ch. 72-299; s. 18, ch. 73-190.

373.406 Exemptions.—The following exemptions shall apply:

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant thereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(2) Nothing herein, or in any rule, regulation, or order adopted pursuant thereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. However, such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

(3) Nothing herein, or in any rule, regulation or order adopted pursuant thereto, shall be construed to be applicable to construction, operation, or maintenance of any closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such closed system.

(4) All rights and restrictions set forth in this section shall be enforced by the governing board or the Department of Environmental Regulation or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.

History.—s. 2, part IV, ch. 72-299; s. 47, ch. 79-65.

373.409 Headgates, valves and measuring devices.—

(1) The department or the governing board may, by regulation, require the owner of any dam, impoundment, reservoir, appurtenant work, or works subject to the provisions of this part to install and maintain a substantial and serviceable headgate or valve at the point designated by the department or the governing board to measure the water discharged or diverted.

(2) If any owner shall not have constructed or installed such headgate or valve or such measuring device within 60 days after the governing board or department has ordered its construction, the governing board or department shall have such headgate, valve, or measuring device constructed or installed, and the costs of installing the headgate, valve, or measuring device shall be a lien against the owner's land upon which such installation takes place until the governing board or department is reimbursed in full.

(3) No person shall alter or tamper with a measuring device so as to cause it to register other than the actual amount of water diverted, discharged, or taken. Violation of this subsection shall be a misdemeanor in the second degree, punishable under s. 775.082(5)(b).

History.—s. 3, part IV, ch. 72-299.

373.413 Permits for construction or alteration.—

(1) Except for the exemptions set forth herein, the governing board or the department may require such permits and impose such reasonable conditions as are necessary to assure that the construction or

alteration of any dam, impoundment, reservoir, appurtenant work, or works will not be harmful to the water resources of the district. The department or the governing board may delineate areas within the district wherein permits may be required.

(2) A person proposing to construct or alter a dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:

(a) Name and address of the applicant.

(b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land.

(c) Location of the work.

(d) Sketches of construction pending tentative approval.

(e) Name and address of the person who prepared the plans and specifications of construction.

(f) Name and address of the person who will construct the proposed work.

(g) General purpose of the proposed work.

(h) Such other information as the governing board or department may require.

(3) After receipt of an application for a permit, the governing board or department shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. In addition, the governing board or department shall send a copy of such notice to any person who has filed a written request for notification of any pending applications affecting the particular designated area. This notice shall be sent by regular mail prior to the date of publication. The notice shall contain:

(a) The name and address of the applicant or, in the case of a corporation, the address of its principal business office;

(b) The date of filing;

(c) The date set for a hearing, if any;

(d) The source of the water to be contained;

(e) The quantity of water to be contained;

(f) The use to be made of the water and any limitation thereon; and

(g) Such other information as the governing board or the department may deem necessary.

(4) The notice provided for in subsection (3) shall state that written objections to the proposed permit may be filed with the governing board or department by a specified date. The governing board or department, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

(5) If no substantial objection to the application is received, the governing board or the department, after proper investigation by its staff, may at its discretion approve the application without a hearing. Otherwise, it shall set a time for a hearing in accordance with the provisions of chapter 120.

History.—s. 4, part IV, ch. 72-299; s. 19, ch. 73-190; s. 14, ch. 78-95.

373.416 Permits for maintenance or operation.—

(1) Except for the exemptions set forth in this part, the governing board or department may require such permits and impose such reasonable conditions as are necessary to assure that the operation or maintenance of any dam, impoundment, reservoir, appurtenant work, or works will not be inconsistent with the overall objectives of the district and will not be harmful to the water resources of the district.

(2) Except as otherwise provided in ss. 373.426 and 373.429, a permit issued by the governing board or department for the maintenance or operation of a dam, impoundment, reservoir, appurtenant work, or works shall be permanent, and the sale or conveyance of such dam, impoundment, reservoir, appurtenant work, or works, or the land on which the same is located, shall in no way affect the validity of the permit, provided the owner in whose name the permit was granted notifies the governing board or department of such change of ownership within 30 days of such transfer.

History.—s. 5, part IV, ch. 72-299; s. 20, ch. 73-190.

373.417 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 6, ch. 79-161.

373.419 Completion report.—Within 30 days after the completion of construction or alteration of any dam, impoundment, reservoir, appurtenant work, or works, the permittee shall file a written statement of completion with the governing board or department. The governing board or department shall designate the form of such statement and such information as it shall require.

History.—s. 6, part IV, ch. 72-299.

373.423 Inspection.—

(1) During the construction or alteration of any dam, impoundment, reservoir, appurtenant work, or works, the governing board or department shall make at its expense such periodic inspections as it deems necessary to insure conformity with the approved plans and specifications included in the permit.

(2) If during construction or alteration the governing board or department finds that the work is not being done in accordance with the approved plans and specifications as indicated in the permit, it shall give the permittee written notice stating with which particulars of the approved plans and specifications the construction is not in compliance and shall order immediate compliance with such plans and specifications. Failure to act in accordance with the orders of the governing board or department after receipt of written notice shall result in the initiation of revocation proceedings in accordance with s. 373.429.

(3) Upon completion of the work, the executive director of the district or the Department of Environmental Regulation or its successor agency shall have periodic inspections made, annually or more frequently as deemed necessary, of permitted dams, reservoirs, impoundments, appurtenant work, or

works to protect the public health and safety and the natural resources of the state. No person shall refuse immediate entry or access to any authorized representative of the governing board or the department who requests entry for purposes of such inspection and presents appropriate credentials.

History.—s. 7, part IV, ch. 72-299; s. 21, ch. 73-190; s. 48, ch. 79-65.

373.426 Abandonment.—

(1) Any owner of any dam, impoundment, reservoir, appurtenant work, or works wishing to abandon or remove such work may first be required by the governing board or the department to obtain a permit to do so and may be required to meet such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the overall objectives of the district.

(2) Where any permitted dam, impoundment, reservoir, appurtenant work, or works is not owned nor directly controlled by the state or any of its agencies and is not used nor maintained under the authority of the owner for a period of 3 years, it shall be presumed that the owner has abandoned such dam, impoundment, reservoir, appurtenant work, or works, and has dedicated the same to the district for the use of the people of the district.

(3) The title of the district to any such dam, impoundment, reservoir, appurtenant work, or works may be established and determined in the court appointed by statute to determine the title to real estate.

History.—s. 8, part IV, ch. 72-299; s. 22, ch. 73-190.

373.429 Revocation and modification of permits.—The governing board or the department may revoke or modify a permit at any time if it determines that a dam, impoundment, reservoir, appurtenant work, or works has become a danger to the public health or safety or if its operation has become inconsistent with the objectives of the district. The affected party may file a written petition for hearing no later than 14 days after notice of revocation or modification is served. If the executive director of the district or the division determines that the danger to the public is imminent, he may order a temporary suspension of the construction, alteration, or operation of the works until the hearing is concluded, or may take such action as authorized under s. 373.439.

History.—s. 9, part IV, ch. 72-299; s. 14, ch. 78-95.

373.433 Abatement.—Any dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen. The governing board or the department shall be a necessary party to any such suit. Nothing herein shall be construed to conflict with the provisions of s. 373.429.

History.—s. 10, part IV, ch. 72-299.

373.436 Remedial measures.—

(1) Upon completion of any inspection provided for by s. 373.423(3), the executive director shall determine what alterations or repairs are necessary and order that such alterations and repairs shall be made within a time certain, which shall be a reasonable time. The owner of such dam, impoundment, reservoir, appurtenant work, or works may file a written petition for hearing before the governing board or the department no later than 14 days after such order is served. If, after such order becomes final, the owner shall fail to make the specified alterations or repairs, the governing board or the department may, in its discretion, cause such alterations or repairs to be made.

(2) Any cost to the district or the department of alterations or repairs made by it under the provisions of subsection (1) shall be a lien against the property of the landowner on whose lands the alterations or repairs are made until the governing board or department is reimbursed, with reasonable interest and attorney's fees, for its costs.

History.—s. 11, part IV, ch. 72-299; s. 14, ch. 78-95.

373.439 Emergency measures.—

(1) The executive director, with the concurrence of the governing board, or the Department of Environmental Regulation shall immediately employ any remedial means to protect life and property if either:

(a) The condition of any dam, impoundment, reservoir, appurtenant work, or works is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any dam, impoundment, reservoir, appurtenant work, or works.

(2) In applying the emergency measures provided for in this section, the executive director or the Department of Environmental Regulation may in an emergency do any of the following:

(a) Lower the water level by releasing water from any impoundment or reservoir.

(b) Completely empty the impoundment or reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

(3) The executive director or the Department of Environmental Regulation shall continue in full charge and control of such dam, impoundment, reservoir, and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased.

History.—s. 12, part IV, ch. 72-299; s. 49, ch. 79-65.

373.443 Immunity from liability.—No action shall be brought against the state or district, or any agents or employees of the state or district, for the recovery of damages caused by the partial or total failure of any dam, impoundment, reservoir, appurtenant work, or works upon the ground that the state or district is liable by virtue of any of the following:

(1) Approval of the permit for construction or alteration.

(2) The issuance or enforcement of any order rel-

ative to maintenance or operation.

(3) Control or regulation of dams, impoundments, reservoirs, appurtenant work, or works regulated under this chapter.

(4) Measures taken to protect against failure during emergency.

History.—s. 13, part IV, ch. 72-299.

PART V

FINANCE AND TAXATION

373.495 Water resources development account.—There is hereby created in the General Revenue Fund an account to be known as the "Water Resources Development Account." Subject to such appropriation as the Legislature may make from time to time, the purpose of said account shall be to provide assistance to the water management districts created under this act for the protection, conservation, or development of the water resources of the state.

History.—s. 10, part I, ch. 72-299; ss. 4, 25, ch. 73-190.
Note.—Former s. 373.059.

373.498 Disbursements from water resources development account.—Subject to the provisions of this chapter, there shall be available to any flood control or water management district created under this chapter or by special acts of Legislature, out of said Water Resources Development Account upon the approval of the Department of Environmental Regulation, a sum or sums of money not exceeding in the aggregate the total estimated amount required to cover the costs allocated to the district for constructing the works of said district, for the acquisition of lands for water storage areas, for highway bridge construction, and for administration and promotion. These works may include small watershed projects (Pub. L. No. 83-566). Said sum or sums shall be available as money is required for said purposes and may be a grant to said districts. Also, subject to the provisions of this chapter, there shall be available to any navigation district or agency created under chapter 374 or by special act of the Legislature, out of said Water Resources Development Account upon approval of the department, a sum or sums of money not exceeding in the aggregate the total estimated amount required to cover the costs allocated to the district for constructing the works, for highway bridge construction, for the acquisition of land for rights-of-way, for water storage areas, and for administration and promotion. Said sum or sums shall be available as money is required for said purposes and may be a grant to said districts or agencies.

History.—s. 4, ch. 25209, 1949; s. 2, ch. 65-287; s. 1, ch. 67-199; ss. 25, 35, ch. 69-106; s. 2, ch. 70-143; s. 25, ch. 73-190; s. 50, ch. 79-65.
Note.—Former s. 378.04.

373.501 Appropriation of funds to water management districts.—The department may allocate to the water management districts, from funds appropriated to the department, such sums as may be deemed necessary to defray the costs of the administrative, regulatory, and other activities of the districts. The governing boards shall submit annual budget requests for such purposes to the department, and the department shall consider such budgets in preparing its budget request for the Legislature.

History.—s. 11, part I, ch. 72-299; ss. 5, 25, ch. 73-190.
Note.—Former s. 373.066.

373.503 Manner of taxation.—

(1) It is the finding of the Legislature that the general regulatory and administrative functions of the districts herein authorized are of general benefit to the people of the state and should substantially be financed by general appropriations. Further, it is the finding of the Legislature that water resources programs of particular benefit to limited segments of the population should be financed by those most directly benefited. To those ends, this chapter provides for the establishment of permit application fees and a method of ad valorem taxation to finance the works of the district.

(2)(a) The Legislature declares that the millage authorized for water management purposes by s. 9(b), Art. VII of the State Constitution shall be levied only by the water management districts set forth in chapter 373 and intends by this section to prevent any laws which would allow other units of government to levy any portion of said millage. However, this does not preclude such units of government from financing and engaging in water management programs if otherwise authorized by law.

(b) Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application pertaining to the allocation of any portion of the millage authorized for water management purposes by s. 9(b), Art. VII of the State Constitution to any unit of government other than those districts established by chapter 373.

(c) The authority of the Central and Southern Florida Flood Control District and the Southwest

Florida Water Management District to levy ad valorem taxes within the territories specified in chapter 25270, Laws of Florida, 1949, and chapter 61-691, Laws of Florida, respectively, as heretofore amended, shall continue until those districts have authority to levy ad valorem taxes pursuant to this section.

(3) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, Laws of Florida, 1949, as amended, and chapter 61-691, Laws of Florida, as amended. The authority to levy ad valorem taxes as provided in this act shall commence with the year 1977. However, the taxes levied for 1977 by the governing boards pursuant to this section shall be prorated to ensure that no such taxes will be levied for the first 4 days of the tax year, which days will fall prior to the effective date of the amendment to s. 9(b), Art. VII of the Constitution of the State of Florida, which was approved March 9, 1976. When appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695. Beginning with the taxing year 1977, and notwithstanding the provisions of any other general or special law to the contrary, the maximum total millage rate for district and basin purposes shall be:

(a) Northwest Florida Water Management District: 0.05 mill.

(b) Suwannee River Water Management District: 0.75 mill.

(c) St. Johns River Water Management District: 0.375 mill.

(d) Southwest Florida Water Management District: 1.0 mill.

(e) South Florida Water Management District: 0.80 mill.

The maximum millage assessed for district purposes shall not exceed 25 percent of the total authorized millage when there are one or more basins in a district, and the maximum millage assessed for basin purposes shall not exceed 75 percent of the total authorized millage.

(4) It is hereby determined that the taxes authorized by this chapter are in proportion to the benefits to be derived by the several parcels of real estate within the districts to which territories are annexed and transferred. It is further determined that the cost of conducting elections within the respective districts or within the transferred or annexed territories, including costs incidental thereto in preparing for such election and in informing the electors of the issues therein, is a proper expenditure of the department, of the respective districts, and of the district to which such territory is or has been annexed or transferred.

History.—s. 1, part V, ch. 72-299; s. 24, ch. 73-190; s. 12, ch. 76-243.
Note.—Chapter 76-243, which created paragraph (2)(b), was passed by the requisite three-fifths vote in each house. See s. 11(a)(21), Art. III, State Const.

373.506 Costs of district.—If it should appear necessary to procure funds with which to pay the expenses of a district, or to meet emergencies, before a sufficient sum can be obtained from the collection of the tax, the board may borrow a sufficient amount of money to pay expenses and to meet emergencies and may issue interest-bearing negotiable notes therefor and pledge the proceeds of the tax imposed under the provisions of this chapter for the repayment thereof. Said board may issue to any person performing work or services or furnishing anything of value interest-bearing negotiable evidence of debt.

History.—s. 19, ch. 25209, 1949; s. 25, ch. 73-190; s. 15, ch. 76-243.
Note.—Former s. 378.19.

373.507 Districts, basins, and taxing authorities; budget and expense reports; audits.—Each district and basin referred to in chapter 76-243, Laws of Florida, shall furnish a detailed copy of its budget and past year's expenditures to the Governor, the Legislature, and the governing body of each county in which the district or basin has jurisdiction or derives any funds for the operations of the district or basin. Each district, basin, and taxing authority shall make provision for an annual postaudit of its financial accounts and activities. Additionally, each district, basin, and taxing authority shall make provision for an independent performance audit of its financial accounts and activities in order that a complete performance audit shall be conducted for each 3-year period. The year in which these performance audits are conducted shall be determined by the Department of Environmental Regulation. These postaudits and performance audits shall be made in accordance with the rules of the Auditor General promulgated pursuant to ss. 166.241 and 11.47.

History.—s. 16, ch. 76-243; s. 1, ch. 77-367.

373.516 Benefits to rights-of-way.—The governing board of the district shall assess benefits to rights-of-way of railroads and other public service corporations in like manner as for other property, and the imposition and collection of said tax shall be in like manner as is provided with respect to other property, except that the basis of value of railroad rights-of-way for assessment purposes is hereby fixed at $4,000 per mile without reference to number of tracks, or other facilities thereon, and the governing board of the district shall furnish the property appraiser of the county in which such rights-of-way is located a description thereof, the number of miles in length and the tax rate on value-benefit basis to be applied in assessing district taxes against said rights-of-way.

History.—s. 22, ch. 25209, 1949; s. 25, ch. 73-190; s. 1, ch. 77-102.
Note.—Former s. 378.22.

373.536 District budget and hearing thereon.—

(1) Commencing October 1, 1975, the fiscal year of districts created under the provisions of this chapter shall extend from October 1 of one year through September 30 of the following year. The governing board of the district shall, on or before July 15 of each year, complete the preparation of a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year. The budget shall set forth, classified by object and purpose, and by fund if so designated, the proposed expenditures of the district for bonds or other debt, for construction, for acquisition of land, and other purposes, for operation and maintenance of the dis-

trict's works, the conduct of the affairs of the district generally, to which may be added an amount to be held as a reserve.

(2) The budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated amount to be raised by district taxes and from other sources for meeting the district's requirements.

(3) On a date to be fixed by the governing board each year, the board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the tentative budget in full, and shall be notice to all owners of property subject to the district taxes that on a date and at a place appearing in the notice, opportunity will be afforded to such owners, their attorneys or agents, to appear before the board and show their objections to the budget. The notice shall be published for 2 consecutive weeks, in one or more newspapers qualified to accept legal advertisements having a combined general circulation in the counties having land in the district, the last insertion of which shall appear not less than 1 nor more than 3 weeks prior to the date set by the board for the hearing on the budget, or if there be no such newspaper then by posting the notice as provided by s. 50.021.

(4) The hearing will be by and before the governing board of the district on a date to be fixed by the board not sooner than 1 week and not later than 3 weeks after the date of the last publication of notice of intention to adopt the budget and may be continued from day to day until terminated by the board. Promptly thereafter, the governing board shall give consideration to objections filed against the budget and in its discretion may amend, modify or change the tentative budget. The board shall adopt a final budget for the district which shall thereupon be the operating and fiscal guide for the district for the ensuing year; provided, however, transfers of funds may be made within the budget by action of the governing board at a public meeting of the governing board. Should the district receive unanticipated funds after the adoption of the final budget, the final budget may be amended by including the said funds, so long as notice of intention to amend shall be published one time in one or more newspapers qualified to accept legal advertisements having a combined general circulation in the counties in the district. The notice shall set forth the proposed amendment and shall be published at least 10 days prior to the public meeting of the board at which the proposed amendment is to be considered. Provided, in the event of disaster or of emergency arising to prevent or avert the same, the governing board shall not be limited by the budget but shall have authority to apply such funds as may be available therefor or as may be procured for such purpose.

(5) For the period from July 1, 1974, through September 30, 1975, the districts created pursuant to this chapter may adopt two separate budgets to cover a 12-month fiscal year and a 3-month fiscal year or a single budget to cover a 15-month fiscal year. Other than the times specified, such budgets shall be adopted in compliance with the provisions of this section.

History.—s. 28, ch. 25209, 1949; s. 3, ch. 29790, 1955; s. 4, ch. 61-497; s. 1, ch. 65-432; s. 1, ch. 67-74; s. 25, ch. 73-190; s. 18, ch. 74-234.
Note.—Former s. 378.28.

373.539 Imposition of taxes.—

(1) Each year the governing board of the district shall certify to the property appraiser of the county in which the property is situate, timely for the preparation of the tax roll, the tax rate to be applied in determining the amount of the district's annual tax, and the property appraiser shall extend on his county tax roll the amount of such tax, determined at the rate certified to him by the governing board, and shall certify the same to the tax collector at the same time and in like manner as for county taxes.

(2) Collection of district taxes, the issuance of tax sale certificates for nonpayment thereof, the redemption or sale of said certificates, the vesting of title by tax forfeiture, and the sale of the land and other real estate so forfeited shall be at the same time, in conjunction with, and by like procedure and of like effect as is provided by law with respect to county taxes, nor may either the county or the district taxes be paid or redemption effected without the payment or redemption of both. The title to district tax forfeited land shall vest in the county on behalf of said district along with that of the county for county tax forfeited land, said district tax forfeited land to be held, sold, or otherwise disposed of by said county for the benefit of said district. The proceeds therefrom, after deducting costs, shall be paid to the district in amounts proportionate to the respective tax liens thereon.

(3) The district tax liens shall be of equal dignity with those of the county.

(4) The tax officers of the county are hereby authorized and directed to perform the duties devolving upon them under this chapter, and to receive compensation therefor at such rates or charges as are provided by law with respect to similar services or charges in other cases.

History.—s. 29, ch. 25209, 1949; s. 25, ch. 73-190; s. 1, ch. 77-102.
Note.—Former s. 378.29.

373.543 Land held by Board of Trustees of the Internal Improvement Trust Fund; areas not taxed.—

(1) Land held by the Board of Trustees of the Internal Improvement Trust Fund shall be subject to the tax imposed under authority of this chapter, and said board of trustees is authorized to pay the same out of any money in its possession derived from the sale of land or otherwise. For facilitating the assessment of district taxes on land of said fund, the board of trustees thereof is authorized to prepare lists of land held by it and, timely for the purpose, to transmit a list of said land to the property appraiser of each county in which such land is located, and the property appraiser is directed to extend said land upon the district tax roll according to the description furnished by said board of trustees and to ascertain the value thereof as for other land.

(2) Land comprising part of the principal of the State School Trust Fund declared by the Constitution to be "sacred and inviolate," or other real estate,

title to which is in the State Board of Education, shall not be subject to the district tax nor shall there be liability therefor upon any state agency.

(3) There shall be excluded from district taxes all bodies of navigable water and unreclaimed water areas meandered by the public surveys, all rights-of-way of said district, all areas devoted or dedicated to the use of and for the works of the district, rights-of-way of state and county highways, and streets within the limits of incorporated towns, and property owned by a public agency open to the use of the public or for the public benefit not leased to or operated by a private agency.

History.—s. 30, ch. 25209, 1949; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 25, ch. 73-190; s. 1, ch. 77-102.
Note.—Former s. 378.30.

373.546 Unit areas.—The governing board may, in its discretion, adopt and effectuate unit areas embracing separate or combined drainage basins, or parts thereof, or areas of related lands and works, for convenience or economy in constructing, maintaining and operating the works of the district, and for the purpose of imposing taxes within each area to meet these requirements of the said area.

History.—s. 31, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.31.

373.553 Treasurer and depositories.—

(1) The governing board shall designate a treasurer who shall be custodian of all funds belonging to the said board and to the said district, and such funds shall be disbursed upon the order of, or in the manner prescribed by, the governing board by warrant or check signed by the treasurer or assistant treasurer and countersigned by the chairman or vice chairman of the board. The board is authorized to establish procedures for disbursement of funds in such amounts and in such manner as the board may prescribe, except that disbursement of funds prior to specific board approval may only be authorized upon certification by its chief executive officer or his designated assistant to the treasurer or assistant treasurer and to the chairman or vice chairman of the board that such disbursement is proper and in order and is within budgetary limits. Any such disbursements shall be reported to the board at its next regular meeting.

(2) The board is hereby authorized to select as depositories in which the funds of the said board and of the said district shall be deposited any banking corporation organized under the laws of the state or under the National Banking Act, doing business in the state, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the said board shall deem just and reasonable and also upon such terms as to security by such depository as said board shall deem proper, which security may be either by satisfactory individual or surety bonds or by the deposit with the treasurer of bonds of the district issued by said board, bonds of the United States, bonds or certificates of the several states, county and municipal bonds or certificates, and county or county school time warrants, issued by any of the counties or cities of the state or by any of the state agencies, departments or commissions authorized to issue bonds or certificates, or issued by authority created by the Legislature. Such bonds or certificates may be general obligations of the issuing authority or they may be secured by utility revenues, or other revenues, or by excise taxes, or they may be secured by a limited ad valorem tax; provided, however, that none of the foregoing bonds or certificates shall be accepted as security for the funds herein mentioned unless they shall have qualities pertinent to bank investments; and provided further, that except as to the bonds of the United States or bonds the payment of whose principal and interest is guaranteed by the United States or federal certificates of indebtedness, or state, county or municipal obligation bonds, the bonds or certificates herein mentioned shall be rated in one of the highest four classifications by established nationally recognized investment rating services, the type, amount or value of such bonds or certificates shall be in such amount as may be designated by the governing board of the district.

History.—s. 33, ch. 25209, 1949; s. 3, ch. 63-224; s. 25, ch. 73-190; s. 1, ch. 73-213; s. 115, ch. 77-104.
Note.—Former s. 378.33.

373.556 Investment of funds.—The governing board of the district may, in its discretion, invest funds of the district in the following manner:

(1) That portion of the funds of the district which the board anticipates will be needed for emergencies may be invested in bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged.

(2) All other funds of the district may be invested in securities named in subsection (1) hereof, or in bonds or other interest-bearing obligations of any incorporated county, city, town, school district or road and bridge district located in the state, for which the full faith and credit of such political subdivision has been pledged; provided, such political subdivision or its successor, through merger, consolidation or otherwise, has not within 5 years previous to the making of such investment, defaulted for more than 6 months in the payment of any part of the principal or interest of its bonded indebtedness; and, provided, the securities purchased under the provisions of this subsection shall have a maturity date on or before the anticipated date of need for the funds represented thereby.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.331.

373.559 May borrow money temporarily.—In order to provide for the works described by this chapter, the governing board is hereby authorized and empowered to borrow money temporarily, from time to time, for a period not to exceed 1 year at any one time, not including renewals thereof, and to issue its promissory notes therefor upon such terms and at such rates of interest as the said board may deem advisable, payable from the taxes herein levied and imposed, and the increment thereof. Any of such notes may be used in payment of amounts due, or to become due, upon contracts made or to be made by said board for carrying on the work authorized and provided for herein, and the said board may, to secure the payment of any of such notes, hypothecate

bonds herein authorized to be issued, and may thereafter redeem such hypothecated bonds. Any of the notes so issued may be paid out of the proceeds of bonds authorized to be issued by this chapter.

History.—s. 34, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.34.

373.563 Bonds.—

(1) The governing board is hereby authorized and empowered to borrow money on permanent loans and incur obligations from time to time on such terms and at such rates of interest as it may deem proper, not exceeding 7½ percent per annum, for the purpose of raising funds to prosecute to final completion the works and all expenses necessary or needful to be incurred in carrying out the purposes of this chapter; and the better to enable the said board to borrow the money to carry out the purposes aforesaid, the board is hereby authorized and empowered to issue in the corporate name of said board, negotiable coupon bonds of said district.

(2) The bonds to be issued by authority of this chapter shall be in such form as shall be prescribed by the said board, shall recite that they are issued under the authority of this chapter, and shall pledge the faith and credit of the governing board of the district for the prompt payment of the interest and principal thereof.

(3) Said bonds shall have all the qualities of negotiable paper under the Law Merchant, and shall not be invalid for any irregularity, or defect in the proceedings for the issue and sale thereof except forgery; and shall be incontestable in the hands of bona fide purchasers or holders thereof for value. The provisions of this chapter shall constitute an irrevocable contract between said board and the district and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this chapter of any of the officers or persons mentioned in this chapter in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment thereof.

(4) The amount of bonds to be issued in any one year, when added to the amount then outstanding, shall be not greater than can be supported for that year in accordance with the bond schedule out of 90 percent of the taxes imposed, or to be imposed, for that year, plus other moneys in the hands of the district usable for bond purposes after deducting therefrom amounts estimated to be required for maintenance and operation of the works of the district, cost of administration, and amounts for such other purposes as the governing board may determine, nor shall the governing board levy in any year taxes insufficient to support said bonds for such year on the basis herein described.

(5) All bonds and coupons not paid at maturity shall bear interest at a rate not to exceed 7½ percent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment.

(6) The bonds to be issued by authority of this chapter shall be in denominations of not less than $100, bearing interest from date at a rate not to exceed 5 percent per annum, payable semiannually, to mature at annual intervals within 40 years commencing after a period of not later than 10 years, to be determined by said board, both principal and interest payable at some convenient place designated by said board to be named in said bonds, which said bonds shall be signed by the chairman of the board, attested with the seal of said district and by the signature of the secretary of said board. In case any of the officers whose signatures, countersignatures and certificates appear upon the said bonds and coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature and certificate shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery of the bonds.

(7) Interest coupons shall be attached to the said bonds and the said coupons shall be consecutively numbered, specifying the number of the bond to which they are attached, and shall be attested by the lithographed or engraved facsimile signature of the chairman and secretary of said board.

(8) In the discretion of said board, it may be provided that at any time, after such date as shall be fixed by the said board, said bonds may be redeemed before maturity at the option of said board, or its successors in office. If any bond so issued subject to redemption before maturity shall not be presented when called for redemption, it shall cease to bear interest from and after the date so fixed for redemption.

History.—s. 35, ch. 25209, 1949; s. 1, ch. 61-147; s. 25, ch. 73-190; s. 33, ch. 73-302; s. 1, ch. 77-174; s. 147, ch. 79-400.
Note.—Former s. 378.35.

373.566 Refunding bonds.—The governing board shall have authority to issue refunding bonds to take up any outstanding bonds of said district falling due and becoming payable, when, in the judgment of said board, it shall be for the best interests of said district so to do. The said board is hereby authorized and empowered to issue refunding bonds to take up and refund all bonds of said district outstanding that are subject to call and termination, and all bonds of said district that are not subject to call or redemption, where the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the board. Such refunding bonds may be issued at any time when in the judgment of said board it will be to the interest of the district financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds, or for any other reason in the judgment of said board advantageous to said district.

History.—s. 36, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.36.

373.569 Bond election.—When required by the state constitution, the governing board shall call an election of the freeholders in said district, in which said election the matter of whether or not said bonds shall be issued shall be decided as provided by law with respect to bond elections.

History.—s. 37, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.37.

373.573 Bonds to be validated.—Whenever the governing board shall have authorized the issuance of bonds under the provisions of this chapter, the said board may, if it shall so elect, have said bonds validated in the manner provided by chapter 75, and to that end the said board may adopt a suitable resolution for the issuance of said bonds.

History.—s. 38, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.38.

373.576 Sale of bonds.—All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such rates as the board may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than 95 cents on the dollar, with accrued interest.

History.—s. 39, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.39.

373.579 Proceeds from taxes for bond purposes.—It shall be the duty of the treasurer as custodian of the funds belonging to the said board and to the district, out of the proceeds of the taxes levied and imposed by this chapter and out of any other moneys in his possession belonging to the district, which moneys so far as necessary shall be set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds to pay the principal thereof.

History.—s. 40, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.40.

373.583 Registration of bonds.—

(1) Whenever the owner of any coupon bond issued pursuant to the provisions of this chapter shall present such bond and all unpaid coupons thereof to the treasurer of the district with request for the conversion of such bond into a registered bond, such treasurer shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print or write upon such coupon bond so presented either upon the back or the face thereof as may be convenient, a statement to the effect that said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time any such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer, and the bond again registered as before, a similar statement being stamped or written thereon.

(2) Such statement stamped, printed or written upon any such bond may be in substantially the following form:

(Date, giving month, year and day.)

This bond is to be registered pursuant to the statutes in such case made and provided in the name of (here insert name of owner), and the interest and principal thereof are hereafter payable to such owner.

.....(Treasurer).....

(3) If any bond shall have been registered as aforesaid, the principal and interest of said bond shall be payable to the registered owner. The treasurer shall enter in the register of said bonds to be kept by him, or in a separate book, the fact of the registration of such bonds, and in whose names respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

History.—s. 41, ch. 25209, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.41.

373.586 Unpaid warrants to draw interest.—If any warrant issued under this chapter is not paid when presented to the treasurer of the district because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant, and such warrant shall draw interest thereafter at a rate not exceeding 6 percent per annum, until such time as there is money on hand to pay the amount of such warrant and the interest then accumulated; but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in the treasury to pay said endorsed warrants and interest.

History.—s. 42, ch. 25209, 1949; s. 25, ch. 73-190; s. 116, ch. 77-104.
Note.—Former s. 378.42.

373.589 Audit by Auditor General.—At the direction of the Governor, audit of the district's accounts may be made from time to time by the Auditor General, and such audit shall be within the authority of said Auditor General, to make. Copy of such audit shall be furnished the Governor and the governing board of the district, and a copy shall be filed with the clerks of the circuit courts of each county within or partly within said district. The expense of said audit shall be paid by the district upon a statement thereof rendered to the district by the Auditor General. Payment of the amount thereof shall be made to the State Department of Banking and Finance to be entered in and to reimburse the account of the Auditor General so as not to reduce the legislative appropriation for said Auditor General.

History.—s. 43, ch. 25209, 1949; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 25, ch. 73-190.
Note.—Former s. 378.43.

PART VI

MISCELLANEOUS PROVISIONS

licenses.

373.603 Power to enforce.—The Department of Environmental Regulation or the governing board of any water management district and any officer or agent thereof may enforce any provision of this law or any rule or regulation adopted and promulgated or order issued thereunder to the same extent as any peace officer is authorized to enforce the law. Any officer or agent of any such board may appear before any magistrate empowered to issue warrants in criminal cases and make an affidavit and apply for the issuance of a warrant in the manner provided by law; and said magistrate, if such affidavit shall allege the commission of an offense, shall issue a warrant directed to any sheriff or deputy for the arrest of any offender. The provisions of this section shall apply to the Florida Water Resources Act of 1972 in its entirety.

History.—s. 14, ch. 57-380; s. 14, ch. 63-336; ss. 25, 35, ch. 69-106; s. 2, part VI, ch. 72-299; s. 25, ch. 73-190; s. 117, ch. 77-104; s. 51, ch. 79-65.
Note.—Former s. 373.201.

373.604 Awards to employees for meritorious service.—The governing board of any water management district may adopt and implement a program of meritorious service awards for district employees who make proposals which are implemented and result in reducing district expenditures or improving district operations, who make exceptional contributions to the efficiency of the district, or who make other improvements in the operations of the district. No award granted under the provisions of this section shall exceed $2,000 or 10 percent of the first year's savings, whichever is less, unless a larger award is made by the Legislature. Awards shall be paid by the district from any available funds.

History.—s. 1, ch. 74-287.

373.605 Group insurance for water management districts.—

(1) The governing board of any water management district is hereby authorized and empowered to provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, 112.12 and 112.14.

(2) Any and all insurance agreements in effect as of October 1, 1974, which conform to the provisions of this section are hereby ratified.

History.—ss. 1, 2, ch. 74-218.

373.609 Enforcement; city and county officers to assist.—It shall be the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county official, upon request, to assist the [1][department], the governing board of any water management district, or any local board, or any of their agents in the enforcement of the provisions of this law and the rules and regulations adopted thereunder.

History.—s. 15, ch. 57-380; s. 15, ch. 63-336; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 117, ch. 77-104.
[1]**Note.**—Bracketed word substituted by the editors for "division." See s. 11, ch. 75-22, which transferred all powers, duties, and functions of the Department of Natural Resources relating to water management, as set forth in ch. 373, to the Department of Environmental Regulation and also s. 13, ch. 75-22, which in effect abolished the Division of Interior Resources.

Note.—Former s. 373.211.

373.613 Penalties.—Any person who violates any provision of this law or any rule, regulation or order adopted or issued pursuant thereto is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 18, ch. 57-380; s. 325, ch. 71-136; s. 25, ch. 73-190.
Note.—Former s. 373.241.

373.614 Unlawful damage to district property or works; penalty.—The governing board of the district shall have the power, and is authorized, to offer and pay rewards of up to $1,000 to any person furnishing information leading to the arrest and conviction of any person who has committed an unlawful act or acts upon the rights-of-way, land, or land interests of the district or has destroyed or damaged district properties or works.

History.—s. 25, ch. 73-190; s. 1, ch. 73-212.
Note.—Former s. 378.163.

373.616 Liberally construed, etc.—The provisions of this chapter shall be liberally construed in order to effectively carry out its purposes.

History.—s. 4, part VI, ch. 72-299.

373.6161 Chapter to be liberally construed.—This chapter shall be construed liberally for effectuating the purposes described herein, and the procedure herein prescribed shall be followed and applied with such latitude consistent with the intent thereof as shall best meet the requirements or necessities therefor.

History.—s. 46, ch. 25209; s. 6, ch. 25213, 1949; s. 25, ch. 73-190.
Note.—Former s. 378.47.

373.617 Judicial review relating to permits and licenses.—

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages;

however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

History.—ss. 1-6, ch. 78-85.

Note.—Also published at ss. 161.212, 253.763, 380.085, and 403.90.

CHAPTER 374

CANAL AUTHORITY-NAVIGATION DISTRICTS-WATERWAYS DEVELOPMENT

PART I CANAL AUTHORITY (ss. 374.001-374.181)

PART II NAVIGATION DISTRICTS (ss. 374.3001-374.521)

PART III WATERWAYS DEVELOPMENT (ss. 374.75-374.97)

PART I

CANAL AUTHORITY

[1]374.001 Transfer of Canal Authority to the Department of Natural Resources.—

(1) The Canal Authority of the State of Florida is transferred by a type three transfer, as defined in s. 20.06(3), to the Department of Natural Resources and assigned to the Division of Resource Management. All funds of the canal authority shall be transferred to and maintained in a trust fund account designated as the Cross Florida Barge Canal Trust Fund administered by the Department of Natural Resources.

(2) Fee title, easements, and other interests in all lands held by the canal authority shall be transferred to the Department of Natural Resources and shall vest in the Board of Trustees of the Internal Improvement Trust Fund. Such title, easements, and other interests in land shall be maintained in the board of trustees pending transfer pursuant to s. 253.781 or pending legislative direction as to disposition pursuant to s. 253.783(2)(a) and shall not revert. The trustees shall utilize such lands or interests in lands pending said disposition for recreation or water management, or other purposes authorized to be performed by water management districts pursuant to s. 373.139, which uses the Legislature finds to be necessary and for a public purpose. Such lands shall be exempt from taxation.

(3) This act shall not be construed to abrogate or impair any contractual agreement entered into by the canal authority or the Board of Commissioners of the Cross Florida Canal Navigation District.

History.—ss. 1, 5, 11, ch. 79-167.

[1]**Note.**—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

374.002 Management plans for retention or disposition of certain Cross Florida Barge Canal lands and for Rodman Dam and Reservoir.—The Canal Authority is authorized to enter into a contract with the Department of Natural Resources for the development of the management plans required by s. 253.783(2)(a) and (b).

History.—s. 15, ch. 79-167.

[1]374.011 Canal authority, creation; short title.—There is hereby created a body corporate, with the name "The Canal Authority of the State of Florida," (herein called the corporation), which shall operate under the supervision of the Department of Natural Resources. The principal office and necessary branch offices of the corporation shall be established at such places and under such rules and regulations as the board of directors may prescribe. This act may be cited as the "Canal Authority Act."

History.—s. 1, ch. 16176, 1933; s. 1, ch. 61-244; ss. 25, 35, ch. 69-106; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.021 Capital.—The capital of said corporation shall consist of the rights, privileges and franchises herein and hereby granted to said corporation, which rights, privileges and franchises are hereby determined to be of the value of $20 million.

History.—s. 2, ch. 16176, 1933; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.031 Board of directors.—The management of the corporation shall be vested in a board of directors consisting of five members to be appointed by the Governor. The terms of the directors shall be 4 years and until their successors are appointed and qualified. Whenever a vacancy occurs among the directors, the person appointed to fill such vacancy

shall hold office for the unexpired portion of the term of the director whose place he is selected to fill.

History.—s. 3, ch. 16176, 1933; s. 4, ch. 78-323; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.041 General powers.**—The corporation shall have perpetual existence. It shall have the power to adopt, alter and use a corporate seal; to make contracts; to lease, buy, acquire, hold and dispose of real and personal property of every kind and nature; to sue and be sued; to select, employ and dismiss at pleasure such officers, employees, attorneys, consultants and agents as shall be necessary or expedient for the transaction of the business of the corporation, to define their authority and duties, and in the discretion of the board of directors to require bonds of them and to fix the penalties thereof; to fix the compensation of all officers, employees, attorneys, consultants and agents of the corporation; to prescribe, amend and repeal, by its board of directors, bylaws, rules and regulations governing the manner in which its business may be conducted and in which the powers granted to it by law may be enjoyed, including the selection of a chairman and provision for such committees and the functions thereof as the board of directors may deem necessary for facilitating the business of the corporation. The board of directors shall determine and prescribe the manner in which the corporation's obligations shall be incurred and its expenses allowed and paid. The corporation, by and with the consent of any board, commission or department of the state, including any field service thereof, may avail itself of the use of information, facilities, officers and employees thereof in carrying out the provisions of this act.

History.—s. 4, ch. 16176, 1933; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.051 Special powers.**—

(1) The corporation is hereby granted the right, privilege, franchise, power and authority:

(a) To acquire, own, construct, operate and maintain a canal across the peninsula of Florida, connecting the waters of the Atlantic Ocean with the waters of the Gulf of Mexico, together with sea and river approaches thereto, and such lateral and connecting branches as may be necessary or desirable; including a branch to link the St. Johns River with the Atlantic Intracoastal Waterway, and a branch to link the western reaches of such canal with the eastern terminus of the inland portion of the Gulf Intracoastal Waterway and the northern terminus of the inland portion of the Gulf Intracoastal Waterway, such canal shall be constructed along such route, and to be of such size, dimensions, specifications, kind or type as may be approved by the Department of the Army or other appropriate department or agency of the United States.

(b) To construct and build the necessary cuts, embankments, basins, reservoirs, locks, including such locks to connect Canaveral Harbor with the revetments, levees and Atlantic Intracoastal Waterway and other appurtenances thereto.

(c) To construct said canal across, along or upon any stream, waterway, highway, (including state highways), railroad or canal, whenever and wherever the route selected for said canal as aforesaid, shall intersect or touch such stream, waterway, highway, railroad or canal.

(d) To repair, construct and reconstruct telephone, telegraph and power transmission lines, water, gas and pipelines, highway and railroad bridges or tunnels, over, across or under said canal, whenever such repair, construction or reconstruction is necessitated by the construction, maintenance or operation of said canal.

(e) To dredge in or about said canal and waterways and to deepen and widen any existing waterways directly connected with said canal.

(f) To contract for, to acquire by lease, purchase, or otherwise and to operate, repair, and maintain, ships, tugs, lighters, scows, vessels, railroads, dredges, bridges, engines, rolling stock, electric powerhouses and powerlines, stores, warehouses, wharves, piers, basins, elevators, buildings and machinery, supplies, equipment, appliances and services of every kind and description that may be necessary, useful or convenient in the construction or operation of said canal.

(g) To exact and collect tolls and to prescribe rules for the privilege of passing through or along said canal or any portion thereof.

(h) To do any and all things necessary and incur and pay any and all expenditures necessary, convenient or proper in the acquisition, construction, operation and control of said canal and its related locks, improvement and appurtenances.

(2) The corporation is likewise authorized to acquire, own, construct, operate and maintain such other waterways project or projects within the state as may be necessary or desirable, including, but not limited to, projects for flood control and water management purposes.

History.—s. 5, ch. 16176, 1933; s. 2, ch. 61-244; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.061 Obligations of indebtedness.**—Said corporation is hereby authorized and empowered to borrow, from time to time, money for the construction and operation of said canal and canal system, in such amounts and on such terms, as the board of directors may deem advisable, and for that purpose it may issue bonds or obligations of indebtedness in its own name, in such denominations, and at such rates of interest, and with such maturities, as its board of directors may determine, and in order to secure the payment thereof, said corporation is authorized and empowered to mortgage or pledge said canal and canal system, and the tolls, income and revenues to be derived therefrom. The corporation is further authorized to agree to such other or additional terms and provisions as may be necessary in order to finance the construction and operation of said canal. Bonds or obligations issued or executed by the corporation shall be what is commonly termed "revenue bonds" and shall not constitute or be a debt or general obligation of the state. The payment thereof, both as to principal and interest, shall be made sole-

ly out of the tolls and revenues to be derived from the operation of said canal and canal system, or from the proceeds of sales or leases of corporate property, and this fact shall be stated on the face of the bonds.

History.—s. 6, ch. 16176, 1933; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.071 Eminent domain.**—The said corporation is hereby authorized and empowered to acquire by condemnation, rights-of-way of such lengths and widths as may be reasonably necessary for the proper construction and efficient operation, repair and improvement of said canal and canal system, its embankments, locks and appurtenances, for spoil areas and borrow pits and for approaches to bridges and tunnels, crossing over or under said canal, including the right to condemn such rights-of-way (of the lengths and widths as above set forth) over property already devoted to public use for railroad, canal or other public utility purposes, wherever the route of such canal may cross the same, and said corporation shall also have the right to acquire by gift, purchase or condemnation, land, timber, earth, rock and other materials or property, and property rights, including riparian rights, in such amounts as may be reasonably necessary or useful in the construction, operation, repair or improvement of said canal and canal system, its improvements, locks and appurtenances. Condemnation proceedings shall be maintained by and in the name of the corporation and the procedure shall be, except insofar as is altered hereby, that now prescribed for condemnation proceedings by railroad corporations in this state.

History.—s. 7, ch. 16176, 1933; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.081 State lands; right of taking.**—This corporation shall have the right to take, exclusively occupy, use and possess, insofar as may be necessary for carrying out the provisions of this act, any areas of land owned by the state, not in use for state purposes, including swamp and overflowed lands, bottoms of streams, lakes, rivers, bays, the sea and arms thereof and other waters of the state, and the riparian rights thereto pertaining; and when so taken and occupied, due notice of such taking and occupancy having been filed with the Department of State by the corporation, such areas of land are hereby granted to and shall be the property of the corporation. For the purposes of this section, the meaning of the term "use" shall include the removal of material from and the placing of material on any such land. In case it shall be held by any court of competent jurisdiction that there are any lands owned by the state which may not be so granted, then the provisions of this section shall continue in full force and effect as to all other lands owned by the state. The provisions of this section are subject to all laws and regulations of the United States with respect to navigable waters.

History.—s. 8, ch. 16176, 1933; ss. 10, 35, ch. 69-106; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.091 County donations of rights-of-way.**—The several counties of the state through which, or adjacent to the boundaries of which may pass the route for said canal or any of its lateral or connecting branches, are hereby authorized to donate to the corporation all necessary rights-of-way, or portions thereof, together with spoil areas, borrow pits and other lands necessary or useful in the acquisition, construction, maintenance and operation of said canal, including approaches for bridges and tunnels crossing over or under said canal, and to that end are vested with the power of eminent domain to condemn all necessary lands for the purpose of securing such rights-of-way, such condemnation proceedings to be brought, maintained and prosecuted in the manner as prescribed in ss. 337.28 and 336.46, and such counties are further authorized and empowered to furnish to the corporation money, labor, materials and other property, including reconstruction of highways, and bridges, necessitated in and by the construction of said canal system. The board of county commissioners of each of said counties is hereby authorized to determine the millage necessary to be levied and to levy a tax on real and personal property to procure the necessary funds for such purposes, which are hereby declared to be county purposes.

History.—s. 9, ch. 16176, 1933; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.101 Tolls.**—The said corporation shall fix and shall have exclusive jurisdiction over the rates of tolls and rules for the use of said canal, without being subject to the supervisory control of any other state board or commission. Tolls may be collected on all vessels or watercraft that pass or repass through said canal or any portion thereof which the corporation may cut or construct, or through any channel not now navigable, that the corporation may have dredged or deepened; and all such vessels and watercraft shall be liable for such tolls and shall be subject to a prior lien therefor, and may be detained by the corporation until the same are paid and acquitted.

History.—s. 10, ch. 16176, 1933; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.111 Revenues, use.**—All revenues derived by the corporation from the operation of said canal shall be used exclusively for the payment of the administrative expenses of said corporation, the expenses of operation and maintenance of the canal, insurance premiums for insurance of such kinds and in such amounts as the board of directors may deem advisable and including such amounts as may be necessary, from time to time, for deepening and widening the main channel of the said canal, as the requirements of commerce may demand or make advisable, and for the payment of the interest on, and the repayment of the principal of, any moneys that may be borrowed from time to time by the corporation. Any surpluses that may be accumulated from time to time, over and above the cost of operation,

administration and maintenance as above defined, and over and above principal, interest and sinking fund requirements on loans, and over and above such amounts as the board of directors may set aside for operating capital, shall be covered into the State Treasury and used for the purpose of reducing taxation.

History.—s. 11, ch. 16176, 1933; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.122 Pilots.—The corporation shall have full power to employ or appoint and license pilots for piloting vessels and other craft through any canal authorized herein. No pilot shall pilot any vessel or other craft, which the regulations of the corporation require to be piloted, through the portions of said canal specified in such regulations, unless he at that time holds a license from the corporation. The corporation shall prescribe all rules and regulations governing pilotage in any such canal, including the exemption of any craft from the necessity for pilotage, the wages or fees to be paid to pilots, the qualification of pilots, the method of handling and speed of vessels in any such canal, and the measurement of vessels for pilotage. The corporation shall have the power to revoke at will the license of any pilot licensed by it. The corporation shall have the right to deny or prevent at any time the entrance to or use of any such canal or any part thereof by any craft. The provisions of this section are subject to all federal laws and regulations of all federal departments having appropriate jurisdiction.

History.—s. 12, ch. 16176, 1933; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.132 Tax exemption.—All property of the corporation shall be exempt from taxation.

History.—s. 13, ch. 16176, 1933; s. 34, ch. 69-216; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

[1]374.141 Reports.—The corporation shall make to the Governor an annual report setting forth in appropriate detail the business transacted during the year and the condition of the corporation at the close of the year. Such annual reports shall be accompanied by duly certified audits of the accounts of the corporation, made by the Auditor General. The corporation shall furnish to the Governor such additional reports and information as he shall from time to time require.

History.—s. 14, ch. 16176, 1933; s. 8, ch. 69-82; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.151 Officers; bonds, per diem, compensation.—The members of the board of directors of the corporation shall each give bond in the sum of $25,000, each conditioned upon the faithful performance of the duties of the office concerned, said bonds to be furnished by reputable bonding companies authorized to do business in this state, to be payable to the Governor of the state and his successors in office, and approved by the Department of Banking and Finance. It shall not be necessary for such bonds to be furnished, however, until the corporation shall have obtained a loan of sufficient moneys with which to construct said canal. Each member of the board shall receive a per diem salary of $12 per day for services rendered to the corporation from time to time, such salary to be paid upon the approval of the board of directors. Provided, however, that the board may select one of their members as managing director, who shall receive such additional compensation, commensurate with the duties and responsibilities placed upon him, as the board of directors may determine.

History.—s. 15, ch. 16176, 1933; ss. 12, 35, ch. 69-106; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.161 Contracts.—The corporation shall have the power and authority to enter into any and all contracts necessary or convenient to the exercise of any or all of the powers herein and hereby granted, including contracts covering periods of time longer than the terms of office of the members of the board of directors making such contracts and shall also have the power and authority to contract with the United States or any appropriate department or agency thereof for the construction, operation or control of said canal or any portion thereof.

History.—s. 16, ch. 16176, 1933; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.171 Transfer to Federal Government.—In the event that the United States should decide to undertake the construction of said canal across Florida, by an agency or department of the Federal Government, or in the event the United States should at any time desire to take over the ownership or possession of said canal for the purpose of operating the same free of tolls, the board of directors of the corporation is authorized, upon such terms and in such manner as said board shall deem proper, to assign, transfer and convey to the United States, or to the appropriate agency thereof, such assets, franchises and property, or interests therein, of the corporation, including lands, easements, and rights-of-way acquired by said corporation hereunder, as may be necessary or desirable, in said board's judgment, to accomplish such purposes.

History.—s. 17, ch. 16176, 1933; s. 3, ch. 61-244; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.181 Liberal construction of act.—It is intended that the provisions of this act shall be liberally construed for accomplishing the work authorized and provided for or intended to be provided for by this act, and where strict construction would result in the defeat of the accomplishment of any part of the work authorized by this act, and a liberal construction would permit or assist in the accomplish-

ment thereof, the liberal construction shall be chosen.

History.—s. 19, ch. 16176, 1933; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

PART II

NAVIGATION DISTRICTS

[1]374.3001 Cross Florida Canal Navigation District; disposition of property and funds.—

(1) All property of the Cross Florida Canal Navigation District is hereby transferred to the Department of Natural Resources. All funds remaining in any account of the district and not legally obligated on the effective date of this act shall be transferred to the Department of Natural Resources, such funds to be included under the management plan repayment provisions pursuant to [2]s. 253.783(2)(g).

(2) Upon deauthorization by Congress, there shall be appropriated $9,340,720 for the purpose of repaying to each county of the Cross Florida Canal Navigation District that amount of principal which it contributed. The accrual of interest shall cease upon payment of the $9,340,720 principal.

(3) Upon repayment to the counties of the Cross Florida Canal Navigation District, as specified in this act, any funds derived from the management or disposition of lands of the Cross Florida Barge Canal Project will be deposited in the Cross Florida Barge Canal Trust Fund.

(4) This act shall not be construed to abrogate or impair any contractual agreement entered into by the Canal Authority or the Board of Commissioners of the Cross Florida Canal Navigation District.

History.—ss. 8, 9, 11, 14, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[2]Note.—The editors substituted "s. 253.783(2)(g)" for "subsection (2)(f) of section 4." Subsection (2)(f) of section 4 of C.S. for H.B. 141 was relettered as (2)(g) as a result of Senate Amendment 2B to C.S. for H.B. 141. See 1979 Senate Journal, p. 725.

[1]374.301 Ship canal navigation districts.—For the purpose of raising funds to be used by the canal authority of the state in paying for the cost of securing a right-of-way for a canal across the state, running through or adjacent to the counties hereinafter named, there is hereby created and incorporated a special taxing district consisting of the Counties of Duval, Clay, Putnam, Marion, Levy and Citrus. Said district shall be known and designated as "The Cross Florida Canal Navigation District," but shall in this act, for the purposes of brevity and convenience, be referred to as the "district," or the "navigation district."

History.—s. 1, ch. 17023, 1935; s. 1, ch. 61-269; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.311 Board of commissioners.—A governing body for said district is created, consisting of five members, which body shall be designated as the "Board of Commissioners of the Cross Florida Canal Navigation District," but which shall, for purposes of brevity and convenience, be referred to as the "board," or the "district board," in this act. Their term of office shall be for 4 years or until their successors shall have been appointed and qualified; provided, however, that of the directors comprising the first governing body, two shall serve for a term of 4 years, one shall serve for a term of 3 years, one shall serve for a term of 2 years and one shall serve for a term of 1 year. The directors shall reside in the counties comprising the district with not more than one director to reside in any one county. The directors shall be appointed by the Governor.

History.—s. 2, ch. 17023, 1935; s. 2, ch. 61-269; s. 12, ch. 79-167.

[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.321 General powers and duties.—The district board shall have all the powers of a body corporate, including the power to sue and be sued; to make contracts; to adopt and use a common seal and to alter the same as may be deemed expedient; to rent, lease, buy, own, acquire and dispose of such property, real or personal, as the board may deem proper to carry out the provisions of this act; to appoint and employ and dismiss at pleasure such engineers, attorneys, auditors, consultants, and employees as the board may require, and to fix and pay the compensation thereof; to establish an office or offices for the transaction of its business, either in Tallahassee, or in some city within the district, and to change the same from time to time; to borrow money and, in the manner and subject to the limitations herein contained, to execute, issue and deliver promissory notes, warrants, bonds or other evidences of indebtedness; to pay all necessary costs and expenses in-

volved and incurred in the formation and organization of the district, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this act; to do any and all other acts and things hereinafter authorized or required to be done, whether or not included in the general powers in this section mentioned; and to do any and all things necessary to accomplish the purposes of this act.

History.—s. 3, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.331 Surety bonds.**—Each member of the district board, before assuming to act as such, shall be required to give a good and sufficient surety bond in the sum of $10,000, payable to the Governor of the state, and his successors in office, conditioned upon the faithful performance of his duties as a member of the district board and as a member of the board of directors of said authority. Such bonds shall be approved by and filed with the Department of Banking and Finance, and the premium or premiums thereon shall be paid by the district board as a necessary expense of the district.

History.—s. 4, ch. 17023, 1935; ss. 12, 35, ch. 69-106; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.341 Rules and regulations; committees; quorum.**—The district board shall have power to adopt, alter, or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the board may deem necessary or expedient in facilitating its business. Three members of the board (one of whom may be the chairman), shall constitute a quorum for the transaction of business, and a majority vote of all members present shall be necessary in order to authorize any action by the board. The chairman shall be entitled to vote on all questions.

History.—s. 5, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.351 Compensation and expenses; executive secretary-treasurer.**—Each member of the district board shall receive a per diem allowance and traveling expenses as provided by s. 112.061, for each day's service, but neither such per diem nor mileage shall be paid unless the service performed has been authorized and payment approved by the board. The board may select one of its members to serve as its executive secretary and treasurer, or one of its members as executive secretary and one as treasurer, and in that event he or they shall receive such additional compensation, commensurate with the duties and responsibilities placed upon him or them as the board may determine. The board may, however, in its discretion, appoint a nonmember of the board as such executive secretary and treasurer, or it may appoint a member as executive secretary and a nonmember as treasurer, or vice versa, or it may appoint two nonmembers, one as executive secretary and one as treasurer. In any of such events, the board shall require a surety bond of such appointee or appointees in such amount as the board may fix, which bond, in the case of the appointment of a member of the board, shall be in addition to the bond furnished by him as a board member.

History.—s. 6, ch. 17023, 1935; s. 1, ch. 63-216; s.12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.361 Issuance of bonds.**—

(1) In order to carry out the purposes of this act, the district board is authorized and empowered to issue, in the corporate name of the district, negotiable bonds in an amount not exceeding the sum of $2,750,000 bearing interest at a rate to be fixed by the board, but not in excess of 7½ percent per annum. Such bonds shall mature at the time or times and shall be issued in the manner and on the terms and conditions, as hereinafter set forth.

(2) The proceeds of all bonds so issued, over and above the amounts which may be necessary to retire the outstanding promissory notes of the district, and over and above the amounts reasonably necessary for the board to retain in order to cover its administrative and operating expenses, shall be turned over to the canal authority, to be used by it in paying the costs and expenses of acquiring a right-of-way for a canal across the state, running through or adjacent to the boundaries of the counties comprising the district, together with sea and river approaches thereto and such lateral and connecting branches as may be necessary or desirable, and in paying its administrative and operating expenses while so engaged in the acquisition of said right-of-way, and paying for any other expenses authorized to be incurred by said authority in and by part I of this chapter. All of the said bonds need not be sold at once, but the same shall be sold in such amounts, and at such times as to meet the monetary needs of the authority in acquiring the said right-of-way, and so that the acquisition thereof by the authority shall not be delayed or interrupted by lack of funds.

(3) Any of the proceeds of such bonds, or other district moneys which may have been turned over to the authority as in this act provided, and which shall not be needed for the purpose of acquiring said right-of-way or in paying the costs and expenses incident thereto, shall, after said right-of-way shall have been completely secured, be returned and repaid to the district and paid into the bond sinking fund to be created as hereafter provided.

(4) If any of the bonds authorized to be issued and sold hereunder, have not been sold by the time said right-of-way shall have been completely acquired, and after all expenses incident to such acquisition have been paid, then such bonds shall not be sold thereafter, but the same shall be canceled, and any unused portion of said bonds at that time still re-

maining in the hands of the district board shall be paid into the said bond sinking fund.

History.—s. 7, ch. 17023, 1935; s. 3, ch. 61-269; s. 30, ch. 73-302; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.371 Promissory notes, issuance, repayment.**—The district board is authorized and empowered, in order to provide itself and the canal authority with immediate funds, to borrow money, for a period or periods not exceeding 1 year, and to issue its promissory notes therefor, upon such terms, and at such rate or rates of interest, not exceeding 7½ percent per annum, as the board may deem advisable; provided, however, that the total amount of money so borrowed on promissory notes as aforesaid, shall not exceed the sum of $200,000. Such notes shall be repaid out of the proceeds of the bond issue hereinafter provided for, unless no bonds are issued or approved, in which event the district board shall make provision in its tax levy for the raising of sufficient funds for the repayment of said notes. The moneys so borrowed on such notes may be used for the purpose of providing the board with sufficient funds with which to administer and operate the district until the proceeds of the bond issues or tax levies hereinafter provided for are available, including all expenses necessarily incurred in calling and holding the election hereinafter provided for; and the remainder thereof shall be turned over to the canal authority, for the same purposes, and in the same manner and subject to the same terms and conditions as are herein set forth with reference to the net proceeds of the bond issue as above provided.

History.—s. 8, ch. 17023, 1935; s. 4, ch. 61-269; s. 118, ch. 77-104; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.391 Bonds; procedure for issuance and calling.**—The bonds of the district issued pursuant to the provisions of this act shall be authorized by a resolution of the board and shall be serial bonds maturing at such time or times not exceeding 30 years from their respective dates, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability or interchangeability privileges, be payable in such medium or payment and at such place or places, and be subject to such terms or redemption as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officer or officers as the board shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds, if any, shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the board and shall have the seal of the district affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions. The bonds issued hereunder shall be sold at public sale at such price or prices as the board shall determine to be in the best interest of the district, provided that the interest cost to the district of such bonds shall not exceed 7½ percent per annum.

History.—s. 10, ch. 17023, 1935; s. 6, ch. 61-269; s. 31, ch. 73-302; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.401 Bonds; signatures.**—In case any chairman or secretary of said board, whose signature, countersignature, or certificate appears upon any of the bonds authorized by this act, or coupons thereon, shall cease to be such chairman or secretary, before the delivery of such bonds to the purchaser, the signature or countersignature, or certificate shall nevertheless be valid and sufficient for all purposes, the same as if such chairman or secretary had continued to be such chairman or secretary until the delivery of the bonds.

History.—s. 11, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.411 Bonds; election for issuance.**—

(1) Before issuing any bonds, the issue shall be provided for by a resolution of the district board, setting forth the amount of bonds proposed to be issued, the denominations and date or dates of maturity thereof, the rate of interest the same are to bear, the time and place where the bonds and the interest thereon shall be payable, and such other terms and conditions as authorized by this act, upon which it is proposed to issue the bonds. The resolution shall further call for and fix a date and otherwise provide for the holding of an election for submission to the qualified freeholders residing in the district, for their approval or disapproval, of the question of the issuance of the bonds. Notice of the resolution and election shall be published in each county in the district once a week for 4 consecutive weeks before the election is held. The board shall cause to be prepared a sufficient number of ballots to be used at the election, which ballots shall be in substantially the following form:

OFFICIAL BALLOT
SPECIAL BONDING ELECTION
The Florida Canal Navigation District

(Place a crossmark (x) before the proposition of your choice)

FOR: Issuing Florida Canal Navigation District Bonds in an amount not to exceed the sum of $2,750,000 bearing interest at the rate of 7½ percent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right-of-way for a canal across the state of Florida, running through said district.

AGAINST: Issuing Florida Canal Navigation District Bonds in an amount not to exceed the sum of $2,750,000 bearing interest at the rate of 7½ percent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right-of-way for a canal across the state of Florida, running through said district.

(2) The election shall be held at the several places in the district where the last general election was held in each of the counties of the district, unless

the district board shall otherwise direct, and said board shall appoint the inspectors and clerks of election for each of the election precincts in said district. Only the freeholders who are qualified electors, as herein provided, and residing in said district shall be eligible to vote in said election. The election shall be conducted and the canvass of the votes certified to and returned, and the returns canvassed substantially in the manner and within the time prescribed by general law for holding bond elections, except as herein otherwise provided, and except that the returns of the election from each precinct in each of the counties in said district shall be delivered to the chairman and secretary of the district board instead of to the county officers or official to whom the returns are usually made. The board shall hold a meeting as soon thereafter as is practicable for the purpose of canvassing the election returns and certifying the returns. If a majority of the freeholders who are qualified electors residing in the district shall have participated in the election and a majority of the votes cast in the election are in favor of the issuance of the bonds, then the district board shall be authorized to issue and sell the bonds, in the manner as herein authorized, in the amount specified in the resolution calling the election, and to use the proceeds as authorized in this act. If, however, a majority of the freeholders who are qualified electors residing in the district shall not have participated in the election, or if a majority of the freeholders shall have participated but less than a majority of the votes cast are in favor of the issuance of the bonds, then and in either of such cases, no bonds shall be issued.

History.—s. 12, ch. 17023, 1935; s. 7, ch. 61-269; s. 2, ch. 65-60; s. 108, ch. 71-355; s. 32, ch. 73-302; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.421 Bonds; additional elections.**—In the event the issuance of the bonds is not approved by the first election held under this act, the district board shall be authorized to call another election on the question of the issuance of such bonds, such election to be held not sooner than 6 months after the first election, and further elections may be called and held, but not oftener than 6 months apart.

History.—s. 13, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.431 Legality of bond issue; protest.**—No proceedings shall be brought by anyone to contest or question the legality or validity of the bond issue after the expiration of the period of 30 days following the publication of the first notice of the board's resolution authorizing the issuance of the bonds, as provided in s. 374.411.

History.—s. 14, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.441 Security for bonds.**—Any and all bonds issued pursuant to the authority contained in this act, when sold, issued and delivered, shall become and be binding, valid and legal obligations of the navigation district, and for the security and payment of the bonds and the interest thereon, the entire taxable property lying within the district, and the full faith and credit thereof shall be pledged.

History.—s. 15, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.451 Bonds; validity and incontestability.**—This act, without reference to any other act or statute of the Legislature of the state, shall be full authority for the issuance and sale of the bonds herein authorized, which bonds shall have all the qualities of negotiable paper and which shall not be invalid because of any irregularity or defect in the proceedings for the issuance and sale thereof, and any and all such bonds shall be incontestable in the hands of bona fide purchasers thereof. All the bonds, regardless of time of sale, shall be of equal rank and without priority of one over the other, except as to the time of maturity as may be fixed in the bonds. No proceedings in respect to the issuance of said bonds shall be necessary, except such as are required by this act. Provided, however, that the district board may, if it deems such action expedient, validate the bonds, in the same manner as is provided by general law for the validation of bonds of counties and municipalities. If the validation proceedings are pursued, they may be instituted by petition filed in the circuit court in and for Duval County, and the proceedings thereon shall be conducted in the same manner and shall have the same effect as is provided by general law for the validation of county and municipal bonds except that notice of hearing on the petition shall be given by publication in one or more newspapers published in each county in the district, once a week for 3 consecutive weeks, the first publication to be at least 18 days prior to the date fixed for the hearing.

History.—s. 16, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.461 Bonds; sale.**—The district board, after the approval of the issuance of the bonds at the election hereinabove provided for, shall have the power and authority to proceed forthwith to sell all of the bonds or portions thereof from time to time, at public sale, or upon sealed proposals, to the highest bidder for cash, after due notice thereof shall have been published in a newspaper published in Duval County, once a week for 2 consecutive weeks, provided, however, that the bonds shall not be sold for less than 95 cents on the dollar, plus accrued interest thereon to the date of delivery. The board shall have the right to reject any or all bids, and if no satisfactory bid is received on the day advertised for the sale thereof, the bonds or any part thereof may be sold at private sale at any time within 60 days thereafter, at not less than the highest bid received at the advertised sale, and at not less than the above stated minimum price of 95 cents on the dollar, plus accrued interest to date of delivery. The board may, however, sell any or all of the bonds at private sale at any time, whether notice has been published or not, pro-

vided that they are sold for not less than par plus accrued interest to date of delivery.

History.—s. 17, ch. 17023, 1935; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.471 Sinking fund.**—It shall be the duty of the treasurer of the district, as custodian of the funds belonging thereto, out of the proceeds of the taxes levied and imposed as provided in this act, and out of any other moneys in his possession belonging to the district (all of which moneys, so far as may be necessary, are appropriated for the purpose), to pay the interest on and principal of the bonds as the same shall fall due. There is hereby created a sinking fund for the payment of the principal of all of the bonds, and until all of the bonds issued shall have been paid, or until there shall have been accumulated in said sinking fund sufficient funds to pay all of such bonds, the board shall set apart and pay into said sinking fund annually, beginning with the year following the year in which the bonds are issued, out of taxes levied and imposed by this act and other funds of the district at least 3½ percent of the total amount of bonds issued and sold hereunder. The sinking fund for the payment of the bonds shall not be appropriated to or used for any other purpose.

History.—s. 18, ch. 17023, 1935; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.481 Redemption of bonds, investment of sinking fund.**—The board is hereby authorized and empowered to invest the moneys belonging to the sinking fund in bonds issued under the provisions of this act, or in bonds issued by the United States. Whenever necessary or expedient in the opinion of the board, the securities in said sinking fund may be sold and the proceeds used in paying maturing bonds of the district or in calling the bonds for redemption as hereinabove in s. 374.391 provided, or for the purpose of being invested in conformity with the provisions hereof. Provided, however, that whenever the total amount of money in the sinking fund (computing the bonds held as cash on the basis of their then market value, less the cost of sale), shall exceed the amount necessary to pay bonds maturing during the next ensuing 12 months, the surplus shall immediately be used by the board for the purpose of calling bonds for redemption in the manner as prescribed in s. 374.391.

History.—s. 19, ch. 17023, 1935; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.491 Deposit of funds.**—All district funds shall be deposited in a bank or banks to be designated by the board, including federal savings and loan associations. The board shall designate as such depository or depositories the bank or banks that will offer the best inducement as to the payment of interest on daily balances, but before any district moneys are deposited in the depository or depositories, security ample to protect the deposits shall be furnished to the district (without expense to the district), which security shall be in the form either of a surety bond or bonds executed by a surety company or companies authorized to do business in this state, or in the form of a deposit, to the credit of the district, of bonds of the United States or of the district, or insurance for the full amount of the deposit through an agency of the United States. Funds of the district shall be paid out only upon warrant signed by the treasurer of the board and countersigned by the chairman or vice chairman. No warrants shall be drawn or issued disbursing any of the funds of the district except for a purpose authorized by this act and only when the account or expenditure for which the same is to be given in payment has been ordered or approved by the board.

History.—s. 20, ch. 17023, 1935; s. 8, ch. 61-269; s. 12, ch. 79-167.
[1]Note.—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]**374.501 Levy of taxes.—**

(1) The navigation district shall have, and it is hereby granted, the power to levy, assess, collect and enforce taxes upon all taxable real and personal property in the district, subject to the limitations and restrictions herein contained. The maximum amount of taxation which the district board shall be authorized to levy in any one year shall not exceed six-tenths mill on the dollar on the assessed evaluation of the district. The amount of such levy to be made each year by the district shall be determined by resolution of the district board; and a certified copy of such tax resolution executed in the name of the board by its chairman and attested by its secretary under its corporate seal, shall be delivered to the board of county commissioners of each and every county in the district and to the Department of Revenue immediately after the adoption of such resolution. The moneys received by the district from such levy shall be used by it as follows:

(a) To furnish the amount needed by the board for the annual administrative and operating expenses of the district which amount shall not exceed the amount which would be raised by a levy of one-tenth mill on the dollar on the assessed valuation of the district.

(b) The balance of the amount raised by such annual levy shall be used for the payment of the principal of and interest on the outstanding bonds of the district becoming due and payable during the ensuing year, and for the establishment of reserves for such purposes. If no bonds of the district be outstanding, then the proceeds of said levy, less the amount needed for the annual administrative and operating expenses of the district, shall be turned over by the district to the canal authority of the state to be used by it in acquiring the necessary right-of-way for the Cross Florida Barge Canal, as herein provided.

(2) It shall be the duty of each of said boards of county commissioners, each year, to order the property appraisers of each of said counties to levy and assess, and the county tax collector to collect a tax at the rate fixed by the said resolution of the district board upon all of the real and personal property in said counties for said year and said levies and assessments shall be included in the tax roll and warrant of the property appraisers in each of said counties for

such year. The tax collector of each said county shall collect such taxes so levied by the district board in the same manner and at the same time as state and county taxes are collected and shall pay and remit the same upon collection, within the time and in the manner required by law, to the district board.

(3) The property appraiser, tax collector, and the board of county commissioners of each and every county in said district shall, when requested by the district board, prepare from their official records and deliver to the board any and all information that may be requested from time to time from him or them regarding the tax valuations, levies, assessments or collections in such counties.

(4) If any of the lands acquired by the canal authority of Florida with funds provided by the Cross Florida Canal Navigation District under this act become surplus after the rights-of-way needs of the canal authority have been met, such land may be sold and the proceeds of such sale shall be paid to the counties comprising said district in direct proportion to the contribution of each county to the Cross Florida Navigation District.

History.—s. 21, ch. 17023, 1935; s. 9, ch. 61-269; ss. 1, chs. 65-237, 65-405; ss. 21, 35, ch. 69-106; s. 1, ch. 77-102; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.511 Publication of financial statement.—At least once in each year the district board shall publish once in some newspaper published in each of the counties of the district, a complete detailed statement of all moneys received and disbursed by the district during the preceding year. Such statement shall also show the several sources from which such funds were received, and the balance on hand at the time of publishing the statement, and shall show the complete financial condition of the district.

History.—s. 22, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

[1]374.521 Liberal construction.—It is intended that the provisions of this act shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—s. 23, ch. 17023, 1935; s. 12, ch. 79-167.

[1]**Note.**—Repealed by s. 12, ch. 79-167, effective upon the effective date of deauthorization of the Cross Florida Barge Canal Project by the U.S. Congress, except for the possible effect of laws affecting this section prior to that date.

PART III

WATERWAYS DEVELOPMENT

374.75 Creation of districts.—Whenever the state or federal government or appropriate agency thereof has authorized a waterways development project within the state and has defined and delineated the course or boundaries of said project, the Department of Natural Resources, acting through its Division of Resource Management, shall create and establish a special taxing district composed of the county or counties within the state through which or adjacent to which such project runs. A certified copy of the resolution adopted by the Governor and Cabinet, as department head, creating and establishing said district shall be published in a newspaper of general circulation in each county which composes said district once a week for 4 consecutive weeks commencing within 1 week of the creation of said district.

History.—s. 1, ch. 61-121; ss. 25, 35, ch. 69-106; s. 52, ch. 79-65.

374.76 Purpose of district.—The district so created shall be designated with an appropriate identifying name. The purpose of the district shall be to raise funds to be used by the canal authority of the state under the direction and control of the Division of Resource Management in acquiring and paying for rights-of-way for the development of the particular waterways project.

History.—s. 2, ch. 61-121; ss. 25, 35, ch. 69-106; s. 53, ch. 79-65.

374.761 Navigation districts subject to supervision of division.—Any navigation district created pursuant to the provisions of this chapter, or any navigation district heretofore or hereafter created by special acts of the Legislature, shall act in conjunction with, but at all times under and subject to the control and supervision of, the Division of [1][Resource Management].

History.—s. 1, ch. 65-502; ss. 25, 35, ch. 69-106.

[1]**Note.**—Bracketed words substituted by the editors for "Interior Resources."

374.77 Governing body.—

(1) The affairs of the district shall be governed by five persons who shall be known as directors of the district and who shall be the owners of real property and shall reside in the district. Their term of office shall be for 4 years or until their successors shall

have been appointed and qualified; provided, however, that of the directors composing the first governing body, two shall serve for a term of 4 years, one shall serve for a term of 3 years, one shall serve for a term of 2 years, one shall serve for a term of 1 year.

(2) Unless such district embraces less than five counties not more than one director shall be from any one county. If the district be composed of five counties or less, each county shall have at least one member of the governing body. The directors shall be appointed by the Governor.

History.—s. 3, ch. 61-121.

374.78 Powers of district directors.—The district directors shall have the following powers:

(1) To sue and be sued.

(2) To adopt and use a common seal.

(3) To make and enter into contracts.

(4) To buy, sell, rent, lease, own, acquire and dispose of real and personal property, as the directors may deem necessary to carry out the functions of the district.

(5) To employ and dismiss at pleasure all necessary personnel including without limitation engineers, attorneys, auditors and consultants and to fix their compensation.

(6) To establish an office for the transaction of its business in some city in the district and to change the same from time to time.

(7) To borrow money subject to the conditions and limitations hereinafter set forth.

(8) To execute, issue, validate and sell promissory notes, warrants, bonds or other evidence of indebtedness.

(9) To pay all expenses incurred in the formation, organization, administration and operation of the district and to pay all other expenses reasonably necessary to carry out and accomplish the purposes of this act.

(10) To do all other things and perform all other acts hereinafter authorized or required to be done whether or not included within the general powers of this section.

(11) To do any and all things necessary to accomplish the purposes of this act.

Provided, however, that all acts of the directors taken pursuant to those above enumerated or done pursuant to other provisions of this act shall be subject to the approval of the Division of Resource Management.

History.—s. 4, ch. 61-121; ss. 25, 35, ch. 69-106; s. 54, ch. 79-65.

374.79 Bond of directors.—Each director of the district before assuming office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his successors in office conditioned on the faithful performance of his duties. Such bond shall be approved by the Division of Resource Management. The premiums on said bonds shall be an expense of the district.

History.—s. 5, ch. 61-121; ss. 25, 35, ch. 69-106; s. 55, ch. 79-65.

374.80 Organization of district.—The directors shall select one of their members as chairman and they shall select a secretary who need not be a director. The directors shall have the power to adopt, alter and amend its bylaws and rules and regulations governing the transaction of its business and accomplishment of its purposes.

History.—s. 6, ch. 61-121.

374.81 Issuance of bonds.—Any district created pursuant to the provisions of this act shall be empowered to issue, validate and sell in the district's name negotiable bonds in an amount and for a term determined by the Division of Resource Management bearing interest at a rate not exceeding the limit set by the division, for the purposes of retiring any outstanding promissory notes, paying the administration and operation expenses of the district and for the cost and expense of acquiring rights-of-way for the waterway development project authorized to run through or adjacent to the said counties comprising the district. That portion of the proceeds from the sale of said bonds by the district to be used for right-of-way acquisitions shall be turned over to the canal authority of the state and said canal authority shall be charged with the actual acquisition of the rights-of-way and the payment thereof with the funds available for that purpose.

History.—s. 7, ch. 61-121; ss. 25, 35, ch. 69-106; s. 56, ch. 79-65.

374.82 Issuance of promissory notes.—Any district created pursuant to the provisions of this act shall be empowered and authorized to borrow money to provide immediate funds in such amount, for periods of time and at an interest rate to be fixed by the Division of Resource Management, and the district shall issue its promissory notes therefor. Such notes shall be repaid from the proceeds of the bond issue, unless no such bonds are issued, validated, or sold, in which event the district shall make provisions in its initial tax levy for the raising of sufficient funds to repay said notes. The funds raised by the borrowing of money pursuant to this section shall be used for the purpose of paying all expenses incurred in the organization of the district or incident to its formation and to provide the district with funds for administration and operation until the proceeds of the bonds issued by the district are available or until the proceeds of the tax levies hereinafter provided are available.

History.—s. 8, ch. 61-121; ss. 25, 35, ch. 69-106; s. 57, ch. 79-65.

374.83 Matching funds.—The Division of Resource Management is authorized to equally match out of state funds any moneys or funds raised by any special taxing district now in existence or hereafter created as herein provided for the purchase or acquisition of rights-of-way for any waterway development project authorized by the state or federal government or appropriate agency thereof.

History.—s. 9, ch. 61-121; ss. 25, 35, ch. 69-106; s. 58, ch. 79-65.

374.84 Issuance of bonds; procedure.—The bonds which the district is authorized to issue pursuant to this act shall be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability, or interchangeability privilege, be payable in such medium or payment and at such place or places, and be subject to such redemptions as the district directors may prescribe and designate by resolution. Said bonds shall

be serial bonds maturing at such time or times as set by the Division of Resource Management. The bonds shall be executed either by manual or facsimile signature by such officer or officers as the directors may determine, provided such bonds shall bear at least one signature which is manually executed thereon, and coupons attached to such bonds, if any, shall bear the facsimile signature or signatures of such officer or officers so designated by the directors and shall have the seal of the district affixed.

History.—s. 10, ch. 61-121; ss. 25, 35, ch. 69-106; s. 59, ch. 79-65.

374.85 Election for bond issue.—

(1) Before issuing any of such bonds, such issue shall be provided for by a resolution of the district directors, setting forth the amount of bonds proposed to be issued, the denominations and date or dates of maturity thereof, the rate of interest the same are to bear, the time and place where said bonds and the interest thereon shall be payable, and such other terms and conditions as authorized by this act, upon which it is proposed to issue said bonds. Said resolution shall further call for and fix a date and otherwise provide for the holding of an election for submission to the qualified freeholders residing in the district, for their approval or disapproval, of the question of the issuance of such bonds. Notice of such resolution and election shall be published in each county in said district once a week for 4 consecutive weeks before such election is held. The district directors shall cause to be prepared a sufficient number of ballots to be used at said election, which ballots shall be in substantially the following form:

OFFICIAL BALLOT
SPECIAL BONDING ELECTION

(Place a crossmark (x) before the proposition of your choice)

FOR: Issuing District Bonds in an amount not to exceed the sum of....., bearing interest at the rate of ..... percent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right-of-way running through said district.

AGAINST: Issuing District Bonds in an amount not to exceed the sum of ....., bearing interest at the rate of ..... percent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right-of-way running through said district.

(2) Such election shall be held at the several places in the district where the last general election was held in each of the counties of the district, unless the district directors shall otherwise direct, and said directors shall appoint the inspectors and clerks of election for each of the election precincts in said district. Only the freeholders who are qualified electors residing in said district shall be eligible to vote in said election. Such election shall be conducted and the canvass of the vote certified to and returned, and the returns canvassed substantially in the manner and within the time prescribed by general law for holding bond elections, except as herein otherwise provided, and except that the return of said election from each precinct in each of the counties in said district shall be delivered to the chairman and secretary of the district instead of to the county officers or official to whom such returns are usually made. The directors shall hold a meeting as soon thereafter as is practicable for the purpose of canvassing said election returns and certifying the returns thereof. If a majority of the freeholders who are qualified electors residing in said district shall have participated in said election and a majority of the votes cast in said election are in favor of the issuance of said bonds, then the district directors shall be authorized to issue and sell such bonds, in the manner as herein authorized, in the amount specified in the resolution calling the election, and to use the proceeds as authorized in this act. If, however, a majority of the freeholders who are qualified electors residing in said district shall not have participated in said election, or if a majority of such freeholders shall have participated but less than a majority of the votes cast are in favor of the issuance of said bonds, then and in either such case, no such bonds shall be issued.

History.—s. 11, ch. 61-121; s. 2, ch. 65-60; s. 108, ch. 71-355.

374.86 Further elections.—In the event the issuance of said bonds is not approved by the first election held, the district directors shall be authorized to call another election on the question of the issuance of such bonds, such election to be held not sooner than 6 months after such first election, and further elections may be called and held, but not oftener than 6 months apart.

History.—s. 12, ch. 61-121.

374.87 Validation.—Any bonds issued by any district created pursuant to this act shall be validated in the same manner as is provided by general law for the validation of bonds of counties and municipalities. Said validation proceedings shall be instituted in the circuit court in and for the most populous county within the district according to the latest official decennial census.

History.—s. 13, ch. 61-121.

374.88 Sale of bonds.—After the approval of the bonds at the elections herein provided for and the validation of the same, the district shall forthwith sell all of said bonds or portions thereof from time to time at a price of not less than 95 percent of face value plus accrued interest. The manner of sale shall be determined by the directors by resolutions subject to approval by the Division of Resource Management.

History.—s. 14, ch. 61-121; ss. 25, 35, ch. 69-106; s. 60, ch. 79-65.

374.89 Sinking fund.—The district directors shall establish and maintain a sinking fund for the payment of the principal and interest on any bonds issued and sold by said district. Until all of said bonds have been paid in full or until there is accumulated in the sinking fund sufficient funds to pay all such bonds, the directors of the district shall deposit and pay into said sinking fund annually out of taxes levied and collected by the district at least funds equal to the amount necessary to pay the said bonds for 1 year. The sinking fund shall not be used or appropriated for any other purposes.

History.—s. 15, ch. 61-121.

374.90 Investment of funds.—Any excess funds of the district may be invested in securities of the United States or agency thereof.

History.—s. 16, ch. 61-121.

374.91 Deposit of funds.—The funds of the district shall be deposited in a bank or banks, including federal savings and loan associations, to be designated by the directors of the board; provided, the bank depository shall furnish the district ample security to protect said deposits. Withdrawal of funds from said bank or banks shall be in such manner as the directors may, by resolution, prescribe.

History.—s. 17, ch. 61-121.

374.92 Levy of taxes.—Any district created pursuant to the provisions of this act shall have the power to levy, assess, collect, and enforce taxes upon all the taxable real and personal property in the district, subject to the following restrictions and limitations:

(1) The county property appraiser of each county within the district shall annually, commencing with the year in which the district is created, immediately upon the assessment rolls being equalized, report to the directors of the district the assessed valuation of the real and personal property in their respective counties and the Department of Revenue shall annually, commencing with the year in which the district is created, report to the district directors the assessed valuation of all railroad lines and property, telephone and telegraph lines and property and all other taxable property within the district over which it has jurisdiction for valuation and assessment purposes. The total sum of all assessments so reported shall be the assessed value of taxable property of the district for that year.

(2) Upon receipt of all such assessments, the district directors shall by resolution determine the total amount of money to be raised by taxation in such year and shall also by the same resolution fix and determine the rate of taxation necessary when applied to the total assessed value of property in the district which will raise the amount of money so determined.

(3) The maximum rate of taxation which the district may levy in any one year shall be the rate which when applied to the total assessed value of property in the district for that year will raise not more than the following amounts, to wit:

(a) The amount necessary to pay the annual interest requirements on and to pay the principal of bonds maturing during the ensuing year, of all bonds of the district outstanding and unpaid.

(b) The amount needed by the district directors for the annual administrative and operating expenses of the district, which amount shall not exceed the amount which would be raised by a levy of a one-fifth mill on the dollar on the total assessed valuation of the district.

(4) The directors of the district shall immediately deliver to the property appraiser and tax collector of each county within the district and to the Department of Revenue, and to the Division of [1][Resource Management], certified copies of the above resolution.

(5) The property appraiser of each county within the district and the Department of Revenue shall each year levy and assess a tax at the rate fixed by the district directors by said resolution upon all of the real and personal property in said counties and to include the same on the tax rolls. The county tax collector shall, each year, collect the tax levied and assessed in the same manner and at the same time as state and county taxes are collected and shall remit the same upon collection, within the time and in the manner required by law, to the district directors.

(6) The collection of the taxes levied and assessed pursuant to this act shall be enforced in the same manner and at the same time as county taxes. Said taxes of the district shall constitute a lien of equal dignity to all other tax liens on all of the taxable property within the district.

History.—s. 18, ch. 61-121; ss. 21, 25, 35, ch. 69-106; s. 1, ch. 77-102.

[1]Note.—Bracketed words substituted by the editors for "Interior Resources."

374.93 Budget.—The district directors shall each year, prior to fixing the rate of taxation for that year, prepare an itemized budget for administration and operations, payment of principal and interest on bonds and any other expenses contemplated for the ensuing year and submit the same to the Division of Resource Management for its approval.

History.—s. 19, ch. 61-121; ss. 25, 35, ch. 69-106; s. 61, ch. 79-65.

374.94 Statement.—The district directors shall publish annually in a newspaper published in each county of the district a complete and detailed statement of all moneys received and disbursed by the district during the preceding year.

History.—s. 20, ch. 61-121.

374.95 Construction.—It is intended that the provisions of this act shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—s. 21, ch. 61-121.

374.97 Participation in Tennessee-Tombigbee Waterway Development Authority.—

(1) The Governor, on behalf of the State of Florida, is hereby authorized to enter into the Tennessee-Tombigbee Waterway Development Authority and Interstate Compact for the purpose of promoting the development of a navigable interstate waterway connecting the Tombigbee and the Tennessee Rivers, which membership will materially assist in the development of Florida's waterways projects.

(2) The membership on this authority from Florida shall consist of the Governor and five other citizens of the state who shall be interested in waterways development, two of whom shall be members of the Department of Natural Resources designated by said department. The department members shall serve until a successor is nominated by the department. Three members shall be appointed by the Governor and shall serve 4-year terms; however, the members of the first board so selected shall serve

staggered terms with one member serving 2 years, one member serving 3 years, and one member serving 4 years. The members of the authority shall not be compensated but each shall be entitled to expenses incurred in the performance of his duties as a member of the authority.

(3) There is hereby granted to the Governor and to the members of the authority from Florida, all powers provided for in said compact and the members from Florida are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purpose of said compact.

(4) When the Governor shall have executed and entered into said authority on behalf of this state and when said compact shall have been ratified by the authority as provided in its bylaws, then this act shall become operative and effective as between this state and such other states and the Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents between the states and any other state ratifying said compact. All documents relating to the compact shall be filed with the Department of State.

History.—ss. 1-4, ch. 67-294; ss. 10, 35, ch. 69-106; s. 106, ch. 73-333.

CHAPTER 375

OUTDOOR RECREATION AND CONSERVATION

375.011 Short title.—This act may be known and cited as the "Outdoor Recreation and Conservation Act of 1963."

History.—s. 1, ch. 63-36.

375.021 Division of Recreation and Parks; committee.—

(1) The Division of Recreation and Parks of the Department of Natural Resources is hereby given the responsibility, authority and power to develop and execute a comprehensive multipurpose outdoor recreation and conservation plan for this state. The outdoor recreation and conservation plan shall be kept current through continual reevaluation and revision. It shall be the responsibility of the division to supervise and to insure the beneficial management and use of the lands acquired under the provisions of this act, and to allocate by lease or otherwise such lands to the different agencies, subdivisions or municipalities of the state in order to accomplish the purposes of this chapter.

(2) For the purposes of coordinating needs for outdoor recreation, conservation and multipurpose land acquisition and obtaining professional guidance in the most beneficial use of lands acquired, there is hereby established an Outdoor Recreation Advisory Committee, hereafter referred to as the committee, whose primary duty it shall be to advise the Division of Recreation and Parks as to outdoor recreation and land acquisition needs and the most efficient use of lands acquired. The committee shall be composed of the following persons: The executive director of the Department of Natural Resources; the executive director of the Board of Trustees of the Internal Improvement Trust Fund; the executive director of the Game and Fresh Water Fish Commission; the secretary of the Department of Community Affairs; the secretary of the Department of Transportation; the director of the Division of Forestry of the Department of Agriculture and Consumer Services; the director of the Division of Recreation and Parks of the Department of Natural Resources and the director of the Division of Archives, History and Records Management of the Department of State. The executive director of the Department of Natural Resources shall also serve on the committee as its chairman. The committee shall meet upon call of the chairman or at the direction of the Division of Recreation and Parks. The chief of the Bureau of Planning and Grants of the Division of Recreation and Parks shall serve as secretary of the committee. Any member of the committee may be represented at the various functions of the committee by his duly authorized representative. Nothing contained herein shall be construed as limiting the powers and authority of the officers, boards, agencies and commissions represented on the committee.

(3) The Division of Recreation and Parks may contract with the Government of the United States or any agency or instrumentality thereof or with the state or any county, municipality, or district authority, or political subdivision, or with any private corporation, partnership, association, or person providing for or relating to the development of outdoor recreation or conservation in accomplishing the purposes of this act. The division may receive and accept from any federal agency, state agency, or other public body grants or loans for or in aid of the purposes of this act and the division may receive and accept aid or contributions or loans from any other source of money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such aid, grants, or loans were made. Without limiting or modifying any of the powers and authority of the division, but specifically as an addition thereto, the division is expressly authorized to participate in the land and water conservation fund program, established by and pursuant to Public Law 88-578, as it may be amended from time to time.

History.—s. 2, ch. 63-36; ss. 1, 2, ch. 67-351; s. 5, ch. 67-461; ss. 25, 35, ch. 69-106; s. 136, ch. 71-377; s. 107, ch. 73-333.

375.031 Acquisition of land; Board of Trustees of the Internal Improvement Trust Fund.—

(1) The division is hereby empowered and authorized to acquire lands, water areas, and related resources and to perform all other activities necessary or incident to acquiring, improving, enlarging, maintaining, extending, selling, leasing, or disposing of land, water areas, and related resources, and improvements thereon. Prior to the division acquiring such land, the seller of the land shall file a statement with the Department of State disclosing, for the period from January 1, 1970, to the date of the statement, all financial transactions concerning the land, all parties having a financial interest in any transaction, and the amount of the tax assessment thereon for each year. Notwithstanding the provisions of this section, all land acquisitions made as provided herein shall conform to the provisions of s. 253.025. The Board of Trustees of the Internal Improvement

Trust Fund shall hold title to lands so acquired, but the beneficial use, control, and management shall be with the division.

(2) The division shall acquire, control and oversee the development and use of all land, water areas and related resources generally classified as outdoor areas and shall construct, improve, enlarge, extend, and maintain capital improvements and facilities upon such outdoor areas as needed. In performing these functions the division shall give full consideration to the recommendations of the committee and of other agencies using or desiring to use land or water areas provided by the division.

(3) All land, water areas and related resources hereafter needed by the state for outdoor recreation, wildlife management, forestry management, nature preservation, water conservation and control and other similar or related purposes may be acquired through the procedures provided in this act.

(4) The division may acquire by purchase, lease-purchase agreements, or otherwise, on such terms and conditions as it deems wise any land, water areas, related resources or other property which it deems is reasonably necessary for outdoor recreation or natural resources conservation under this act, and any and all rights, title and interest in such land, water areas, related resources and other property, including any public lands, parks, playgrounds, reservations, roads or parkways, owned by or in which any county, political subdivision, city, town, village, public agency, or officer of the state has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and fee simple absolute in, easement upon, or the benefit of restrictions upon, abutting property to preserve and protect recreation and conservation areas and projects.

(5) Land, water areas and related resources which may be acquired through the procedures provided in this act shall include, but not be limited to, parks and recreation areas, wildlife preserves, forest areas, wetlands, floodways and water storage areas, beaches, water access sites, boating and navigational channels, submerged lands, historical and archaeological sites, rights-of-way and sites for access roads which may be necessary for maximum development, use and enjoyment of any outdoor recreation or conservation areas. The terms "land" and "lands" where used singly in this act shall be construed as inclusive of lands, water areas and related resources.

(6) The division may acquire by the exercise of the power of eminent domain in accordance with the statutes of the state any land or water areas, related resources and property and any and all rights, title and interest in such land or water areas, related resources and other property which it determines as reasonably necessary for the preservation of floodways and water storage areas, boating and navigational channels, rights-of-way for access roads which may be necessary for maximum development and use of any outdoor recreation and conservation areas and rights-of-way for access which may be necessary for the use and enjoyment of public waterways.

(7) The division may lease acquired land, water areas and related resources, or improvements thereon, to any state agency for its authorized purposes. The division may, in its discretion, require such state agency to pay as rentals on the leased land, water areas, related resources, or improvements, all or any part of the revenues derived from the land so leased.

(8) The division may, if it deems it desirable and in the best interest of the program, direct the board of trustees to sell or otherwise dispose of any lands or water storage areas acquired under this act. The board of trustees, when so directed, shall offer such lands or water storage areas, on such terms as the division may determine, first to other state agencies and then, if still available, to the county or municipality in which such lands or water storage areas lie. If not acquired by another state agency or local governmental body for beneficial public purposes, such lands or water storage areas shall then be offered by the board of trustees at public sale, after first giving notice of such sale by publication in a newspaper published in the county or counties in which such lands or water storage areas lie not less than once a week for 3 consecutive weeks. All proceeds from the sale or disposition of any lands or water storage areas pursuant to this section shall be deposited in the Land Acquisition Trust Fund.

(9) The division may sell, lease or otherwise dispose of certain products and user rights in, under or upon land, water areas and related resources acquired under the provisions of this act, including, but not limited to, oil and minerals, timber and forest products, sand, gravel, earth, grazing rights, and farming rights on such terms and conditions as it determines, if the sale, lease, or other disposition is not inconsistent with or injurious to the outdoor recreation, conservation, and other purposes for which said lands and water areas were acquired.

(10) The Division of Recreation and Parks is empowered and authorized to provide matching funds to counties and municipalities of up to 50 percent of the cost of purchasing, exclusive of condemnation, rights-of-way for access roads or walkways to public beaches contiguous with the Atlantic Ocean or the Gulf of Mexico.

History.—s. 3, ch. 63-36; s. 3, ch. 67-351; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 72-104; s. 1, ch. 75-81; s. 17, ch. 79-255.

375.032 Recreation; required purpose for purchase.—No land shall be purchased under this act or any funds expended for any project unless a finding is made that recreation is the prime purpose of the purchase or of the project.

History.—s. 6, ch. 67-351.

375.041 Land Acquisition Trust Fund.—

(1) There is hereby created a Land Acquisition Trust Fund to facilitate and expedite the acquisition of land, water areas and related resources required to accomplish the purposes of this act. The Land Acquisition Trust Fund shall be held and administered by the division. All moneys and revenue from the operation, management, sale, lease, or other disposition of land, water areas, related resources and the facilities thereon acquired or constructed under this act shall be deposited in or credited to the Land Acquisition Trust Fund. Moneys accruing to any agency for the purposes enumerated in this act may be deposited in this fund. There shall also be deposited into the Land Acquisition Trust Fund other mon-

eys as authorized by appropriate act of the Legislature. All moneys so deposited into the Land Acquisition Trust Fund shall be trust funds for the uses and purposes herein set forth, within the meaning of s. 215.32(1)(b) and such moneys shall not become or be commingled with the General Revenue Fund of the state, as defined by s. 215.32(1)(a).

(2) The moneys on deposit in the Land Acquisition Trust Fund shall be first applied to pay the rentals due under lease-purchase agreements or to meet debt-service requirements of revenue bonds issued pursuant to s. 375.051.

(3) Any moneys in the Land Acquisition Trust Fund which are not pledged for rentals or debt service as above provided may be expended from time to time to acquire land, water areas and related resources and to construct, improve, enlarge, extend, operate and maintain capital improvements and facilities in accordance with the plan.

(4) The division may disburse moneys in the Land Acquisition Trust Fund to pay all necessary expenses to carry out the purposes of this act.

History.—s. 4, ch. 63-36; s. 4, ch. 67-351; ss. 25, 35, ch. 69-106.

375.043 Deposit in Land Acquisition Trust Fund of funds in, and revenues accruing to, Internal Improvement Trust Fund.—Notwithstanding any other provision of law to the contrary, the uncommitted fund balance of the Internal Improvement Trust Fund as of July 1, 1975, and all revenues subsequently accruing from sources now designated by law for deposit in the Internal Improvement Trust Fund shall be deposited in the Land Acquisition Trust Fund created by s. 375.041, to be used in accordance with this chapter.

History.—s. 15, ch. 75-22; s. 2, ch. 77-113.
Note.—Former s. 20.25(5).

375.051 Issuance of revenue bonds subject to constitutional authorization.—The acquisition of lands, water areas and related resources by the division under this act is a public purpose for which revenue bonds may be issued when and only when there has been granted in the State Constitution specific authorization for the division to issue revenue bonds to pay the cost of acquiring such lands, water areas and related resources and to construct, improve, enlarge and extend capital improvements and facilities thereon as determined by the division to be necessary for the purposes of this act. The division may utilize the services and facilities of the Department of Legal Affairs, the Board of Administration, or any other agency in this regard. Provided, however, no revenue bonds, revenue certificates or other evidences of indebtedness shall be issued for the purposes of this act except as specifically authorized by the State Constitution; provided, however, all revenue bonds, revenue certificates or other evidences of indebtedness issued pursuant to this act shall be submitted to the State Board of Administration for final approval or disapproval.

History.—s. 5, ch. 63-36; s. 5, ch. 67-351; ss. 11, 25, 28, 35, ch. 69-106.

375.061 Construction.—The provisions of this act shall be liberally construed in a manner to accomplish the purposes thereof.

History.—s. 6, ch. 63-36.

375.065 Public beaches; financial and other assistance by Department of Natural Resources to local governments.—

(1) The Department of Natural Resources is authorized, within the limits of appropriations available to the department for such purposes, to utilize any one or more of the following procedures in establishing and operating a program of financial assistance to local governments for the acquisition of public beach properties:

(a) The department may make grants for, and advance loans to, the governing body of any county or municipality in an amount not to exceed the fair-market value, as determined by the department, of any waterfront property sought to be purchased by said governing body for the purpose of establishing and maintaining a public beach.

(b) The department may require the local governing body to give assurance that it has the financial ability to furnish or secure funds to complete the purchase of the property sought. Any revenue from concessions, tolls, or parking or otherwise produced by the development or operation of such public beach may be pledged to amortize any indebtedness incurred in such beach acquisitions.

(2) The Department of Natural Resources, through its Division of Recreation and Parks, may acquire waterfront property and may lease, sell, or grant acquired land, water areas, and related resources or improvements thereon to the governing body of any county or municipality upon such terms and conditions as the department may require in order to assure that such property will be reserved for public use and benefit in the future.

(3) The division is authorized to promulgate such rules, regulations, and forms as may be necessary to carry out the purposes of this section and to insure that all projects to which assistance is rendered hereunder are for the purpose of providing public beaches for recreation purposes.

(4) In addition to the authorized assistance procedures provided by this section, the legislature hereby urges the Department of Natural Resources and the Division of Recreation and Parks to give priority to applications relating to the acquisition of public beaches in urban areas, and to make full use of the Federal Land and Water Conservation Fund Act of 1965, as amended or other applicable federal programs. This section is supplemental to and shall not limit or repeal any provision of the Outdoor Recreation Act of 1963.

History.—ss. 1-3, ch. 72-86.

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this act is to encourage persons to make available to the public land, water areas and park areas for outdoor recreational purposes by limiting their liability to persons going thereon and to third persons who may be damaged by the acts or omissions of persons going thereon.

(2)(a) An owner or lessee who provides the public

with a park area for outdoor recreational purposes owes no duty of care to keep that park area safe for entry or use by others, or to give warning to persons entering or going on that park area of any hazardous conditions, structures, or activities thereon. An owner or lessee who provides the public with a park area for outdoor recreational purposes shall not by providing that park area:

1. Be presumed to extend any assurance that such park area is safe for any purpose,

2. Incur any duty of care toward a person who goes on that park area, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that park area.

(b) This section shall not apply if there is any charge made or usually made for entering or using such park area, or any part thereof, or if any commercial or other activity for profit is conducted on such park area, or any part thereof.

(3)(a) An owner of land or water area leased to the state for outdoor recreational purposes owes no duty of care to keep that land or water area safe for entry or use by others, or to give warning to persons entering or going on that land or water of any hazardous conditions, structures, or activities thereon. An owner who leases land or water area to the state for outdoor recreational purposes shall not by giving such lease:

1. Be presumed to extend any assurance that such land or water area is safe for any purpose,

2. Incur any duty of care toward a person who goes on the leased land or water area, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the leased land or water area.

(b) The foregoing applies whether the person going on the leased land or water area is an invitee, licensee, trespasser, or otherwise.

(4) This act does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.

(5) The term "outdoor recreational purposes" as used in this act shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

History.—ss. 1-5, ch. 63-313; s. 1, ch. 75-17.

375.311 Legislative intent.—To protect and manage Florida's wildlife environment on lands conveyed for recreational purposes by private owners and public custodians, the Legislature hereby intends that the Game and Fresh Water Fish Commission shall regulate motor vehicle access and traffic control on Florida's public lands.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

375.312 Definitions.—As used in this act, unless the context requires otherwise:

(1) "Motor vehicle" means any self-propelled vehicle, including every device in, upon, or by which any person or property is or may be transported or drawn, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Public lands" means any lands in the state which are owned by, leased by, or otherwise assigned to the state or any of its agencies and which are used by the general public for recreational purposes.

(3) "Commission" means the Florida Game and Fresh Water Fish Commission.

(4) "Off-road vehicle" means any motor vehicle under this act which is not licensed or registered under chapter 320, except those vehicles when used in timber harvest, reforestation, or other industry as may be directed by the landowner or mineral owner.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

375.313 Commission powers and duties.—The commission shall:

(1) Regulate or prohibit, when necessary, the use of motor vehicles on the public lands of the state in order to prevent damage or destruction to said lands.

(2) Collect any registration fees imposed by s. 375.315 and deposit said fees in the State Game Trust Fund. The revenue resulting from said registration shall be expended for the funding and administration of ss. 375.311-375.315.

(3) Adopt and promulgate such reasonable rules as deemed necessary to administer the provisions of ss. 375.311-375.315, except that, before any such rules are adopted, the commission shall obtain the consent and agreement, in writing, of the owner, in the case of privately owned lands, or the owner or primary custodian, in the case of publicly owned lands.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

375.314 Damage to public lands.—

(1) Whoever damages public lands by the use of a motor vehicle is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 or by restitution.

(2) For the purpose of this section, damage shall include, but is not limited to, injury to or destruction of trees, flora, sand dunes or other environmentally sensitive land, roads, trails, drainage systems or natural water courses or sources, wildlife resources, fences or gates, or crops or cultivated land.

(3) Any person who operates a motor vehicle on lands owned by the state or its agency shall be civilly liable for the actual damage to the lands by reason of his wrongful act, which damages may be recovered by suit and, when collected, shall go to the state or its agency to be used to restore or replace the damaged property.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355; s. 86, ch. 79-164.

375.315 Registration of off-road vehicles.—

(1) Any off-road vehicle operated upon public lands and not registered or licensed under s. 320.02 or s. 320.06 must be registered as provided in this section.

(2) Upon the filing of an application by the owner of an off-road vehicle, the commission shall assign to such motor vehicle a registration license number and shall deliver to the owner a certificate of registration and one registration decal for each motor vehicle so registered.

(3) Registration shall be renewed annually upon

payment of an annual registration fee for off-road vehicles not to exceed $10.

(4) Whoever operates any off-road vehicle on public lands without having attached thereto a registration decal for the current registration period is guilty of an infraction as defined in s. 318.13(3) and shall be penalized as provided in s. 318.18.

(5) Nothing contained herein shall be deemed to conflict with the provisions of chapter 320 or chapter 325.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

CHAPTER 376

POLLUTANT SPILL PREVENTION AND CONTROL

376.011 Short title.—This chapter shall be known as the "Pollutant Spill Prevention and Control Act."

History.—s. 1, ch. 70-244; s. 1, ch. 74-336.

376.021 Legislative intent.—

(1) The Legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The Legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The Legislature further finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to owners and users of shore front property, to public and private recreation, to citizens of the state and other interests deriving livelihood from marine-related activities, and to the beauty of the Florida coast;

(c) Such hazards have frequently occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(4) The Legislature intends by the enactment of this chapter to exercise the police power of the state by conferring upon the Department of Natural Resources power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(6) The Legislature further declares that it is the intent of this chapter to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.—s. 2, ch. 70-244; s. 2, ch. 74-336.

376.031 Definitions.—When used in this chapter, unless the context clearly requires otherwise:

(1) "Department" means the Department of Natural Resources.

(2) "Director" means the executive director of the Department of Natural Resources.

(3) "Barrel" means 42 U. S. gallons at 60° Fahrenheit.

(4) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(5) "Discharge" shall include, but not be limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside of the territorial limits of the state and affects lands and waters within the territorial limits of the state.

(6) "Fund" means the Florida Coastal Protection Fund.

(7) "Pollutants" shall include oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof.

(8) "Pollution" means the presence in the out-

door atmosphere or waters of the state of any one or more substances or pollutants, in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(9) "Terminal facility" means any waterfront or offshore facility of any kind, other than vessels not owned or operated by such facility, and directly associated waterfront or offshore appurtenances including pipelines located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. For the purposes of this chapter, "terminal facility" shall not be construed to include waterfront facilities owned and operated by governmental entities acting as agents of public convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of, pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by said governmental entity shall be construed as a terminal facility.

(10) "Owner" means any person owning a terminal facility; "operator" means any person operating a terminal facility, whether by lease, contract, or other form of agreement.

(11) "Transfer" or "transferred" includes onloading or offloading between terminal facility and vessel, vessel and vessel, or terminal facility and terminal facility.

(12) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

(13) "Person in charge" means the person on the scene who is in direct, responsible charge of a terminal facility or vessel from which pollutants are discharged, when the discharge occurs.

(14) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities.

(15) "Board" means the board of arbitration.

(16) "Person" means any individual, partner, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(17) "Registrant" is a terminal facility required to possess a valid registration certificate to operate as a terminal facility.

History.—s. 3, ch. 70-244; s. 1, ch. 71-243; s. 3, ch. 74-336.

376.041 Pollution of waters and lands of the state prohibited.—The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by this chapter is prohibited.

History.—s. 4, ch. 70-244; s. 4, ch. 74-336.

376.051 Powers and duties of the department.—

(1) The powers and duties conferred by this chapter shall be exercised by the Department of Natural Resources and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The Department of Environmental Regulation is directed to cooperate with the Department of Natural Resources and to offer consultative services, enforcement, prosecution, and technical advice to the department. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request.

(2) The powers and duties of the department under this chapter shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3) Registration certificates required under this chapter shall be issued from the department subject to such terms and conditions as are set forth in this chapter and as set forth in rules and regulations promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under this chapter, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by s. 376.12. The Department of Legal Affairs shall represent the department in any such proceeding.

History.—s. 5, ch. 70-244; s. 2, ch. 71-137; s. 5, ch. 74-336; s. 62, ch. 79-65.

376.06 Operation without registration prohibited.—

(1) No person shall operate or cause to be operated a terminal facility as defined in s. 376.031(9) without a registration certificate.

(2) Registration certificates shall be issued on an annual basis and shall expire on December 31 annually, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of this chapter.

(3) As a condition precedent to the issuance or renewal of a registration certificate, the department shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, state and federal plans and regulations for prevention, control, and abatement of pollution when a discharge occurs.

(4) Registration certificates issued to any termi-

nal facility shall include vessels used to transport pollutants between the facility and vessels within state waters.

(5) The department shall require, in connection with the issuance of a terminal facility registration certificate, the payment of a reasonable fee for processing applications for registration certificates. This fee shall be in addition to the excise tax imposed by s. 376.11(4). The fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections; however, the fee shall not exceed $250 per terminal facility per year.

(6) No later than October 1, 1974, every owner or operator of a terminal facility shall obtain a registration certificate. The department shall issue a registration certificate upon the showing that the registrant can provide all required equipment to prevent, contain, and remove discharges of pollutants.

(7) On or after a date to be determined by the department, but in no case later than October 1, 1974, no person shall operate or cause to be operated any terminal facility without a terminal facility registration certificate issued by the department. No registration certificate shall be valid for more than 1 year unless revalidated by the department. Each applicant for a terminal facility registration certificate shall pay the registration certificate application fee and shall submit information, in a form satisfactory to the department, describing the following:

(a) The barrel or other measurement capacity of the terminal facility.

(b) All prevention, containment, and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the facility has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization.

(c) The terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(8) Upon showing of satisfactory containment and cleanup capability under this section, and upon payment of the registration certificate application fee required by the department under this section, the applicant shall be issued a registration certificate covering the terminal facility and related appurtenances, including vessels as defined in s. 376.031(12).

History.—s. 6, ch. 70-244; s. 1, ch. 70-439; s. 6, ch. 74-336.

376.07 Regulatory powers of department.—The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to discharges of pollutants into the waters of this state or onto the coasts of this state.

(1) The regulations shall be adopted in accordance with the Administrative Procedure Act, chapter 120.

(2) The department shall adopt regulations including, but not limited to, the following matters:

(a) Operation and inspection requirements for terminal facilities, vessels, and other matters relating to certification under this chapter, but shall not require vessels to maintain spill prevention gear, holding tanks of any kind, and containment gear in excess of federal requirements.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this chapter.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by this chapter in the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds.

(e) Creation by contract or administrative action of a state response team which shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations. The state plans shall include detailed emergency operating procedures for the state as a whole and the team shall from time to time conduct practice alerts. These plans shall be filed with the governor and all Coast Guard stations in the state and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws within the state, on or before January 1, 1975. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including but not limited to an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, a list of available sources of supplies necessary for cleanup, and a designation of priority zones to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the Federal Government but is directed to cooperate with any federal cleanup operation.

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of pollutants the vessel has had since leaving the last port;

2. Any mechanical problem on the vessel which creates the possibility of a discharge; and

3. Any denial of entry into any port during the current cruise of the vessel.

Any person who shall make or cause to be made any false statement in response to requirements of any provisions of this chapter with a fraudulent intent shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, as required in s. 837.01.

(h) Requirements that any registrant causing or permitting the discharge of a pollutant in violation of the provisions of this chapter, and at other reason-

able times, be subject to a complete and thorough inspection. If the department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(i) Such other rules and regulations as the exigencies of any condition may require or as may reasonably be necessary to carry out the intent of this chapter.

History.—s. 7, ch. 70-244; s. 7, ch. 74-336; s. 1, ch. 77-174.

376.09 Removal of prohibited discharges.—

(1) Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the department may arrange for the removal of the pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of said law. Federal funds provided under said act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in this chapter shall affect in any way the right of any person who renders assistance in containing or removing pollutants to reimbursement for the costs of the containment or removal under the applicable provisions of this law or the Federal Water Pollution Control Act, as amended, or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutants.

History.—s. 8, ch. 70-244; s. 1, ch. 70-439; s. 9, ch. 74-336.

376.10 Personnel and equipment.—The department shall establish and maintain at such ports within the state and other places as it shall determine such employees and equipment, other than equipment furnished by the registrant, as in its judgment may be necessary to carry out the provisions of this chapter. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the Division of Personnel of the Department of Administration. The salaries of the employees and the cost of the equipment shall be paid from the Florida Coastal Protection Fund established by this chapter. The department shall periodically consult with other departments of the state and specifically with the Department of Environmental Regulation relative to procedures for the prevention of discharges of pollutants into or affecting the coastal waters of the state from operations regulated by this chapter.

History.—s. 9, ch. 70-244; s. 2, ch. 71-137; s. 1, ch. 73-326; s. 10, ch. 74-336; s. 63, ch. 79-65.

376.11 Florida Coastal Protection Trust Fund.—

(1) The purpose of this section is to provide a mechanism to have financial resources immediately available for cleanup and rehabilitation after a pollutant has been discharged, to prevent further damage by the pollutant, and to pay for damages. It is the legislative intent that this section be liberally construed to effect the purposes set forth, such interpretation being especially imperative in light of the danger to the environment and resources.

(2) The Florida Coastal Protection Trust Fund is established, to be used by the department as a nonlapsing revolving fund for carrying out the purposes of this chapter. To this fund shall be credited all excise taxes, registration fees, penalties, judgments, and other fees and charges related to this chapter. Charges against the fund shall be in accordance with this section.

(3) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter shall be deposited with the treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Florida Coastal Protection Fund.

(4)(a) There is hereby levied, to be collected from and paid by each registrant, an excise tax upon each registrant for the privilege of operating a terminal facility and handling all pollutants covered by this chapter, the amount of which is to be determined by the department as measured by the volume in barrels of liquid pollutants transferred to or from the registrant.

(b) The excise tax shall be 2 cents per barrel transferred until the balance in the fund equals or exceeds $35 million. The fiscal year immediately following the year in which the balance in the fund equals or exceeds $35 million, no excise tax shall be levied unless:

1. The balance in the fund is less than or equal to $30 million. The fiscal year immediately following the year in which the balance in the fund is less than or equal to $30 million, the excise tax shall be and

shall remain 2 cents per barrel transferred until the fund again equals or exceeds $35 million. The fiscal year immediately following the year in which the fund again is equal to or exceeds $35 million, the excise tax and fund shall be controlled as when the fund first was equal to or exceeded $35 million.

2. There is a discharge of catastrophic proportions, the results of which could significantly reduce the balance in the fund. In the event of such a catastrophic occurrence, the governor and cabinet as the head of the Department of Natural Resources may, by rule, relevy the excise tax in an amount not to exceed 10 cents per barrel for a period of time sufficient to maintain the fund at a balance of $35 million, after payment of the costs and damages related to the catastrophic discharge.

3. The fund is unable to pay any proven claims against the fund at the end of the fiscal year. Notwithstanding any other provision of this section, the fiscal year following the year in which the fund is unable to pay any proven claims against the fund at the end of the fiscal year, the excise tax shall be and shall remain 5 cents per barrel transferred until all outstanding proven claims have been paid and the fund again equals or exceeds $10 million. The fiscal year immediately following the year in which the fund, after levy of the 5 cents excise tax, again is equal to or exceeds $10 million, the excise tax and fund shall be controlled in accordance with subparagraph 1., unless otherwise provided.

4. The Florida Coastal Protection Trust Fund has had appropriated to it by the legislature, but not yet repaid, state funds from the General Revenue Fund. In such event, the excise tax shall continue in effect until all such funds are repaid to the General Revenue Fund.

(c) The excise tax provided for in this section shall be collected monthly by the Department of Revenue on the basis of records certified to the Department of Revenue and Department of Natural Resources and shall be credited to the Florida Coastal Protection Trust Fund. However, for the purposes of this section, the excise tax on each barrel of the pollutant shall be imposed only once, at the first transfer of the specific pollutant. Each tax barrel of the specific pollutant shall only be considered once for the purpose of this excise tax. This excise tax shall be in addition to all other taxes imposed upon or paid by the registrant.

(5) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses, and equipment costs of the department related to the enforcement of this chapter subject to s. 376.18.

(b) All immediate costs involved in the abatement of pollution related to the discharge of pollutants covered by this chapter and the abatement of other potential pollution hazards as authorized herein.

(c) All costs and expenses of the cleanup and rehabilitation of water fowl, wildlife, and all other natural resources damaged by the discharge of pollutants, whether performed or authorized by the department or any other state or local agency.

(d) All provable costs and damages which are the proximate results of the discharge of pollutants covered by this chapter.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended therefrom, pursuant to subsection 376.12(4), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the Florida Coastal Protection Trust Fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

History.—s. 11, ch. 70-244; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 11, ch. 74-336.

376.12 Liabilities and defenses of terminal facilities and vessels.—

(1) Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages, any vessel, or its agents or servants, who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of cleanup or abatement, up to an amount not to exceed $14 million or $100 per gross registered ton of such vessel, whichever is the lesser. When the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator or agent thereof, such owner or operator shall be liable to the fund for the full amount of such sums expended. When a discharge of pollutants occurs from a terminal facility, recovery of costs of abatement and cleanup shall be limited to an amount not to exceed $8 million, except that when the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator, such owner or operator shall be liable to the fund for the full amount of such sums expended. In addition to the foregoing costs of cleanup, terminal facilities shall be liable to the fund for all damages in accordance with the terms of subsections (2), (3), and (4) and s. 376.11(6).

(2) Any person claiming to have suffered damages as a result of a discharge of pollutants prohibited by s. 376.041 may, within 12 months after the cause of action arises, apply to the fund, stating the amount of damage suffered as a result of the discharge. The department shall prescribe appropriate forms and details for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claim to the best of his knowledge. The department may, upon petition and for good cause shown, waive the 12-month limitation for filing damage claims.

(a) If the claimant, the person determined by the executive director to be responsible for the discharge, and the executive director or his designee can agree to the damage claim, the department shall certify the amount of the award and the name of the claimant to the treasurer who shall pay the award

from the fund, subject to the provisions of subsection (5). The settlement mutually arrived at shall be binding upon all parties as to all issues and cannot be further attacked, collaterally or by separate action, in the future.

(b) If the claimant, the person determined by the executive director to be responsible for the discharge, and the executive director or his designee cannot agree to the amount of the damage award, the claim shall forthwith be transmitted for action to the board of arbitration as provided herein. A claimant's submission of his claim to arbitration and payment resulting therefrom shall be a waiver of all other remedies. However, when the amount of proven damages exceeds the amounts available to any claimant or claimants from the fund, such claimant or claimants shall have the right to a pro rata share of all funds received by the fund until the total amount of the proven damages is paid to the claimant or claimants. The department shall be a necessary party to all arbitration and court proceedings under this section.

(c) Each person's damage claims arising from a single occurrence shall be stated in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

(d) If a person damaged by a discharge of pollutant chooses to make a claim against the fund and accepts payment from, or a judgment against, the fund, then the department shall be subrogated to any cause of action that the claimant may have had, to the extent of such payment or judgment, and shall diligently pursue recovery on that cause of action pursuant to subsection (4) and s. 376.11(6). In any such action, the amount of damages shall be proved by the department by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible in evidence, and the amounts paid from or owed by the fund to the claimants stated therein shall be irrebuttably presumed to be the amount of damages.

(e) The fund is absolutely liable for all claims proven against the fund as provided for in this section.

(3) A board of arbitration shall consist of three persons: One to be chosen by the claimants; one to be chosen by the persons determined by the department to have caused the discharge or by the fund if the discharge is of unknown origin; and one to be chosen by the first two appointed members, to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the two arbitrators fail to agree upon, select, and name the neutral arbitrator within 10 days after their appointment, then the department shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. The department is a necessary party to any arbitration of legal proceedings held pursuant to the provisions of this chapter. The department shall appear in any such proceedings and shall have the right to appeal any decisions as provided by this chapter.

(a) Arbitrators shall be named by their principals within 30 days after the department receives notice of claims arising from a discharge prohibited by s. 376.041. If either party fails to select an arbitrator within the said 30 days, the other party shall request the American Arbitration Association to utilize its procedures for the selection of such arbitrator, and the two arbitrators shall proceed to select the neutral arbitrator as provided in this section.

(b) Hearings before boards of arbitration shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. The boards shall have the power to administer oaths and to subpoena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues represented to them for determination. Such power shall be subject to the applicable Florida Rules of Civil Procedure.

(c) Determinations made by a majority of a board shall be subject to judicial review only in the circuit court of the circuit or circuits in which the discharge occurred.

(d) Representation on the board shall not be deemed an admission of liability for the discharge.

(4) It shall be the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup, abatement, and damages in accordance with the provisions of this chapter. In any suit to enforce claims of the fund under this chapter, it shall not be necessary for the department in administering the fund to plead or prove negligence in any form or manner. The department in administering the fund need only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses of a person alleged to be responsible for the discharge to an action for damages, costs and expenses of cleanup, or abatement shall be to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party, without regard to whether any such act or omission was or was not negligent.

(5) In the event the total awards against the fund shall exceed the present balance of the fund, the claimants shall be paid from the future income of the fund.

(6) In the event the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid a pro rata share of all funds received by the fund until the total amount of the proven damages is paid to the claimant or claimants. However, amounts collected by the fund from the prosecution of causes of action pursuant to paragraph (2)(d) and subsection (4) shall be utilized to satisfy the claims as to which such prosecutions relate to the extent theretofore unsatisfied.

(7) Nothing contained herein shall be construed

to limit the liability of vessels, terminal facilities, or the fund for damages.

(8) In addition to the civil penalty, the pilot and the master of any vessel or person in charge of any terminal facility who fails to give immediate notification of a discharge to the department or the nearest Coast Guard station shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. After reporting a discharge, a vessel shall remain in the jurisdiction of the department sufficient time to prove financial responsibility for the damages resulting from the discharge. The pilot and master of a vessel which fails to remain in the jurisdiction of the department for a reasonable time after notice of a discharge shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In no event shall the department detain the vessel longer than 12 hours after proving financial responsibility. The department shall, by rules and regulations, require that the registrant designate a person at the terminal facility who shall be the person in charge of that facility for the purposes specified by this section.

History.—s. 12, ch. 70-244; s. 326, ch. 71-136; s. 12, ch. 74-336.

376.13 Emergency proclamation; Governor's powers.—

(1) Whenever any disaster or catastrophe exists or appears imminent, arising from the discharge of oil, petroleum products or their by-products, or any other pollutants, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the state. If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the Department of State.

(2) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to a disaster or catastrophe.

(3) In performing his duties under this section, the Governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out this section within the limits of the authority conferred upon him and not inconsistent with the rules, regulations, and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in him under this section and to provide for the subdelegation of any such authority.

(4) Whenever the Governor is satisfied that an emergency no longer exists, he may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. The proclamation shall be published in such newspapers of the state and posted in such places as the Governor, or any person acting in that capacity, deems appropriate.

History.—s. 13, ch. 70-244; s. 1, ch. 70-439.

376.14 Terminal facilities and vessels; financial responsibility.—

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall be required to establish and maintain evidence of financial responsibility pursuant to federal laws and regulations. Such evidence of financial responsibility shall be the only evidence required by the department that such registrant or vessel has the ability to meet the liabilities which may be incurred under this chapter.

(2) Any claim brought pursuant to this chapter by the fund or any damaged party may be brought directly against the bond, the insurer, or any other person providing a terminal facility or vessel with evidence of financial responsibility.

(3) Each owner or operator of a terminal facility or vessel subject to the provisions of this chapter shall designate a person in the state as his legal agent for service of process under this chapter, and such designation shall be filed with the Department of State. In the absence of such designation, the secretary of state shall be the designated agent for purposes of service of process under this chapter.

History.—s. 14, ch. 70-244; s. 1, ch. 70-439; s. 13, ch. 74-336.

376.15 Derelict vessels.—

(1) It is unlawful for any person, firm or corporation to store or leave any vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof or docked at any private property without the consent of the owner of the private property.

(2)(a) The department is hereby designated as the agency of the state authorized and empowered to remove any derelict vessel from public waters in any instance when the vessel obstructs or threatens to obstruct navigation, contributes to air or water pollution, or in any other way constitutes a danger or potential danger to the environment.

(b) This section shall constitute the authority of the department for such removal, but is not intended to be in contravention of any applicable federal act.

(c) The Department of Legal Affairs shall represent the Department of Natural Resources in such actions.

History.—s. 15, ch. 70-244; s. 1, ch. 70-439.

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate any provision of this chapter or any rule, regulation, or order of the department made hereunder. Violation shall be punishable by a civil penalty of up to $50,000 per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense.

(2) Penalties assessed herein for a discharge shall be the only penalties assessed by the state, and the assessed person or persons shall be excused from paying any additional penalty for water pollution assessable under chapter 403 for the same occurrence.

(3) The penalty provisions of this section shall not apply to any discharge promptly reported and removed by a registrant or vessel in accordance with the rules, regulations and orders of the department.

History.—ss. 10, 16, ch. 70-244; ss. 7, 14, ch. 74-336.

376.165 "Hold-harmless" agreements prohibited.—Any agreement entered into after July 1, 1974, to "hold-harmless" a vessel or terminal facility from liability for the occurrence of a discharge prohibited by this chapter, agreed to by a governmental agency or political subdivision, is deemed contrary to public policy and is hereby prohibited.

History.—s. 14, ch. 74-336.

376.17 Reports to the Legislature.—The department shall include in its recommendations to each regular session of the Legislature specific recommendations relating to the operation of this chapter.

History.—s. 17, ch. 70-244; s. 15, ch. 74-336.

376.18 Budget approval.—The department shall submit to each regular session of the Legislature its budget recommendations for disbursements from the fund pursuant only to paragraph 376.11(5)(a). Upon appropriation thereof by the Legislature, the Comptroller shall authorize expenditures therefrom as approved by the department.

History.—s. 18, ch. 70-244; s. 16, ch. 74-336.

376.19 County and municipal ordinances; powers limited.—Nothing in this chapter shall be construed to deny any county or municipality authority to exercise police powers by ordinance or law under any general or special act, and laws and ordinances promulgated in furtherance of the intent of this chapter to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of this chapter or any rule, regulation, or order of the department adopted under authority of this chapter. However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of this chapter.

History.—s. 19, ch. 70-244.

376.20 Limitation on application.—Nothing in this chapter shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

History.—s. 20, ch. 70-244; s. 2, ch. 71-137; s. 17, ch. 74-336.

376.205 Individual cause of action for damages.—The remedies in this act shall be deemed to be cumulative and not exclusive. Nothing in this act shall require pursuit of any claim against the fund as a condition precedent to any other remedy. Notwithstanding any other provision of law, nothing contained herein shall prohibit any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by this chapter. In any such suit, it shall not be necessary for the person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it occurred. The only defenses to such cause of action shall be those specified in subsection 376.12(4). In addition to any other remedy, the injured party shall be entitled to recover costs of the action and reasonable attorneys' fees.

History.—s. 18, ch. 74-336.

376.21 Construction.—This chapter, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under this chapter and the Federal Water Pollution Control Act, as amended.

History.—s. 21, ch. 70-244; s. 19, ch. 74-336.

CHAPTER 377

ENERGY RESOURCES

PART I REGULATION OF OIL AND GAS RESOURCES (ss. 377.01-377.40)

PART II PLANNING AND DEVELOPMENT (ss. 377.601-377.705)

PART I

REGULATION OF OIL AND GAS RESOURCES

377.01 Governor to enter into interstate compact to conserve oil and gas.—The Governor of the state is hereby authorized and directed, for and in the name of the state, to join with other states in the interstate compact to conserve oil and gas, which was heretofore executed in the City of Dallas, Texas, on February 16, 1935, and is now deposited with the Department of State of the United States, and which has been extended with the consent of Congress to September 1, 1947.

History.—s. 1, ch. 22823, 1945.

377.02 Form of compact.—The interstate compact to conserve oil and gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement, reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI.

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII.

This compact shall expire September 1, 1937, but any state joining herein may, upon 60 days' notice, withdraw herefrom.

The representative of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

History.—s. 2, ch. 22823, 1945.

377.03 Extension of compact.—The Governor of Florida is further authorized and empowered, for and in the name of the state, to execute agreements for the further extension of the expiration date of the said "The Interstate Oil Compact" to conserve oil and gas, and to determine if and when it shall be for the best interest of the state to withdraw from said compact upon 60 days' notice as provided by its terms. In the event he shall determine that the state should withdraw from said compact he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state from said compact.

History.—s. 3, ch. 22823, 1945.

377.04 Official report of state.—The Governor shall be the official representative of the state on the Interstate Oil Compact Commission, provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all the powers and duties as a member of the Interstate Oil Compact Commission; provided, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state as a member of said commission. Said assistant representative shall take the oath of office prescribed by the Constitution, which shall be filed with the Department of State.

History.—s. 4, ch. 22823, 1945; ss. 10, 35, ch. 69-106.

377.06 Public policy of state concerning natural resources of oil and gas.—It is hereby declared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made there-

from, to encourage the continuous and economic supply of the demand therefor; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all purposes indicated by the provisions herein. It is not the intention of this section to limit or restrict or modify in any way the provisions of this law.

History.—s. 1, ch. 22819, 1945.

377.07 Division of Resource Management; powers, duties, and authority.—The Division of Resource Management of the Department of Natural Resources is hereby vested with power, authority and duty to administer, carry out and enforce the provisions of this law as directed in s. 370.02(3).

History.—s. 2, ch. 22819, 1945; s. 8, ch. 61-231; ss. 25, 35, ch. 69-106; s. 64, ch. 79-65.

377.075 Division of Resource Management; geological functions.—

(1) PERSONNEL.—The Department of Natural Resources shall through the Division of Resource Management employ such suitable persons, as in the judgment of the department may be necessary to conduct the geological survey of the state.

(2) DISBURSEMENTS; SURVEY EXPENSES.—For the purpose of expeditiously and thoroughly carrying out the geological survey, there shall be included a sufficient appropriation in the annual general appropriations act. The Comptroller shall, upon the requisition of the Division of Resource Management, when approved by the Governor, draw his warrant on the Treasurer for the amount so appropriated in such sums as may be needed from time to time for the purpose of said survey as herein set forth; and for all such expenditures, the consent and approval of the Governor shall be obtained, and the vouchers for all such expenditures made from this fund shall be filed with the Comptroller; a statement of his receipts and expenditures shall be printed in such annual report of the division. The amount annually appropriated, or so much thereof as may be necessary, shall be expended for the salaries and for the contingent expenses of the survey, including compensation of all temporary and permanent assistance; traveling expenses of the division, purchase of materials or other necessary expenses for outfit; expenses incurred in providing for the transportation, arrangement and proper exhibition of the geological and other collections made under the provisions of this law, for postage, stationery and printing and the printing and engraving of maps, and sections to illustrate the annual reports.

(3) DUTIES.—The Division of Resource Management shall make annually to the Governor a report of the progress of its surveys and explorations of minerals, water supply and other natural resources of the state, and shall include in such report full description of such surveys and explorations, occurrences and location of mineral and other deposits of value, surface and subterranean water supply and power and mineral waters, and the best and most economical method of development, together with analysis of soils, minerals and mineral waters, with maps, charts and drawings of the same.

(4) COLLECTION OF GEOLOGICAL SPECIMENS.—The Division of Resource Management shall make collections of specimens illustrating the geological and mineral features of the state; one suite of which shall be deposited in the office of the said division, at Tallahassee and duplicate suites in the libraries of each of the state colleges; each suite shall be correctly labeled for convenient use and study.

(5) NOTIFYING OWNER OF DEPOSITS LOCATED.—The person in charge of the Division of Resource Management and his assistants, when they discover any mineral deposits, or other substance of value shall notify the owner of the land upon which such deposits occur. Failure to notify the owner of such deposit before disclosing the same to any other person shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) CHEMICAL ANALYSIS BY STATE CHEMIST.—All chemical, analytical or assay work shall be performed by the state chemist and his assistants at the direction of the Governor upon request of the Division of Resource Management.

History.—s. 2, ch. 28145, 1953; s. 4, ch. 61-231; ss. 25, 35, ch. 69-106; s. 322, ch. 71-136; s. 1, ch. 73-305; s. 65, ch. 79-65.

Note.—Former ss. 370.04, 373.011.

377.10 Certain persons not to be employed by division.—No person in the employ of, or holding any official connection or position with any person, firm, partnership, corporation or association of any kind, engaged in the business of buying or selling mineral leases, drilling wells in the search of oil or gas, producing, transporting, refining, or distributing oil or gas shall hold any position under, or be employed by, the Division of Resource Management in the prosecution of its duties under this law.

History.—s. 5, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 66, ch. 79-65.

377.18 Common sources of oil and gas.—All common sources of supply of oil and gas or either of them shall have the production therefrom controlled or regulated in accordance with the provisions of this law.

History.—s. 13, ch. 22819, 1945.

377.19 Definitions.—Unless the context otherwise requires, the words defined in this section shall have the following meanings when found in ss. 377.06, 377.07, 377.10-377.40:

(1) "Division" shall mean the Division of Resource Management of the Department of Natural Resources.

(2) "State" shall mean the State of Florida.

(3) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(4) "Oil" shall mean crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(5) "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (4) above.

(6) "Pool" shall mean an underground reservoir containing or appearing to contain a common accu-

mulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(7) "Field" shall mean the general area which is underlaid, or appears to be underlaid, by at least one pool; and "field" shall include the underground reservoir, or reservoirs, containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field" unlike "pool," may relate to two or more pools.

(8) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another, or others.

(9) "Producer" shall mean the owner or operator of a well or wells capable of producing oil or gas, or both.

(10) "Waste," in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. "Waste" shall include:

(a) The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) Producing oil or gas in such a manner as to cause unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof, capable of producing oil or gas.

(f) Underground waste however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate and unratable withdrawals, causing undue drainage between tracts of land.

(11) "Product" means any commodity made from oil or gas, and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(12) "Illegal oil" shall mean oil which has been produced within the state from any well, or wells, in excess of the amount allowed by rule, regulation or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(13) "Illegal gas" shall mean gas which has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(14) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(15) "Reasonable market demand" shall mean the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(16) "Tender" shall mean a permit or certificate of clearance for the transportation or the delivery of oil, gas or products, approved and issued or registered under the authority of the division.

(17) The use of the word "and" shall include the word "or" and the use of "or" shall include "and," unless the context clearly requires a different meaning, especially with respect to such expressions as "oil and gas" or "oil or gas."

(18) "Well site" shall mean the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas.

History.—s. 14, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 138, ch. 71-377; s. 1, ch. 76-104; s. 1, ch. 77-174; s. 67, ch. 79-65.

377.20 Waste prohibited.—Waste of oil or gas defined in this law is hereby prohibited.

History.—s. 15, ch. 22819, 1945.

377.21 Jurisdiction of division.—

(1) The division shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

(2) The division shall have authority, and it shall be its duty, to make such inquiries as it may deem proper to determine whether waste, over which it has jurisdiction, exists or is imminent. In the exercise of such power, the division shall have the authority to:

(a) Collect data.

(b) Make investigations and inspections.

(c) Examine properties, leases, papers, books, and records and to examine, survey, check, test, and gauge oil and gas wells, tanks, storage tanks, treatment plants and facilities, and modes of transporta-

tion used to gather and process crude oil or gas and products derived from wells within the state, prior to delivery to a common carrier.

(d) Hold hearings.

(e) Provide for the keeping of records and the making of reports.

(f) Take such action as may be reasonably necessary to enforce this law.

(3) The jurisdiction of the division shall extend to the state boundaries as set forth in s. 1, Art. II of the State Constitution.

History.—s. 16, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 1, ch. 72-394; s. 1, ch. 76-188.

377.22 Rules, regulations and orders.—

(1) The Department of Natural Resources shall provide, by rules and regulations, for ratable takings in all pools on a reasonable and equitable basis.

(2) The department shall adopt such rules and regulations, and shall issue such orders, governing all phases of the exploration, drilling, and production of oil, gas, or other petroleum products in the state, including exploration, drilling, and production in the offshore waters of the state as may be necessary for the proper administration and enforcement of this chapter. Such rules, regulations, and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products. The department shall revise such rules and regulations from time to time as may be necessary for the proper administration and enforcement of this chapter. Rules, regulations, and orders promulgated in accordance with this section shall be for, but shall not be limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration, by the applicant, of the area over which the drilling or production is conducted to the similar contour and general condition in existence prior to such operation.

(g) To require and carry out a reasonable program of monitoring or inspection of all drilling operations or producing wells, including regular inspections by division personnel.

(h) To require the making of reports showing the location of all oil and gas wells, the making and filing of logs, the taking and filing of directional surveys, the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells, if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology, and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be held confidential by the division for a period of 90 days after the completion of a well, and, at the option of the division, for a longer period.

(i) To prevent wells from being drilled, operated or produced in such a manner as to cause injury to neighboring leases or property.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blow outs," "caving" and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating and chemical treatment of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) If necessary for the prevention of waste, as herein defined, to determine, limit and prorate the production of oil or gas, or both, from any pool or field in the state.

(s) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(t) To regulate the spacing of wells and to establish drilling units.

(u) To prevent, so far as is practical, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

History.—s. 16, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 2, ch. 72-394; s. 1, ch. 76-103.

377.23 Monthly reports to division.—Every producer of oil or gas in the state shall submit to the division, on forms prescribed by the division, a monthly report of the actual production from each and every oil and gas well operated by him. Said producer shall submit a duplicate copy of said report at the same time to the Department of Banking and Finance; and said reports shall be submitted through the medium of the United States mails, and it shall

be unlawful for the same to be transmitted or received in any other way.

History.—s. 17, ch. 22819, 1945; s. 1, ch. 69-266; ss. 12, 25, 35, ch. 69-106.

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before any well in search of oil or gas shall be drilled, the person desiring to drill the same shall notify the division upon such form as it may prescribe and shall pay a fee of $50 for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

(2) Each application for the drilling of a well in search of oil or gas in this state shall include the address of the residence of the applicant, or each applicant, which address shall be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.

(3) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by regulations to be prescribed by the Department of Natural Resources, and the owner of such well shall give notice upon such form as the division may prescribe, of the drilling of each dry hole and of the owner's intention to abandon, and shall pay a fee of $15. No well shall be abandoned until such notice has been given and such fee has been paid.

(4) Application for permission to drill or abandon any well may be denied by the division for only just and lawful cause.

(5) No permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.

(6) No permit to drill a gas or oil well shall be granted at a location in the tidal waters of the state, abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.

(7) No permit to drill a gas or oil well shall be granted on any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters of the state abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly approved the application for such permit by resolution.

(8) For the purposes of this section and law, an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than 10 hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given mile of such beach.

History.—s. 18, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 68, ch. 79-65.

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(1) The nature, character and location of the lands involved; whether rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future.

(2) The nature, type and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.

(3) The proven or indicated likelihood of the presence of oil, gas or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106.

377.242 Permits for drilling or exploring and extracting through well holes or surface extractions.—The Division of Resource Management shall be vested with the power and authority:

(1) To issue permits for the drilling, exploring for, or production of oil, gas, or other petroleum products which are to be extracted from below the surface of the land, including submerged lands, only through the well hole drilled for oil, gas, and other petroleum products. No permit shall be required for preliminary geophysical tests and other exploratory operations prior to actual drilling which are now permitted by the division for oil, gas and other petroleum products. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be constructed on submerged lands within 1 mile seaward of the coastline of the state or as otherwise provided in s. 377.24(7). No such structures shall be constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of freshwater lakes, rivers, and streams. No permit shall be granted within 1 mile inland from the coastline unless the division is satisfied that the estuaries, beaches, and shore areas of the state will be adequately protected in the event of accident. Each permit shall contain an agreement by the permitholder that said permitholder will not prevent inspection by division personnel at any time.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 3, ch. 72-394; s. 69, ch. 79-65.

377.2421 Division to review federal applications.—The division shall review all applications for federal oil leases in the territorial waters of the

United States adjacent to Florida waters and shall signify its approval or objection to each application.

History.—s. 4, ch. 72-394.

377.243 Conditions for granting permits for extraction through well holes.—

(1) Prior to the application to the Division of Resource Management for the permit to drill for oil, gas, and related products referred to in s. 377.242(1), the applicant must own a valid deed, or other muniment of title, or lease granting said applicant the privilege to explore for oil, gas, or related mineral products to be extracted only through the well hole on the land or lands included in the application. However, unallocated interests may be unitized according to s. 377.27.

(2) As a condition precedent to the issuance or renewal of a permit, the division shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, programs for control of pollution related to oil, petroleum products or their byproducts, and other pollutants and the abatement thereof when a discharge occurs.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 5, ch. 72-394; s. 70, ch. 79-65.

377.244 Conditions for granting permits for surface exploratory and extraction operations.—

(1) Exploration for and extraction of minerals under and by virtue of the authority of a grant of oil, gas or mineral rights, or which, subsequent to such grant, may be interpreted to include the right to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole, that is by means of surface exploratory and extraction operations such as sifting of the sands, dragline, open pit mining or other type of surface operation, which would include movement of sands, dirt, rock, or minerals, shall be exercised only pursuant to permit issued by the Division of Resource Management upon applicant complying with the following conditions:

(a) Applicant must own a valid deed, or other muniment of title, or lease granting applicant the right to explore for and extract oil, gas and other minerals from said lands.

(b) The applicant shall post a good and sufficient surety bond with the division in such amount as the division may determine is adequate to afford full and complete protection for the owner of the surface rights of the lands described in the application, conditioned upon the full and complete restoration, by the applicant, of the area over which the exploratory and extraction operations are conducted to the same condition and contour in existence prior to such operations.

(2) The provisions of this act shall not apply to the exploration and removal from lands of peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances; it being the legislative determination that the mining and extraction operations, and the grants of authority under which these activities are conducted for said substances exempted from the provisions of this act, are dissimilar from the exploratory and extraction operations and the grants of authority under which these activities are conducted for substances which come within the purview of the regulatory provisions of this act.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 71, ch. 79-65.

377.245 Provision for distribution of earnings to lessees or owners of the fractional undivided mineral rights not owned by applicant for permit under ss. 377.243 and 377.244.—Lessees or owners of the fractional undivided oil, gas or other mineral rights in lands described in permits issued under the provisions of ss. 377.243 and 377.244, not owned by the applicant named in said permits, shall, as to all productive wells or surface mineral operations on said lands, be entitled to and be paid their pro rata part of the earnings after costs of exploration and operation have been allocated. The division shall prescribe such reasonable and appropriate rules and regulations as shall be deemed necessary and proper to implement the provisions of this section and all other sections of this act.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106.

377.25 Production pools; drilling units.—

(1) No rule, regulation or order of the division shall be such in terms or effect:

(a) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can without waste produce such share, or

(b) As to occasion net drainage from a tract, unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can without waste produce such tract's just and equitable share, as set forth in this section, of the production of such pool.

(2) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the board shall establish a drilling unit or units for each pool. A drilling unit, as contemplated herein, means the maximum area in a pool which may be efficiently and economically drained by one well, and such unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities.

(3) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where the division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the division shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract, with respect to which the exception is granted, will be prevented or minimized, and the producer of the well drilled, as an exception, will be allowed to produce no more than his just and

equitable share of the oil and gas in the pool, as such share is set forth in this section.

(4) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract or tracts in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained; and, to that end, the rules, regulations, permits and orders of the division shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage which is not equalized by counter-drainage, and will give to each producer the opportunity to use his just and equitable share of the reservoir energy.

History.—s. 19, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

377.26 Location of wells.—Whenever the division fixes the location of any well or wells on the surface, the point at which the maximum penetration of such well into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface; provided, that the division shall prescribe rules, regulations and orders governing the reasonableness of such variation.

History.—s. 20, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.27 Drilling units.—

(1) When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may validly agree to integrate their interest and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the division shall, for the prevention of waste and to avoid the risks involved in the drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit.

(2) Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the division is without authority to require integration as provided for in subsection (1), then, subject to all other applicable provisions of this law, the owners of each tract embraced within the drilling unit may drill on their respective tracts; but the allowable production therefrom shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

History.—s. 21, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.28 Cycling, pooling, and unitization of oil and gas.—

(1) The Department of Natural Resources may consider the need for the operation as a unit of an entire field, or of any pool or pools, portion or portions, or combinations thereof within a field, for the production of oil or gas, or both, and other minerals which may be associated and produced therewith, in order to avoid the drilling of unnecessary wells, otherwise to prevent waste, or to increase the ultimate recovery of the unitized minerals by additional recovery methods.

(2) The department shall issue an order requiring unit operation if it finds that:

(a) Unit operation of the field, or of any pool or pools, portion or portions, or combinations thereof within the field, is reasonably necessary to prevent waste, to avoid the drilling of unnecessary wells, or to increase the ultimate recovery of oil or gas by additional recovery methods; and

(b) The estimated additional cost incident to the conduct of such operation will not exceed the value of the estimated additional recovery of oil or gas.

The phrase "additional recovery methods" as used herein includes, but is not limited to, the maintenance or partial maintenance of reservoir pressures; recycling; flooding a pool or pools, or parts thereof, with air, gas, water, liquid hydrocarbons, any other substance, or any combination thereof; or any other method of producing additional hydrocarbons approved by the department.

(3) The order shall be fair and reasonable under all the circumstances, shall protect the rights of interested parties, and shall include:

(a) A description of the area embraced, termed the "unit area" and a description of the pool or pools, or portions thereof, affected and lying within the unit area.

(b) A statement of the nature of the operations contemplated.

(c) A method of allocation among the separately owned tracts in the unit area of all the oil or gas, or both, produced from the unit pool within the unit area and not required in the conduct of such operation or unavoidably lost, such method of allocation to be on a formula that is fair and equitable and that will protect the correlative rights of all interested parties.

(d) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investments in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners). However, if said owners of the unit area are unable to agree upon the amount of such charges or upon the correctness thereof, the department shall determine the amount. The net amount charged against the owners of a separately owned tract shall be considered expense of unit operation chargeable against such tract. The adjustment provided for herein may be treated separately and handled by agreements separate from the unitization agreement.

(e) A provision that the costs and expenses of unit operation, including investment, past and prospective, be charged to the separately owned tracts in the same proportions that such tracts share in unit production. The expenses chargeable to a tract

shall be paid by the person not entitled to share in production free of operating costs and who, in the absence of unit operation, would be responsible for the expense of developing and operating such tracts, and such person's interest in the separately owned tract shall be primarily responsible therefor. The obligation or liability of such persons in the several, separately owned tracts for the payment of unit expense shall at all times be several, and not joint or collective. The unit operator shall have a first and prior lien upon:

1. The leasehold estate, exclusive of the royalty interest provided thereby, and upon unleased oil and gas rights, exclusive of one-eighth interest therein, in and to each separately owned tract; and

2. The interest of the owners thereof in and to the unit production and all equipment in possession of the unit,

to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract.

(f) The designation of, or a provision for the selection of, a unit operator. The conduct of all unit operations by the unit operator and the selection of a successor to the unit operator shall be governed by the terms and provisions of the unitization agreements.

(g) A provision that when the full amount of any charge made against any interest in a separately owned tract is not paid when due by the person or persons primarily responsible therefor, then all of the oil and gas production allocated to the interest in default in such separately owned tract, upon which operator has a lien, may be appropriated by the unit operator and marketed and sold for the payment of such charge, together with interest at a rate of 6 percent per annum. The remaining portion of the unit production, or the proceeds derived therefrom, allocated to each separately owned tract shall in all events be regarded as royalty to be paid to the owners, free and clear of all unit expense and free and clear of any lien therefor. The owner of any overriding royalty, oil and gas payment, or other interest who is not primarily responsible for the unpaid obligation shall, to the extent of any payment or deduction from his share, be subrogated to all the rights of the unit operator with respect to the interest or interests primarily responsible for such payment. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted, in the proportion of their respective interest.

(h) The time the unit operation shall become effective and the manner in which, and the circumstances under which, the unit operation shall terminate.

(4) An order requiring unit operation shall not become effective unless and until:

(a) A contract incorporating the unitization agreement has been signed or ratified or approved in writing by the owners of at least 75 percent in interest as costs are shared under the terms of the order and by 75 percent in interest as production is to be allocated to the royalty owners in the unit area. If any entity owns both royalty interests and interests responsible for costs, such party may vote as an owner responsible for costs or as a royalty owner, at his election, but not as both, and his interest that is not voted shall be excluded in calculating the percentages of consent and nonconsent.

(b) A contract incorporating the required arrangements for operations has been signed or ratified or approved in writing by the owners of at least 75 percent in interest as costs are shared,

and the department has made a finding to that effect either in the order or in a supplemental order. Both contracts may be encompassed in a single document. In the event the required percentage interests have not signed, ratified, or approved the said agreements within 6 months after the date of such order, or within such extended period as the department may prescribe, it shall be automatically revoked.

(5)(a) The department, by entry of new or amending orders, may from time to time add to unit operations portions of pools not theretofore included, may add to unit operations new pools or portions thereof, and may extend the unit area as required. Any such order, in providing for allocation of production from a unitized zone of the unit area, shall first allocate to such pool or pools or portion thereof so added a portion of the total production of oil or gas, or both, from all pools affected within the unit area, as enlarged, and not required in the conduct of unit operations or unavoidably lost; such allocation to be based on a formula for sharing that is considered to treat each tract and each owner fairly and equitably during the remaining course of unit operations. The production so allocated to such added pool or pools or portions thereof shall be allocated to the separately owned tracts which participate in such production on a fair and equitable basis. The remaining portion of unit production shall be allocated among the separately owned tracts within the previously established unit area in the same proportions as those specified prior to the enlargement unless such proportions are shown to be erroneous by data developed subsequent to the former determination, in which event the errors shall be corrected. Orders promulgated under this section shall become operative at 7 a.m. on the first day of the month next following the day on which the order becomes effective.

(b) An order promulgated by the department shall not become effective unless and until:

1. All of the terms and provisions of the unitization agreement relating to the extension or enlargement of the unit area or to the addition of pools or portions thereof to unit operations have been fulfilled and satisfied and evidence thereof has been submitted to the department.

2. The extension or addition effected by such order has been agreed to in writing by the owners of at least 75 percent in interest as costs are shared in the area or pools or portions thereof to be added to the unit operation by such order and by 75 percent in interest as production is to be allocated to the royalty owners in the area or pools or portions thereof to be added to the unit operations by such order and evidence thereof has been submitted to the department. If any entity owns both royalty interests and interests responsible for costs, such party may vote

as an owner responsible for costs or as a royalty owner, at his election, but not as both, and his interest that is not voted shall be excluded in calculating the percentages of consent and nonconsent.

In the event both of the requirements specified in subparagraphs 1. and 2. are not fulfilled within 6 months after the date of such order, or within such extended period as the department may prescribe, it shall be automatically revoked.

(6) When the contribution of a separately owned tract with respect to any unit pool has been established, such contribution shall not be subsequently altered except to correct a mathematical or clerical error that caused the tract contribution to be erroneous, unless an enlargement of the unit is effected. No change or correction of the contribution of any separately owned tract shall be given retroactive effect, but appropriate adjustment shall be made for the investment charges as provided in this section.

(7) The portion of unit production allocated to a separately owned tract within the unit area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to any unit pool within the unit area shall be deemed, for all purposes, to be the conduct of operations for the production of oil or gas, or both, from each separately owned tract in the unit area.

(8) Subsections (1) through (7) shall apply only to field or pool units, and shall not apply to the unitization of interests within an individual drilling unit.

(9) All orders requiring integration, pooling, cycling, repressuring pressure maintenance, or secondary recovery operations shall be upon terms and conditions that are just and reasonable, will afford to the owner of each tract the opportunity to recover his just and equitable share of the oil and gas in the pool without unnecessary expense, and, as to individual drilling units, will prevent or minimize reasonably avoidable drainage from each unit which is not equalized by counterdrainage. The portion of the production allocated to the owner of each tract included in unit operation formed by a unit operation order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon. In the event such integration or pooling is required, the operator designated by the department to develop and operate the unit operation shall have the right to charge against each other owner's interest in the production from the wells drilled by such designated operator the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from such wells drilled by him thereon which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well so that the amount due by each of them for his share of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. In the event of any dispute relative to such costs, the division shall determine the proper cost. In the event a dry hole should be drilled on an individual drilling unit, no liability for any part of the cost of drilling said well shall attach to any person or persons by reason of the unit operation order of the department.

History.—s. 22, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 31, ch. 74-316; s. 1, ch. 77-174; s. 23, ch. 78-95.

377.29 Agreements in interest of conservation.—Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners and operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid, by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of the pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the division, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

History.—s. 23, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.30 Limitation on amount of oil or gas taken.—

(1) Whenever the total amount of oil or gas which all the pools in the state can produce exceeds the amount reasonably required to meet the reasonable market demand for oil or gas in this state, then the division shall limit the total amount of oil or gas which may be produced in the state by fixing an allowable for the state among the pools on a reasonable basis and in such a manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the allowable for the state, and in fixing allowable for pools producing oil or gas, the division shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas and shall formulate rules setting forth standards or a program for the distribution of the allowable for the state, and shall distribute the allowable for the state in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the division shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste; and provided, further, that if the amount allocated to a pool as its share of the allowable for the state is in excess of the amount which the pool should produce to prevent waste, then the division shall fix the allowable for the pool so that waste will be prevented.

(2) Whenever the division limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation may be imposed either incidentally to, or without, a limitation of the total

amount of oil or gas which may be produced in the state, the division shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage, and so that each producer will have the opportunity to produce or receive his just and equitable share, as above set forth, subject to the reasonable requirement for the prevention of waste.

(3) After the effective date of any rule, regulation or order of the division fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

History.—s. 24, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.31 Evidence of rules and orders.—A certified copy of any division rule, regulation, or order shall be received in evidence in all courts of this state with the same effect as the original thereof.

History.—s. 25, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

377.32 Issuance of subpoenas; service, etc.—(1) The division is hereby empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers and records in any proceeding before the division as may be material upon questions lawfully before the division. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the division or a court, or from obedience to the subpoena of the division or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry not pertinent to some question lawfully before the division or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the division or court, or in obedience to its subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with any subpoena issued by the division, or, in case of the refusal of any witness to testify or answer as to any matter regarding which he may be lawfully interrogated, any circuit court in this state, on the application of the division, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the division and produce such documents, and give his testimony upon such matters as may be lawfully required, and such court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from such court, or for refusal to testify therein.

History.—s. 26, ch. 22819, 1945; s. 23, ch. 29737, 1955; ss. 25, 35, ch. 69-106.

377.33 Injunctions against division.—(1) Any interested person adversely affected by any statute of this state with respect to conservation of oil or gas, or both, or by provisions of this law may seek relief by a suit for injunction against the division, as defendant, or the members thereof by suit in the chancery court in the county or counties wherein the property involved is situated, or in the chancery court of Leon County. Such suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the division may have the case set for trial after 10 days' notice to the plaintiff or his attorney. Such trial shall be de novo, and the burden of proof shall be upon the plaintiff. The statute or provision of this law complained of shall be taken as prima facie valid, and such presumption shall not be overcome, in connection with any application for injunctive relief, including temporary restraining order, by verified complaint or affidavit of, or in behalf of, the applicant.

(2) No temporary restraining order or injunction shall be granted against the division or against its attorneys, agents, employees, or representatives restraining the attorneys, agents, employees, or representatives from enforcing any statute of this state relating to conservation of oil or gas, or any of the provisions of this law, except after due notice, served upon the executive director of the department, and after a hearing at which it shall be shown to the court by legal evidence that the act done or threatened is without sanction of law or that the provisions of this law are invalid or unreasonable and, if enforced against the complaining party, will cause an irreparable injury. If the division shall so request at such hearing, it shall be entitled to a trial on the merits within 10 days after the granting of any temporary order, and, if the plaintiff is not ready for trial at such time, the court shall be authorized to dissolve the temporary restraining order.

(3) No temporary injunction of any kind against the division, or against its attorneys, agents, employees or representatives, shall become effective until the plaintiff shall execute a bond in the amount and upon the conditions the court directs. The bond shall be made payable to the Governor and his successors in office, shall be approved by the court or clerk, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the injunction.

History.—ss. 27-29, ch. 22819, 1945; s. 10, ch. 26484, 1951; s. 2, ch. 29737, 1955; ss. 25, 35, ch. 69-106; s. 27, ch. 74-382; s. 23, ch. 78-95; s. 88, ch. 79-164.

377.34 Actions and injunctions by division.—(1) Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the division, through its counsel, or the Department of Legal Affairs on its own initiative, may

bring suit against such person in the Circuit Court in the County of Leon, state, or in the Circuit Court in the county in which the well in question is located, at the option of the division, or the Department of Legal Affairs, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit, the division, or the Department of Legal Affairs, may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of a receiver appointed by the court if, in the judgment of the court, such action is advisable.

(2) In the event the division, or the Department of Legal Affairs, should fail to bring suit within 10 days to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this law, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the division, or the Department of Legal Affairs, in writing of such violation, or threat thereof, and has requested the division, or the Department of Legal Affairs, to sue, may, to prevent any or further violation, bring suit for that purpose in the Circuit Court of the County of Leon, in the state. If, in such suit, the court should hold that injunctive relief should be granted, then the division, or the Department of Legal Affairs, shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the division, or the Department of Legal Affairs, had at all times been the complainant.

(3) If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made upon him or any employee or agent of that defendant at any place in Florida and by the division, or the Department of Legal Affairs, mailing copy of the complaint in the action to the defendant at the address of the defendant then recorded with the division, or the Department of Legal Affairs.

History.—s. 30, ch. 22819, 1945; s. 1, ch. 69-350; ss. 11, 25, 35, ch. 69-106.

377.35 Suits, proceedings, appeals, etc.—In all proceedings brought under authority of this law, or of any oil or gas conservation statute of this state, or of any rule, regulation or order made thereunder, and in all proceedings instituted for the purpose of contesting the validity of any provision of the law, or of any oil or gas conservation statute, or of any rule, regulation or order made thereunder, review may be had pursuant to Art. V, State Constitution, the Florida Appellate Rules and chapter 120.

History.—s. 31, ch. 22819, 1945; s. 22, ch. 63-512; s. 121, ch. 77-104.

377.36 False entries and statements; incomplete entries, etc.; penalties.—Any person who, for the purpose of evading this law, or of evading any rule, regulation or order made thereunder, shall intentionally make, or cause to be made, any false entry or statement of fact in any report required to be made by this law, or by any rule, regulation or order made hereunder; or who, for such purpose shall make, or cause to be made, any false entry in any account, record or memorandum kept by any person in connection with any provision of this law, or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person, as may be required by the division under authority given in this law, or by any rule, regulation or order made hereunder; or who, for such purpose, shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or, by any other means, falsify any book, record, or other paper pertaining to the transaction regulated by this law, or by any rule, regulation or order made hereunder, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 32, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 327, ch. 71-136; s. 6, ch. 72-394.

377.37 Penalties.—

(1) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1), or any lessee, permitholder, or operator of equipment or facilities used in the exploration, drilling, or production of oil, gas, or other petroleum products who refuses inspection by the division as provided in this chapter, shall be liable for a civil penalty of up to $500 per day for every day during which said violation occurs. The payment of any damages or penalties as provided for herein shall not have the effect of changing illegal product into legal product, illegal oil into legal oil, or illegal gas into legal gas; nor shall such payment have the effect of authorizing the sale, purchase, acquisition, transportation, refining, processing, or handling in any other way of such illegal oil, illegal gas, or illegal product. The payment of any such damages or penalties shall not impair or abridge any cause of action which any person may have against the person violating any provision of this law or any rule, regulation, or order for an injury resulting to him from such violation.

(2) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation or order made thereunder shall be subject to the same damages as are prescribed herein for the violation by such other person.

History.—s. 33, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 7, ch. 72-394.

377.371 Pollution prohibited; reporting, liability.—

(1) No person drilling for or producing oil, gas, or other petroleum products shall pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow any extraneous matter to enter or damage any mineral or freshwater-bearing formation.

(2) All spills or leakage of oil, gas, other petroleum products, or waste material shall be reported to the division and those of any quantity which cannot be immediately controlled shall be reported immediately to the division and the appropriate federal agencies.

(3) Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages resulting from pollution in violation of this chapter, if the waters of the state are polluted by the drilling or production operations of any person or persons and such pollution damages or threatens to damage human, animal, or plant life, public or private property, or any mineral or water-bearing formation, said person shall be liable to the state for all costs of cleanup or other damage incurred by the state. In any suit to enforce claims of the state under this chapter, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the person or persons conducting the drilling or production operations; the state need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at the facilities of the person or persons conducting the drilling or production operation. No person or persons conducting the drilling or production operation shall be liable if said person or persons prove that the prohibited discharge or other polluting condition was the result of any of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

(4) Any person who is found liable for damages or costs of cleanup as provided in this section shall not be liable for penalties under the provisions of chapter 403 or chapter 376.

History.—s. 8, ch. 72-394.

377.38 Illegal oil, gas and other products; handling, sale, use, etc., prohibited.—

(1) The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited.

(2) Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or of transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no liquidated damage shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Liquidated damages shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, liquidated damages as provided in this law shall apply in any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which liquidated damages shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with all applicable rules, regulations or orders of the division relating thereto.

History.—s. 34, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.39 Seizure and sale of illegal oil, gas and their products.—

(1) Apart from, and in addition to, any other remedy or procedure which may be available to the division, or any liquidated damages which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this subsection, that the commodity involved is contraband. Whenever the division believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through its counsel, bring a civil action in rem for that purpose in the Circuit Court of the county where the commodity is found or the action may be maintained in connection with any suit or cross action for injunction or for liquidated damages relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person, who may show himself to be adversely affected by any such seizure and sale, shall have the right to intervene in such suit to protect his rights.

(2) The action referred to above shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons without undertaking to name them, who may be interested in the illegal oil, illegal gas or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. One copy of

such summons shall be posted at least 5 days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the state. A copy of the summons shall also be published once each week for 4 successive weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein if such a newspaper is published. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of 5 days from the last publication or posting of said summons. Proof of service of said summons, and the manner thereof, shall be provided by general law.

(3) Where it appears by a verified pleading on the part of the plaintiff or by affidavit or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue an order of seizure, which shall be signed by the clerk and bear the seal of the court. Such order of seizure shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product described therein, and to hold the same subject to the orders of the court. Said order of seizure shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such order of seizure, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

(4) In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product, seized by him under an order of seizure, to a receiver or conservator to be appointed by the court, which receiver or conservator shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the order of the court; provided, that the court may in its discretion appoint any agent of the division as such receiver or conservator.

(5) Sales of illegal oil, illegal gas or illegal product made under the authority of this law, and notices of such sales, shall be in accordance with the laws of this state relating to the sale and disposition of attached property; provided, however, that where the property is in the custody of a receiver or conservator, the sale shall be held by said receiver or conservator, and not by the sheriff. For his services hereunder, such receiver or conservator shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

(6) The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the act which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the General Revenue Fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing or handling in any other way, of the commodity purchased.

(7) Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character.

History.—s. 35, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 1, ch. 77-174.

377.40 Negligently permitting gas and oil to go wild or out of control.—

(1) In order to protect further the gas fields and oil fields in the state, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after 24 hours' written notice by the division given to him or the person in possession of such well, make reasonable effort to control such well.

(2) In the event of the failure of the owner of such well, within 24 hours after service of notice above provided for, to control the same, if such can be done within the period or to begin, in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the division shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well, all at the reasonable expense of the owner of the well. In order to secure the division in the payment of the reasonable cost and expense of controlling or plugging of such well, the division shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the division shall be repaid. When all such costs and expenses have been repaid, the division shall restore possession of such well to the owner; provided, that in the event the income received by the division shall not be sufficient to reimburse the division, as provided for in this section, the division shall have lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the division shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other like civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the division which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well.

History.—s. 36, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

PART II

PLANNING AND DEVELOPMENT

377.601 Legislative intent.—

(1) The Legislature finds that the ability to deal effectively with present shortages of resources used in the production of energy is aggravated and intensified because of inadequate or nonexistent information and that intelligent response to these problems and to the development of a state energy policy demands accurate and relevant information concerning energy supply, distribution, and use. The Legislature finds and declares that a procedure for the collection and analysis of data on the energy flow in this state is essential to the development and maintenance of an energy profile defining the characteristics and magnitudes of present and future energy demands and availability so that the state may rationally deal with present energy problems and anticipate future energy problems.

(2) The Legislature further recognizes that every state official dealing with energy problems should have current and reliable information on the types and quantity of energy resources produced, imported, converted, distributed, exported, stored, held in reserve, or consumed within the state.

(3) It is the intent of the Legislature in the passage of this act to provide the necessary mechanisms for the effective development of information necessary to rectify the present lack of information which is seriously handicapping the state's ability to deal effectively with the energy problem. To this end, the provisions of ss. 377.601-377.608 should be given the broadest possible interpretation consistent with the stated legislative desire to procure vital information.

(4) It is the policy of the State of Florida to:

(a) Develop and promote the effective use of energy in the state and discourage all forms of energy waste.

(b) Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation.

(c) Include energy considerations in all planning.

(d) Utilize and manage effectively energy resources used within state agencies.

(e) Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.

(f) Include the full participation of citizens in the development and implementation of energy programs.

(g) Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses.

(h) Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact.

(i) Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources.

(j) Consider, in its decision making, the social, economic, and environmental impacts of energy-related activities, so that detrimental effects of these activities are understood and minimized.

(k) Develop and maintain energy-emergency-preparedness plans to minimize the effects of an energy shortage within Florida.

History.—s. 1, ch. 74-186; s. 1, ch. 77-333; s. 2, ch. 78-25.

377.602 Definitions.—As used in ss. 377.601-377.608:

(1) "Energy resources" includes, but shall not be limited to:

(a) Propane, butane, motor gasoline, kerosene, home heating oil, diesel fuel, other middle distillates, aviation gasoline, kerosene-type jet fuel, naphtha-type jet fuel, residual fuels, crude oil, and other petroleum products and hydrocarbons as may be determined by the director to be of importance.

(b) All natural gas, including casinghead gas, all other hydrocarbons not defined as petroleum products in paragraph (a), and liquefied petroleum gas as defined in s. 527.01.

(c) All types of coal and products derived from its conversion and used as fuel.

(d) All types of nuclear energy, special nuclear material, and source material, as defined in s. 290.07.

(e) Every other energy resource, whether natural or manmade which the director determines to be important to the production or supply of energy, including, but not limited to, energy converted from solar radiation, wind, hydraulic potential, tidal movements, and geothermal sources.

(f) All electrical energy.

(2) "Center" means the Energy Data Center of the Executive Office of the Governor.

(3) "Director" means the chief administrator of the Energy Data Center of the Executive Office of the Governor.

(4) "Person" means producer, refiner, wholesaler, marketer, consignee, jobber, distributor, storage operator, importer, exporter, firm, corporation, broker, cooperative, public utility as defined in s. 366.02, rural electrification cooperative, municipality engaged in the business of providing electricity or other energy resources to the public, pipeline company, person transporting any energy resources as defined in subsection (1), and person holding energy reserves for further production; however, "person" does not

include persons exclusively engaged in the retail sale of petroleum products.

History.—s. 2, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 123, ch. 79-190.

377.603 Energy Data Center; powers and duties.—

(1) There is created an Energy Data Center in the Executive Office of the Governor whose duty it shall be to collect data on the extraction, production, importation, exportation, refinement, transportation, transmission, conversion, storage, sale, or reserves of energy resources in this state in an efficient and expeditious manner.

(2) The center shall prepare periodic reports of energy data it collects.

(3) The center shall prescribe and furnish forms for the collection of information as required by ss. 377.601-377.608 and shall consult with other state entities to assure that such data collected will meet their data requirements.

(4) The center may adopt and promulgate such rules and regulations as are necessary to carry out the provisions of ss. 377.601-377.608. Such rules shall be pursuant to chapter 120.

(5) The center shall maintain internal validation procedures to assure the accuracy of information received.

History.—s. 3, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 124, ch. 79-190.

377.604 Required reports.—Every person who produces, imports, exports, refines, transports, transmits, converts, stores, sells, or holds known reserves of any form of energy resources used as fuel shall report to the director of the center at a frequency set, and in a manner prescribed, by the director, on forms provided by the center and prepared with the advice of representatives of the energy industry. Such forms shall be designed in such a manner as to indicate:

(1) The identity of the person or persons making the report.

(2) The quantity of energy resources extracted, produced, imported, exported, refined, transported, transmitted, converted, stored, or sold except at retail.

(3) The quantity of energy resources known to be held in reserve in the state.

(4) The identity of each refinery from which petroleum products have normally been obtained and the type and quantity of products secured from that refinery for sale or resale in this state.

(5) Any other information which the center deems proper pursuant to the intent of ss. 377.601-377.608.

History.—s. 4, ch. 74-186; s. 2, ch. 78-25.

377.605 Use of existing information.—The office shall utilize to the fullest extent possible any existing energy information already prepared for state or federal agencies. Every state, county, and municipal agency shall cooperate with the center and shall submit any information on energy to the center upon request.

History.—s. 5, ch. 74-186; s. 2, ch. 78-25.

377.606 Records of the Energy Data Center; limits of confidentiality.—The information or records of individual persons, as defined herein, obtained by the center as a result of a report, investigation, or verification required by the center, except such information as is requested to be held confidential by the person providing said information, shall be open to the public. Information reported by entities other than the Energy Data Center in documents or reports open to public inspection shall under no circumstances be classified as confidential by the center. Divulgence of such information as is requested to be held confidential, except upon order of a court of competent jurisdiction or except to an officer of the state entitled to receive the same in his official capacity, shall be a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083. Nothing herein shall be construed to prohibit the publication or divulgence by other means of data so classified as to prevent identification of particular accounts or reports made to the center in compliance with s. 377.603 or to prohibit the disclosure of such information to properly qualified legislative committees. The center shall establish a system which permits reasonable access to information developed.

History.—ss. 6, 7, ch. 74-186; s. 1, ch. 77-174; s. 2, ch. 78-25.

377.607 Violations; penalties.—Any person who willfully fails to submit information as required by ss. 377.601-377.608, or submits false information, is guilty of a misdemeanor in the first degree, punishable as provided in ss. 775.082 and 775.083.

History.—s. 9, ch. 74-186; s. 2, ch. 78-25.

377.608 Prosecution of cases by state attorney.—The state attorney shall prosecute all cases certified to him for prosecution by the Executive Office of the Governor immediately upon receipt of the evidence transmitted by the [1]department, or as soon thereafter as practicable.

History.—s. 8, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 125, ch. 79-190.

[1]Note.—See s. 43, ch. 79-190, which transferred all powers, duties, and functions of the Department of Administration provided in this section to the Executive Office of the Governor.

377.701 Petroleum allocation.—

(1) The Executive Office of the Governor shall assume the state's role in petroleum allocation and conservation, including the development of a fair and equitable petroleum plan. The [1]department shall constitute the responsible state agency for performing the functions of any federal program delegated to the state, which relates to petroleum supply, demand, and allocation.

(2) The Executive Office of the Governor shall, in addition to assuming the duties and responsibilities provided by subsection (1), perform the following:

(a) In projecting available supplies of petroleum, coordinate with the Department of Revenue to secure information necessary to assure the sufficiency and accuracy of data submitted by persons affected by any federal fuel allocation program.

(b) Require such periodic reports from public and private sources as may be necessary to the fulfillment of its responsibilities under this act. Such reports may include: Petroleum use; all sales, including end-user sales, except retail gasoline and retail

fuel oil sales; inventories; expected supplies and allocations; and petroleum conservation measures.

(c) In cooperation with the Department of Revenue and other relevant state agencies, provide for long-range studies regarding the usage of petroleum in the state in order to:

1. Comprehend the consumption of petroleum resources.

2. Predict future petroleum demands in relation to available resources.

3. Report the results of such studies to the Legislature.

(3) For the purpose of determining accuracy of data, all state agencies shall timely provide the Executive Office of the Governor with petroleum-use information in a format suitable to the needs of the allocation program.

(4) No state employee shall divulge or make known in any manner any proprietary information acquired under this act except in accordance with a court order, as otherwise provided by law, or in the publication of statistical information compiled by methods which would not disclose the identity of individual suppliers or companies. Nothing in this subsection shall be construed to prevent inspection of reports by the Attorney General, members of the Legislature, and interested state agencies; however, such agencies and their employees and members are bound by the requirements set forth in this subsection.

(5) Any person who willfully fails to submit information required by this act or submits false information or who violates any provision of this act is guilty of a misdemeanor of the first degree and shall be punished as provided in ss. 775.082 and 775.083.

History.—ss. 1, 2, ch. 74-189; s. 2, ch. 75-256; s. 126, ch. 79-190.

[1]**Note.**—See s. 43, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided in this section to the Executive Office of the Governor.

377.703 Additional department functions; energy emergency contingency plan; federal and state conservation programs.—

(1) LEGISLATIVE INTENT.—Recognizing that energy supply and demand questions have become a major area of concern to the state which must be dealt with by effective and well-coordinated state action, it is the intent of the Legislature to promote the efficient, effective, and economical management of energy problems, centralize energy coordination responsibilities, pinpoint responsibility for conducting energy programs, and insure the accountability of state agencies for the implementation of s. 377.601(4), the state energy policy. It is the specific intent of the Legislature that nothing in this act shall in any way change the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, part II of chapter 403, or the powers, duties, and responsibilities of the Florida Public Service Commission.

(2) DEFINITIONS.—

(a) "Coordinate," "coordination," or "coordinating" means the examination, evaluation, and reporting to responsible state agencies in order to ensure that plans and programs are consistent with legislative energy policy as stated in this act.

(b) "Energy conservation" means increased efficiency in the utilization of energy.

(c) "Energy emergency" means an actual or impending shortage or curtailment of usable, necessary energy resources, such that the maintenance of necessary services, the protection of public health, safety, and welfare, or the maintenance of basic sound economy is imperiled in any geographical section of the state or throughout the entire state.

(d) "Energy source" means electricity, fossil fuels, solar power, wind power, hydroelectric power, nuclear power, or any other resource which has the capacity to do work.

(e) "Facilities" means any building or structure not otherwise exempted by the provisions of this act.

(f) "Fuel" means petroleum, crude oil, petroleum product, coal, natural gas, or any other substance used primarily for its energy content.

(g) "Local government" means any county, municipality, regional planning agency, or other special district or local governmental entity whose policies or programs may affect the supply or demand, or both, for energy in the state.

(h) "Promotion" or "promote" means to encourage, aid, assist, provide technical information, or otherwise seek to develop and expand.

(i) "Regional planning agency" means those agencies designated as regional planning agencies by the Executive Office of the Governor.

(j) "Renewable energy resource" means any method, process, or substance the use of which does not diminish its availability or abundance, including, but not limited to, biomass conversion, geothermal energy, solar energy, wind energy, wood fuels derived from waste, ocean thermal gradient power, hydroelectric power, and fuels derived from agricultural products.

(3) EXECUTIVE OFFICE OF THE GOVERNOR; DUTIES.—The Executive Office of the Governor shall, in addition to assuming the duties and responsibilities provided by ss. 20.31(7) and 377.701, perform the following functions consistent with the development of a state energy policy:

(a) The [1]department shall assume the responsibility for development of an energy emergency contingency plan to respond to serious shortages of primary and secondary energy sources in coordination with the Public Service Commission, which shall have exclusive responsibility for electrical and natural gas emergency contingency plans. Upon a finding by the Governor, implementation of any emergency program shall be upon order of the Governor that a particular kind or type of fuel is, or that the occurrence of an event which is reasonably expected within 30 days will make the fuel, in short supply. The [1]department shall then respond by instituting the appropriate measures of the contingency plan to meet the given emergency or energy shortage. The Governor may utilize the provisions of s. 252.36(5) to carry out any emergency actions required by a serious shortage of energy sources.

(b) The [1]department shall constitute the responsible state agency for performing or coordinating the functions of any federal energy programs delegated to the state, including energy supply, demand, conservation, or allocation.

(c) The [1]department shall analyze present and

proposed federal energy programs and recommend the state's position.

(d) The [1]department shall coordinate efforts to seek federal support or other support for state energy activities, including energy conservation, research, or development, and shall be the state agency responsible for the coordination of multiagency energy conservation programs.

(e) The [1]department shall analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Public Service Commission, which shall have responsibility for electricity and natural gas forecasts. To this end, the forecasts published in 1980 and thereafter shall contain:

1. Analysis of the relationship of state economic growth and development to energy supply and demand, including the constraints to economic growth resulting from energy supply constraints.

2. Plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas, and analysis of the extent to which renewable energy sources are being utilized in the state.

3. Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years, to identify strategies for long-range action, including identification of potential social, economic, and environmental effects.

4. Assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both.

(f) The [1]department shall make an annual report to the Legislature, 60 days prior to each regular session, reflecting its activities and making recommendations of policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the people of Florida. The report shall include a report from the Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and under way in the past year and shall include recommendations for energy conservation programs for the state, including, but not limited to, the following factors:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy conservation.

3. Development and conduct of educational and training programs relating to energy conservation.

4. Analysis of the ways in which state agencies are seeking to implement s. 377.601(4), the state energy policy, and recommendations for better fulfilling this policy.

(g) The [1]department is authorized to make any rules or regulations pursuant to chapter 120 as are necessary to carry out the purposes of this act.

(h) The [1]department shall promote energy conservation in all energy use sectors throughout the state and shall constitute the state agency primarily responsible for this function. To this end, the [1]department shall coordinate the energy conservation programs of all state agencies and review and comment on the energy conservation programs of all state agencies.

(i) The [1]department shall prepare and distribute such information and materials as may be necessary to provide energy information to citizens of the state. The [1]department shall provide information to consumers regarding the anticipated energy-use and energy-saving characteristics of products and services in coordination with any federal, state, or local governmental agencies as may provide such information to consumers.

(j) The [1]department shall coordinate energy-related programs of state government, including, but not limited to, the programs provided in this section. To this end, the [1]department shall:

1. Provide assistance to other state agencies, counties, municipalities, and regional planning agencies to further and promote their energy planning activities.

2. Require, in cooperation with the Department of General Services, all state agencies to operate state-owned and state-leased buildings in accordance with energy conservation standards as adopted by the Department of General Services. Beginning 120 days following July 1, 1978, and every 3 months thereafter, the Department of General Services shall furnish the [1]department data on agencies' energy consumption in a format mutually agreed upon by the [1]department and the Department of General Services.

3. Promote the development and use of renewable energy resources and energy conservation technologies. To this end, the [1]department shall:

a. Aid and promote the commercialization of solar energy technology, in cooperation with the Florida Solar Energy Center of the State University System, the Department of Commerce, and any other federal, state, or local governmental agency which may seek to promote research, development, and demonstration of solar energy equipment and technology.

b. Promote the recovery of energy from wastes, including, but not limited to, the utilization of waste heat, the use of agricultural products as a source of energy, and recycling of manufactured products. Such promotion shall be conducted in conjunction with, and after consultation with, the Department of Environmental Regulation, the Public Service Commission where electrical generation or natural gas is involved, and any other relevant federal, state, or local governmental agency having responsibility for resource recovery programs.

(4) The Department of Community Affairs shall be responsible for the administration of the Coastal Energy Impact Program provided for and described in Pub. L. No. 94-370; 16 U.S.C. s. 1456a.

History.—s. 3, ch. 75-256; s. 1, ch. 77-174; s. 1, ch. 78-25; s. 127, ch. 79-190.

[1]**Note.**—See s. 43, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided in this section, except

for former paragraph (2)(k), to the Executive Office of the Governor.

377.705 Solar Energy Center; development of solar energy standards.—

(1) SHORT TITLE.—This act shall be known and may be cited as the Solar Energy Standards Act of 1976.

(2) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature recognizes that if present trends continue, Florida will increase present energy consumption six-fold by the year 2000. Because of this dramatic increase and because existing domestic conventional energy resources will not provide sufficient energy to meet the nation's future needs, new sources of energy must be developed and applied. One such source, solar energy, has been in limited use in Florida for 30 years. Applications of incident solar energy, the use of solar radiation to provide energy for water heating, space heating, space cooling, and other uses, through suitable absorbing equipment on or near a residence or commercial structure, must be extensively expanded. Unfortunately, the initial costs with regard to the production of solar energy have been prohibitively expensive. However, because of increases in the cost of conventional fuel, certain applications of solar energy are becoming competitive, particularly when life-cycle costs are considered. It is the intent of the Legislature in formulating a sound and balanced energy policy for the state to encourage the development of an alternative energy capability in the form of incident solar energy.

(b) Toward this purpose, the Legislature intends to provide incentives for the production and sale of, and to set standards for, solar energy systems. Such standards shall ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality of materials, workmanship, and design.

(3) DEFINITIONS.—

(a) "Center" is defined as the Florida Solar Energy Center of the Board of Regents.

(b) "Solar energy systems" is defined as equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(a) The center shall develop and promulgate standards for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons when such tests are conducted according to the criteria established by the center and when the testing entity has no vested interest in the manufacture, distribution or sale of solar energy systems.

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the State Treasurer to be deposited in the Solar Energy Center Testing Trust Fund, which is hereby created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

[1](d) All solar energy systems manufactured or sold in the state must meet the standards established by the center and shall display accepted results of approved performance tests in a manner prescribed by the center.

History.—ss. 1-4, ch. 76-246; s. 1, ch. 78-309.

[1]**Note.**—As amended, effective January 1, 1980.

CHAPTER 378

LAND RECLAMATION

378.011 Land Use Advisory Committee.—

(1) There is hereby created a Land Use Advisory Committee which shall be composed of the following:

(a) One member from the Bureau of Geology of the Division of Resource Management of the Department of Natural Resources, who shall serve as chairman, to be appointed by the executive director of said department;

(b) One member from the Executive Office of the Governor, to be appointed by the Governor;

(c) One member from the Tampa Bay Regional Planning Council, one member from the Central Florida Regional Planning Council, and one member from the North Central Florida Regional Planning Council, to be appointed by the respective directors of said regional planning councils;

(d) One member to represent the Board of County Commissioners of Polk County, one member to represent the Board of County Commissioners of Hillsborough County, and one member to represent the Board of County Commissioners of Hamilton County, to be appointed by the chairmen of said boards;

(e) One member from the Game and Fresh Water Fish Commission, to be appointed by the Executive Director of said commission; and

(f) Two members of the public, to be appointed by the Governor.

(2) Members of the Land Use Advisory Committee shall receive no compensation but shall receive travel and per diem allowances as provided by s. 112.061.

(3) The duties of the Land Use Advisory Committee shall be:

(a) To evaluate the lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are unreclaimed and not subject to mandatory reclamation under part II of chapter 211, for the purpose of identifying and designating, as a part of the general reclamation plan to be developed pursuant to paragraph (b), the following items:

1. The potential land use needs of the area;

2. The types of landforms, surface water regimes, and vegetation deemed desirable to enhance the natural recovery of land into mature sites with high potential for the land use desired;

3. The kinds and descriptions of lands with viable naturally developed environmental systems such that artificial reclamation need not be undertaken; and

4. A prioritization of kinds and descriptions of lands to be reclaimed and potential land uses to best serve the public interest.

(b) To develop a general reclamation plan for lands mined or disturbed by the severance of phosphate rock which are not subject to mandatory reclamation under part II of chapter 211, which plan shall not be inconsistent with local government plans prepared pursuant to the Local Government Comprehensive Planning Act of 1975, and which plan shall be developed utilizing the standards set forth in s. 211.32(3)(a). If, however, the application of the standards set forth in s. 211.32(3)(a) would unnecessarily reverse the natural development of certain lands, which in their present state enhance the overall environmental quality of the area, the committee may recommend in the general reclamation plan that exceptions to the standards set forth in s. 211.32(3)(a) be granted for said lands.

(c) To consider the advice and expertise of governmental agencies and interested groups and individuals.

(d) To furnish its report to the Department of Natural Resources on or before July 1, 1979. The Land Use Advisory Committee shall have no final authority to require the implementation of the general reclamation plan contained in its report.

History.—s. 3, ch. 78-136; s. 128, ch. 79-190.

378.021 Master reclamation plan.—

(1) The Department of Natural Resources shall adopt by rule, as expeditiously as possible upon receipt of the report of the Land Use Advisory Committee, a master reclamation plan to provide guidelines for the reclamation of lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. In developing said master reclamation plan, the Department of Natural Resources shall conduct an onsite evaluation of all lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211, and shall consider the report and plan prepared by the Land Use Advisory Committee under s. 378.011. The master reclamation plan adopted by the Department of Natural Resources shall be consistent with local government plans prepared pursuant to the Local Government Comprehensive Planning Act of 1975.

(2) The master reclamation plan shall identify which of the lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, meet the following criteria:

(a) The quality of surface waters leaving the land does not meet applicable water quality standards, if any; or, health and safety hazards exist on the land; or, the soil has not stabilized and revegetated; or, the remaining natural resources associated with the land are not being conserved;

(b) The environmental or economic utility or aesthetic value of the land would not naturally return within a reasonable time, and reclamation would substantially promote the environmental or economic utility or the aesthetic value of the land; and

(c) The reclamation of the land is in the public interest because the reclamation, when combined with other reclamation under the master plan, would provide a substantial regional benefit.

(3) Lands evaluated by the department under subsection (1) which meet the criteria set forth in subsection (2) shall be identified with specificity in the master reclamation plan. Lands evaluated by the department under subsection (1) which do not meet the criteria set forth in subsection (2) shall also be identified with specificity in the master reclamation plan as lands which are acceptable in their present form.

(4) Upon adoption of the master reclamation plan as a rule, such plan shall provide the guidelines for approval of reclamation programs for lands covered in the plan, recognizing that reclamation of such lands is not mandatory, but that any payment of costs expended for reclamation paid under s. 378.031 shall be contingent upon conformity with the guidelines set forth in the master reclamation plan.

History.—s. 4, ch. 78-136.

378.031 Nonmandatory Land Reclamation Trust Fund.—

(1) Money paid into the Nonmandatory Land Reclamation Trust Fund shall be made available for the costs expended for reclamation accomplished in accordance with programs approved by the Department of Natural Resources for lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under s. 211.32(3). The Comptroller shall, upon written verification by the Department of Natural Resources of completion of an approved program for reclamation of lands not subject to mandatory reclamation, and upon verification of the cost of the reclamation, grant payments of funds from the Nonmandatory Land Reclamation Trust Fund in an amount equal to 100 percent of the costs incurred in completing the reclamation program, subject to the following limitations:

(a) A landowner shall not be entitled to payments in excess of the funds available in the Nonmandatory Land Reclamation Trust Fund.

(b) No moneys shall be paid to the landowner in excess of amounts actually expended to effect reclamation.

(c) As to lands which are deemed reclaimed without the necessity of reclamation after the adoption of the master reclamation plan, no moneys shall be paid to the landowner.

(d) Moneys shall be paid only for reclamation which is consistent with the master reclamation plan to be developed under s. 378.021 and adopted as a rule.

(2) Money paid into the Nonmandatory Land Reclamation Trust Fund may also be used by the Department of Natural Resources to purchase land included within the master plan developed and adopted as a rule under s. 378.021, at a negotiated price, when the Department of Natural Resources reasonably determines that such purchase will serve the public interest because of the exceptional need to accomplish particular reclamation and restoration and finds that the landowner is unable or unwilling to restore or reclaim the land in accordance with the master plan. In the event that a sale price cannot be agreed upon, the Department of Natural Resources is authorized to exercise the power of eminent domain and to proceed to condemn said property in accordance with the provisions of chapter 73. Where property is acquired under this subsection, the Department of Natural Resources shall reclaim and restore such land as soon as practicable, with the costs of such reclamation and restoration to be paid in advance from the Nonmandatory Land Reclamation Trust Fund. Such land shall within a reasonable time thereafter be resold at public sale, at a price not less than that expended by the state for reclamation. The proceeds of such sale shall be payable to the Nonmandatory Land Reclamation Trust Fund.

History.—s. 5, ch. 78-136.

378.101 Florida Institute of Phosphate Research.—

(1) There is created a Florida Institute of Phosphate Research, which is empowered:

(a) To conduct or cause to be conducted such environmental studies related to radiation and water consumption, or other environmental effects of phosphate mining and reclamation, as may from time to time be deemed reasonably necessary by the institute for the health, safety, and welfare of the citizens of this state and particularly the citizens of the regions where phosphate mining or processing occurs.

(b) To conduct or cause to be conducted a thorough and comprehensive study of reclamation alternatives and technologies in the phosphate mining or processing industry, including wetlands reclamation.

(c) To conduct or cause to be conducted a thorough and comprehensive study of phosphatic clay disposal and utilization as a part of phosphate mining, together with all environmental or land use related thereto.

(d) To establish methods for better and more efficient phosphate recovery mining and processing in this state as it may determine most beneficial to the economy, environment, and way of life of the citizens of the state.

(e) To enter into any mutually satisfactory contract with any firm, institution, corporation, or federal or state agency, as may be reasonably required or desired in carrying out the research and studies herein authorized.

(f) To make available to the public the results of its research program so that the research efforts will result in the public being better informed as to the effects of phosphate mining in the state.

(g) To hold public hearings and consult with representatives of the phosphate industry and all other interested parties; to assign priorities for its research and studies; to make public from time to time its intentions as to future research and study; and to allocate its resources and personnel for such research and studies as it may determine from time to time to be in the public interest.

(h) To provide suitable and sufficient laboratory facilities and equipment, making use insofar as practical of the existing laboratory facilities and equipment of the State University System and other facilities as may be available, for carrying out the research and studies herein authorized.

(i) To administer the Phosphate Research Trust Fund and to expend funds therefrom for its adminis-

tration and for carrying out the purposes set forth in this section.

(2) The work of the Florida Institute of Phosphate Research shall be directed by a three-member board appointed by and serving at the pleasure of the Governor. The Governor shall make these appointments on the basis of ability to set priorities for the phosphate research and otherwise give direction to a professional, efficient, and broad phosphate research effort. In setting such priorities, emphasis shall be given to applied research which tends to solve real problems of the industry in which the public has a substantial interest. The policies and decisions of the board shall be implemented through an executive director chosen by the board on the basis of professional competence, both scientific and administrative.

History.—s. 6, ch. 78-136.

CHAPTER 379

EVERGLADES FIRE CONTROL DISTRICT

379.01 Everglades Fire Control District created.—There is hereby created the Everglades Fire Control District, the said district shall encompass all of the territory now known as the Everglades Drainage District which lies in the following counties to wit: Broward, Collier, Dade, Glades, Hendry, Highlands, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

History.—s. 1, ch. 19274, 1939.

379.03 Use of state prisoners and state property.—In the matter of preventing, controlling, and extinguishing fires within the Everglades Fire Control District, the Division of Forestry of the Department of Agriculture and Consumer Services, by and with the consent of the Department of Corrections, may use such state prisoners as shall be available for that purpose, and such state equipment and property as shall be adapted for such work, upon such terms and conditions as may be agreed upon between the Division of Forestry and the Department of Corrections.

History.—s. 3, ch. 19274, 1939; ss. 14, 19, 35, ch. 69-106; s. 1, ch. 70-309; ss. 1, 2, ch. 70-441; s. 6, ch. 77-120; s. 11, ch. 79-3.

379.04 Everglades Fire Control District Trust Fund created.—There is created in the State Treasury the Everglades Fire Control District Trust Fund which shall be credited with such funds as are appropriated thereto by the Legislature. The Division of Forestry is authorized to procure additional funds from any department of the Federal Government which may be further designated or allocated to this state for the purpose of fire prevention and control within the district or territory adjacent or contiguous thereto or flood control or for any like purpose. Any additional funds procured shall be deposited in said Everglades Fire Control District Trust Fund. Such fund shall be available for the use of the Everglades Fire Control District, to be disbursed on requisitions made by the chief of the district and approved by the division, whereupon the State Comptroller is authorized to draw state warrants chargeable to said fund.

History.—s. 4, ch. 19274, 1939; s. 1, ch. 20973, 1941; s. 1, ch. 26789, 1951; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 1, ch. 70-309; s. 140, ch. 71-377; s. 1, ch. 73-305.

379.041 Payment of district expenses by each county.—In order to defray the cost and expense, or any portion of the cost and expense, of performing the functions of the said district in each county within its territory, the board of county commissioners in each county receiving services pursuant to this chapter, may pay such costs and expenses from the general fund of the county and, in order to provide for the payments thereof, the said county commissioners may levy annually a tax upon all the taxable property in said county. However, the gross annual proceeds of such tax shall not in any year exceed the amount provided by law. It is further provided that the services authorized under this chapter shall be withheld from within any county, the board of county commissioners of which does not provide the payments authorized herein beginning the next ensuing fiscal year of such county.

History.—s. 14, ch. 69-106; ss. 1, 3, ch. 71-14.
cf.—s. 20.14 Department of Agriculture and Consumer Services.

379.05 Setting fires prohibited.—It shall be unlawful for any person or persons, firm or corporation to set fire or cause the same to be set or started on any lands within the Everglades Fire Control District, except as in this chapter provided. The clearing of lands by fire, the setting of field fires, forest fires, prairie fires, the encouraging of new pasture by firing, the smoking out or driving of game by fire, and all other fires of such description are prohibited by this chapter, except as herein otherwise specifically provided. It shall be unlawful to abandon or leave unguarded any campfire.

History.—s. 5, ch. 19274, 1939.

379.06 Duties and responsibilities of owners or occupants of land.—The owners of land, proprietors, lessees, tenants, or other occupants of land shall be responsible for the existence of fires thereon, and it shall be the duty of such parties, and they are hereby required by this chapter, to prevent the starting of fires on such lands, and said owners or other occupants shall eliminate and extinguish and assist in eliminating and extinguishing the same when burning or which may exist from any cause whether of their own account or from other source, including the spreading of fires to said lands from outside areas.

History.—s. 6, ch. 19274, 1939.

379.07 Fire hazards prohibited.—It shall be unlawful for any proprietor of lands, lessees, tenant, or other occupant to have on his premises any brush heap, trash pile, accumulation of stacks of combustible or inflammable material exposed to danger of fire or have the same in such location that the burning thereof may endanger the spread of fire to other property. It shall be and is hereby required by this

chapter that all brush, trash or other inflammable material accumulated, existing or resulting from the clearing of the land shall, when collected in piles, heaps or stacks be protected from fire by the clearing of the land around such heaps or piles to prevent the spread of fire therefrom in case of fire, and that such heap, pile or stack shall be burned or otherwise disposed of as shall be directed by notice pursuant to rules and regulations theretofore made and promulgated by the Division of Forestry of the Department of Agriculture and Consumer Services, from the chief of the district or from the county fire warden. It shall be unlawful to stack, pile or accumulate any brush, trash or other inflammable material within 100 feet of any highway, road or canal bank.

History.—s. 7, ch. 19274, 1939; ss. 14, 35, ch. 69-106.

379.08 Supervision of all fires.—The setting of all fires, the burning of all trash and brush, the clearing of all fields, woods, prairie or other lands by fire shall be under the supervision of the chief of the district or by the county fire warden, and in accordance with such rules and regulations as may be prescribed therefor.

History.—s. 8, ch. 19274, 1939.

379.09 Fire patrols, establishment; purchase of equipment.—The division is hereby authorized to establish fire patrols in said district and may purchase, lease, rent or hire such labor services, teams, equipment or machinery as it may deem necessary and pay therefor such price as may be agreed upon.

History.—s. 9, ch. 19274, 1939; ss. 14, 35, ch. 69-106; s. 1, ch. 70-309.

379.10 Powers and authority of division.—

(1) The division, at proper periods of the year and under conditions favorable therefor, may permit, authorize, order and require the burning of fields, woods, prairies, trash piles, brush heaps, or other accumulations of combustible or inflammable material by the owner, proprietor, lessee, tenant, or other occupant of such lands. Such permit, authority, order or requirement by the division shall not excuse or relieve the person or persons to whom issued from any liability or responsibility for damages which may result from carelessness or neglect on his part in setting, starting, looking after or guarding fires permitted, authorized, ordered or required to be set.

(2) The division shall have authority and power to require the owners or proprietors of land, lessees, tenants, or other occupants to burn or otherwise dispose of material deemed necessary for safety to be burned or otherwise disposed of, and for failure or refusal so to do, such person, proprietor, lessee, tenant or other occupant shall be subject to the penalties hereinafter described.

(3) In case of fires in the district from which damage will result, and of such magnitude as may make necessary, the division shall have authority to require service or services of any person or persons for assisting it in eliminating and extinguishing such fires and for preventing damage to property in the Everglades Fire Control District. And the said division shall pay therefor such price as may be agreed upon, or such sum as it may deem just and proper. The owner, proprietor, lessee, tenant, or other occupant of said land shall receive no compensation for services which he may render on behalf of his own property or property used or occupied by him.

(4) To better enable the division and the county fire wardens provided for in this chapter to enforce and make effective the provisions hereof, the said wardens shall have and are hereby vested with police powers under the laws of this state in the enforcement of the provisions of this chapter and they are hereby vested with the power to make arrests with or without warrants for violations of the provisions of this chapter.

History.—s. 10, ch. 19274, 1939; ss. 14, 35, ch. 69-106; s. 1, ch. 70-309; s. 123, ch. 77-104.

379.11 Penalty.—Any person, firm, association, or corporation, who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 19274, 1939; s. 328, ch. 71-136.

379.12 Prosecutions for violations.—It shall be the duty of the sheriff of the county in which any of the lands embraced in the district are located, to cooperate with the division and the county fire wardens in the enforcement of the several provisions of this chapter. It is hereby made the duty of the lawfully constituted prosecuting attorneys of the several courts within the Everglades Fire Control District, having trial jurisdiction of offenses committed against the provisions of this chapter, to prosecute any and all such violations in the manner and to the extent provided and required by law in the discharge of their official duties in connection with the violation of other criminal laws.

History.—s. 12, ch. 19274, 1939; ss. 14, 35, ch. 69-106; s. 1, ch. 70-309.

379.13 Purpose.—It is hereby declared that, in and for the Everglades Fire Control District that fire is a "common enemy" that by reason thereof emergencies have heretofore existed and are certain hereafter to exist and that such measures as hereinabove outlined are necessary and needful for the protection of life and property, the prevention of loss, the preservation of valuable assets of the district, and the enjoyment of the same by the citizens of the said district and the state.

History.—s. 13, ch. 19274, 1939.

CHAPTER 380

LAND AND WATER MANAGEMENT

PART I ENVIRONMENTAL LAND AND WATER MANAGEMENT (ss. 380.012-380.12)

PART II COASTAL PLANNING AND MANAGEMENT (ss. 380.19-380.25)

PART I

ENVIRONMENTAL LAND AND WATER MANAGEMENT

380.012 Short title.—Sections 380.012-380.10 shall be known and may be cited as "The Florida Environmental Land and Water Management Act of 1972."

History.—s. 1, ch. 72-317.

380.021 Purpose.—It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in s. 7, Art. II of the State Constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary adequately to plan for and guide growth and development within this state. In order to accomplish these purposes, it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

History.—s. 2, ch. 72-317.

380.031 Definitions.—As used in this chapter:

[1](1) "Administration commission" or "commission" means the Governor and the Cabinet, and for purposes of this chapter the commission shall act on a simple majority.

(2) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(3) A "development permit" includes any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in this chapter.

(4) "Developer" means any person, including a governmental agency, undertaking any development as defined in this chapter.

(5) "Governmental agency" means:

(a) The United States or any department, commission, agency, or other instrumentality thereof;

(b) This state or any department, commission, agency, or other instrumentality thereof;

(c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;

(d) Any school board or other special district, authority, or other governmental entity.

(6) "Land" means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

(7) "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land.

(8) "Land use" means the development that has occurred on land.

(9) "Local government" means any county or municipality and, where relevant, any joint airport zoning board.

(10) "Major public facility" means any publicly owned facility of more than local significance.

(11) "Parcel of land" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

(12) "Person" means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(13) "Regional planning agency" means the

agency designated by the state land planning agency to exercise responsibilities under this chapter in a particular region of the state.

(14) "Rule" means a rule adopted under chapter 120.

(15) "State land development plan" means a comprehensive statewide plan or any portion thereof setting forth state land development policies.

[2](16) "State land planning agency" means the agency designated by law, or its successor agency, to undertake statewide comprehensive planning.

(17) "Structure" means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

(18) "Resource planning and management committee" or "committee" means a committee appointed pursuant to s. 380.045.

History.—s. 3, ch. 72-317; s. 1, ch. 79-73.

[1]Note.—See ss. 1 and 19, ch. 79-190, which, respectively, created an Administration Commission as part of the Executive Office of the Governor and deleted the Administration Commission as an organizational unit of the Department of Administration.

[2]Note.—See s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning of the Department of Administration under ss. 380.012-380.10 to the Department of Community Affairs.

[1]380.032 State land planning agency; powers and duties.—The state land planning agency shall have the power and the duty to:

(1) Exercise general supervision of the administration and enforcement of this act and all rules and regulations promulgated hereunder.

(2) Adopt or modify rules to carry out the intent and purposes of this act. Such rules shall be consistent with the provisions of this act.

(3) Enter into agreements with any landowner, developer, or governmental agency as may be necessary to effectuate the provisions of this act or any rules promulgated hereunder.

History.—s. 1, ch. 77-215.

[1]Note.—See s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning of the Department of Administration under ss. 380.012-380.10 to the Department of Community Affairs.

380.04 Definition of development.—

(1) "Development" means the carrying out of any building or mining operation or the making of any material change in the use or appearance of any structure or land and the dividing of land into three or more parcels.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve development, as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance, of a structure on land.

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any coastal construction as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve development as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, powerlines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, development refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of subsection (1).

History.—s. 4, ch. 72-317.

380.045 Resource planning and management committees; objectives; procedures.—

(1) Prior to recommending an area as an area of critical state concern pursuant to s. 380.05, the Governor, acting as the chief planning officer of the state, shall appoint a resource planning and management committee for the area under study by the state land planning agency. The objective of the committee shall be to organize a voluntary, cooperative resource planning and management program to resolve existing, and prevent future, problems which may endanger those resources, facilities, and areas described in s. 380.05(2) within the area under study by the state land planning agency.

(2) The committee shall include, but not be limited to, representation from each of the following: Elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels would be relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chairman and vice chairman. A staff member of the state land planning agency shall be appointed by the director of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chairman or on demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee shall, from the time of appointment, remain in existence for no less than 6 months.

History.—s. 2, ch. 79-73.

380.05 Areas of critical state concern.—

(1)(a) The state land planning agency may from time to time recommend to the Administration Commission specific areas of critical state concern. In its recommendation, the agency shall include recommendations with respect to the purchase of lands situated within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Act of 1972. The agency also shall include any report or recommendation of a resource planning and management committee appointed pursuant to s. 380.045; the dangers that would result from uncontrolled or inadequate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner; a detailed boundary description of the proposed area; specific principles for guiding development within the area; and an inventory of lands owned by the state, federal, county, and municipal governments within the proposed area.

(b) Within 45 days following receipt of a recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without modification and by rule designate the area of critical state concern and the principles for guiding the development of the area. The rule shall become effective 20 days after filing with the Secretary of State, except that an emergency rule adopted by the commission and designating an area of critical state concern shall become effective immediately on filing. Any rule adopted pursuant to this paragraph shall be presented to the Legislature for review pursuant to paragraph (c). An economic impact statement prepared pursuant to s. 120.54(2)(a) shall not be grounds for a challenge of the rule; however, a landowner shall not be precluded from using adverse economic results as grounds for challenge. Such principles for guiding development shall apply to any development undertaken subsequent to the legislative review pursuant to paragraph (c) of the designation of the area of critical state concern with or without modification but prior to the adoption of land development rules and regulations for the critical area pursuant to subsections (6) and (8). No boundary or principles for guiding development shall be adopted without a specific finding by the commission that the boundaries or principles are consistent with the protection of the resources or area sought to be protected. The commission is not authorized to adopt any rule that would provide for a moratorium on development in any area of critical state concern.

(c) A rule adopted by the commission pursuant to paragraph (b) designating an area of critical state concern and principles for guiding development shall be submitted to the President of the Senate and the Speaker of the House for review no later than 30 days prior to the next regular session of the Legislature. The Legislature may reject, modify, or take no action relative to the adopted rule. In its deliberations, the Legislature may consider, among other factors, whether a resource planning and management committee established a program pursuant to s. 380.045. In addition to any other data and information required pursuant to this chapter, all rules presented to the Legislature shall include a detailed legal description of the boundary of the area of critical state concern, proposed principles for guiding development, and a detailed statement of how the area meets the criteria for designation as provided in subsection (2).

(d) If, after the repeal of the boundary designation of an area of critical state concern pursuant to subsection (15), the state land planning agency determines that the administration of the local land development regulations within a formerly designated area is inadequate to protect the former area of critical state concern, then the state land planning agency may recommend to the commission that the area be redesignated as an area of critical state concern. Within 45 days following the receipt of the recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without modification. The commission may, by rule, make such redesignation effective immediately, at which time the boundaries and regulations in effect at the time the previous designation was repealed shall be reinstated. Within 90 days of such redesignation, the commission shall begin rulemaking procedures to designate the area an area of critical state concern under paragraph (b).

(2) An area of critical state concern may be designated only for:

(a) An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources. Specific criteria which

shall be considered in designating an area under this paragraph include:

1. Whether the economic value of the area, as determined by the type, variety, distribution, relative scarcity, and condition of the environmental or natural resources within the area, is of substantial regional or statewide importance.

2. Whether the ecological value of the area, as determined by the physical and biological components of the environmental system, is of substantial regional or statewide importance.

3. Whether the area is a designated critical habitat of any state or federally designated threatened or endangered plant or animal species.

4. Whether the area is inherently susceptible to substantial development due to its geographic location or natural aesthetics.

5. Whether any existing or planned substantial development within the area will directly, significantly, and deleteriously affect any or all of the environmental or natural resources of the area which are of regional or statewide importance.

(b) An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts. Specific criteria which shall be considered in designating an area under this paragraph include:

1. Whether the area is associated with events that have made a significant contribution to the history of the state or region.

2. Whether the area is associated with the lives of persons who are significant to the history of the state or region.

3. Whether the area contains any structure that embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction and which are of regional or statewide importance.

4. Whether the area has yielded, or will likely yield, information important to the prehistory or history of the state or region.

(c) An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, but not limited to, highways, ports, airports, energy facilities, and water management projects.

(3) Each regional planning agency may recommend to the state land planning agency from time to time areas wholly or partially within its jurisdiction that meet the criteria for areas of critical state concern as defined in this section. Each regional planning agency shall solicit from the local governments within its jurisdiction suggestions as to areas to be recommended. A local government in an area where there is no regional planning agency may recommend to the state land planning agency from time to time areas wholly or partially within its jurisdiction that meet the criteria for areas of critical state concern as defined in this section. If the state land planning agency does not recommend to the commission as an area of critical state concern an area substantially similar to one that has been recommended, it shall respond in writing as to its reasons therefor.

(4) Prior to submitting any recommendation to the commission under subsection (1), the state land planning agency shall give notice to any committee appointed pursuant to s. 380.045 and to all local governments and regional planning agencies that include within their boundaries any part of any area of critical state concern proposed to be designated by the rule, in addition to any notice otherwise required under chapter 120.

(5) After the commission adopts a rule designating the boundaries of and principles for guiding development in an area of critical state concern and within 180 days of such adoption, the local government having jurisdiction may submit to the state land planning agency its existing land development regulations for the area, if any, or shall prepare, adopt, and submit new or modified regulations, taking into consideration the principles set forth in the rule designating the area as well as the provisions of its local government comprehensive plan, if adopted.

(6) If the state land planning agency finds that the land development regulations submitted by a local government comply with the principles for guiding the development of the area specified under the rule designating the area, the state land planning agency shall by rule approve the land development regulations. Such approval, or disapproval pursuant to subsection (8), shall be no later than 60 days after submittal of the land development regulations by the local government. No proposed land development regulation within an area of critical state concern becomes effective under this subsection until the state land planning agency rule approving it becomes effective.

(7) The state land planning agency and any applicable regional planning agency shall, to the greatest extent possible, provide technical assistance to local governments in the preparation of land development regulations for areas of critical state concern.

(8) If any local government fails to submit land development regulations within 180 days after the commission adopts a rule designating an area of critical state concern, or if the regulations submitted do not comply with the principles for guiding development set out in the rule designating the area of critical state concern and with the provisions of an adopted local government comprehensive plan, in either case, within 120 days, the state land planning agency shall submit to the commission recommended land development regulations applicable to that local government's portion of the area of critical state concern. Within 45 days following receipt of the recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without modification, and by rule establish land development regulations applicable to that local government's portion of the area of critical state concern. However, such rule shall not become effective prior to legislative review of an area of critical state concern pursuant to paragraph (1)(c). In the rule, the commission shall specify the

extent to which its land development regulations shall supersede local land development regulations or be supplementary thereto. Notice of any proposed rule issued under this section shall be given to all local governments and regional planning agencies in the area of critical state concern, in addition to any other notice required under chapter 120. The land development regulations adopted by the commission under this section may include any type of regulation that could have been adopted by the local government. Any land development regulations adopted by the commission under this section shall be administered by the local government as part of, or in the absence of, the local land development regulations.

(9) If, within 12 months after the commission adopts a rule designating an area of critical state concern, land development regulations for the area have not become effective under either subsection (6) or subsection (8), the designation of the area as an area of critical state concern terminates. No part of such area may be recommended for redesignation until at least 12 months after the date the designation terminates pursuant to this subsection. The running of the 12-month period subsequent to the initial designation shall be tolled upon challenge pursuant to the provisions of chapter 120 to either the designation of the area of critical state concern or the adoption of land development regulations under subsection (6) or subsection (8).

(10) At any time after the adoption of land development regulations by the commission under this section, a local government may propose land development regulations under subsection (5) which, if approved by the state land planning agency as provided in subsection (6), shall supersede any regulations adopted under subsection (8).

(11) Land development regulations submitted by a local government in an area of critical state concern and approved pursuant to subsection (6) may be amended or rescinded by the local government, but the amendment or rescission becomes effective only upon approval thereof by the state land planning agency. The state land planning agency shall either approve or reject the requested changes within 60 days of receipt thereof. Land development regulations for an area of critical state concern adopted by the commission under subsection (8) may be amended or rescinded by rule by the commission in the same manner as for original adoption.

(12) Upon request of a substantially interested person pursuant to s. 120.54(5), a local government or regional planning agency within the designated area, or the state land planning agency, the commission may by rule remove, contract, or expand any designated boundary. Boundary expansions shall be subject to legislative review pursuant to paragraph (1)(c). No boundary shall be modified without a specific finding by the commission that such changes are consistent with necessary resource protection. The total boundaries of an entire area of critical state concern shall not be removed by the commission unless a minimum time of 1 year has elapsed from the adoption of regulations adopted pursuant to subsection (1), subsection (6), subsection (8), or subsection (10). Before totally removing such boundaries, the commission shall make findings that the regulations adopted pursuant to subsection (1), subsection (6), subsection (8), or subsection (10) are being effectively implemented by local governments within the area of critical state concern to protect the area and that adopted local government comprehensive plans within the area have been conformed to principles for guiding development for the area.

(13) If the state land planning agency determines that the administration of the local land development regulations within the area is inadequate to protect the state or regional interest prior to the repeal of the critical state concern designation pursuant to subsection (15), the state land planning agency may institute appropriate judicial proceedings, as provided in s. 380.11, to compel proper enforcement of the land development regulations.

(14) Any local government which lies either wholly or partially within an area of critical state concern and which has adopted a local government comprehensive plan pursuant to chapter 163 shall conform such plans to the principles for guiding development for the area of critical state concern.

(15) Any rule adopted pursuant to this section designating the boundaries of an area of critical state concern and the principles for guiding development therein shall be repealed by the commission no earlier than 12 months and no later than 3 years after approval by the state land planning agency or adoption by the commission of all land development regulations pursuant to subsection (6), subsection (8), or subsection (10). Any repeal pursuant to this subsection may be limited to any portion of the area of critical state concern. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations pursuant to subsection (6) or subsection (10), upon such regulations being effective for a period of 12 months, and upon adoption or modification by the applicable unit of local government of a local government comprehensive plan pursuant to subsection (14).

(16) No person shall undertake any development within any area of critical state concern except in accordance with this chapter.

(17) If an area of critical state concern has been designated under subsection (1) and if land development regulations for the area of critical state concern have not yet become effective under subsection (6) or subsection (8), a local government may grant development permits in accordance with such land development regulations as were in effect immediately prior to the designation of the area as an area of critical state concern.

(18) Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the approval under subsection (6), or the adoption under subsection (8), of land de-

velopment regulations for the area of critical state concern. If a developer has by his actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(19) In addition to any other notice required to be given under the local land development regulations, the local government shall give notice to the state land planning agency of any application for a development permit in any area of critical state concern, except to the extent that the state land planning agency has in writing waived its right to such notice in regard to all or certain classes of such applications. The state land planning agency may by rule specify additional classes of persons who shall have the right to receive notices of and participate in hearings under this section.

(20) At no time shall a land area be designated an area of critical state concern if the effect of such designation would be to subject more than 5 percent of the land of the state to supervision under this section, except that if any supervision by the state is retained, the area shall be considered to be included within the limitations of this subsection. If 5 percent of the lands of the state are designated as areas of critical state concern pursuant to this section, a redesignation pursuant to paragraph (1)(d) will not be prohibited by this subsection.

(21) Within 30 days after the effective date of the designation of an area of critical state concern pursuant to paragraph (1)(c) or paragraph (1)(d), the state land planning agency shall record a legal description of the boundaries of the area of critical state concern in the public records of the county or counties in which the area of critical state concern is located.

History.—s. 5, ch. 72-317; s. 1, ch. 74-326; s. 1, ch. 76-190; s. 4, ch. 79-73.

380.055 Big Cypress Area.—

(1) SHORT TITLE.—This section shall be known and may be cited as "The Big Cypress Conservation Act of 1973."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Big Cypress Area of Florida. It is the finding of the Legislature that the Big Cypress Area is an area containing and having a significant impact upon environmental and natural resources of regional and statewide importance and that designation of the area as an area of critical state concern is desirable and necessary to accomplish the purposes of "The Florida Environmental Land and Water Management Act of 1972" and to implement s. 7, Art. II of the State Constitution.

(3) DESIGNATION AS AREA OF CRITICAL STATE CONCERN.—The "Big Cypress Area," as defined in this subsection, is hereby designated as an area of critical state concern. "Big Cypress Area" means the area generally depicted on the map entitled "Boundary Map, Big Cypress National Freshwater Reserve, Florida," numbered BC-91,001 and dated November 1971, which is on file and available for public inspection in the office of the National Park Service, Department of the Interior, Washington, D.C., and in the office of the Board of Trustees of the Internal Improvement Trust Fund, which is the area proposed as the Federal Big Cypress National Freshwater Reserve, Florida, together with such contiguous land and water areas as are ecologically linked with the Everglades National Park, certain of the estuarine fisheries of South Florida, or the freshwater aquifer of South Florida, the definitive boundaries of which shall be set in the following manner: Within 120 days following the effective date of this act, the state land planning agency shall recommend definitive boundaries for the Big Cypress Area to the Administration Commission, after giving notice to all local governments and regional planning agencies which include within their boundaries any part of the area proposed to be included in the Big Cypress Area and holding such hearings as the state land planning agency deems appropriate. Within 45 days following receipt of the recommended boundaries, the Administration Commission shall adopt, modify, or reject the recommendation and shall by rule establish the boundaries of the area defined as the Big Cypress Area.

(4) ADOPTION OF LAND DEVELOPMENT REGULATIONS.—The provisions of subsections (5)-(8), (10)-(12), (14), and (17) of s. 380.05 shall not apply to the Big Cypress Area. All other provisions of this chapter shall apply to the Big Cypress Area. Any provision of this chapter to the contrary notwithstanding, the state land planning agency has the right, and its duty shall be, to submit recommended land development regulations applicable to the Big Cypress Area to the Administration Commission concurrent with the boundaries recommended pursuant to subsection (3). The Administration Commission shall either reject the recommendation as tendered or adopt the same by rule with or without modification. The commission shall specify the extent to which regulations adopted pursuant to this section supersede local land development regulations.

(5) ACQUISITION OF BIG CYPRESS NATIONAL PRESERVE.—

(a) It is the intent of the Legislature to provide the means to accomplish an agreement between the State of Florida and the Government of the United States, whereby the state will contribute toward the cost of a program of acquisition of land and water areas and related rights and interests within the area proposed as the Federal Big Cypress National Preserve, Florida. It is the intent of the Legislature that the Governor and the Cabinet begin immediately an acquisition program within the area proposed as the Federal Big Cypress National Preserve, Florida, on behalf of the state pending action by the Government of the United States in the Big Cypress Area.

(b) The Governor and Cabinet shall set aside from the proceeds of the full faith and credit bonds authorized by the Land Conservation Act of 1972, or from other funds authorized, appropriated, or allocated for the acquisition of environmentally endangered lands, or from both sources, $40 million for acquisition of the area proposed as the Federal Big Cypress National Preserve, Florida, or portions thereof.

(c) The Governor and Cabinet are empowered to acquire land and water areas within the Federal Big Cypress National Preserve, Florida, created by Pub. L. No. 93-440, in order to conserve and protect the natural resources and scenic beauty therein and to donate and convey title in land and water areas so acquired or currently owned by the state to the Government of the United States or its agency upon the expenditure by the United States of an amount of federal funds at least equal to the acquisition cost of the land and water areas donated by the state. The intent of this condition for the donation of land and water areas by the state is to insure that the investment of federal funds in the acquisition of land and water areas for the Big Cypress National Preserve will be not less than the investment of state funds in the land and water areas so donated. In making such acquisitions, the Governor and Cabinet shall give priority to those land and water areas within the area proposed as the Federal Big Cypress National Preserve, Florida, which are essential to the integrity of the environment, the destruction of which would cause irreparable damage to the Everglades National Park, the estuarine fisheries of South Florida, or the underlying freshwater aquifer.

(6) FUNCTION OF WATER MANAGEMENT DISTRICT.—It is the finding of the Legislature that the Big Cypress Area, as a water storage and recharge area, is an integral part of the water resources of any water management district of which the Big Cypress Area is or may be a part. It is the legislative intent that there be close cooperation and coordination of efforts between the water management district and the Department of Natural Resources in carrying out the intent and purposes of this section. The Governor and Cabinet as head of the Department of Natural Resources are authorized to delegate to the water management district, or to a board therein, any power authorized in this section to be exercised by the department, and the district or basin is authorized to accept the powers delegated to it and shall have the power and duty to carry out the intent and purposes of this section to the fullest extent possible within its capabilities and resources.

(7) EMINENT DOMAIN WITHIN BIG CYPRESS AREA.—The Governor and Cabinet as the head of the Department of Natural Resources are empowered and authorized to acquire by the exercise of the power of eminent domain any land or water areas and related resources and property, and any and all rights, title and interest in such land or water areas and related resources and other property, lying within the boundaries of the Big Cypress Area. The Legislature finds that the exercise of the power of eminent domain within the Big Cypress Area to accomplish the purposes of this section is necessary and for a public purpose.

(8) INDIAN RIGHTS.—Notwithstanding any provision of this section to the contrary, members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida may continue their usual and customary use and occupancy of lands and waters within the Big Cypress Area, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials. Nothing in this section shall be construed to deny or impair, or authorize the denial or impairment, of any rights granted by or pursuant to chapter 285 relative to Indian reservation and affairs, and the lands of the Seminole Tribe of Florida and of the Miccosukee Tribe of Indians of Florida, as described in s. 285.061(1), shall be excluded from the Big Cypress Area as defined in this section.

History.—ss. 1-5, ch. 73-131; s. 1, ch. 75-175; s. 4, ch. 78-95; s. 89, ch. 79-164.

380.0551 Green Swamp Area; designation as area of critical state concern.—

(1) The Green Swamp Area, the boundaries of which are described in chapter 22F-5, Florida Administrative Code, is hereby designated an area of critical state concern effective July 1, 1979. The state land planning agency, in conjunction with the applicable local governments, shall review suggested changes to the existing boundary in the area immediately to the south of the southern boundary of the City of Clermont in Lake County and the area along the existing southern boundary around Lake Juliana and the City of Polk City in Polk County for possible deletion from the area of critical state concern. The state land planning agency shall report to, and shall make specific recommendations to, the commission relative to any proposed deletion by August 1, 1979. The commission shall take action on the recommendations of the state planning agency no later than October 1, 1979. Chapters 22F-5, 22F-6, and 22F-7, Florida Administrative Code, are hereby adopted and incorporated herein by reference. The boundaries described in chapter 22F-5, Florida Administrative Code, shall be modified pursuant to s. 380.05(12). There shall be appointed a resource planning and management committee as provided in s. 380.045.

(2) The land development regulations contained in chapters 22F-6 and 22F-7, Florida Administrative Code, shall be the land development regulations for the applicable local government's portion of the area of critical state concern until either:

(a) An applicable local government complies with the provisions of s. 380.05(10); or

(b) Such regulations are repealed pursuant to subsection (3).

(3) Chapters 22F-5, 22F-6, and 22F-7, Florida Administrative Code, shall be repealed by the commission no earlier than July 1, 1980, and no later than July 1, 1982. Upon recommendation by the state land planning agency to the commission, any repeal of such rules pursuant to this subsection may be effective only for one local government's portion of the Green Swamp Area. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations pursuant to s. 380.05(6) or (10), upon such regulations being effective for a period of 12 months, and upon adoption or modification by the applicable local government of a local government comprehensive plan pursuant to s. 380.05(14).

History.—s. 5, ch. 79-73.

380.0552 Florida Keys Area; designation as area of critical state concern.—

(1) The Florida Keys Area, the boundaries of which are described in chapter 22F-8, Florida Ad-

ministrative Code, is hereby designated an area of critical state concern effective July 1, 1979. Chapters 22F-8 through 22F-13, Florida Administrative Code, are hereby adopted and incorporated herein by reference. There shall be appointed a resource planning and management committee as provided in s. 380.045.

(2) The land development regulations contained in chapters 22F-9 through 22F-13, Florida Administrative Code, shall be the land development regulations for the applicable local government's portion of the area of critical state concern until either:

(a) An applicable local government complies with the provisions of s. 380.05(10); or

(b) Such regulations are repealed pursuant to subsection (4).

(3) The City of Key West, as incorporated, shall be removed from under the provisions of chapters 22F-8 and 22F-12, Florida Administrative Code, upon approval by the state land planning agency of the land-use element of the local government comprehensive plan pursuant to chapter 163, notwithstanding the 1-year minimum requirement of subsection (4).

(4) Chapters 22F-8 through 22F-13, Florida Administrative Code, shall be repealed by the commission no earlier than July 1, 1980, and no later than July 1, 1982. Upon recommendation by the state land planning agency to the commission, any repeal of such rules pursuant to this subsection may be effective only for one local government's portion of the Florida Keys Area. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations pursuant to s. 380.05(6) or (10), upon such regulations being effective for a period of 12 months, and upon adoption or modification by the applicable local government of a local government comprehensive plan pursuant to s. 380.05(14).

History.—s. 6, ch. 79-73.

380.06 Developments of regional impact.—

(1) "Development of regional impact," as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

(2)(a) The state land planning agency shall recommend to the Administration Commission specific guidelines and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt guidelines and standards to be used in determining whether particular developments shall be presumed to be of regional impact. Such guidelines and standards shall be subject to legislative review as provided in s. 380.10(2). In adopting its guidelines and standards, the Administration Commission shall consider and be guided by:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.

2. The amount of pedestrian or vehicular traffic likely to be generated.

3. The number of persons likely to be residents, employees, or otherwise present.

4. The size of the site to be occupied.

5. The likelihood that additional or subsidiary development will be generated.

6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.

7. The unique qualities of particular areas of the state.

(b) Any modifications to the initial guidelines and standards prescribed pursuant to this subsection shall not modify or abridge rights that have vested pursuant to subsection (12) or development of regional impact status determinations acquired through executed agreements or binding letters issued pursuant to this section, upon which the developer has relied and upon the basis of which he has changed his position prior to the effective date of such rules.

(3) Each regional planning agency may recommend to the state land planning agency from time to time types of development for designation as developments of regional impact under subsection (2). Each regional planning agency shall solicit from the local governments within its jurisdiction suggestions regarding developments to be recommended.

(4)(a) If any developer is in doubt whether his proposed development would be a development of regional impact, whether his rights have vested pursuant to subsection (12), or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (12) would divest such rights, he may request a determination from the state land planning agency. Within 60 days of the receipt of such request, the state land planning agency shall issue a binding letter of interpretation with respect to the proposed development. Binding letters of interpretation issued by the state land planning agency shall bind all state, regional, and local agencies, as well as the developer.

(b) In determining whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (12) would divest such rights, the state land planning agency shall review the proposed change within the context of:

1. Its conformance with any adopted state comprehensive plan and any rules of the state land planning agency;

2. All rights and obligations arising out of the vested status of such development;

3. Permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069, or any of their successor agencies or any appropriate federal regulatory agency; and

4. Any regional impacts arising from the proposed change.

(c) If a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (12) would result in reduced regional impacts, the change shall not divest rights to complete the development pursuant to subsection (12).

(d) Requests for determinations made pursuant to this subsection shall be in writing and in such

form as prescribed by the state land planning agency.

(5) A developer may undertake a development of regional impact if:

(a) The land on which the development is proposed is within the jurisdiction of a local government that has adopted a zoning ordinance under chapter 163 or under appropriate special or local laws or ordinances and the development has been approved under the requirements of this section;

(b) The land on which the development is proposed is within an area of critical state concern and the development has been approved under the requirements of s. 380.05; or

(c) The developer has given written notice to the state land planning agency and to any local government having jurisdiction to adopt zoning or subdivision regulations for the area in which the development is proposed and, after 90 days have passed, no zoning or subdivision regulations have been adopted or designation of area of critical state concern issued.

(6) If the development of regional impact is to be located within the jurisdiction of a local government that has adopted a zoning ordinance, the developer shall file an application for development approval with the appropriate local government having jurisdiction. The application shall contain, in addition to such other matters as may be required, a statement that the developer proposes to undertake a development of regional impact as defined under this section.

(7) The appropriate local government shall give notice and hold a hearing on the application in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance and shall comply with the following additional requirements:

(a) The notice of hearing shall state that the proposed development would be a development of regional impact. However, in no case shall the appropriate local government issue notice of public hearing until the appropriate regional planning agency provides written notice that the application for development approval contains sufficient information for the regional planning agency to discharge its responsibilities under subsection (8) or that any additional information requested will not be supplied by the applicant. A public hearing date shall be set by the appropriate local government at the next scheduled meeting.

(b) If a regional planning agency determines that the application is insufficient, it shall provide in writing to the appropriate local government and the applicant a statement of any additional information desired within 15 working days of the receipt of the application by the regional planning agency. The applicant may supply the information requested by the regional planning agency and shall communicate its intention to do so in writing to the appropriate local government and the regional planning agency within 5 working days of the receipt of the statement requesting such information, or the applicant shall notify the appropriate local government and the regional planning agency in writing that the requested information will not be supplied.

(c) The notice shall be published and given in the usual manner, but at least 60 days in advance of the hearing.

(d) The notice shall be given to the state land planning agency, to the applicable regional planning agency, and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

(e) The appropriate local government shall render a decision on the application within 30 days after the hearing, unless an extension is requested by the developer. The development order shall include findings of fact and conclusions of law consistent with subsection (11).

(f) When a development of regional impact is proposed within the jurisdiction of more than one local government, the local governments, at the request of the developer, may hold a joint public hearing.

(g) If a developer proposes any change to a development of regional impact previously approved pursuant to this section, the local government may, without waiving the right to injunctive relief under s. 380.11, require further review consistent with local procedures. The approved development of regional impact shall not be subject to further review pursuant to this section unless the local government finds a substantial deviation from the terms of the original development order. As used in this section, "substantial deviation" means any change to the previously approved development of regional impact which creates a reasonable likelihood of additional adverse regional impact or any other regional impact created by the change, not previously reviewed by the regional planning agency.

(h) In determining whether a development of regional impact previously approved pursuant to this section is subject to further review pursuant to this section, the local government shall consider the following changes which shall be presumed not to be substantial deviations requiring further review:

1. An increase in the number of dwelling units of not more than 5 percent or 200 dwelling units, whichever is less;

2. A decrease in the number of dwelling units which does not require a major redistribution of density;

3. A decrease in the area set aside for common open space of not more than 5 percent or 50 acres, whichever is less;

4. An increase in the area set aside for common open space;

5. An increase in the floor area proposed for nonresidential use of not more than 5 percent or 10,000 square feet, whichever is less;

6. A decrease in the regional impact of the development, as approved in the local government order;

7. A change required by permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069, or any of their successor agencies, or any appropriate federal regulatory agency.

(i) Unless the presumptions set forth in paragraph (h) are rebutted by clear and convincing evidence offered by the moving party, the development shall not be subject to further development of regional impact review pursuant to this section. The appro-

priate local government shall afford a reasonable opportunity for a developer or other substantially affected party to present evidence to support or rebut such presumptions.

(8) Within 50 days after receipt of the notice required in paragraph (7)(d), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the agency head relating to the proposed regional agency report and recommendations. In preparing its report and recommendations, the regional planning agency shall consider whether, and the extent to which:

(a) The development will have a favorable or unfavorable impact on the environment and natural resources of the region.

(b) The development will have a favorable or unfavorable impact on the economy of the region.

(c) The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.

(d) The development will efficiently use or unduly burden public transportation facilities.

(e) The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

(f) The development complies with such other criteria for determining regional impact as the regional planning agency shall deem appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54.

(9) The state land planning agency shall print biweekly, and mail to any person upon payment of a reasonable charge to cover costs of preparation and mailing, a list of all notices of applications for developments of regional impact that have been filed with the state land planning agency.

(10) If the development is in an area of critical state concern, the local government shall approve it only if it complies with the land development regulations therefor under s. 380.05.

(11) If the development is not located in an area of critical state concern, in considering whether the development shall be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area;

(b) The development is consistent with the local land development regulations; and

(c) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (8) of this section.

(12) Nothing in this section shall limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the effective date of the rules issued by the Administration Commission pursuant to subsection (2). If a developer has, by his actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, shall be sufficient to vest all property rights for the purposes of this subsection, and no action in reliance on, or change of position concerning, such local governmental approval shall be required for vesting to take place.

(b) For the purpose of this act the conveyance of, or agreement to convey, property to the county, state, or local government as a prerequisite to zoning change approval shall be construed as an act of reliance to vest rights as determined under this subsection, provided such zoning change is actually granted by such government.

(13)(a) If a development project includes two or more developments of regional impact, a developer may file a comprehensive development of regional impact application.

(b) If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement shall be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction.

(c) The state land planning agency, by rule, shall establish uniform procedures to implement this subsection.

(14)(a) The state land planning agency shall adopt rules to insure uniform procedural review of developments of regional impact by the state land planning agency and regional planning agencies pursuant to this section. These rules shall be adopted pursuant to chapter 120 and shall include all forms, application content, and review guidelines necessary to implement developments of regional impact review.

(b) Regional planning agencies shall be subject to rules adopted by the state land planning agency; however, a regional planning agency may adopt additional rules not inconsistent with rules adopted by the state land planning agency, to promote efficient review of developments of regional impact applications. Regional planning agency rules shall be adopt-

ed pursuant to chapter 120.

(15) Any proposed hospital which has a designed capacity of not more than 100 beds is exempt from the provisions of this section.

History.—s. 6, ch. 72-317; s. 2, ch. 74-326; s. 5, ch. 75-167; s. 1, ch. 76-69; s. 2, ch. 77-215; s. 148, ch. 79-400.

cf.—s. 380.10 Adoption of standards and guidelines.

380.07 Florida Land and Water Adjudicatory Commission.—

(1) There is hereby created the Florida Land and Water Adjudicatory Commission, which shall consist of the Administration Commission.

(2) Whenever any local government issues any development order in any area of critical state concern, or in regard to any development of regional impact, copies of such orders as prescribed by rule by the state land planning agency shall be transmitted to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order. Within 45 days after the order is rendered, the owner, the developer, an appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. The appellant shall furnish a copy of the notice of appeal to the opposing party, as the case may be, and to the local government which issued the order. The filing of the notice of appeal shall stay the effectiveness of the order and shall stay any judicial proceedings in relation to the development order, until after the completion of the appeal process.

(3) Prior to issuing an order, the Florida Land and Water Adjudicatory Commission shall hold a hearing pursuant to the provisions of chapter 120. The commission shall encourage the submission of appeals on the record made below in cases in which the development order was issued after a full and complete hearing before the local government or an agency thereof.

(4) The Florida Land and Water Adjudicatory Commission shall issue a decision granting or denying permission to develop pursuant to the standards of this chapter and may attach conditions and restrictions to its decisions.

History.—s. 7, ch. 72-317; s. 1, ch. 77-117; s. 3, ch. 77-215; s. 15, ch. 78-95.

380.08 Protection of landowners' rights.—

(1) Nothing in this chapter authorizes any governmental agency to adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of property without the payment of full compensation, in violation of the constitutions of this state or of the United States.

(2) If any governmental agency authorized to adopt a rule or regulation or issue any order under this chapter shall determine that, to achieve the purposes of this chapter, it is in the public interest to acquire the fee simple or lesser interest in any parcel of land, such agency shall so certify to the state land planning agency, the Board of Trustees of the Internal Improvement Trust Fund, and other appropriate governmental agencies. Prior to such agency's acquiring such land, the seller of the land shall file a statement with the Department of State disclosing, for the period from January 1, 1970, to the date of the statement, all financial transactions concerning the land, all parties having a financial interest in any transaction, and the amount of the tax assessment thereon for each year.

(3) If any governmental agency denies a development permit under this chapter, it shall specify its reasons in writing and indicate any changes in the development proposal that would make it eligible to receive the permit.

History.—s. 8, ch. 72-317; s. 2, ch. 75-81.

380.085 Judicial review relating to permits and licenses.—

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this part.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative

and shall not be deemed to abrogate any other remedies provided by law.

History.—ss. 1-6, ch. 78-85.

Note.—Also published at ss. 161.212, 253.763, 373.617, and 403.90.

380.10 Adoption of standards and guidelines.—

(1) The standards and guidelines adopted by the Administration Commission pursuant to s. 380.06(2) shall be transmitted to the Secretary of the Senate and the Clerk of the House of Representatives for presentation to the regular session of the Legislature. The initial standards and guidelines shall be approved or disapproved by concurrent resolution of the 1973 Legislature[1]or be modified by law, and, upon concurrence by both houses of the Legislature, the provisions of the standards and guidelines shall become effective as the initial standards and guidelines of the Administration Commission. In the event the 1973 Legislature disapproves the initial standards and guidelines submitted to it pursuant to s. 380.06(2), the Administration Commission shall adopt by rule new standards and guidelines and submit said standards and guidelines to the Legislature.

(2) Thereafter, any change made by the Administration Commission in the guidelines and standards relating to developments of regional impact which have been approved by the Legislature shall be submitted to the next regular session of the Legislature and shall not become effective until approved by that Legislature. However, the Administration Commission shall have the authority to make any change which it designates as an emergency act that is vital to the health, safety, and welfare of the citizens of more than one county. Such an emergency change shall be effective upon its adoption by the commission, but the continuance of this effectiveness beyond the next regular session of the Legislature shall be subject to approval by that Legislature, notwithstanding the provisions of chapter 120.

History.—s. 10, ch. 72-317; s. 1, ch. 73-39; s. 4, ch. 78-95.

[1]Note.—Initial standards and guidelines approved. HCR No. 1039, filed in office of Secretary of State June 14, 1973.

380.11 Enforcement.—The Department of Community Affairs, all state attorneys, and all counties and municipalities are hereby authorized to bring an action for injunctive relief, both temporary and permanent, against any person or developer found to be in violation of the provisions of this act, or any rules, regulations, or orders issued thereunder.

History.—s. 3, ch. 74-326; s. 129, ch. 79-190.

380.12 Rights unaffected by chapter 75-22, Laws of Florida.—Nothing in chapter 75-22, Laws of Florida, shall alter or affect rights previously vested under this chapter.

History.—s. 23, ch. 75-22.

PART II

COASTAL PLANNING AND MANAGEMENT

380.19 Department of Environmental Regulation.—

(1) It is the intent of the Legislature that the environmental aspects of the coastal areas of this state have attracted a high percentage of permanent population and visitors and that this concentration of people and their requirements has had a serious impact on the natural surroundings and has become a threat to the health, safety, and general welfare of the citizens of this state. It is further determined that a coordinated effort of interested federal, state, and local agencies of government is imperative to plan for and effect a solution to this threat, and that the creation of an advisory council will aid in accomplishing this purpose and in the implementation of s. 7, Art. II of the State Constitution, and s. 20.03(9).

(2) As used in this section:

(a) [1]["Department" means the Department of Environmental Regulation.]

(b) "Coastal zone" means that area of land and water from the territorial limits seaward to the most inland extent of maritime influences.

(c) "Interested agency" means any unit of state or local government administering laws, regulations, or ordinances designed to manage an environmental aspect of the coastal zone.

[2](3) There is created within the Department of Natural Resources the Florida Coastal Coordinating Council, to consist of the executive director of the Department of Natural Resources, who shall be chairman, the executive director of the Board of Trustees of the Internal Improvement Trust Fund, and the executive director of the Department of Pollution Control, all of whom shall serve ex officio on the council and who shall be considered as the base members of the council. Additional members from interested state or local units of government may serve on the council by unanimous request and at the pleasure of its base members.

(4) The duties of the [1][department] shall be:

(a) To employ a staff director and such other personnel as may be necessary to aid in carrying out the work of the [1][department];

(b) To conduct, direct, encourage, coordinate, and organize a continuous program of research into problems relating to the coastal zone;

(c) To review, upon request, all plans and activities pertinent to the coastal zone and to provide coordination in these activities among the various levels of government and areas of the state;

(d) To develop a comprehensive state plan for the protection, development, and zoning of the coastal zone, making maximum use of any federal funding for this purpose;

(e) To provide a clearing service for coastal zone matters by collecting, processing, and disseminating pertinent information relating thereto;

(f) To make use of pertinent data as may be secured from departments, boards, commissions, officials, agencies, and institutions, except such records

or information as may be required by law to be confidential; and

(g) To provide such other services as any interested agency may request.

All interested agencies are requested to make available such records, data, information, and statistics as are necessary or proper for the operation of the [1][department].

(5)(a) Any research project or any form of empirical study prepared by the [1][department] or its staff which is wholly or partially financed by state funds shall be reported to the office of the Governor or his designee, with two copies of the report each to the Speaker of the House, the President of the Senate, and the library maintained by the Joint Legislative Management Committee.

(b) Reports shall be submitted 30 days prior to commencement of the project and on January 1 of each year thereafter until termination of the project. Upon conclusion of the project a final report shall be submitted.

(c) All reports shall contain a description of the project or study conducted. The description shall include the source of funds and the duration, purpose, and location of each project or study. Final reports shall also include all findings and conclusions of the research or study.

(d) Nothing in this section shall require the filing of reports on projects that have been classified due to national defense or security.

(e) The Joint Legislative Management Committee shall make report forms available and keep records of all reports submitted.

(6) The [1][department] is to be advisory to any interested agency requesting its service in matters relating to the coastal zone to provide coordination of efforts and to avoid duplication of effort in the interest of governmental efficiency.

(7) The [1][department] is authorized to make and shall adopt rules for the implementation of this section in accordance with the provisions of the Administrative Procedure Act, chapter 120.

History.—ss. 1-7, ch. 70-259; s. 2, ch. 71-137; s. 20, ch. 72-178.

[1]**Note.**—Bracketed language substituted for a reference to the Coastal Coordinating Council. See s. 18, ch. 75-22, which transferred the powers, duties, and functions of the council to the Division of Resource Management of the Department of Natural Resources; also see s. 4, ch. 77-306, which transferred the "powers, duties, personnel, and functions . . . described in s. 370.0211(4)(a)-(g)" to the Department of Environmental Regulation.

[2]**Note.**—The Coastal Coordinating Council was abolished and its powers, duties, and functions transferred. See s. 18, ch. 75-22.

Note.—Former s. 370.0211.

380.20 Short title.—Sections 380.21-380.25 may be cited as the "Florida Coastal Management Act of 1978."

History.—s. 5, ch. 78-287.

380.21 Legislative intent.—

(1) The Legislature finds that:

(a) The coast is rich in a variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources, including, but not limited to, energy facilities, as that term is defined in s. 304(5) of the Federal Coastal Zone Management Act of 1972, of immediate potential value to the present and future well-being of the residents of this state.

(b) It is in the state and national interest to protect, maintain, and develop these resources through coordinated management.

(c) State land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development.

(2) The Legislature therefore grants authorization for the Department of Environmental Regulation to compile a program based on existing statutes and existing rules and submit an application to the appropriate federal agency as a basis for receiving administrative funds under the Federal Coastal Zone Management Act of 1972. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes or provide additional regulatory authority to any governmental body except as otherwise provided by s. 380.23. The enactment of this legislation shall not in any other way affect any existing statutory or regulatory authority.

History.—s. 6, ch. 78-287.

380.22 Lead agency authority and duties.—

(1) The Department of Environmental Regulation shall be the lead agency pursuant to 16 U.S.C. s. 1451, et seq., and shall compile and submit to the appropriate federal agency an application to receive funds pursuant to s. 306 of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464). The application for federal approval of the state's program shall include program policies that only reference existing statutes and existing implementing administrative rules. In the event the application or the program submitted pursuant to this subsection is rejected by the appropriate federal agency because of failure of this act, the existing statutes, or the existing implementing administrative rules to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended, no state coastal management program shall become effective without prior legislative approval. The coastal management application or program may be amended from time to time to include changes in statutes and rules adopted pursuant to statutory authority other than this act.

(2) The Department of Environmental Regulation shall also have authority to:

(a) Establish advisory councils with sufficient geographic balance to insure statewide representation.

(b) Coordinate central files and clearinghouse procedures for coastal resource data information and encourage the use of compatible information and standards.

(c) Provide to the extent practicable financial, technical, research, and legal assistance to effectuate the purposes of this act.

(d) Review rules of other affected agencies to determine consistency with the program and to report any inconsistencies to the Legislature.

(3) The Secretary of Environmental Regulation shall adopt by rule a specific formula for allocation of federal funds for the administration of the program.

History.—s. 7, ch. 78-287.

380.23 Federal consistency.—

(1) When an activity requires a permit or license subject to federal consistency review, the issuance or renewal of a state license shall automatically constitute the state's concurrence that the licensed activity or use, as licensed, is consistent with the federally approved program. When an activity requires a permit or license subject to federal consistency review, the denial of a state license shall automatically constitute the state's finding that the proposed activity or use is not consistent with the state's federally approved program, unless the United States Secretary of Commerce determines that such activity or use is in the national interest as provided in the Federal Coastal Zone Management Act of 1972.

(2) Where federal licenses, permits, activities, and projects listed in subsection (3) are subject to federal consistency review and are seaward of the jurisdiction of the state, or there is no state agency with sole jurisdiction, the Department of Environmental Regulation shall be responsible for the consistency review and determination; however, the department shall not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. All decisions and determinations under this subsection shall be appealable to the Governor and Cabinet.

(3) Consistency review shall be limited to review of the following activities, uses, and projects to ensure that such activities and uses are conducted in accordance with the state's coastal management program:

(a) Federal development projects and activities of federal agencies which significantly affect coastal waters and the adjacent shorelands of the state.

(b) Federal assistance projects which significantly affect coastal waters and the adjacent shorelands of the state and which are reviewed as part of the review process developed pursuant to OMB Circular A-95.

(c) Federally licensed or permitted activities affecting land or water uses when such activities are in or seaward of the jurisdiction of local governments required to develop a coastal zone protection element as provided in s. 380.24 and when such activities involve:

1. Permits required under ss. 10 and 11 of the Rivers and Harbors Act of 1899, as amended.

2. Permits required under s. 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

3. Permits required under ss. 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.

4. Permits required under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. ss. 1401, 1402, 1411-1421, and 1441-1444.

5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C. s. 401, as amended.

6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1801-1812, as amended, or 33 U.S.C. s. 419, as amended.

7. Permits and licenses required under 43 U.S.C. s. 717 for construction and operation of interstate gas pipelines and storage facilities.

8. Permits required under 15 U.S.C. s. 717, as amended, for construction and operation of facilities needed to import and export natural gas.

9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), as amended.

10. Permits and licenses required for drilling and mining on public lands.

11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C. s. 1331, as amended, of exploration, development, and production plans.

12. Permits for pipeline rights of way for oil and gas transmissions.

13. Permits and licenses required for deep-water ports under 33 U.S.C. s. 1503, as amended.

(4) The department shall by rule adopt procedures for the expeditious handling of emergency repairs to existing facilities for which consistency review is required pursuant to subsections (1), (2), and (3).

(5) In any coastal management program submitted to the appropriate federal agency for its approval pursuant to this act, the department shall specifically waive its right to determine the consistency with the coastal management program of all federally licensed or permitted activities not specifically listed in subsection (3).

(6) Agencies shall not review for federal consistency purposes an application for a federally licensed or permitted activity if the activity is vested, exempted, or excepted under its own regulatory authority.

(7) The department shall review the items listed in subsection (3) to determine if in certain circumstances such items would constitute minor permit activities. If the department determines that the list contains minor permit activities, it may by rule establish a program of general concurrence pursuant to federal regulation which shall allow similar minor activities, in the same geographic area, to proceed without prior department review for federal consistency.

(8) This section shall not apply to the review of federally licensed or permitted activities for which permit applications are filed with the appropriate federal agency prior to approval of the state coastal management program by the appropriate federal agency pursuant to 16 U.S.C. s. 1451, et seq.

History.—s. 8, ch. 78-287.

380.24 Local government participation.— Units of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule pursuant to s. 403.817 constitute the dominant plant community, shall develop a coastal zone protection element pursuant to s. 163.3177. Such units of local government shall be eligible to receive technical assistance from

the state in preparing coastal zone protection elements and shall be the only units of local government eligible to apply to the department for available financial assistance. Local government participation in the coastal management program authorized by this act shall be voluntary.

History.—s. 9, ch. 78-287.

380.25 Previous coastal zone atlases rejected.

—The legislative draft of the coastal management program submitted to the Legislature by the department dated March 1, 1978, and the previously prepared coastal zone atlases are expressly rejected as the state's coastal management program. The department shall not divide areas of the state into vital, conservation, and development areas.

History.—s. 10, ch. 78-287.

TITLE XXVIII

PUBLIC HEALTH

CHAPTER 381

PUBLIC HEALTH; GENERAL PROVISIONS

381.031 Duties and powers of the Department of Health and Rehabilitative Services.—

(1) It shall be the duty of the Department of Health and Rehabilitative Services to:

(a) Formulate general policies affecting the public health of the state.

(b) Supervise generally the enforcement of laws, rules and regulations relating to sanitation, control of communicable diseases among humans and from animals to humans, quarantine and the general health of the state.

(c) Cooperate with and accept assistance from the Surgeon General of the United States Public Health Service and other appropriate federal officials in the enforcement of quarantine regulations, and in the prevention and suppression of communicable diseases.

(d) Declare, enforce, modify, and abolish quarantine as the circumstances indicate.

(e) Provide for a thorough investigation and study of the frequency of occurrence, causes and modes of propagation and means of prevention, control, and cure of diseases among humans, and from animals to humans, especially communicable diseases, epidemic and otherwise.

(f) Provide for the dissemination of information to the public relative to the prevention and control of communicable diseases among humans and from animals to humans and the promotion and protection of the physical and mental health of the people of the state by means of printed matter, radio, lectures, exhibits, and other media.

(g) Adopt, promulgate, repeal, and amend rules

consistent with law regulating:

1. Control of communicable diseases and the quarantine or destruction of domestic pets or wild animals infected with rabies, or which have been exposed to or are known vectors of rabies.

2. Prevention and control of public health nuisances.

3. Sanitary practices relating to drinking water made accessible to the public; watersheds used for public water supplies; the disposal of excreta, sewage, or other wastes; the disposal of garbage and refuse; plumbing; rodent control; drainage and filling in connection with the control of arthropods of public health importance; the production, handling, processing, and sale of food products and drinks, including milk, dairies, and milk plants; canning plants, shellfish dealing and handling establishments, restaurants, and all other places serving food and drink to the public; toilets and washrooms in all public places and places of employment; factories; trailer, tourist, recreation, and other camps offering accommodations to the public; swimming pools and bathing places; state, county, municipal, and private institutions serving the public; jointly with the State Board of Education, public and privately owned schools; vehicles offering transportation to the public; all places used for the incarceration of prisoners and inmates of state institutions for the mentally ill; and any other condition, place, or establishment necessary for the control of communicable diseases or the protection and safety (light and ventilation) of the public health.

4. Control of arthropods of public health importance.

5. Qualifications of operators of milk plants, water purification plants, sewage treatment plants, and swimming pools.

6. Segregation, destruction, quarantine, and control of all pigeons or psittacine birds having, or suspected of having, diseases communicable to man.

7. Nursing homes.

8. The practice of midwifery.

9. Bedding inspection.

10. The disposal of dead bodies.

11. The execution of any other purpose or intent of the laws enacted for the protection of the public health of Florida.

Regulations adopted under subparagraphs 2., 3., 4., 5., and 10. of this paragraph shall be called and known as the "Sanitary Code of Florida."

(h) Carry out the duties imposed by this subsection; however, nothing herein shall be construed to authorize the department to require a permit or license, unless such requirement is specifically provided by law.

(2) The department may advise and assist local departments of health and education in the establishment of mental health services, particularly in connection with maternal and child health conferences and in the schools of the state, and may conduct such other activities as may be required in the development of mental health services as related to the public health.

(3) The department may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

(a) To enforce its rules and regulations.

(b)1. To make application for injunction to the proper circuit court and the judge of said court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or both restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter, such injunction to issue without bond; provided, however, no temporary injunction without bond shall be issued except after a hearing of which the respondent or respondents has or have been given not less than 7 days' prior notice, and no temporary injunction without bond, which shall limit or prevent operations of an industrial, manufacturing, or processing plant shall be issued, unless at the hearing, it shall be made to appear by clear, certain, and convincing evidence that irreparable injury will result to the public from the failure to issue the same.

2. In event of the issue of a temporary injunction or restraining order hereunder without bond, then this state, in event said injunction or restraining order was improperly, erroneously, or improvidently granted, shall be liable in damages and to the same extent as if said injunction or restraining order had been issued upon application of a private litigant instead of a public litigant, and the state hereby waives its sovereign immunity and consents to be sued in any such case.

3. In addition to the authority granted by this law, the department may commence and maintain all proper and necessary actions and proceedings to enjoin and abate nuisances dangerous to the health of persons, fish, and livestock.

(c) To compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.

(d) To protect and preserve the public health.

It may defend all actions and proceedings involving its powers and duties.

History.—s. 2, ch. 29834, 1955; ss. 1-3, ch. 57-787; s. 1, ch. 67-436; ss. 19, 35, ch. 69-106; s. 141, ch. 71-377; s. 54, ch. 77-147; s. 1, ch. 77-258; s. 1, ch. 77-288; s. 19, ch. 78-95.

381.061 Additional duties of Department of Health and Rehabilitative Services.—It shall be the duty of the Department of Health and Rehabilitative Services to:

(1) Act as state registrar of vital statistics.

(2) Administer and enforce laws, enforce rules and regulations relating to sanitation, control of communicable diseases in humans and from animals to humans, and the general health of the people of Florida.

(3) Supervise and cooperate with municipal and county officials and employees in enforcing the state health laws, rules and regulations promulgated by the department and consistent with local health regulations and ordinances.

(4) Cooperate with and assist federal health officers in the enforcement of public health laws and regulations.

(5) Declare, enforce, modify, and abolish quarantine as the circumstances may indicate.

(6) Cooperate with other appropriate state, county, municipal, and private boards, departments, or organizations for the improvement and preservation of the public health.

(7) Prepare sanitary and public health rules and regulations and legislation.

(8) Observe diligently the sanitary and public health conditions throughout the state and take necessary precautions to protect it in its sanitary and public health relations with other states and countries.

(9) Perform any other duties prescribed by the law.

History.—s. 2, ch. 29834, 1955; ss. 2, 3, ch. 67-371; s. 143, ch. 71-377; s. 55, ch. 77-147.

381.062 Eminent domain.—Whenever the [1]Division of Health of the Department of Health and Rehabilitative Services shall find it necessary to acquire private property for the use of said [1]division and to be occupied by said division, the said [1]division is empowered to exercise the power of eminent domain and to proceed to condemn said property in the manner provided by chapter 73.

History.—s. 1, ch. 57-232; ss. 19, 35, ch. 69-106.

[1]Note.—See s. 3, ch. 75-48, which abolished the Division of Health and assigned its functions to the Department of Health and Rehabilitative Services.

381.071 Regulations and ordinances superseded.—The provisions of the rules and regulations adopted and promulgated by the Department of Health and Rehabilitative Services under the provisions of this chapter shall, as to matters of public health, supersede all regulations enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that no provision of this chapter shall be construed as altering or superseding any of the provisions set forth in chapters 502 and 503 or any rule or regulation adopted under the authority of said chapters. Any rules and regulations adopted by the Department of Health and Rehabilitative Services under the provisions of this chapter relating to the sanitary practices for the production, handling, and processing of milk, to dairies, and to milk plants shall be only for the purpose of carrying out the provisions of subsection 502.211(3).

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 1, ch. 76-235; s. 56, ch. 77-147.

381.081 Presumptions.—The authority, action and proceedings of the Department of Health and Rehabilitative Services in enforcing the rules and regulations adopted by it under the provisions of this chapter shall be regarded as judicial in nature and treated as prima facie just and legal.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 57, ch. 77-147.

381.091 Construction, rules and regulations.—Nothing contained in the rules and regulations adopted by the Department of Health and Rehabilitative Services under the provisions of this chapter shall be construed as limiting any duty or power of the department provided by the statute laws of Florida.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 58, ch. 77-147.

381.101 Municipal regulations and ordinances.—Any municipality may enact, in manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules and regulations adopted by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 59, ch. 77-147.

381.111 Power to enforce.—The Department of Health and Rehabilitative Services or any officer or agent of the department designated for the purpose may enforce any of the provisions of this chapter or any rule and regulation promulgated by the department under the provisions of this chapter and if necessary may appear before any magistrate empowered to issue warrants in criminal cases and request the issuance of a warrant. Said magistrate shall issue a warrant directed to any sheriff, deputy, or police officer to assist in any way to carry out the purpose and intent of this chapter.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 60, ch. 77-147.

381.121 Enforcement; city and county officers to assist.—It shall be the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the Department of Health and Rehabilitative Services or any of its agents in the enforcement of the state health laws and the rules and regulations promulgated under the provisions of this chapter.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 61, ch. 77-147.

381.171 Purchase, lease, and sale of real property.—

(1) The Department of Health and Rehabilitative Services may purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the department, subject to available appropriations therefor, when the acquisition is necessary to the efficient accomplishment of the purposes of this chapter.

(2) The department may sell, lease, or convey in the name of the state for the use and benefit of the department, any land and buildings owned by the state for the use and benefit of the department which lands and buildings are no longer necessary for carrying out the purposes of this chapter.

(3) Title is confirmed in the Department of Health and Rehabilitative Services to any real estate which has heretofore been conveyed or attempted to be conveyed to the former Division of Health of the department.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 64, ch. 77-147.
cf.—s. 253.03 Title to state-owned lands.

381.201 Application for and acceptance of gifts or grants.—The Department of Health and Rehabilitative Services may apply for and accept any funds, grants, gifts, or services made available to it by any agency or department of the federal government or any other agency or private individual in aid of any present or future health program undertaken, maintained, or proposed. All moneys received under the provision of this section shall be deposited

in the State Treasury and shall be disbursed in the same manner as other funds of the department.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 65, ch. 77-147.

381.211 Disposition of equipment and material; transfers to county health departments.—When the Department of Health and Rehabilitative Services purchases equipment and materials in furtherance of its public health programs from state or federal or state and federal funds for primary use and location in a county health department of this state, it is authorized to transfer title to such equipment and materials to the board of county commissioners of the county where said county health department is located. All property so transferred shall be accounted for as provided in chapter 274.

History.—s. 2, ch. 29834, 1955; s. 2, ch. 61-46; ss. 19, 35, ch. 69-106; s. 127, ch. 77-104.

381.231 Report of communicable diseases to department.—

(1) Any attending practitioner, licensed in Florida to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or suspects the existence of a disease communicable among humans or from animals to humans shall immediately report the fact to the Department of Health and Rehabilitative Services.

(2) Periodically the department shall issue a list of diseases determined by it to be communicable within the meaning of this chapter and shall furnish a copy of said list to the practitioners listed in subsection (1).

(3) Reports required by this section shall be made on forms furnished by the department.

(4) Information submitted in reports required by this section is confidential and shall be made public only when necessary to public health. No report so submitted shall be considered a violation of the confidential relationship between practitioner and patient.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 67, ch. 77-147.

381.241 Quarantine regulations; commerce or travel.—No health regulation which restricts travel or trade within the state shall be promulgated or enforced in this state except by authority of the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 68, ch. 77-147.

381.261 Supervision; private and certain public water systems and individual sewage disposal systems.—The Department of Health and Rehabilitative Services and its agents shall have general supervision and control over all private water systems, public water systems not covered or included in the Florida Safe Drinking Water Act (ss. 403.850-403.864) and individual sewage disposal systems and over those aspects of the public water supply program for which it has the duties and responsibilities provided for in ss. 403.862-403.864.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 69, ch. 77-147; s. 16, ch. 77-337.

381.272 Individual sewage disposal facilities; installation; conditions.—

(1) Requirements of certain rules and regulations of the Department of Health and Rehabilitative Services to the contrary notwithstanding, individual sewage disposal facilities may be installed under conditions as described in subsections (2)-(6).

(2) Subdivisions of 50 or fewer lots, each lot having a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with private well and individual sewage disposal, provided satisfactory ground water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of chapter 10D-6, Florida Administrative Code, are met. Further, it is not the intention of this act to allow sequential development of contiguous subdivisions under single ownership.

(3) Subdivisions of 100 or fewer lots, each lot having a minimum area of at least one-third acre and either a minimum dimension of 75 feet or a mean of at least 75 feet of the side bordering the street and the distance formed by a line drawn parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a public water system and individual sewage disposal, provided all distance and setback, soil condition, water table elevation and other related requirements of chapter 10D-6, Florida Administrative Code, are met. Additionally, sequential development of contiguous subdivisions under single ownership is prohibited.

(4) Subsections (2) and (3) shall not apply to areas where a municipal-owned or investor-owned public sewerage system is available contiguous to the proposed subdivision or within one-fourth mile thereof with public right-of-way accessibility.

(5) The Department of Health and Rehabilitative Services may adopt variances in hardship cases which may be less restrictive than the provisions specified in subsections (2)-(4).

(6) The Legislature hereby declares that it is the policy of this state to require that all individual sewage disposal systems developed under the provisions of this act shall connect to a public-owned or investor-owned sewerage system within 365 days after notification that such a system is available. The developer of any lot that is developed under the provisions of this act shall provide advance notice of this requirement to the purchaser of said lot.

(7) Notwithstanding any other provisions of this chapter, residential subdivisions with a public water system may utilize individual sewage disposal facilities, provided there are no more than four lots per acre and that all distance and setback, soil condition, water table elevation, and other related requirements which are generally applicable to the use of individual sewage disposal systems are met.

(8) Notwithstanding any other provisions of this chapter, all undeveloped residential lots platted prior to 1972, unless public sewage disposal facilities are available, may be developed with a minimum distance of 75 feet between any private well and an individual sewage disposal system, or with a public water supply and an individual sewage disposal system, provided that all soil condition, water table ele-

vation, and other nondistance-related requirements of Chapter 10D-6, Florida Administrative Code, are met and that such development is done only after written notification of such intended development to the health department of the county in which such lots are situated.

(9) In the case of the installation of organic waste composting toilets or toilet systems, only the provisions of subsections (1), (2), and (3) shall apply.

(10) With respect to the installation of organic waste composting toilets or toilet systems, the Department of Health and Rehabilitative Services may adopt rules less restrictive than those for conventional systems required pursuant to this section, provided that all soil conditions, water table elevation, and other related requirements which are generally applicable to the safe and environmentally sound use of individual sewage disposal systems are met.

History.—ss. 1-6, ch. 75-145; s. 72, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 77-308; s. 1, ch. 78-430; s. 1, ch. 79-45.

381.291 Corrective orders; private and certain public water systems and individual sewage disposal systems.—When the Department of Health and Rehabilitative Services or its agents, through investigation, find that any private water system, public water system not covered or included in the Florida Safe Drinking Water Act (ss. 403.850-403.864) or individual sewage disposal system constitutes a nuisance or menace to the public health, it may issue an order requiring the owner to correct the improper condition.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 74, ch. 77-147; s. 17, ch. 77-337.

381.311 Regulations for municipal and county sanitation.—The Department of Health and Rehabilitative Services shall supervise and regulate municipal and county sanitation and shall exercise general supervision over the work of local health authorities. Local health officials and other appropriate local officials concurrently with the department shall enforce the provisions of the State Sanitary Code and other public health rules and regulations and of such local ordinances and sanitary regulations as may be consistent with it.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 76, ch. 77-147.

381.321 Laboratories.—

(1) The Department of Health and Rehabilitative Services may establish and maintain, in suitable and convenient places in the state, laboratories for microbiological and chemical analyses and any other purposes it determines necessary for the protection of the public health.

(2) The Department of Health and Rehabilitative Services shall contract with the Department of Natural Resources for laboratory services related to, but not limited to, the regulation of shellfish.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 3, ch. 77-113; s. 77, ch. 77-147.

381.331 Analyses; human, animal bodies.—The Department of Health and Rehabilitative Services shall have an analysis made of any part of the contents of the human body submitted by any Florida physician, state attorney, or sheriff or of any part of the contents of the body of any animal submitted by any agent of the State Livestock Board, any licensed Florida veterinarian or sheriff to determine whether they may contain any foreign matter or poisonous drugs and shall furnish a certificate as to the results of the analysis to the person requesting the analysis.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 24, ch. 73-334; s. 78, ch. 77-147.

381.341 Insulin; purchase, distribution.—The Department of Health and Rehabilitative Services shall purchase and distribute insulin through its agents or other appropriate agent of the state or Federal Government in any county or municipality in the state to any bona fide resident of Florida suffering from diabetes or kindred disease requiring insulin in its treatment who makes application for and furnishes proof of his financial inability to purchase in accordance with the rules and regulations promulgated by the department concerning the distribution of insulin.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 79, ch. 77-147.

381.351 Department to assume control in certain cases.—Whenever the Department of Health and Rehabilitative Services investigates any suspicious case or cases of disease and determines the disease is contagious or infectious and a menace to public health, it shall assume charge and management, and all necessary and legitimate expenses attendant upon the case or cases of disease after charge and management has been assumed by the department may be paid out of funds appropriated to the department under provisions of the general appropriations act on vouchers approved as provided by this chapter.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 80, ch. 77-147.

381.3712 Cancer control and research.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Cancer Control and Research Act."

(2) LEGISLATIVE INTENT.—It is the finding of the Legislature that:

(a) Advances in scientific knowledge have led to the development of preventive and therapeutic capabilities in the control of cancer. Such knowledge and therapy must be made available to all citizens of this state through educational and therapeutic programs.

(b) The present state of our knowledge concerning the prevalence, cause or associated factors, and treatment of cancer have resulted primarily from a vast federal investment into basic and clinical research, some of which is expended in Florida. These research activities must continue, but programs must be established to extend this knowledge in preventive measures and patient treatment throughout the state.

(c) Research in cancer has implicated the environment as a causal factor for many types of cancer, i.e. sunshine, X rays, diet, smoking, etc., and programs are needed to further document such cause and effect relationships. Proven causes of cancer should be publicized and be the subject of educational programs for the prevention of cancer.

(d) An effective cancer control program would

mobilize the scientific, educational, and medical resources that presently exist into an intense attack against this dread disease.

(3) DEFINITIONS.—The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

(a) "Board" means the Florida Cancer Control and Research Advisory Board, which is an advisory body appointed to function on a continuing basis for the study of cancer and which recommends solutions and policy alternatives to the Secretary of Health and Rehabilitative Services and which is established by this section.

(b) "Cancer" means all malignant neoplasms, regardless of the tissue of origin, including lymphoma and leukemia.

(c) "Fund" means the Florida Cancer Control and Research Fund established by this section.

(d) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.

(e) "Secretary" means the Secretary of Health and Rehabilitative Services of the Department of Health and Rehabilitative Services.

[1](4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY BOARD; CREATION; COMPOSITION.—

(a) There is created within the Department of Health and Rehabilitative Services the "Florida Cancer Control and Research Advisory Board." The board shall consist of 24 members and a chairperson, all of whom shall be residents of this state. All members except those appointed by the Speaker of the House of Representatives and the President of the Senate shall be appointed by the Governor. One member shall be a representative of the American Cancer Society; one member shall be a representative of the Association of Florida Tumor Programs Directors; one member shall be a representative of the Florida Tumor Registrars Association; one member shall be a representative of the Comprehensive Cancer Center of the State of Florida; one member shall be a representative of the Department of Health and Rehabilitative Services; one member shall be a representative of the Florida Nurses Association; one member shall be a representative of the Florida Osteopathic Association; one member shall be a representative of the American College of Surgeons; one member shall be a representative of the School of Medicine of the University of Miami; one member shall be a representative of the College of Medicine of the University of Florida; one member shall be a representative of the College of Medicine of the University of South Florida; one member shall be a representative of the Florida Society of Clinical Oncology; one member shall be a representative of the Florida Medical Association; one member shall be a member of the Florida Pediatric Society; one member shall be a representative of the Florida Radiological Society; three members shall be representatives of the general public acting as consumer advocates; one member shall be a member of the House of Representatives appointed by the Speaker of the House; one member shall be a member of the Senate appointed by the President of the Senate; one member shall be a representative of the Department of Education; one member shall be a representative of the Florida Dental Association; one member shall be a representative of the Florida Hospital Association; one member shall be a representative of the Association of Community Cancer Centers; and one member shall be a representative of the Papanicolaou Cancer Research Institute.

(b) The terms of the members shall be 4 years from their respective dates of appointment, except that the initial appointments shall be made in such a manner that seven members shall be appointed for terms of 4 years, six for terms of 3 years, six for terms of 2 years, and six for terms of 1 year.

(c) A chairperson shall be appointed by the Governor for a term of 2 years. The chairperson shall appoint an executive committee of no fewer than three persons to serve at the pleasure of the chairperson. This committee will prepare material for the board but make no final decisions.

(d) The board shall meet no less than semiannually at the call of the chairperson or, in his absence or incapacity, at the call of the Secretary of Health and Rehabilitative Services. Thirteen members shall constitute a quorum for the purpose of exercising all of the powers of the board. A vote of the majority of the members present shall be sufficient for all actions of the board.

(e) The board members shall serve without pay. Notwithstanding the provisions of ss. 20.05(3) and 112.061 to the contrary, the board members shall not be reimbursed for travel or expenses.

(f) No member of the board shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.

(g) The board shall have the power to prescribe, amend, and repeal bylaws governing the manner in which the business of the board is conducted.

(h) The board shall advise the Secretary of Health and Rehabilitative Services with respect to cancer control and research in Florida.

(i) The board shall approve each year a program for cancer control and research to be known as the "Florida Cancer Plan" which shall be consistent with the State Health Plan developed by the State Health Coordinating Council and integrated and coordinated with existing programs in this state.

(j) The board shall formulate and recommend to the Secretary of Health and Rehabilitative Services a plan for the care and treatment of persons suffering from cancer and recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in Florida. The board may recommend to the secretary the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The secretary shall consider the plan in developing departmental priorities

and funding priorities and standards under chapter 395.

(k) The board shall be responsible for including in the Florida Cancer Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. Committees shall be formed by the board so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.
2. Cancer prevention.
3. Cancer detection.
4. Cancer patient management: treatment, rehabilitation, terminal care, and other patient-oriented activities.
5. Cancer education: lay and professional.
6. Unproven methods of cancer therapy: quackery and unorthodox therapies.
7. Investigator-initiated project research.

(l) In order to implement in whole or in part the Florida Cancer Plan, the board shall recommend to the secretary the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.

(m) The board shall have the responsibility to advise the secretary on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(n) The board may recommend to the secretary rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(o) The board shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper treatment of cancer.

(p) On January 15 of each year, the board shall report to the Governor and to the Legislature.

(5) RESPONSIBILITIES OF THE SECRETARY.—

(a) The secretary, after consultation with the board, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.

(b) The secretary shall provide such staff, information, and other assistance as the secretary may deem necessary for the completion of the board's responsibilities.

(c) The secretary, after consultation with the board, may adopt rules necessary for the implementation of this section.

(d) The secretary, after consultation with the board, shall make rules specifying to what extent and on what terms and conditions cancer patients of the state may receive financial aid for the diagnosis and treatment of cancer in any hospital or clinic selected. The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.

(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.—

(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the General Revenue Fund and any gifts, grants, or funds received from other sources.

(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the secretary.

History.—ss. 1-6, 8, ch. 79-320.

[1]**Note.**—Section 8, ch. 79-320 provides that, in accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, subsection (4) shall be repealed on July 1, 1985, and the Florida Cancer Control and Research Advisory Board shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

381.3812 Statewide cancer registry.—

(1) Each hospital licensed pursuant to chapter 395 shall report to the Department of Health and Rehabilitative Services such information as will indicate diagnosis, stage of disease, medical history, laboratory data, tissue diagnosis, and radiation, surgical, or other methods of treatment on each cancer patient admitted to the hospital for treatment. Failure to comply with this requirement may be cause for suspension or revocation of the license of any such hospital.

(2) The department shall establish, or cause to have established, by contract with a recognized medical organization in Florida and its affiliated institutions, a statewide cancer registry program to insure that cancer reports as required in subsection (1) shall be maintained and shall be available for use in the course of any study for the purpose of reducing morbidity or mortality; and no liability of any kind or character for damages or other relief shall arise or be enforced against any hospital by reason of having provided such information or material to the department.

(3) The department or a contractual designee operating the statewide cancer registry program required by this act shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released for general publication. In all events, the identity of any person whose condition or treatment has been reported and studied shall be confidential and shall not be revealed under any circumstances. All information, interviews, reports, statements, memoranda, or other data furnished by reason of this act and any findings or conclusions resulting from such studies are hereby declared to be privileged.

(4) The department shall report to the Legislature before April 1, 1979, a plan of annual follow-up for those cancer patients admitted to the hospital for treatment.

(5) If funds are appropriated for this act, 35 percent of such funds shall be utilized for the purposes of establishing, administering, compiling, processing, and providing suitable biometric and statistical analysis to the reporting hospitals, and 65 percent shall be utilized to help defray the expenses incurred by the reporting hospitals in providing information to the cancer registry.

(6) The provisions of this act shall not apply to any hospital whose primary function is to provide psychiatric care to its patients.

History.—ss. 2-4, 9, ch. 78-171.

381.382 Family planning.—

(1) SHORT TITLE.—This section shall be known as the "Comprehensive Family Planning Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to make available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

(3) ACCESS TO SERVICES; PROHIBITIONS.—Except as otherwise provided in this section, no medical agency or institution of this state or unit of local government shall interfere with the right of any patient or physician to use medically acceptable contraceptive procedures, supplies, or information or to restrict the physician-patient relationship.

(4) AUTHORITY AND POWERS.—

(a) The Department of Health and Rehabilitative Services shall implement a comprehensive family planning program which shall be designed to include, but not be limited to, the following:

1. Comprehensive family planning education and counseling programs.
2. Prescription for and provision of all medically recognized methods of contraception.
3. Medical evaluation, including cytological examination and other appropriate laboratory studies.
4. Treatment of physical complications other than pregnancy resulting from the use of contraceptive methods.
5. Provision of services at locations and times readily available to the population served.
6. Emphasis and stress on service to post partum mothers.

(b) Services shall be available to all persons desirous of such services, subject to the provisions of this section, at a cost based on a fee schedule prepared and published by the Department of Health and Rehabilitative Services. Fees shall be based on the cost of service and ability to pay.

(5) MINORS; PROVISION OF MATERNAL HEALTH AND CONTRACEPTIVE INFORMATION AND SERVICES.—

(a) Maternal health and contraceptive information and services of a nonsurgical nature may be rendered to any minor by persons licensed to practice medicine under the provisions of chapter 458 or chapter 459, as well as by the Department of Health and Rehabilitative Services through its family planning program, provided the minor:

1. Is married;
2. Is a parent;
3. Is pregnant;
4. Has the consent of a parent or legal guardian; or
5. May, in the opinion of the physician, suffer probable health hazards if such services are not provided.

(b) Application of nonpermanent internal contraceptive devices shall not be deemed a surgical procedure.

(6) REFUSAL FOR RELIGIOUS OR MEDICAL REASONS.—The provisions of this section shall not be interpreted so as to prevent a physician or other person from refusing to furnish any contraceptive or family planning service, supplies, or information for medical or religious reasons; and the physician or other person shall not be held liable for such refusal.

History.—ss. 1-6, ch. 72-132.

381.411 Penalties.—

(1) Any person who violates any of the provisions of this chapter, any quarantine or any rule or regulation promulgated by the Department of Health and Rehabilitative Services under the provisions of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who interferes with, hinders, or opposes any agent or officer of the [1]division in the discharge of his duties is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who maliciously disseminates any false rumor or report concerning the existence of any infectious or contagious disease is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who makes fraudulent application for and obtains insulin under the provisions of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 29834, 1955; ss. 19, 35, ch. 69-106; s. 330, ch. 71-136; s. 5, ch. 79-12.

[1]Note.—See s. 3, ch. 75-48, which abolished the Division of Health and assigned its functions to the Department of Health and Rehabilitative Services.

[1]381.422 Definitions; migrant labor camps.—As used in ss. 381.432-381.482 the following words and phrases shall mean:

(1) "Migrant labor camp."—One or more buildings or structures, tents, trailers, or vehicles, or any portion thereof, together with the land appertaining thereto, established, operated, or used as living quarters for five or more seasonal, temporary, or migrant workers, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(2) "Department."—The Department of Health and Rehabilitative Services.

History.—s. 1, ch. 59-476; ss. 19, 35, ch. 69-106; s. 144, ch. 71-377; s. 1, ch. 72-176; s. 3, ch. 76-168; s. 84, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]381.432 License required for establishment, maintenance, or operation of migrant labor camp.—No person shall establish, maintain, or operate any migrant labor camp in this state without first obtaining a license therefor from the Department of Health and Rehabilitative Services and unless such license is posted and kept posted in the

camp to which it applies at all times during maintenance or operation of the camp.

History.—s. 2, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 85, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**381.442 Application for license.**—Application for a license to establish, operate, or maintain a migrant labor camp shall be made to the Department of Health and Rehabilitative Services in writing and on a form and under regulations prescribed by the department. The application shall state the location of the existing or proposed migrant labor camp, the approximate number of persons to be accommodated, the probable duration of use, and any other information the department may require.

History.—s. 3, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 86, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**381.452 Issuance of license.**—If the Department of Health and Rehabilitative Services is satisfied, after causing an inspection to be made, that the camp meets the minimum standards of construction, sanitation, equipment, and operation required by regulations issued under s. 381.472, it shall issue in the name of the department the necessary license in writing on a form to be prescribed by the department. The license, unless sooner revoked, shall expire on June 30 next after the date of issuance unless renewed, and it shall not be transferable. All applications for renewal shall be filed with the department 30 days prior to its expiration on form blanks furnished by the department.

History.—s. 4, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 87, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**381.462 Revocation of license.**—The Department of Health and Rehabilitative Services may revoke a license authorizing the operation of a migrant labor camp if it finds the holder has failed to comply with any provision of this law or of any regulation or order issued hereunder.

History.—s. 5, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 88, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**381.472 Authority to issue regulations.**—The Department of Health and Rehabilitative Services shall make, promulgate, and repeal such rules and regulations as it may determine to be necessary to protect the health and safety of persons living in migrant labor camps, including provisions relating to construction of camps, sanitary conditions, light, air, safety, minimum living space per occupant, equipment, maintenance and operation of the camp, enforcement of the applicable uniform fire safety standards established by the State Fire Marshal pursuant to s. 633.05(8), and such other matters as it may determine to be appropriate or necessary for the protection of the life and health of the occupants. Any unit of a camp used for family residential purposes shall contain, within such unit, provision for a potable water supply.

History.—s. 6, ch. 59-476; ss. 19, 35, ch. 69-106; s. 2, ch. 72-176; s. 3, ch. 76-168; s. 1, ch. 76-252; s. 89, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**381.482 Right of entry.**—The Department of Health and Rehabilitative Services or its inspectors may enter and inspect migrant labor camps at reasonable hours and investigate such facts, conditions, and practices or matters, as may be necessary or appropriate to determine whether any person has violated any provisions of this law or rules and regulations of the department pertaining hereto are being violated. The department may from time to time at its discretion publish the reports of such inspections.

History.—s. 7, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 90, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

381.492 Survey of state hospital facilities; Department of Health and Rehabilitative Services.—

(1) The Department of Health and Rehabilitative Services is hereby designated as the sole agency of the state to carry out the purposes of and administer the Federal Hospital and Medical Facilities Amendments of 1964 (P.L. 88-443).

(2) The Governor is authorized to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General.

History.—s. 1, ch. 22851, 1945; s. 1, ch. 59-401; ss. 1, 10, ch. 65-46; ss. 19, 35, ch. 69-106; s. 2, ch. 71-213; s. 91, ch. 77-147.

Note.—Former s. 380.01; s. 965.01.

381.493 Health facilities and health services planning.—

(1) SHORT TITLE.—Sections 381.493-381.497 shall be known as the "Health Facilities and Health Services Planning Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to stimulate the establishment and continuous reevaluation of community-oriented health goals by providers, consumers, and public agencies; to assist in the rational examination of alternate methods of achieving those goals; and to aid in their achievement through the most effective means possible within the limits of available resources. It is imperative to plan the rendering of health services in order to meet and provide for community health needs in a responsible and effective manner, and this planning by the community must be assisted by a state health planning agency which is intended to coordinate the activities of all health planning agencies. It is the intent of the Legislature to invest the state health planning agency with the roles of provider of information, consultant, stimulator, and adviser to all health care institutions, health service providers, hospices, and consumers. It is intended that the agency work closely with health care facilities, health service providers, and hospices in developing a planning process to define service needs in specific geographic areas and assist health

care facilities, health service providers, and hospices in those areas to develop programs of service that will assure the best possible service to the community. It is also intended that the agency work with the community to find and define areas of need and to consider available alternatives to meet the needs. Every consideration shall be given to the elimination of unnecessary duplication of health services and the provision of health services not currently available or insufficiently provided within the community. It is further intended that health care facilities, certain health service providers, and hospices shall not change the scope of those services without the approval and authorization of the state health planning agency.

(3) DEFINITIONS.—As used in ss. 381.493-381.497, unless the context clearly requires otherwise:

(a) "Department" means the Department of Health and Rehabilitative Services.

(b) "Health service providers" means home health agencies as defined in part III of chapter 400.

(c) "Health care facility" means a hospital, skilled nursing facility, intermediate care facility, ambulatory surgical center, or freestanding hemodialysis center. A facility, such as one provided by the Christian Science Church, relying solely on spiritual means through prayer for healing shall not be included as a health care facility within the meaning of ss. 381.493-381.497.

(d) "Certificate of need" means a written statement issued by the department evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.

(e) "Capital expenditure" means an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, which changes the bed capacity or substantially changes the services of the health care facility, health service provider, or hospice with respect to which such expenditure is made, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment.

(f) "Skilled nursing facility" means an institution, or a distinct part of an institution, which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(g) "Hospital" means a health care facility licensed under chapter 395.

(h) "Health systems agency" means a comprehensive health planning council consisting of a majority of consumers of health services and providers of health services, broadly representing the areawide health system, as described and approved under all federal, state, and departmental rules and regulations and identified in Pub. L. No. 93-641.

(i) "State health planning agency" means the Department of Health and Rehabilitative Services.

(j) "Ambulatory surgical center" means a facility the primary purpose of which is to provide elective surgical care and in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, a facility existing for the primary purpose of performing therapeutic abortions, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center.

[1](k) "Statewide health coordinating council" means the state-level council which is advisory to the department, as described and approved under all federal, state, and departmental rules and regulations and identified in Pub. L. No. 93-641.

(l) "Intermediate-care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services, above the level of room and board.

(m) "Health maintenance organization" means a health care provider organization defined and authorized in part II of chapter 641.

(n) "Freestanding hemodialysis center" means a facility, separate and apart from any other health care facility, which provides renal dialysis to persons with kidney disease.

(o) "Hospice" or "hospice program" means an autonomous, centrally administered, nonprofit, as defined in chapter 617, medically directed, nurse-coordinated program providing a continuum of home, outpatient, and inpatient care for the terminally ill patient and his family. It employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available 24 hours a day, 7 days a week and is provided on the basis of need regardless of inability to pay.

History.—ss. 1-3, ch. 72-391; s. 1, ch. 75-167; s. 13, ch. 77-24; s. 92, ch. 77-147; s. 1, ch. 77-400; s. 4, ch. 78-323; s. 16, ch. 79-186; s. 149, ch. 79-400.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

› 381.494 Health-related projects; certificate of need.—

(1) APPLICATION.—All health care facilities, health maintenance organizations, health services, and hospices proposed to be offered or developed as described in paragraphs (a), (b), (c), or (d) shall be subject to review under this act and shall, accordingly, file application for a certificate of need. Such offering or development includes:

(a) In the case of health care facilities or health maintenance organizations:

1. The addition of beds by new construction or alteration of existing facilities.

2. New construction of additional health care facilities.

3. A capital expenditure of $150,000 or more in a hospital or $50,000 or more in a skilled or intermediate nursing facility or ambulatory surgical center.

4. The conversion from one type of health care

facility to another, including the conversion from one level of care to another in a skilled or intermediate nursing facility, if said conversion effects a change in the level of care of 10 beds or 10 percent of total bed capacity of such skilled or intermediate nursing facility. If such nursing facility is certified for both skilled and intermediate nursing care, the provisions of this subparagraph shall not apply.

5. An increase in licensed bed capacity.

(b) The establishment of a new health maintenance organization, home health agency, or hospice.

(c) A substantial change in services provided by a health care facility.

(d) An acquisition by, or on behalf of, a health care facility or health maintenance organization by any means which would have required review if the acquisition had been by purchase.

(2) OSTEOPATHIC FACILITIES.—When an application is made for a certificate of need to construct or to expand an osteopathic facility, the need for such facility shall be determined on the basis of the need and availability in the community for osteopathic services and facilities.

(3) HOSPICE.—When an application is made for a certificate of need to establish or expand a hospice, the need for such hospice shall be determined on the basis of the need for and availability of hospice services in the community. Provision of hospice care by any current provider of health care is a significant change in service and would therefore require a certificate of need for such services.

(4) EXHIBITS.—The applicant health care facility, health service provider, health maintenance organization, or hospice shall attach to the application the following exhibits:

(a) A statement of the purpose and need for the project and the reasons for the proposed construction, expansion, renovations, licensed bed increase, substantial change in service, conversion, health care facility or equipment acquisition, establishment of a new home health agency, establishment of a new health maintenance organization, or establishment of a new hospice.

(b) A statement of future funding sources for the proposed project.

(c) A statement of financial resources of the applicant.

(d) A statement of the capital expenditures necessary to accomplish the project.

(e) An audited balance sheet of the previous fiscal year's operation, if applicable; a statement of financial feasibility for the proposed project, to include an audited profit and loss statement of the previous fiscal year's operation, if applicable; and a statement of projected income and expense on a pro forma basis for the first 2 years of operation after completion of the project.

(f) A statement of cost containment benefits to be derived by the public by the accomplishment of the proposed project.

(g) A statement of manpower requirements and availability to support the proposed project.

(5) NOTICE TO THE HEALTH SYSTEMS AGENCY AND THE DEPARTMENT.—At least 30 days prior to filing an application, a letter of intent shall be submitted by the applicant to the health systems agency and the department respecting the development of a proposal subject to review. At the time of filing an application with the health systems agency, the applicant shall send a copy of the application to the department. Within 15 working days after receipt of a project application, the health systems agency and the department shall determine whether said application is complete. If the application is deemed complete by agreement between the health systems agency and the department, the review period shall commence on the date the application is deemed complete. If the application is deemed incomplete by agreement between the health systems agency and the department, the department shall request from the applicant specific information necessary for the application to be deemed complete. Subsequent to the receipt of an application, the department may make only one request for specific additional information. Upon receipt of the specific additional information requested, the application shall be deemed complete, and the review period shall commence on the date the requested additional information is received by the health systems agency and the department. If an applicant does not provide the specific additional information requested by the department within 90 days of the request, the application shall be deemed as withdrawn from consideration. Not later than 90 days after an application is deemed complete and the review period initiated, if said period is not extended as hereinafter provided, the department shall issue or deny a certificate of need.

(6) FUNCTION OF HEALTH SYSTEMS AGENCY.—

(a) The health systems agency, upon commencement of the review period on a proposal, shall make such investigations and inquiries as necessary to enable it to make a recommendation to the department for approval or denial of a certificate of need.

(b) Review of individual applications shall be in accordance with administrative procedures established by the health systems agency in consultation with the department and the statewide health coordinating council, and shall include, but not be limited to:

1. A public hearing that allows applicants and other interested parties to present their positions.

2. Reasonable notice.

3. The right to present oral and written evidence.

4. Written findings of fact and recommendations to be delivered to applicant and the department.

(c) The following shall be thoroughly considered by health systems agencies in certificate of need determinations for health care facilities and services, hospices, and health maintenance organizations:

1. The need for health care facilities and services and hospices being proposed in relation to the applicable health systems plan, annual implementation plan, and state medical facilities plan adopted pursuant to Titles XV and XVI of the Public Health Service Act.

2. The availability, accessibility, extent of utilization, and adequacy of like and existing health care services and hospices in the applicant's health service area.

3. The availability and adequacy of other health

care facilities and services and hospices in the applicant's health service area, such as outpatient care and ambulatory or home care services, which may serve as alternatives for the health care facilities and services to be provided by the applicant.

4. Probable economies and improvements in service that may be derived from operation of joint, cooperative, or shared health care resources.

5. The need in the applicant's health service area for special equipment and services which are not reasonably and economically accessible in adjoining areas.

6. The need for research and educational facilities.

7. The availability of resources, including health manpower, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.

8. The immediate and long-term financial feasibility of the proposal.

9. The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act.

10. The needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions, schools, multidisciplinary clinics, and specialty services such as open heart surgery, radiation therapy, and renal transplantation.

11. The probable impact of the proposed construction project on the costs of providing health services by the applicant.

12. The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective, methods of construction.

(d) Upon commencement of the review period, the health systems agency shall, within not more than 60 days, make one of the following recommendations in writing to the department:

1. That a certificate of need be issued for the project in its entirety or for identifiable portions of the total project; or

2. That a certificate of need be denied for the project in its entirety or for identifiable portions of the total project.

(e) A copy of said recommendation shall be mailed to the applicant. If the health systems agency fails to make a recommendation within the 60-day period and if said period is not extended as hereinafter provided, then it shall be deemed that the proposal is recommended for approval by the agency. The 60-day period may be extended by written mutual agreement of the applicant, the department, and the health systems agency, but in no event shall the extension be for more than 60 days. Recommendations made by health systems agencies shall be supported by findings of fact and justifications in context with criteria prescribed in paragraph (c). In cases of capital expenditure proposals for the provision of new health services to inpatients, the agency shall also reference each of the following in its findings of fact:

1. That less costly, more efficient, or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable.

2. That existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner.

3. That, in the case of new construction, alternatives to new construction, e.g., modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable.

4. That patients will experience serious problems in obtaining inpatient care of the type proposed, in the absence of the proposed new service.

5. That, in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care, including home health services.

(7) DUTIES AND RESPONSIBILITIES OF DEPARTMENT; RULES AND REGULATIONS.—

(a) The department shall be designated as the single state agency to issue or deny certificates of need in accordance with present and future federal and state statutes.

(b) The department, with the advice of the statewide health coordinating council, shall consult with the health systems agencies and such hospital, nursing home, and professional associations and societies and other agencies, as it deems advisable, in matters of policy affecting the administration of ss. 381.493-381.497 and in promulgating rules, regulations, and minimum standards for the issuance of certificates of need. Such rules, regulations, and standards shall be in accordance with the Administrative Procedure Act.

(c) Upon review of the applications for certificates of need, the recommendations of the health systems agencies, and the relationship between the applications, the state health plan, and the state medical facilities plan, the department shall issue or deny certificates of need for proposed capital expenditures in their entirety or for identifiable portions of the total project. If denial of the certificate of need by the department is counter to the recommendation of the local health systems agency, the department shall outline its reason for denial, item by item, to the health systems agency, in writing. The department shall make its determination within not more than 90 days from the day the application is declared to be complete, unless the total review period is otherwise extended according to paragraph (5)(e) or the applicant agrees, in writing, to an extension of the determination due date of the department. If the department fails to render a determination within 90 days, or within an otherwise extended period, from the day the application is declared to be complete, it shall be deemed that the application for a certificate of need is denied. In cases of capital expenditure applications for the provision of new health services to inpatients, the department shall not issue a certificate of need unless the findings

prescribed in subsection (5)(e) are documented in writing.

(d) Denial by the department shall be in writing setting forth its findings of fact upon which such denial is based.

(e) Any applicant or health systems agency aggrieved by the issuance or denial of a certificate of need shall have the right, within not more than 30 days from the day notice of the issuance or denial of such certificate is received from the department, to seek relief according to the provisions of the Administrative Procedure Act. Such hearings as may take place according to the provisions of this paragraph shall be regarded as meeting the requirements of Section 1122 of Public Law 92-603.

(f) A certificate of need shall terminate 1 year after the date of issuance, unless the applicant has commenced construction, if the project provides for construction or incurred an enforceable capital expenditure commitment for projects not involving construction, or unless the certificate of need validity period is extended by the department for an additional period of up to 6 months, upon showing of good cause by the applicant for the extension.

History.—ss. 4-6, ch. 72-391; s. 2, ch. 75-167; s. 93, ch. 77-147; s. 1, ch. 77-174; s. 2, ch. 77-400; s. 90, ch. 79-164; s. 17, ch. 79-186.

381.495 Certificate of need; requirement of filing; penalties.—

(1) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 395 and 400, and to hospices, the Department of Health and Rehabilitative Services shall duly consider the certificate of need required by ss. 381.493-381.497 and shall not issue a license to any health care facility, health service provider, hospice, or part of a health care facility which fails to receive a certificate of need. However, any health care facility project for which land had been acquired and preliminary construction plans had been filed with the department prior to July 1, 1975, shall not be denied a license on the basis of not having received a certificate of need; however, any health care facility project not requiring a certificate of need as a condition for licensure under this provision shall forfeit such exemption unless:

(a) The health care facility project is under construction prior to July 1, 1977; or

(b) An immediate and diligent good faith effort is being made to undertake construction;

but in no case shall this exemption apply after July 1, 1978.

(2) Any health care facility which places a radiation therapy unit, computerized axial tomography scanner, cardiac catheterization laboratory, or hemodialysis unit in operation after July 1, 1977, without a certificate of need issued under this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 7, ch. 72-391; s. 3, ch. 75-167; s. 94, ch. 77-147; s. 3, ch. 77-400; s. 18, ch. 79-186.

381.498 Special circumstances.—In the event of the destruction of any part of a health care facility or health maintenance organization as a result of fire, civil disturbance, or storm or any other act of God, the Department of Health and Rehabilitative Services shall expedite a certificate of need determination to the extent that the application includes replacement of the previously existing facilities. The department shall adopt rules providing procedures for expeditious consideration of certificate of need applications.

History.—s. 6, ch. 77-400; s. 2, ch. 78-194.

381.503 The Community Hospital Education Act.—

(1) SHORT TITLE.—This section shall be known and cited as "The Community Hospital Education Act."

(2) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature that health care services for the citizens of this state be upgraded and that a program for continuing these services be maintained through a plan for community medical education. The program is intended to provide additional outpatient and inpatient services, a continuing supply of highly trained physicians, graduate medical education, and a program for continuing education in professional skills for practicing physicians in the state.

(b) The Legislature further acknowledges the critical need for increased numbers of family physicians to provide the necessary current and projected health and medical services. In order to meet both present and anticipated needs, the Legislature supports an expansion in the number of family practice residency positions so that 150 new family physicians can be graduated into practice each year by 1988. The Legislature intends that the funding for graduate education in family practice be maintained at a minimum of $10,000 per resident per year. Should funding for this act remain constant or be reduced, it is intended that all programs funded by this act be maintained or reduced proportionately.

(3) PROGRAM FOR COMMUNITY HOSPITAL EDUCATION; STATE AND LOCAL PLANNING.—

(a) There is established within the Department of Education a program for statewide medical education. It is intended that continuing medical education programs for interns and residents be established on a statewide basis. The program shall provide salary supplements for interns and residents based on policies recommended and approved by the Board of Regents, the Community Hospital Education Council, herein established, and the Department of Education.

(b) Medical institutions throughout the state, other than hospitals under the control of the Board of Regents, may apply to the Community Hospital Education Council for grants-in-aid for financial support of their approved programs. Recommendations for funding of approved programs shall be forwarded to the Division of Universities of the Department of Education.

(c) The program shall provide a plan for community clinical teaching and training with the cooperation of the medical profession, hospitals, and clinics. The plan shall also include formal teaching oppor-

tunities for intern and resident training and advanced medical education for physicians throughout the state. In addition, the plan shall establish an off-campus medical faculty with university faculty review to be located throughout the state in local communities.

(4) In addition to the programs established in subsection (3), the Board of Regents, the Community Hospital Education Council, and the Department of Education shall establish an ongoing, statewide program of family practice residencies. The administration of this program shall be in the manner described in this section.

(5) COUNCIL AND DIRECTOR.—

(a) There is established the Community Hospital Education Council, hereinafter referred to as the council, which shall consist of nine members, three of whom shall be directors of medical education in approved community hospital medical education programs; two of whom shall be from private practice and members of faculty of approved community hospital education programs; one of whom shall be a representative of the administration of a hospital with an approved community hospital medical education program; one of whom shall be the dean of a medical school in this state; and two of whom shall be consumer representatives. All of the members shall be appointed by, and serve at the pleasure of, the Governor.

(b) Council membership shall cease when a member's representative status no longer exists. Members of similar representative status shall be appointed to replace retiring or resigning members of the council.

(c) The Board of Regents shall designate an administrator to serve as staff director. The council shall elect a chairman from among its membership. Such other personnel as may be necessary to carry out the program shall be employed as authorized by the Department of Education.

(6) BOARD OF REGENTS; STANDARDS.—

(a) The Board of Regents, with recommendations from the council, shall establish standards and policies for the use and expenditure of medical education funds appropriated pursuant to subsections (8) and (9) for a program of community hospital education. The Board of Regents shall establish requirements for hospitals to be qualified for participation in the program, which shall include, but not be limited to:

1. Submission of an educational plan and a training schedule.

2. A determination by the council to ascertain that each portion of the program of the hospital provides a high degree of academic excellence and that it qualifies for approval by the Council on Education of the American Medical Association or accreditation by the American Osteopathic Association.

3. Supervision of the educational program of the hospital by a physician who is not the hospital administrator.

(b) Each participating hospital shall provide a postgraduate education program for physicians in private practice in the local area.

(c) The Board of Regents shall periodically review the educational program provided by a participating hospital to assure that the program includes a reasonable amount of both formal and practical training and that the formal sessions are presented as scheduled in the plan submitted by each hospital.

(7) POLICIES ESTABLISHED BY THE BOARD OF REGENTS.—The Board of Regents, with recommendations by the council and final approval by the Department of Education, shall establish policies for the use and expenditure of funds appropriated for the inter-residency program.

(8) COMMUNITY MEDICAL EDUCATION PROGRAM; FUNDING FORMULA.—There is appropriated from the General Revenue Fund $25,000, which shall be matched by local funds. The Board of Regents shall develop a formula which shall apportion said funds among the following uses:

(a) Funds for payments to be used for student remunerations;

(b) Funds for teaching assistants and teaching-related equipment to be used for salaries of nonacademic faculty and for the purchase of related teaching equipment;

(c) Funds for faculty review to be used to hire part-time or per diem faculty members to review approved programs.

(9) MATCHING FUNDS.—State funds shall be used to match funds from any local governmental or hospital source. The state shall provide up to 50 percent of the funds, and the community hospital medical education program shall provide the remainder. However, except for fixed capital outlay, the provisions of this subsection shall not apply to any program authorized under the provisions of subsection (4) for the first 3 years after such program is in operation.

(10) REPORT TO LEGISLATURE.—On or before January 1 of each year, the council shall make a report to the Legislature on the progress of the program and the expenditures of funds authorized by this act. The report shall include:

(a) A summary of expenditures by program and by specialty, in accordance with procedures and guidelines adopted by the council.

(b) Specialty and individual program goals as they relate to the number of residents trained.

(c) The location of graduating physicians' practices, including an analysis of out-of-state movement and the potential impact on in-state health and medical services needs.

History.—s. 1, ch. 71-311; ss. 1-4, ch. 72-137; s. 1, ch. 74-135; s. 1, ch. 74-358; s. 1, ch. 76-63.

381.512 Transportation of radioactive materials.—

(1) The Department of Health and Rehabilitative Services shall adopt reasonable rules and regulations governing the transportation of radioactive materials which, in the judgment of the department, shall promote the public health, safety, or welfare and protect the environment.

(a) Such rules and regulations shall include, but shall not be limited to, provisions for the use of signs designating radioactive material cargo and for the packing, marking, loading, and handling of radioactive materials, and the precautions necessary to determine whether the material when offered is in proper condition for transport, and may include designation of routes in this state which are to be used

for the transportation of radioactive materials.

(b) Such rules and regulations shall not include the equipment or operation of the carrier vehicle, nor shall they apply to transportation of radioactive material within the confines of an authorized facility of use.

(c) Such rules and regulations shall be compatible with, but not more restrictive than, those established by the United States Atomic Energy Commission, the United States Federal Aviation Agency, the United States Department of Transportation, the United States Coast Guard, or the United States Post Office.

(2)(a) Rules and regulations adopted by the Department of Health and Rehabilitative Services pursuant to subsection (1) may be enforced, within their respective jurisdictions, by any authorized representative of the Department of Health and Rehabilitative Services, the Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Public Service Commission.

(b) The Department of Health and Rehabilitative Services, through any authorized representative, is authorized to inspect any records of persons engaged in the transportation of radioactive materials during the hours of business operation when such records reasonably relate to the method or contents of packing, marking, loading, handling, or shipping of radioactive materials.

(c) The Department of Health and Rehabilitative Services, through any authorized representative, is authorized to enter upon and inspect the premises or vehicles of any person engaged in the transportation of radioactive materials during hours of business operation, with or without a warrant, for the purpose of determining compliance with the provisions of this section and the rules and regulations thereunder.

(3) Upon a finding by the Department of Health and Rehabilitative Services that any provision of this section, or the rules and regulations thereunder, are being violated or that any practice in the transportation of radioactive materials constitutes a clear and imminent danger to the public health, property, or safety, it may issue an order requiring correction.

(4) Violation of any of the provisions of this section or the rules and regulations thereunder shall constitute a misdemeanor and, upon conviction, shall be punishable according to law.

History.—ss. 1-4, ch. 71-271; s. 97, ch. 77-147.

381.522 Toilets required by department regulations; charge for use of prohibited.—No place of employment or place serving the public shall make a charge for the use of any toilet which is required to be provided by regulation of the Department of Health and Rehabilitative Services. Any place of employment or place serving the public which violates this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 1, ch. 74-240; s. 98, ch. 77-147.

381.523 Separate restrooms for males and females.—

(1) Any business may designate separate restrooms and separate dressing rooms for males and for females and may prohibit any female from using a restroom or dressing room designated for males and any male from using a restroom or dressing room designated for females.

(2) If more than one restroom is provided in any building or facility owned or operated by the state or any political subdivision of the state, the restrooms for males shall be separate from the restrooms for females and each restroom shall be designated by an appropriate sign as a restroom for use by males or for use by females, if said restroom has occupant capacity of more than one person.

History.—ss. 1, 2, ch. 77-242.

***381.601 Blood labeling.**—

(1) SHORT TITLE.—This section shall be known and may be cited as "The Florida Blood Labeling Act of 1977."

(2) DEFINITIONS.—As used in this section, unless the context clearly requires otherwise:

(a) "Blood" means whole human blood or components of human blood, including plasma, which components are prepared from whole human blood by physical rather than chemical processes, but does not include blood derivatives manufactured or processed for industrial use.

(b) "Donation" means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives no consideration other than credit through blood assurance programs or other intangible benefits.

(c) "Purchase" means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives a monetary consideration.

(d) "Industrial use" means a use of blood in which the blood is modified by physical or chemical means to produce derivatives for therapeutic or pharmaceutic biologicals and laboratory reagents or controls.

(3) LABEL; PURCHASE OR DONATION TO BE INDICATED.—

(a) Every person who withdraws blood from an individual, or separates blood into components by physical processes, shall affix to each container of such blood or components a label in a form specified by the Department of Health and Rehabilitative Services, which form shall include an indication of whether the blood was obtained by purchase or donation.

(b) Any person who receives blood in this state from a blood bank in another state shall label such blood as donated blood only if he has a certificate, in a form approved by the Department of Health and Rehabilitative Services, from such blood bank that the particular shipment of blood was acquired by donation or that all blood processed by that blood bank is acquired by donation. If there is no such certificate, such blood shall be labeled as blood acquired by purchase.

(4) TRANSFER OF BLOOD AND BLOOD COMPONENTS FOR INDUSTRIAL USE.—Blood and blood components, including salvage plasma, may be used and transferred for industrial use without re-

gard to whether the original acquisition thereof was by purchase or donation.

(5) ADMINISTRATION OF ACT.—

(a) The Department of Health and Rehabilitative Services shall promulgate rules necessary to carry out the provisions of this section. Such rules shall be promulgated in accordance with the provisions of chapter 120.

(b) The Department of Health and Rehabilitative Services may inspect the collecting, labeling, and storage facilities of any blood bank, hospital, or other entity that withdraws or stores blood, at any reasonable time, to assure compliance with this section.

(6) VIOLATION; PENALTY.—A violation of any provision of subsection (3) shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent violation of any provision of subsection (3) shall be a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) VIOLATION; INJUNCTION.—In addition to any other remedy provided by law, the Department of Health and Rehabilitative Services may apply to a circuit court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of subsection (3), irrespective of whether or not there exists an adequate remedy at law.

History.—s. 1, ch. 77-307.

381.605 Chronic disease control program.—

(1) DEFINITIONS.—As used in this act:

(a) "Chronic disease control program" means a program including at least the following elements:

1. Health screening;
2. Risk factor detection;
3. Appropriate intervention to enable and encourage risk factor reversal; and
4. Nutrition counseling.

(b) "Community health education program" means a program involving the planned and coordinated use of the educational resources available in a community in an effort to:

1. Motivate and assist citizens to adopt and maintain healthful practices and lifestyles;
2. Make available learning opportunities which will increase the ability of people to make informed decisions affecting their personal, family, and community well-being and which are designed to facilitate voluntary adoption of behavior which will improve or maintain health;
3. Reduce, through coordination among appropriate agencies, duplication of health education efforts; and
4. Facilitate collaboration among appropriate agencies for efficient use of scarce resources.

(c) "Comprehensive health improvement project" means a program combining the required elements of both a chronic disease control program and a community health education program into a unified program over which a single administrative entity has authority and responsibility.

(d) "Department" means the Department of Health and Rehabilitative Services.

(e) "District" means a service district of the department.

(f) "Risk factor" means a factor identified during the course of an epidemiological study of a disease, which factor appears to be statistically associated with a high incidence of that disease.

(2) DEMONSTRATION PROJECT AND EVALUATION STUDY.—

(a) The department shall conduct a demonstration project and an evaluation study to determine the desirability of establishing chronic disease control programs, community health education programs, and comprehensive health improvement programs throughout the state. In carrying out the demonstration project, the department, in at least three districts, shall establish or cause to be established pilot programs or contract with existing pilot programs.

(b) Existing community resources, when available, shall be used to support the programs. The department shall seek funding for the programs from federal and state financial assistance programs which presently exist or which may be hereafter created. Additional services, as appropriate, may be incorporated into a program to the extent that resources are available. The department may accept gifts and grants in order to carry out a program.

(c) Volunteers shall be used to the maximum extent possible in carrying out the programs. The department shall contract, pursuant to s. 455.06, for the necessary insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under a program.

(d) The department may contract for the provision of all or any portion of the services required by a program, and shall so contract whenever the requirements of s. 20.19(13) are met.

(e) Each entity contracting with the department to conduct a pilot program shall provide at least 25 percent of the funding necessary for the support of the operation of the program. Contributions in kind, whether of materials, commodities, transportation, office space, other types of facilities, or personal services, may be valuated and counted as part or all of such required local funding.

(f) If the department determines that it is necessary for clients to help pay for services provided by a program, the department may require clients to make contribution therefor in either money or personal services. The amount of money or value of the personal services shall be fixed according to a fee schedule established by the department or by the entity developing the program. In establishing the fee schedule, the department or the entity developing the program shall take into account the expenses and resources of a client and his overall ability to pay for the services.

(g) The department shall adopt rules governing the operation of the pilot programs. These rules shall include guidelines for intake and enrollment of clients into the programs.

(h) On or before January 1 of 1979, 1980, and 1981, the department shall submit to the President of the Senate and to the Speaker of the House of Representatives a report summarizing and evaluating the progress of the project. Each report shall provide information and data necessary for an accu-

rate analysis of the costs and benefits associated with the establishment and operation of each program.

History.—ss. 1, 2, ch. 78-331.

CHAPTER 382

VITAL STATISTICS

382.01 Registration of vital statistics.—The Department of Health and Rehabilitative Services shall have charge of the registration of vital statistics; shall furnish forms and blanks for obtaining and preserving such records; and shall procure the faithful registration of the same in each primary registration district as constituted in s. 382.031 and in the vital statistics office of the department. The said department shall be charged with the uniform and thorough enforcement of the law throughout the state and shall from time to time recommend any additional legislation that may be necessary for this purpose.

History.—s. 1, ch. 6892, 1915; RGS 2068; CGL 3268; s. 1, ch. 25372, 1949; ss. 19, 35, ch. 69-106; s. 99, ch. 77-147.

382.02 Vital statistics function; clerical assistance; compensation.—The vital statistics function of the Department of Health and Rehabilitative Services shall be under the direction of the Secretary of Health and Rehabilitative Services, who shall be, by virtue of his office, State Registrar of Vital Statistics. The department shall provide for such clerical and other assistants as may be necessary for the purposes of this chapter, shall fix the compensation of persons thus employed, and shall provide suitable offices which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this chapter.

History.—s. 2, ch. 6892, 1915; RGS 2069; CGL 3269; ss. 19, 35, ch. 69-106; s. 145, ch. 71-377; s. 100, ch. 77-147.

382.031 Registration districts.—The State Registrar for Vital Statistics shall from time to time establish registration districts throughout the state. He may consolidate or subdivide such districts to facilitate registration.

History.—s. 1, ch. 67-312.

382.04 Appointment of local registrars; terms of office; vacancies; penalty.—

(1) The State Registrar shall appoint a local registrar of vital statistics for each registration district in the state. The term of office of each local registrar so appointed shall be 4 years, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes; provided, that in incorporated towns or cities where health officers or other officials are, in the judgment of the State Registrar, conducting effective registration of births and deaths under local ordinances, such officials may be appointed as registrars in and for such incorporated towns or cities, and shall be subject to the instructions of the State Registrar, and to all of the provisions of this chapter. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the State Registrar. At least 10 days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the State Registrar.

(2) Any local registrar who, in the judgment of the State Registrar, fails or neglects to discharge efficiently the duties of his office as set forth in this chapter, or to make prompt and complete returns of births and deaths as required thereby, shall be forthwith removed by the State Registrar, and such other penalties may be imposed as are provided under s. 382.39.

History.—s. 4, ch. 6892, 1915; RGS 2071; CGL 3271.

382.05 Deputy registrars; subregistrars.—

Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, who shall act in his stead in case of his absence or disability; and such deputy shall in writing accept such appointment, and be subject to all instructions governing local registrars. And when it appears necessary for the convenience of the people in any district, the State Registrar may appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive certificates, to issue burial, removal, or other permits in and for such portions of the district as may be designated; and each subregistrar shall note, on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within 10 days, and in all cases before the third day of the following month; provided, that such subregistrar shall be subject to the supervision and control of the State Registrar, and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this chapter or the instructions of the State Registrar, and shall be subject to the same penalties for neglect of duty as the local registrar.

History.—s. 4, ch. 6892, 1915; RGS 2072; CGL 3272.

382.061 Burial-transit permit.—

(1) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall obtain a burial-transit permit prior to final disposition or removal from the state of the body or fetus and within 72 hours after death. Such burial-transit permit shall be issued by the local registrar of the registration district in which the death occurred or the body was found. No such burial-transit permit shall be issued by any registrar until a complete and satisfactory certificate of death or fetal death has been filed in accordance with the requirements of this chapter.

(2) The funeral director shall deliver the burial-transit permit to the person in charge of the place of burial, before interring or otherwise disposing of the body within this state; or when transported to a point outside the state the permit shall accompany the dead body to its destination.

(3) A burial-transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(4) A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized or otherwise provided by law. Such permit shall be issued by the local registrar for vital statistics of the district in which the body is buried, to a licensed funeral director or person acting as such, upon proper application.

History.—s. 1, ch. 67-312.

382.071 Fetal death registration.—

(1) Fetal death is death prior to the complete expulsion or extraction from its mother of a product of conception, if the 20th week of gestation has been reached; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(2) A fetal death certificate for each fetal death which occurs in this state after gestation period of 20 completed weeks or more shall be filed with the local registrar of the district in which the delivery occurred within 3 days after such delivery and prior to final disposition or removal of the fetus from the state, and shall be registered with such registrar if it has been completed and filed in accordance with this section; provided:

(a) The certificate of fetal death shall be in the form prescribed by the Department of Health and Rehabilitative Services;

(b) If the place of fetal death is unknown, a fetal death certificate shall be filed in the registration district in which a dead fetus was found within 3 days after the occurrence; and

(c) If a fetal death occurs on a moving conveyance, a fetal death certificate shall be filed in the registration district in which the fetus was first removed from such conveyance.

(3) The funeral director or person acting as such who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery shall file the certificate of fetal death. He shall obtain the personal data from the next of kin or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail, by the physician, medical examiner, or coroner responsible for furnishing such information.

(4) The medical certification shall be completed and signed within 48 hours after delivery by the

physician in attendance at or after delivery except when inquiry is required by medical examiner or coroner. Midwives shall not sign fetal death certificates, but such cases and fetal deaths occurring without medical attendance of a physician shall be treated as deaths without medical attendance as provided for in s. 382.10.

(5) When a fetal death occurs without medical attendance upon the mother at or after the delivery or when inquiry is required by the medical examiner or coroner, the responsible official shall investigate the cause of fetal death and shall complete and sign the medical certification within 48 hours after taking charge of the case.

History.—s. 1, ch. 67-312; ss. 19, 35, ch. 69-106; s. 101, ch. 77-147.

382.081 Death registration.—

(1) A death certificate for each death which occurs in this state shall be filed with the local registrar of the district in which the death occurred within 3 days after such death and prior to final disposition or removal of the body from the state, and shall be registered by such registrar if it has been completed and filed in accordance with this section:

(a) The certificate of death shall be in the form prescribed by the Department of Health and Rehabilitative Services;

(b) If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within 3 days after such occurrence; and

(c) If death occurs in a moving conveyance a death certificate shall be filed in the registration district in which the dead body was first removed from such conveyance.

(2) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail, by the physician, medical examiner, or coroner responsible for furnishing such information.

(3) The medical certification shall be completed, signed, and made available within 48 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death, or the physician last in attendance upon the deceased, who shall certify over his signature the cause of death to his best knowledge and belief, except when inquiry is required by the medical examiner or coroner.

(4) When death occurred without medical attendance as set forth in subsection (3) or when inquiry is required by medical examiner or coroner, the responsible official shall investigate the cause of death and shall complete and sign the medical certification within 48 hours after taking charge of the case.

History.—s. 1, ch. 67-312; ss. 19, 35, ch. 69-106; s. 102, ch. 77-147; s. 1, ch. 78-9.

382.091 Extension of time.—

(1) The Department of Health and Rehabilitative Services may by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this act, provide for the extension of the periods prescribed in this chapter for the filing of death certificates, fetal death certificates, medical certifications of causes of death, and for the obtaining of burial-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.

(2) Regulations of the said department may provide for the issuance of a burial-transit permit prior to the filing of a certificate of death or fetal death upon conditions designed to assure compliance with the purposes of this act in cases in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

History.—s. 1, ch. 67-312; ss. 19, 35, ch. 69-106; s. 103, ch. 77-147.

382.10 Where death occurs without medical attendance.—In case of any death occurring without medical attendance, the undertaker, or other person to whose knowledge the death may come, shall notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided, that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided, further, that if the undertaker, or person acting as such, or the registrar, has reason to believe that the death may have been due to unlawful act or neglect, the registrar shall then refer the case to the coroner or other proper officer for his investigation and certification; and the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person shall make the certificate of death required for a burial permit and state in his certificate the name of the disease causing death or, if from external causes, the means of death and whether (probably) accidental, suicidal, or homicidal and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death.

History.—s. 8, ch. 6892, 1915; RGS 2077; CGL 3277.

382.14 Interment prohibited without burial permit; records of bodies interred.—No person in charge of any premises on which interments, or other dispositions are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, other disposition, or removal permit as herein provided. Any such person shall endorse upon the permit the date of interment, or other disposition, over his signature, and shall return all permits so endorsed to the local registrar of his district within 10 days from the date of interment or other disposition. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge in each case stating the name and color or race of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial grounds having no

person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within 10 days with the registrar of the district in which the cemetery is located. Permits filed with the local registrar under the provisions of this section may be destroyed by the official custodian after the expiration of 3 years from the date of such filing.

History.—s. 11, ch. 6892, 1915; RGS 2081; CGL 3281; s. 6, ch. 25372, 1949.

382.15 All births to be registered.—The birth of each and every child born in this state shall be registered as hereinafter provided.

History.—s. 12, ch. 6892, 1915; RGS 2082; CGL 3282.

382.16 Certificate of birth; registration.—

(1) A certificate of birth for each live birth which occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred and shall be registered if it has been completed and filed in accordance with this section.

(2) If a birth occurs in an institution or enroute thereto, the physician, midwife, or person in attendance during or immediately after the delivery shall provide the person in charge of the institution or his designated representative the medical information required by the certificate, within 48 hours after the birth. The person in charge of the institution or his designated representative shall obtain the other information required by the certificate and shall prepare the certificate, certify to the facts of birth, and file the certificate with the local registrar.

(3) If a birth occurs outside an institution and the child is not taken to an institution immediately after delivery, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority:

(a) The physician or midwife in attendance during or immediately after the birth or, in the absence of such a person;

(b) Any other person in attendance during or immediately after the birth or, in the absence of such a person;

(c) The father or the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(4) If a birth occurs on a moving conveyance and the child is first removed from the conveyance in this state, the birth shall be registered in this state, and the place to which the child is first removed shall be considered the place of birth. The birth certificate shall be filed in accordance with subsections (2) or (3), whichever is applicable.

(5)(a) If the mother was married at the time of conception, the name of her husband at such time shall be entered on the certificate as the father of the child, and the surname of the child shall be entered on the certificate as that of the husband, unless paternity has been determined otherwise by a court of competent jurisdiction.

(b) If the mother was not married at the time of conception, but is married at the time of birth, the name of her husband at the time of birth shall be entered on the certificate as the name of the father of the child, and the surname of the child shall be entered on the certificate as that of the husband, provided the husband gives consent in writing, unless paternity has been determined otherwise by a court of competent jurisdiction.

(c) If the mother was not married at the time of either conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father, in which case, upon the request of both parents in writing, the surname of the child shall be that of the father.

(d) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(e) In all other cases, the surname of the child shall be the legal surname of the mother.

(f) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(6) At least one of the parents of the child shall attest to the accuracy of the personal data provided for the certificate in time to permit the filing of the certificate within the 5 days prescribed herein.

History.—s. 13, ch. 6892, 1915; RGS 2083; CGL 3283; s. 1, ch. 77-319; s. 150, ch. 79-400.

382.17 Birth certificates; form; information to be recorded.—

(1) The original certificate of birth shall contain all of the information required by the Department of Health and Rehabilitative Services, all of the items of which are declared necessary for the legal, social, and sanitary purposes subserved by registration records, provided, however, that all information concerning marital status and medical details shall be recorded on a separate section of the original birth certificate, which portion of said birth certificate, after having been processed for statistical and health purposes, shall not be open to inspection by, nor shall certified copies of the same be issued to, any person other than the registrant, if of legal age, except upon the order of any court of competent jurisdiction. In the case of an adoptive child, if of legal age, access to the original certificate of birth shall be governed by s. 63.162.

(2) A birth certificate shall be filed for every child of undetermined parentage and shall show all known or approximate facts relating to the birth. To assist in later identification, information concerning the place and circumstances under which the said child was found shall be filed on the portion of the original birth certificate relating to marital status and medical details. In the event said child is identified to the satisfaction of the registrar at any subsequent time, a new birth certificate shall be prepared which will bear the same number as the original certificate, and the original certificate shall thereupon be sealed and filed and shall not be opened to inspection by, nor shall certified copies of the same be issued to, any person other than the registrant, if of legal age, except upon the order of any court of competent jurisdiction. In the case of an adoptive child, if of legal age, access to the original certificate of birth shall be governed by s. 63.162.

(3) All original, new, or amendatory certificates

of birth shall be identical in form, color, size, wording, and arrangement of items, regardless of the marital status of the parents or of the fact that the child is adopted or of undetermined parentage, except delayed certificates of birth, which shall be on such form as the State Registrar may provide.

History.—s. 14, ch. 6892, 1915; RGS 2084; CGL 3284; s. 7, ch. 25372, 1949; s. 2, ch. 67-312; ss. 19, 35, ch. 69-106; s. 2, ch. 75-166; s. 104, ch. 77-147; s. 3, ch. 77-446; s. 151, ch. 79-400.

382.19 Filing of certificates of birth, death, or stillbirth in cases where none was filed at time of birth, death, or stillbirth.—If at any time after the birth, death, or stillbirth of any person within the state, a copy of the official record or portion thereof of said birth, death, or stillbirth be necessary and, after search by the State Registrar or his representative, it should appear that no such certificate of birth, death, or stillbirth was made or filed, the physician, midwife, or undertaker responsible for the report, or father, mother, older brother, or sister, or other person knowing the facts, may file with the central vital statistics office of the Department of Health and Rehabilitative Services such certificate of birth, death, or stillbirth, together with such sworn statements and affidavits as the State Registrar may require.

History.—s. 2, ch. 13864, 1929; CGL 1936 Supp. 3301(2); s. 9, ch. 25372, 1949; s. 105, ch. 77-147.

382.20 State Registrar may withhold filing of birth, death, or stillbirth certificates until proof is filed; certificates prima facie evidence.—The State Registrar may require such affidavits to be presented and such proof to be filed as he may deem advisable or necessary to establish the truth of the facts endeavored to be made or recorded by the certificate and may withhold filing of the birth, death, or stillbirth certificate involved until his requirements are complied with. Certificates filed and accepted under this section and s. 382.19 shall be admissible in evidence as prima facie evidence of the facts recited therein with like force and effect as other vital statistics records are received or admitted in evidence. The State Registrar may make and enforce appropriate rules and regulations to carry out this section and to prevent fraud and deception being committed under same.

History.—s. 3, ch. 13864, 1929; CGL 1936 Supp. 3301(3); s. 10, ch. 25372, 1949.

382.21 New or amended certificates of birth; duty of clerks of court, and State Registrar.—The clerk of the court in which any proceeding for determination of paternity, adoption, or annulment of an adoption shall be filed, shall within 30 days after the final disposition thereof forward to the State Registrar of Vital Statistics a report of said proceedings upon a form to be furnished by the State Registrar, which form shall contain sufficient information to identify the original birth certificate of the child and to enable an amendatory or new birth certificate to be prepared.

(1) ADOPTION.—Upon receipt of the report of an adoption from a clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree of adoption, together with all necessary information, from any registrant or adoptive parent of a registrant, the State Registrar shall make and file a new birth certificate, which certificate shall bear the same file number as the original birth certificate. All names and statistical particulars entered on the new certificate shall refer to the adoptive parents, but nothing in said certificate shall refer to or designate said parents as being adoptive. All other items not affected by adoption shall be copied as on the original certificate, including the date of filing.

(2) DETERMINATION OF PATERNITY.—Upon receipt of the report of a determination of paternity from a clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree or judgment of determination of paternity, together with all necessary information from a registrant or the parent or parents of a registrant, or upon receipt of evidence of the marriage of the parents of a person subsequent to the birth of said person, the State Registrar shall make and file a new birth certificate, which certificate shall bear the same file number as the original birth certificate. The names and statistical particulars shall be entered as of the date of birth but as though the parents were married at that time.

(3) ANNULMENT OF ADOPTION.—Upon receipt of the report of an annulment of an adoption from the clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree, or judgment of the annulment of adoption, the State Registrar shall, if a new certificate of birth was made and filed, based upon an adoption order, remove such new certificate and restore the original certificate to its original place in the files and the certificate so removed shall then be destroyed by the registrar.

(4) DUTY OF STATE REGISTRAR UPON RECEIPT OF REPORTS ON CHILDREN NOT BORN IN THIS STATE.—Upon receipt of a report of an adoption, determination of paternity, or annulment of an adoption from a clerk of the court, as hereinbefore provided for, in which report it affirmatively appears that the person involved was born in a state other than the State of Florida, it shall be the duty of the State Registrar to forward a copy of such report to the State Registrar or comparable official of the state in which said person was born.

(5) CORRECTION OF BIRTH RECORDS.—A person whose birth is recorded in this state may request the State Registrar to correct any misstatement or errors occurring in said birth record, upon presentation of proof satisfactory to the State Registrar.

History.—s. 1, ch. 19063, 1939; CGL 1940 Supp. 3301(4); s. 1, ch. 22016, 1943; s. 11, ch. 25372, 1949; s. 3, ch. 75-166.

382.215 Establishment of new birth certificates for alien children.—For an alien child adopted in this state whose adopting parents are United States citizens and residents of this state, the State Registrar of Vital Statistics shall, upon request of the adoptee or adopting parent, make and file a birth certificate upon receipt of a certified copy of the decree of adoption. The certificate shall show the new name of the child as specified in the decree of adoption, the true country and date of birth of the child, and such other information concerning the adoptive

parents as may be necessary to complete the birth certificate.

History.—s. 1, ch. 79-17.

382.22 Substitution of new certificate of birth for original.—When a new certificate of birth is made, the State Registrar shall substitute the new certificate of birth for that on file in the central vital statistics office of the Department of Health and Rehabilitative Services, and shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken or opened except by decree, judgment, or order of a court of competent jurisdiction or at the instance and request of the person whose birth is the subject of the said certificate of birth; provided, however, that before any such person shall be entitled to have the seal broken and the record opened without order of court, he or she shall first identify himself or herself to the satisfaction of the State Registrar. In the case of an adoptive child, if of legal age, access to the original certificate of birth shall be governed by s. 63.162. Thereafter, when a certified copy of the certificate of birth of such person or portion thereof is issued, it shall be a copy of the new certificate of birth or portion thereof, except when an order, judgment, or decree of a court of competent jurisdiction shall require the issuance of a copy or certified copy or the original certificate of birth or when such copy of the original certificate shall be requested by the person whose birth is the subject of the said certificate, such person having first furnished satisfactory evidence of identity as is hereinabove provided. In the case of an adoptive child, if of legal age, access to the original certificate of birth shall be governed by s. 63.162.

History.—s. 2, ch. 19063, 1939; CGL 1940 Supp. 3301 (5); s. 12, ch. 25372, 1949; ss. 19, 35, ch. 69-106; s. 106, ch. 77-147; s. 4, ch. 77-446.

382.23 Department to receive marriage licenses.—Upon the return of each marriage license to the issuing County Court Judge, as provided and issued under chapter 741, the issuing County Court Judge shall forthwith record the same, and shall, on or before the 5th day of each month, transmit all the original licenses, with endorsements thereon, received by him during the preceding calendar month, to the vital statistics office of the Department of Health and Rehabilitative Services. As to any marriage licenses issued and not returned to the issuing County Court Judge or any marriage licenses returned to the issuing County Court Judge and not recorded by him so as to be transmitted to the department, as in this section provided, such issuing County Court Judge shall report the same to the department at the time of transmitting the recorded licenses on the forms to be prescribed and furnished by the department. If no marriage licenses are issued or returned to the issuing County Court Judge to be transmitted or reported to the department, as by this section provided, said issuing County Court Judge shall report such fact to the department upon forms prescribed and furnished by it.

History.—s. 2, ch. 11869, 1927; CGL 3295, 5852; s. 24, ch. 73-334; s. 107, ch. 77-147.

382.24 County Court Judges and Clerks of the Circuit Courts to transmit marriage application fees monthly.—On or before the fifth day of each month, each of the several County Court Judges and Clerks of the Circuit Courts of the state shall transmit to the vital statistics office of the Department of Health and Rehabilitative Services the fees collected by him under the provisions of s. 741.02 during the preceding calendar months.

History.—s. 3, ch. 11869, 1927; CGL 3296; s. 1, ch. 67-520; s. 24, ch. 73-334; s. 1, ch. 74-372; s. 108, ch. 77-147.

382.25 Clerks of Circuit Courts to furnish department with record of dissolutions of marriage granted; charges.—On or before the tenth day of each month, the several Clerks of the Circuit Courts of the state shall transmit to the vital statistics office of the Department of Health and Rehabilitative Services, on forms prescribed and furnished by it, a record of each and every judgment of dissolution of marriage granted by said courts during the preceding calendar month, giving names of parties and such other data as required by such forms. Clerks of the Circuit Court shall collect for their service at the time of the filing of a final judgment of dissolution of marriage a charge of $3, which is to be taxed as a part of the cost in the cause in which the judgment is granted.

History.—s. 4, ch. 11869, 1927; CGL 3297; s. 2, ch. 67-520; s. 23, ch. 70-134; s. 1, ch. 73-300; s. 109, ch. 77-147.

382.26 Department of Health and Rehabilitative Services to compile and preserve records of marriages and dissolutions of marriage.—The records of marriages and dissolutions of marriage obtained under the provisions of ss. 382.23 and 382.25 shall be compiled, kept, and preserved as are other vital statistics under the provisions of this chapter.

History.—s. 5, ch. 11869, 1927; CGL 3298; s. 1, ch. 73-300.

382.28 Department to prescribe and furnish marriage license forms.—All forms used in the issuance of marriage licenses in this state shall be prescribed and furnished by the Department of Health and Rehabilitative Services.

History.—s. 7, ch. 11869, 1927; CGL 3300; s. 110, ch. 77-147.

382.29 Department to keep accurate accounts and transmit funds monthly to State Treasurer.—A true and correct account of all sums transmitted to the Department of Health and Rehabilitative Services by the several County Court Judges of the state, under the provisions of s. 382.24, shall be kept by the department, and the department shall each month transmit such funds so received by it to the State Treasurer; the State Treasurer shall place such funds so transmitted to him to the credit of the General Revenue Funds and sufficient moneys shall be appropriated by the Annual Appropriations Act for the efficient administration of this chapter.

History.—s. 8, ch. 11869, 1927; CGL 3301; s. 14, ch. 25372, 1949; s. 64, ch. 26869, 1951; s. 1, ch. 73-305; s. 24, ch. 73-334; s. 111, ch. 77-147.

382.30 Physicians, midwives, sextons, retail casket dealers, and undertakers must register; local registrars to make annual reports.—Every physician, midwife, sexton, retail casket dealer, and

undertaker shall, without delay, register his or her name, address and occupation, and color or race with the local registrar of the district in which he or she resides or may hereafter establish a residence, and shall thereupon be supplied by the local registrar with a copy of this chapter, together with such instructions as may be prepared by the State Registrar relative to its enforcement. Within 30 days after the close of each calendar year each local registrar shall make a return to the State Registrar of all physicians, midwives, sextons, retail casket dealers, or undertakers who have registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives, sextons, retail casket dealers, or undertakers for registering their names under this section or making returns thereof to the State Registrar.

History.—s. 16, ch. 6892, 1915; RGS 2086; CGL 3286; s. 7, ch. 22858, 1945.

382.31 Hospitals and almshouses required to keep records.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates of their institutions, which are required in the forms of the certificates provided for by this chapter, as directed by the State Registrar; and in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted, or if injured the nature and cause thereof. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

History.—s. 17, ch. 6892, 1915; RGS 2087; CGL 3287; s. 7, ch. 22000, 1943.

382.32 State Registrar to supply forms; duties.—The State Registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this chapter; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth, upon demand of the State Registrar, in person, by mail or through the local registrar. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the Department of Health and Rehabilitative Services, in order that when deaths occur from such diseases, proper precautions may be taken to prevent their spread.

History.—s. 18, ch. 6892, 1915; RGS 2088; CGL 3288; s. 15, ch. 25372, 1949; ss. 19, 35, ch. 69-106; s. 112, ch. 77-147.

382.321 Department to destroy certain index cards.—The Department of Health and Rehabilitative Services is hereby authorized to destroy the card index it is required to prepare and maintain by s. 382.32, after the information thereon has been permanently recorded in bound index books and verified.

History.—s. 1, ch. 22624, 1945; ss. 19, 35, ch. 69-106; s. 113, ch. 77-147.

382.33 Duties of local registrar.—Each local registrar shall supply blank forms to such persons as require them. Each local registrar shall carefully examine each certificate of birth, death, or stillbirth when presented for record, in order to ascertain whether or not it has been made out in accordance with the provisions of this chapter and the instructions of the State Registrar; and if any certificate of death or stillbirth is incomplete or unsatisfactory, shall call attention to the defect in the return, and to withhold the burial, removal, or other permit until such defects are corrected. All certificates, either of birth, death, or stillbirth, shall be typewritten or written legibly in permanent black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death or stillbirth is properly executed and complete, he shall then issue a burial, removal, or other permit to the undertaker or the person acting as such; provided, that in case the death occurred from some disease which is held by the Department of Health and Rehabilitative Services to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the Department of Health and Rehabilitative Services. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him or her to supply the missing items of information if they can be obtained. He shall sign his name as registrar in attestation of the date of filing in his office. He shall also make and preserve a local record of each birth, each death, and each stillbirth certificate registered by him, in such manner as directed by the State Registrar. And he shall, on the 5th day of each month, transmit to the State Registrar all original certificates registered by him for the preceding month. And if no births or deaths or no stillbirths occurred in any month he shall, on the fifth day of the following month, report that fact to the State Registrar, on a card provided for such purpose.

History.—s. 19, ch. 6892, 1915; RGS 2089; CGL 3289; s. 16, ch. 25372, 1949; ss. 19, 35, ch. 69-106; s. 114, ch. 77-147.

382.34 Fees of local registrar.—Each local registrar shall be paid the sum of 25 cents for each birth certificate, each death certificate, and each stillbirth certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Registrar as required by this chapter. And in case no births, no deaths, or no stillbirths were registered during the month, the local registrar shall be entitled to be paid the sum of 25 cents for each report to that effect, but only if such report be made promptly as required by this chapter. All amounts payable to a local registrar under the provisions of this section shall be from the annual appropriation upon certification of the State Registrar.

History.—s. 20, ch. 6892, 1915; RGS 2090; CGL 3290; s. 17, ch. 25372, 1949; s. 65, ch. 26869, 1951; s. 1, ch. 73-305.

382.35 Disclosure of information; certified copies of birth certificates, birth cards, etc.; copies as evidence; searches of records; fees; disposition of fees.—

(1) All birth records of this state shall be considered confidential documents and shall be open to inspection only as hereinbefore or hereinafter provided for.

(2) Certified copies of the original birth certificate or any new or amendatory certificate, exclusive of that portion containing medical details and marital status, shall be issued only by the State Registrar and only to the registrant, if of legal age, his or her parent or guardian or other legal representative, health and social agencies upon approval of the State Registrar, any agency of the state or the United States for official purposes or upon order of any court of competent jurisdiction.

(3) The State Registrar shall, upon request, furnish to any applicant, a short form certificate of birth or birth card in such form as the State Registrar may designate which shall contain only the name, color, sex, date of birth, place of birth, date of filing of the original certificate, and certificate number which shall be certified to by the State Registrar. All such short form certificates of birth or birth cards including those for persons born out of wedlock or of undetermined parentage or for persons for whom paternity has been determined or adopted persons shall be identical in form, color, size, wording, and arrangement of items.

(4) The State Registrar shall furnish a certified copy of all or part of any marriage, dissolution of marriage, or death certificate, excluding that portion which contains the medical certification of cause of death, recorded under the provisions of this chapter to any person requesting it upon payment of the fee prescribed by this section. A certified copy of the medical certification of cause of death shall be furnished only to persons having a direct and tangible interest in the cause of death, as provided by rules and regulations of the Department of Health and Rehabilitative Services.

(5) Any copy of any record registered under the provisions of this act or any part thereof when properly certified by the State Registrar shall be prima facie evidence in all courts and cases of the facts therein stated.

(6) The State Registrar shall be entitled to fees as follows:

(a) Two dollars for the first calendar year of records searched for a record of birth, fetal death, death, marriage, dissolution of marriage, or other vital record, and $1 for each additional calendar year of records searched, up to a maximum of $25. This fee entitles the applicant to one certification of the record, if located.

(b) Five dollars for filing a delayed certification of birth, death, or stillbirth.

(c) Five dollars for processing and filing a correction on a death record or a correction on a birth record; provided there shall be no fee for processing and filing a correction on a birth record of a child less than 6 months of age.

(d) Five dollars for processing and filing a new birth certificate for reason of adoption or for reason of determination of paternity.

(e) Two dollars for each certification of a vital record in excess of one certification of a vital record for which a fee for search is paid or for which a filing fee is paid.

(f) Three dollars for processing and forwarding each exemplified copy of a vital record.

(g) Four dollars for each search of state census records.

(7) All fees prescribed herein shall be paid by the applicant. The Department of Health and Rehabilitative Services may waive any or all of the fees required in this section. The State Registrar shall keep a true and correct account of all fees required under this section and turn the same over to the State Treasurer to the credit of the General Revenue Fund.

(8) No person shall prepare or issue any certificate which purports to be an original, or certified copy of an original certificate of birth, death or fetal death, except as authorized in this act, or regulations adopted hereunder.

History.—s. 21, ch. 6892, 1915; RGS 2091; CGL 3291; s. 18, ch. 25372, 1949; s. 66, ch. 26869, 1951; s. 1, ch. 63-151; s. 3, ch. 67-312; s. 3, ch. 67-520; ss. 19, 35, ch. 69-106; s. 1, ch. 71-26; s. 1, ch. 73-300; s. 108, ch. 73-333; s. 4, ch. 75-166; s. 115, ch. 77-147; s. 3, ch. 77-319.

382.36 Local registrars charged with enforcing law.—Each local registrar is charged with the strict and thorough enforcement of the provisions of this chapter in his registration district, under the supervision and direction of the State Registrar; and he shall make an immediate report to the State Registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

History.—s. 23, ch. 6892, 1915; RGS 2092; CGL 3292.

382.37 State Registrar charged with executing law.—The State Registrar is charged with the thorough and efficient execution of the provisions of this chapter in every part of the state, and is granted supervisory power over local registrars, deputy registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The State Registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall

report cases of violations of any of the provisions of this chapter to the State Attorney having charge of the prosecution of misdemeanors in the registration district in which such violation shall occur, with a statement of the facts and circumstances; and when any such case is reported to him by the State Registrar, the said State Attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law; and upon request of the State Registrar, the Department of Legal Affairs shall assist in the enforcement of the provisions of this chapter.

History.—s. 23, ch. 6892, 1915; RGS 2093; CGL 3293; ss. 11, 35, ch. 69-106; s. 24, ch. 73-334.

382.38 Department rules.—The Department of Health and Rehabilitative Services may adopt, promulgate, and enforce rules and regulations requiring the notification of all cases of sickness necessary for the preservation and protection of the public health, and for the collection of statistics of marriages and dissolutions of marriage.

History.—s. 24, ch. 6892, 1915; RGS 2094; CGL 3294; ss. 19, 35, ch. 69-106; s. 1, ch. 73-300; s. 116, ch. 77-147.

382.39 Penalties.—

(1) Any person who willfully makes or alters any certificate or record or certification therefrom provided for in this chapter, except in accordance with the provisions of this chapter, or who shall willfully furnish false or fraudulent information affecting any certificate or record required by this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who knowingly transports or accepts for transport, inters, or otherwise disposes of a dead body without an accompanying permit issued in accordance with the provisions of this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(3) Except where a different penalty is provided for in this section, any person who violates any of the provisions of this chapter, or the rules and regulations of the Department of Health and Rehabilitative Services, or who neglects or refuses to perform any of the duties imposed upon him thereunder, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 22, ch. 6892, 1915; RGS 5550; CGL 7733; s. 19, ch. 25372, 1949; ss. 19, 35, ch. 69-106; s. 331, ch. 71-136; s. 117, ch. 77-147.

382.40 Delayed birth certificates; jurisdiction of County Court; procedure and issuance.—Any resident of, or person born in, the state may file a duly verified petition in the county court in the county of his or her residence or in the county of his or her place of birth, setting forth the date, place, and parentage of his or her birth, and petitioning the County Court Judge to issue an order certifying the date, place, and parentage of the birth of the petitioner. Also, a petition may be filed by any such resident or person born in Florida for the purpose of determining either, or any, the date, the place, or the parentage of the birth of the petitioner. Upon filing said petition, the County Court Judge shall have a hearing and may conduct the same as other special proceedings before him. The hearing may, in his discretion, be set for a time certain, within a reasonable time after the petition is filed. When the petition comes on for hearing before the County Court Judge, such evidence may be presented as may be required by the court to establish the fact of such birth and the date, place, and parentage of the birth of the petitioner, or any of such facts, but no certificate may be granted on the uncorroborated testimony of the petitioner. If the evidence offered shall satisfy the court of the date, place, and parentage of the birth of the petitioner, or any of such facts, the court shall thereupon enter an order and certificate accordingly, which said order shall be entered upon forms furnished the county court of the several counties by the Department of Health and Rehabilitative Services. Said order shall be made and signed in triplicate. One copy of such order shall be filed in the County Court in a permanent looseleaf book kept for that purpose and marked "Delayed Birth Certificates," and no further recording shall be required by the court. Where the birth of the petitioner is shown to have occurred in Florida, one copy shall be delivered to the petitioner, and one copy shall be mailed by the County Court Judge, within 10 days after the date of order, to the vital statistics office of the Department of Health and Rehabilitative Services. In all other instances two copies of such order shall be delivered to the petitioner. Said department is authorized and directed to furnish such forms and file such order.

History.—s. 1, ch. 21931, 1943; s. 1, ch. 22887, 1945; ss. 19, 35, ch. 69-106; s. 24, ch. 73-334; s. 118, ch. 77-147.

382.41 Petition, contents.—Such petition may be in form and substance as follows:

In the County Court ..... County, Florida

Petitioner respectfully says that: His (or her) full name is (stating full name). His (or her) residence is (stating place of residence). He (or she) was born on (stating date of birth) at (stating place of birth); that petitioner's father's name was (or is) (stating name of father, if known), color or race of father (stating color or race of father), birthplace of father (stating birthplace, if known, of father), maiden name of mother (stating maiden name, if known, of mother), color or race of mother (stating color or race of mother), birthplace of mother (stating birthplace, if known, of mother); and petitioner prays that an order be entered, certifying and ordering such facts.

History.—s. 2, ch. 21931, 1943; s. 24, ch. 73-334.

382.42 Petition, execution.—Such petition shall be signed and sworn to by the petitioner, or his or her parent or guardian, or by someone who knows such facts, and shall state each fact as definitely in such petition as is known to petitioner. If either or any of such fact or facts is unknown to petitioner, the petitioner shall so state.

History.—s. 3, ch. 21931, 1943.

382.43 Form of certificate.—The birth certificate shall be an order of the County Court Judge adjudicating all or any facts stated in the petition for which sufficient evidence is produced, and such order may be in substance as follows:

In the County Court ..... County, Florida.

DELAYED BIRTH CERTIFICATE

This is to certify that:

It has been made to appear to me that (stating full name of person), was born (stating month, day and year) at (stating place of birth); that his (or her) father's name was (or is) (stating name of father), color or race (stating color or race of father), and his place of birth was (stating father's place of birth); that his (or her) mother's maiden name was (or is) (stating maiden name of mother of petitioner), color or race (stating color or race of mother), and her place of birth was (stating birthplace of mother).

Given under my hand and seal, at ..... Florida, this ..... day of ..... 19 .....

(County Court Judge)

..... County, Florida.

History.—s. 4, ch. 21931, 1943; s. 24, ch. 73-334.

382.44 Judgment a public record.—Said order and the record thereof is hereby made a judgment of a court of record, and, when filed as herein required, shall be a public record and shall be accepted as such by the courts and other agencies and persons of this state in the same manner as other public records, and shall be prima facie evidence of the fact or facts therein adjudicated.

History.—s. 5, ch. 21931, 1943; s. 24, ch. 73-334.

382.45 Appeals.—Any resident of such county where the proceeding is had, or any person interested, may appeal from such order or certificate to the appropriate District Court of Appeal in the manner and within the time required by the Florida Appellate Rules, or to the Supreme Court if authorized by s. 3, Art. V of the State Constitution.

History.—s. 6, ch. 21931, 1943; s. 24, ch. 63-559; s. 7, ch. 73-299.

382.46 Costs.—The county court, for the complete services in establishing a delayed birth certificate and order under this law, shall receive the sum of $5.

History.—s. 7, ch. 21931, 1943; s. 2, ch. 63-151; s. 24, ch. 73-334.

382.47 Certified copies.—The Department of Health and Rehabilitative Services and the County Court Judge are each authorized to make and furnish additional certified copies of such order upon payment of $2 therefor.

History.—s. 8, ch. 21931, 1943; s. 3, ch. 63-151; s. 4, ch. 67-520; s. 24, ch. 73-334; s. 119, ch. 77-147.

382.48 Remedy cumulative.—The method of obtaining delayed birth certificates under ss. 382.40-382.47 shall be cumulative and in addition to any other method now or hereafter provided by law for obtaining delayed birth certificate, but no person may establish more than one birth certificate.

History.—s. 10, ch. 21931, 1943.

382.49 Correction of birth certificates.—

(1) The Department of Health and Rehabilitative Services, by and through the State Registrar, is hereby authorized, empowered and directed to correct any error of a general nature pertaining to date of birth, sex of child, or other information necessary to the issuance of birth certificate and to correct any error of a clerical nature, such as mistakes in spelling of names of child, names of towns or cities in which child was born or doctor or midwife or other person attending the birth of said child.

(2) The affidavit of either parent of said child shall be sufficient evidence for the correction of any error mentioned in subsection (1) of this section.

(3) The State Registrar shall make no rule superseding this section.

History.—ss. 1, 2, 3, ch. 24114, 1947; s. 120, ch. 77-147.

382.50 Microfilming and destroying obsolete correspondence and records.—

(1) The State Registrar may destroy general correspondence files over 2 years old and also any other records not specifically provided for herein.

(2) The State Registrar is authorized to photograph, microphotograph, or reproduce on film, in such a manner that each page will be exposed in exact conformity with the original, all burial or removal permits, death certificates, birth certificates, marriage licenses, and other records and documents as he may, in his discretion, select, and the said State Registrar is hereby authorized to destroy any of said documents after they have been photographed and filed and after audit of his office has been completed for the period embracing the dates of said instruments.

(3) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—s. 1, ch. 59-221.

CHAPTER 383

MATERNITY AND INFANCY HYGIENE

[1]383.01 Acceptance of provisions of Sheppard-Towner Act.—The state accepts the provisions of what is known as the Sheppard-Towner Act, an Act of Congress approved November 23, 1921, for the promotion of the welfare and hygiene of maternity and infancy and for other purposes. The good faith of the state is pledged to make available for the several purposes of said act, funds sufficient at least to equal the sums allotted from time to time to this state from the appropriation made by the said act and to meet all conditions necessary to entitle the state to the benefits of the said act.

History.—s. 1, ch. 9186, 1923; CGL 3987.

[1]Note.—Since 1935, the program provided by this section has been funded under Title V of the Social Security Act, as amended, 42 U.S.C. 701 et seq.

[1]383.02 Custodian and disburser of funds.—The Department of Health and Rehabilitative Services is designated custodian of all funds allotted to this state from the appropriation made by the Sheppard-Towner Act, and the department may receive and provide for the proper custody and disbursement of said funds in accordance with said act.

History.—s. 2, ch. 9186, 1923; CGL 3988; ss. 19, 35, ch. 69-106; s. 121, ch. 77-147.

[1]Note.—See note following s. 383.01.

[1]383.03 Cooperation with federal authorities; appropriation.—The Department of Health and Rehabilitative Services, shall cooperate as provided in and by the Sheppard-Towner Act of Congress with the federal authorities in the administration of the provisions of said act, and shall do all things necessary to entitle the state to receive the benefits thereof and especially shall cooperate with the Federal Government in carrying out the provisions of the act for the promotion of the welfare and hygiene of maternity and infancy. The Department of Health and Rehabilitative Services may expend, of the funds raised by taxation for the maintenance of the department, the sum of $16,000 per year, or so much thereof as may be necessary to equal and match the amount of money allotted to the state by the Federal Government under the provisions of the said Sheppard-Towner Act, approved November 23, 1921.

History.—s. 3, ch. 9186, 1923; CGL 3989; ss. 4, 19, 35, ch. 69-106; s. 122, ch. 77-147.

[1]Note.—See note following s. 383.01.

383.04 Prophylactic required for eyes of infants.—Every physician, midwife, or other person in attendance at the birth of a child in the state is required to instill or have instilled into the eyes of the baby within 1 hour after birth, a 1 percent fresh solution of silver nitrate (with date of manufacture marked on container), 2 drops of the solution to be dropped into each eye after the eyelids have been opened; or some equally effective prophylactic approved by the Department of Health and Rehabilitative Services, for the prevention of blindness from ophthalmia neonatorum. A record of such administration or instillation shall be reported on the birth certificate, showing the time with respect to the birth and the kind of prophylactic administered; provided, that this section shall not apply to cases where the parents shall file with the physician, midwife, or other person in attendance at the birth of a child written objections on account of religious beliefs contrary to the use of drugs. In such case the physician, midwife, or other person in attendance shall record in writing on the birth certificate of such child that such measures were or were not employed and attach thereto such written objection.

History.—s. 1, ch. 20690, 1941; ss. 19, 35, ch. 69-106; s. 123, ch. 77-147.

383.05 Department of Health and Rehabilitative Services to prepare prophylactic for free distribution.—The Department of Health and Rehabilitative Services shall cause to be prepared and put into proper containers a 1 percent fresh solution of nitrate of silver or some equally effective prophylactic approved by the department, to be distributed free, with instructions for use, to local health officers, to enable each health officer to distribute a sufficient quantity to each physician and midwife within his territorial jurisdiction; and it is hereby made the duty of local health officers to make such distribution to indigents. In areas where no health officer is employed, the department shall furnish such prophylactic preparations and instructions free to each physician, midwife, or other person in attendance at the birth of a child. Any solution or prophylactic furnished by the department shall bear the date of manufacture.

History.—s. 2, ch. 20690, 1941; ss. 19, 35, ch. 69-106; s. 110, ch. 71-355; s. 124, ch. 77-147.

383.06 Report of inflamed, etc., eyes treated.—Any person who shall nurse or attend any infant shall report any inflammation or unnatural discharge in the eyes of said child that shall develop within 2 weeks after birth, to the local health officer or licensed physician, which report shall be made within 6 hours.

History.—s. 3, ch. 20690, 1941.

383.07 Penalty for violation.—Any person who fails to comply with the provisions of ss. 383.04-383.06 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 4, ch. 20690, 1941; s. 332, ch. 71-136.

383.08 Serological tests of pregnant women; duty of physician.—Every physician attending a pregnant woman for conditions relating to her pregnancy during the period of gestation or at delivery shall take, or cause to be taken, a sample of venous blood of such woman at the time of the first professional visit or within 10 days thereafter. In those cases where a pregnant woman is not seen prior to the time of delivery, blood should be collected by the person making the delivery, such blood to be sent to a recognized laboratory for a serological test for syphilis. Every other person permitted by law to attend pregnant women but not permitted by law to take blood samples shall cause a sample of venous blood of such pregnant women to be taken by a physician duly licensed. Such sample of blood shall be submitted by the physician to an approved laboratory for a standard serological test for syphilis.

History.—s. 1, ch. 22644, 1945.

383.09 Tests.—For the purpose of this law, a standard serological test shall be a test for syphilis approved by the Department of Health and Rehabilitative Services, and an approved laboratory shall be the Department of Health and Rehabilitative Services laboratory, any of its branches, or other laboratory in the state which is approved by the department; provided, however, that the serological test or tests shall be such as will exclude the possibility that the disease as shown by said test or tests is some other disease than syphilis.

History.—s. 2, ch. 22644, 1945; ss. 19, 35, ch. 69-106; s. 125, ch. 77-147.

383.10 Reporting births.—In reporting every birth and stillbirth, physicians and others required by law to make such reports shall state on the back of the certificate that a serological test for syphilis has been made upon a sample of blood taken from the woman who bore the child and the approximate date of such test; and if such test has not been made, the reason for not making the test. In no case shall the birth certificate state the result of the test.

History.—s. 3, ch. 22644, 1945.

383.11 Reports.—The laboratory report on the serological test shall be made on a form to be provided by the Department of Health and Rehabilitative Services. In submitting the sample of blood for the test, the physician shall designate that this is a pregnancy test; and the laboratory report shall state that this was a pregnancy test.

History.—s. 4, ch. 22644, 1945; ss. 19, 35, ch. 69-106; s. 126, ch. 77-147.

383.12 Costs and charges.—All serological tests required by this law on blood samples submitted to the laboratory of the Department of Health and Rehabilitative Services or to any of its authorized branches shall be made without charge.

History.—s. 5, ch. 22644, 1945; ss. 19, 35, ch. 69-106; s. 127, ch. 77-147.

383.13 Use of information by department.—The Department of Health and Rehabilitative Services shall be authorized to use the information derived from pregnancy serological tests for such follow-up procedures as are required by law or deemed necessary by said department for the protection of the public health.

History.—s. 6, ch. 22644, 1945; ss. 19, 35, ch. 69-106; s. 128, ch. 77-147.

383.14 Screening of infants for metabolic and other hereditary and congenital disorders.—It shall be the duty of the Department of Health and Rehabilitative Services to promote the screening of all infants born in Florida for phenylketonuria and other metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. Tests shall be performed at such times and in such manner as may be prescribed by the department after consultation with the Infant Screening Advisory Council.

(1) RULES.—After consultation with the Infant Screening Advisory Council, the department shall promulgate and enforce rules requiring that every infant born in Florida shall, prior to becoming 2 weeks of age, be subjected to a test for phenylketonuria and, at the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time. The department is empowered to promulgate such additional rules as are found necessary for the administration of this section, including rules relating to the methods used and time or times for testing as accepted medical practice indicates, and rules requiring mandatory reporting of the results of tests for these conditions to the department.

(2) DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES; POWERS AND DUTIES.—The department shall administer and provide certain services to implement the provisions of this section and shall:

(a) Assure the availability and quality of the necessary laboratory tests and materials.

(b) Furnish all physicians, public health units, and hospitals forms on which the results of tests for phenylketonuria and such other disorders for which testing may be required from time to time shall be reported to the department.

(c) Promote education of the public about the prevention and management of metabolic, hereditary, and congenital disorders.

(d) Maintain a confidential registry of cases, including information of importance for the purpose of follow-up services to prevent mental retardation, to correct or ameliorate physical handicaps, and for

epidemiologic studies, if indicated.

(e) Supply the necessary dietary treatment products where practicable for diagnosed cases for as long as medically indicated when the products are not otherwise available.

(f) Promote the availability of genetic studies and counseling in order that the parents, siblings, and affected infants may benefit from available knowledge of the condition.

(3) OBJECTIONS OF PARENT OR GUARDIAN.—The provisions of this section shall not apply when the parent or guardian of the child objects thereto. A written statement of such objection shall be presented to the physician or other person whose duty it is to administer and report such tests under the provisions of this section.

(4) ADVISORY COUNCIL.—There is established an Infant Screening Advisory Council made up of 10 members appointed by the Secretary of the Department of Health and Rehabilitative Services. The council shall be composed of two consumer members, two practicing pediatricians, one representative from each of the three medical schools in the state, and one representative each from the Children's Medical Services Program Office, the Health Program Office, and the Developmental Services Program Office. One half of the members of the first council shall be appointed for a term of 2 years and the other half for a term of 4 years. Thereafter, all appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. Council members shall serve without pay. Notwithstanding the provisions of ss. 20.05(3) and 112.061, the council members shall not be reimbursed for travel or expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program;

(b) Procedures for collection and transmission of specimens and recording of results; and

(c) Methods whereby screening programs for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

History.—s. 1, ch. 65-519; ss. 19, 35, ch. 69-106; s. 1, ch. 71-140; s. 129, ch. 77-147; s. 1, ch. 78-245; s. 2, ch. 79-26.

383.15 Legislative intent.—The Legislature finds and declares that many of the diseases and disabilities of the perinatal period have debilitating, costly, and often fatal consequences if left untreated. Many of these debilitating conditions could be prevented or ameliorated if regional perinatal care program center services were available to the general public. Such perinatal care services are critical to the well-being and development of a healthy society and represent a constructive, cost beneficial, and essential investment in the future of our state. Therefore, it is the intent of the Legislature to stimulate and encourage the development of regional perinatal care program centers throughout the state. The Legislature further intends that development of regional perinatal care program centers shall not effectuate a reduction or dilution of the current financial commitment of the state as indicated through appropriation, to the existing regional neonatal intensive care program centers.

History.—s. 1, ch. 76-54; s. 1, ch. 77-171.

383.16 Definitions.—As used in this act, unless the context clearly requires otherwise:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Office" means the Children's Medical Services Program Office.

(3) "Centers" or "Regional Perinatal Intensive Care Program Centers" means units designated by the department within hospitals, specifically designed to provide a full range of health services to women with high-risk pregnancies and newborn infants in need of intensive care.

(4) "Affiliated centers" means:

(a) Units designated by the department in children's hospitals, specifically designed to provide a full range of health services to newborns in need of intensive care; or

(b) Units designated by the department within hospitals, designed to provide health services to mothers with mild to moderate risk pregnancies and infants in need of special care, but not requiring the full range of services provided at the regional perinatal centers,

which are integrated into a regional perinatal intensive care program and which have an established working relationship with the designated center.

(5) "Patient" means a woman with a high risk pregnancy who has been declared financially and medically eligible or a newborn infant in need of intensive care and declared financially and medically eligible, notwithstanding the provisions of chapter 391.

(6) "Equalization funds" means funds available to centers and affiliated centers, which funds shall be distributed according to a formula designed by the department to include the proportion of eligible patients served statewide during a given fiscal year, and which formula shall include the number of eligible patients served, the number of inpatient hospitalization days, and the number of outpatient evaluations and services.

(7) "Minimum support grants" means grants of equal amount which are distributed by the department to all centers.

History.—s. 2, ch. 76-54; s. 1, ch. 77-171; s. 1, ch. 79-351.

383.17 Regional perinatal intensive care center program; authority.—The department is authorized to make grants and reimbursements to hospitals licensed under chapter 395, in accordance with agreements entered into pursuant to this act. These grants or reimbursements shall be designed to assist hospitals in helping to establish and maintain centers and affiliated centers. The cost of administering the regional programs shall be paid by the department from funds appropriated for this purpose.

History.—s. 3, ch. 76-54; s. 1, ch. 77-171.

383.18 Grant agreements; conditions.—Grants made under this act shall be contingent upon the department's entering into contractual agreements with recipient centers which provide that patients will receive services of such centers. Parents or guardians of these patients shall not be additionally charged for treatment and care which has been contracted for by the department. Grants shall be disbursed in accordance with conditions set forth in s. 383.19.

History.—s. 4, ch. 76-54; s. 1, ch. 77-174.

383.19 Grant disbursements and reimbursements; guidelines.—

(1) The department shall use guidelines for development of centers which include, but are not limited to, the need for regional perinatal intensive care program center and affiliated center services and the requirements of the population to be served. One center may be established to serve a geographic area which experiences at least 10,000 live births per year. First priority in the establishment of these centers shall be given to the seven neonatal intensive care centers located in Escambia, Duval, Alachua, Orange, Hillsborough, Pinellas, and Dade Counties; and three new centers shall be established, subject to further legislative approval and to appropriations becoming available specifically for such centers, to be located in Broward, Dade, and Palm Beach Counties. From funds appropriated for this program, each established center shall receive an equal minimum support grant. Affiliated centers shall be entitled to funds appropriated for the perinatal intensive care program only after established centers have received minimum support grants as provided above and after agreement, and establishment of a working relationship, between an affiliated center and a center. Each fiscal year, the amount of minimum support grants shall be computed so that the aggregate of all such grants is not less than 200 percent or more than 250 percent of the sum allocated for equalization funds. If funds designated for minimum support grants are not expended for such grants because a center terminates or does not enter into a contractual agreement with the department, such funds shall revert to equalization funds and be distributed accordingly.

(2) Centers and affiliated centers which are reimbursed funds under this act shall comply with standards established by rule of the department.

(3) The department shall give priority consideration to establishing centers in hospitals which have demonstrated an interest in perinatal intensive care by developing resources to match grants made pursuant to this act.

(4) Hospitals organized on a private, for-profit basis that do not accept county, state, or federal funds or indigent patients shall not be eligible for funds under this act.

History.—s. 5, ch. 76-54; s. 1, ch. 77-171; s. 1, ch. 77-174; s. 2, ch. 79-351; s. 152, ch. 79-400.

383.20 Perinatal Advisory Council.—There is established a Perinatal Advisory Council made up of eight members appointed by the program office. The program director of the office shall serve as an ex officio member of the council. The terms of members shall be for 4 years and shall be staggered. The chairman of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon call of the chairman or the director of the office. The council will recommend to the office standards and facilities for designation as affiliated centers and centers. The council members shall serve without pay. Notwithstanding the provisions of subsection 20.05(3) and s. 112.061, the council members shall not be reimbursed for travel or expenses.

History.—s. 5, ch. 76-54; s. 1, ch. 77-171.

383.21 Program review.—At least annually during the grant period, the department shall evaluate the services rendered by the regional centers and any affiliated centers. The department shall submit its programmatic and financial evaluation report, by center and affiliated center, to the Legislature no later than February 15 of each year. Not more than 5 percent of the funds appropriated for this act may be used to provide for statewide supervision and evaluation of the regional center programs.

History.—s. 7, ch. 76-54; s. 1, ch. 77-171.

CHAPTER 384

VENEREAL DISEASES

384.01 Diseases designated as venereal diseases.—Syphilis, gonorrhea, and chancroid are designated as venereal diseases and are declared to be contagious, infectious, communicable, and dangerous to the public health. It is unlawful for any one infected with either of these diseases to expose another to infection.

History.—s. 1, ch. 7829, 1919; CGL 3947.

384.02 Sexual intercourse with person afflicted with venereal disease illegal.—It is unlawful for any female afflicted with any venereal disease, knowing of such condition, to have sexual intercourse with any male person, or for any male person afflicted with any venereal disease, knowing of such condition, to have sexual intercourse with any female.

History.—s. 2, ch. 7829, 1919; CGL 3948.

384.03 Penalty for violation.—Any person who shall violate any of the provisions of s. 384.01 or s. 384.02, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 7829, 1919; CGL 7735; s. 333, ch. 71-136.

384.04 Physical examination.—Any person suspected of being afflicted with any infectious venereal disease shall be subject to physical examination and inspection by any representative of the Department of Health and Rehabilitative Services, and for failure or refusal to allow such inspection or examination, they shall be guilty of a misdemeanor and shall be punished as for a misdemeanor; provided, the suspected person shall not be apprehended, inspected or examined against his will, except upon the sworn testimony of the person or persons accusing; and upon the presentation of the warrant duly authorized by the county court judge or some court officer charged with the execution of this law.

History.—s. 4, ch. 7829, 1919; CGL 3949; ss. 19, 35, ch. 69-106; s. 24, ch. 73-334; s. 6, ch. 79-12.

384.05 Penalty for violation of Department of Health and Rehabilitative Services rules.—Any person willfully violating any rule or regulation promulgated by the Department of Health and Rehabilitative Services under the authority of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 7829, 1919; CGL 7736; ss. 19, 35, ch. 69-106; s. 334, ch. 71-136; s. 130, ch. 77-147.

384.06 Physicians, etc., to report venereal disease cases to Department of Health and Rehabilitative Services.—Any physician or other person who makes a diagnosis in, or treats a case of, venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall make a report of such case to the Department of Health and Rehabilitative Services or to the local health officer representing the department, and subsequently, if such infected person ceases to take treatment for such venereal disease from the original reporting source prior to his or her becoming cured or rendered noninfectious, as determined according to competent medical authority, such fact shall likewise be reported to the department or said local health officer, according to such form and manner and at such times as the Department of Health and Rehabilitative Services shall direct by rule or regulation adopted by it.

History.—s. 6, ch. 7829, 1919; CGL 3950; s. 1, ch. 21657, 1943; ss. 19, 35, ch. 69-106; s. 131, ch. 77-147.
cf.—ss. 796.04-796.07 Laws prohibiting prostitution.

384.061 Minors, consent to treatment.—

(1)(a) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine

under chapters 458 and 459, when executed by a minor who is or professes to be afflicted with or exposed to an infectious, contagious, or communicable disease as defined in s. 384.01, shall be valid and binding as if the minor had achieved his majority. Any such consent shall not be subject to later disaffirmance by reason of minority.

(b) The consent of no person, including but not limited to a spouse, parent, custodian, or guardian, shall be necessary in order to authorize such hospital or clinical care or services to be provided by a physician licensed to practice medicine under chapters 458 and 459 to such a minor, and such person, spouse, parent, custodian, or guardian shall not be liable for any care rendered pursuant to this section. However, the physician shall make a sincere attempt to persuade the minor to permit him to divulge the nature of the condition to the parent or parents of the minor.

(2) Upon the advice and direction of a treating physician or, if more than one, any one of them, a member of the medical or osteopathic staff of a hospital or public clinic or a physician licensed to practice medicine under chapters 458 and 459 may inform the spouse, parent, custodian, or guardian of any such minor as to the treatment given or needed. Such information may be given to or withheld from the spouse, parent, custodian, or guardian without the consent of the minor patient.

History.—s. 1, ch. 70-58; s. 1, ch. 71-349.

384.07 Department of Health and Rehabilitative Services and county and municipal health officers may examine suspects and require treatment.—The Department of Health and Rehabilitative Services and county and municipal health officers, or their authorized deputies, within their respective jurisdictions, shall, when in their judgment it is necessary to protect the public health, make examination of persons being or suspected of being infected with a venereal disease, require persons infected with a venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense, and isolate persons infected with a venereal disease; provided, the suspected person shall not be apprehended, inspected, or examined against his will, except upon the sworn testimony of the person or persons accusing; and upon the presentation of the warrant duly authorized by the county court judge or some court officer charged with the execution of this law.

History.—s. 7, ch. 7829, 1919; CGL 3951; ss. 19, 35, ch. 69-106; s. 24, ch. 73-334; s. 132, ch. 77-147.

384.08 Prisoners to be examined and treated by Department of Health and Rehabilitative Services.—All persons who shall be confined or imprisoned in any state, county, or city prison of this state, may be examined and treated for venereal diseases by the health authorities or their deputies. The Department of Health and Rehabilitative Services and county and municipal boards of health may take over such portions of any state, county, or city prison as may be necessary for a department or board of health hospital, wherein all persons who shall have been confined or imprisoned and who are suffering with a venereal disease at the time of the expiration of their terms of imprisonment, shall be isolated and treated at public expense until cured, or, in lieu of such isolation, such person may, in the discretion of the department, be required to report to a licensed physician or submit to treatment at public expense as provided in s. 384.07.

History.—s. 8, ch. 7829, 1919; CGL 3952; ss. 19, 35, ch. 69-106; s. 133, ch. 77-147.

384.09 Department of Health and Rehabilitative Services to make rules necessary for carrying out of this chapter.—The Department of Health and Rehabilitative Services shall make such rules and regulations as shall in its judgment be necessary for the carrying out of the purposes of this chapter, including rules and regulations providing for such labor on the part of the isolated persons as may be necessary to provide in whole or in part for their subsistence and to safeguard their general health, and such other rules and regulations concerning venereal diseases as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter.

History.—s. 9, ch. 7829, 1919; CGL 3953; ss. 19, 35, ch. 69-106; s. 134, ch. 77-147.

384.10 Reports of venereal disease cases to be filed in Department of Health and Rehabilitative Services office not subject to public inspection.—All reports of cases of venereal disease shall be filed in a safe or some place of safekeeping in the office of the Department of Health and Rehabilitative Services, and shall not be subject to public inspection. No clerk or officer of the department shall give out any personal information as to such reported cases, except upon the demand of the judge of a court empowered to deal with the operation of this law; nor shall the reports of cases of venereal disease be made to the department, or any city or county board of health, except in a sealed, stamped envelope, which shall be furnished the physicians of the state without cost to them by the department; provided, however, that all such reports shall be available to said department and may be used by it for the purpose of requiring persons so reported as being infected with venereal disease to take treatment therefor as required by law.

History.—s. 10, ch. 7829, 1919; CGL 3954; s. 1, ch. 21658, 1943; ss. 19, 35, ch. 69-106; s. 135, ch. 77-147.

384.11 Towns, cities, or counties may donate.—Any town, city, or county, may make donations to the Department of Health and Rehabilitative Services to assist in the enforcement of this chapter.

History.—s. 11, ch. 7829, 1919; CGL 3955; ss. 19, 35, ch. 69-106; s. 136, ch. 77-147.

384.12 Certain persons having venereal disease to report to department.—After May 1, 1943, all persons in the State of Florida who have been rejected for military service in the Armed Forces of the United States, or placed in a deferred classification by their local draft board of selective service, who are infected with a venereal disease, shall immediately report to the nearest venereal disease

clinic operated by the Department of Health and Rehabilitative Services and furnish satisfactory proof to the health officer in charge of such clinic that such person is taking, and will continue to take, treatment for such venereal disease from a reputable physician until cured, or submit to treatment at public expense under the supervision and direction of such venereal disease clinic.

History.—s. 1, ch. 21659, 1943; ss. 19, 35, ch. 69-106; s. 137, ch. 77-147.

384.13 Venereal disease; evidence, penalty for violations.—Notice from any local draft board of selective service to a venereal disease clinic operated by the Department of Health and Rehabilitative Services, that the person named therein is infected with a venereal disease, shall constitute prima facie evidence in the courts of this state that such person is infected with a venereal disease, and his refusal to report to the venereal disease clinic, as provided in s. 384.12 after receipt of notice to report from said venereal disease clinic, shall constitute a violation of this section, and such person shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 21659, 1943; ss. 19, 35, ch. 69-106; s. 335, ch. 71-136; s. 138, ch. 77-147.

384.14 Venereal diseases; quarantine; power and authority of health officers.—State, county, and municipal health officers, or their authorized deputies, when in their judgment it is necessary to protect the public health, may commit persons within their respective jurisdictions, infected with venereal disease, for quarantine and compulsory treatment in any hospital within the state operated for that purpose by the Department of Health and Rehabilitative Services for quarantine and treatment.

History.—s. 1, ch. 21948, 1943; ss. 19, 35, ch. 69-106; s. 139, ch. 77-147.

384.15 Transfer of certain persons to health officer.—The several sheriffs and chiefs of police of the various counties and municipalities in the state are hereby authorized and directed to transfer to the custody of the Department of Health and Rehabilitative Services or any county or municipal health officer or their authorized deputies within their respective jurisdictions, any person in the custody of said sheriffs or chiefs of police charged with or convicted of any misdemeanor and who is infected with any venereal disease, for the purposes of quarantine and treatment in any hospital in the state operated for that purpose by the department; provided, however, that when such person has been rendered noninfectious, such person shall, if still under sentence or prosecution, be redelivered to the sheriff or chief of police of the county or city entitled to the custody of such person, at the expense of the department, to answer to the charges or sentence therein pending against such person; and provided, further, if such person should break quarantine and escape from such hospital, such person shall be apprehended at the expense of the department and returned to the county or municipality entitled to the custody of such person, to be quarantined in the county or city jail and to answer to the charge or sentence there pending against such person.

History.—s. 2, ch. 21948, 1943; ss. 19, 35, ch. 69-106; s. 140, ch. 77-147.

384.16 Quarantine and treatment; procedure.—Any person infected with a venereal disease and delivered to any state, county, or municipal health officer for quarantine and treatment, as provided in this section, may be transported, for quarantine and treatment, from the county or municipality where such person is received by said health officer, to any hospital in the state operated for that purpose by the Department of Health and Rehabilitative Services, and said health officer may cause such person to be transported by the sheriff or chief of police or duly authorized deputy sheriff or police officer, or by a duly authorized officer of the Florida Highway Patrol, and the expense incident to such transportation, in all cases except where transportation is by the Florida Highway Patrol, shall be paid by the county or municipality involved.

History.—s. 3, ch. 21948, 1943; ss. 19, 35, ch. 69-106; s. 141, ch. 77-147.

384.17 Isolation of infected persons.—In the event persons infected with venereal disease for any reason cannot be received at any hospital operated by the Department of Health and Rehabilitative Services for quarantine and treatment of persons infected with venereal disease, and such persons, in the opinion of the health officer, should be isolated and quarantined for the protection of the public health, then and in such event the health officer may cause such persons to be isolated, quarantined, and treated in the jail of the county or city where such person resides, at the expense of the county or city involved.

History.—s. 4, ch. 21948, 1943; ss. 19, 35, ch. 69-106; s. 142, ch. 77-147.

384.18 Sheriffs' fees, etc.—The sheriffs of the several counties of the state shall receive the same fees and mileage for service rendered under this law as are prescribed for like service in criminal cases, such fees and mileage to be paid out of the fine and forfeiture fund of the county involved.

History.—s. 5, ch. 21948, 1943.

384.19 Receipt for delivery of infected persons.—In all cases where a sheriff or chief of police transfers custody of any person to a health officer under this law, such health officer shall give to such sheriff or chief of police a receipt showing the name of the person or persons so delivered, together with the date and place where said delivery was made.

History.—s. 6, ch. 21948, 1943.

CHAPTER 385

SANITARY INSPECTION OF HOTELS AND BOARDINGHOUSES

385.01 Examination of buildings, etc.—The Department of Health and Rehabilitative Services shall cause, as often as may be necessary, upon information or complaint of any person, or at the request of any town or city council, or health officer, an examination to be made of any building or buildings, and the premises connected therewith, used for board and lodging of visitors or other persons, containing 10 or more rooms, such examination to be made by or under the supervision of the department, or by persons under its appointment, as soon as possible after such application or complaint shall have been made.

History.—s. 1, ch. 4696, 1899; GS 1149; RGS 2120; CGL 3349; ss. 19, 35, ch. 69-106; s. 143, ch. 77-147.
cf.—Ch. 509 Hotels and restaurants.

385.02 Purpose of examination; fee for inspection if unsanitary condition found.—It shall be the purpose in making such examination, to ascertain the source and sufficiency of the water supply, the quality of the water, the methods of removal of waste water, slops, excreta, house refuse, garbage, and all other putrescible matter of any kind, the ventilation available, and all other conditions relating to the health, sanitary conditions, and safety of said buildings and premises. For each inspection so made the owner or managing occupant of the premises so inspected shall pay the Department of Health and Rehabilitative Services the sum of $2, if premises are found to be in unsanitary condition, which amount shall be deposited by said department to the credit of the General Revenue Fund.

History.—s. 2, ch. 4696, 1899; GS 1150; RGS 2121; CGL 3350; s. 67, ch. 26869, 1951; ss. 19, 35, ch. 69-106; s. 144, ch. 77-147.

385.03 Department of Health and Rehabilitative Services to issue certificates.—Upon the completion of such inspection, the Department of Health and Rehabilitative Services shall issue a certificate, reciting the details of the sanitary and other conditions of the examined premises, in accordance with the facts ascertained by such examination, and said certificate shall forthwith be posted by the owner or managing occupant of such premises in a safe and conspicuous place, where it may be easily seen and read by all persons, guests or other occupants of said premises; and if the said certificate shall become defaced or destroyed, said managing occupant shall immediately procure a copy of the same, which shall be placed in a like conspicuous position, for which copy the department shall not be entitled to receive any fee.

History.—s. 3, ch. 4696, 1899; GS 1151; RGS 2122; CGL 3351; ss. 19, 35, ch. 69-106; s. 145, ch. 77-147.

385.04 Unsanitary conditions must be remedied.—Whenever, upon an examination of any premises the inspection of which is required by this chapter, it shall be found by the Department of Health and Rehabilitative Services that the premises and building so inspected are in an unsanitary condition, such as to constitute a menace to the health and safety of the occupants thereof, the department shall cause to be posted upon some conspicuous place on said premises, a written or printed notice, requiring the owner or managing occupant of said premises, or both, to make such changes or to perform or refrain from the performance of such acts as may be necessary to place said premises in a sanitary and safe condition for the occupants thereof, within a reasonable time to be fixed by said notice.

History.—s. 5, ch. 4696, 1899; GS 1152; RGS 2123; CGL 3352; ss. 19, 35, ch. 69-106; s. 146, ch. 77-147.

385.05 Penalty for failure to remedy unsanitary conditions.—If the owner or managing occupant, or both, who shall be required by notice from the Department of Health and Rehabilitative Services to remedy unsanitary conditions, shall fail to comply therewith within the time mentioned, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 4696, 1899; GS 3693; RGS 5638; CGL 7831; ss. 19, 35, ch. 69-106; s. 336, ch. 71-136; s. 147, ch. 77-147.

CHAPTER 386

NUISANCES INJURIOUS TO HEALTH

386.01 Sanitary nuisance.—A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

History.—s. 1, ch. 4346, 1895; GS 1153; RGS 2157; CGL 3386.

386.02 Duty of Department of Health and Rehabilitative Services.—The Department of Health and Rehabilitative Services, upon request of the proper authorities, or of any three responsible resident citizens, or whenever it may seem necessary to the department, shall investigate the sanitary condition of any city, town, or place in the state; and if, upon examination, the department shall ascertain the existence of any sanitary nuisance as herein defined, it shall serve notice upon the proper party or parties to remove or abate the said nuisance or, if necessary, proceed to remove or abate the said nuisance in the manner provided in s. 823.01.

History.—s. 11, ch. 4346, 1895; GS 1154; RGS 2158; CGL 3387; ss. 19, 35, ch. 69-106; s. 148, ch. 77-147.

386.03 Notice to remove nuisances; authority of Department of Health and Rehabilitative Services and local health authorities.—

(1) The Department of Health and Rehabilitative Services, upon determining the existence of anything or things herein declared to be nuisances by law, shall notify the person or persons committing, creating, keeping, or maintaining the same, to remove or cause to be removed, the same within 24 hours, or such other reasonable time as may be determined by the department, after such notice be duly given.

(2) If the sanitary nuisance condition is not removed by such person or persons within the time prescribed in said notice, the department, its agents or deputies or local health authorities, may within the county where the nuisance exists, remove, cause to remove, or prevent the continuing sanitary nuisance condition in the following manner:

(a) Undertake required correctional procedures, including the removal of same if necessary; the cost or expense of such removal or correctional procedures shall be paid by the person or persons committing, creating, keeping, or maintaining such nuisances; and if the said cost and expense thus accruing shall not be paid within 10 days after such removal, the same shall be collected from the person or persons committing, creating, keeping, or maintaining such nuisances, by suit at law; but this paragraph shall not authorize the department to alter, change, demolish, or remove any machinery, equipment, or facility designed or used for the processing or disposing of liquid or smoke effluent of a manufacturing plant.

(b) Institute criminal proceedings in the county court in the jurisdiction of which the condition exists against all persons failing to comply with notices to correct sanitary nuisance conditions as provided in this chapter.

(c) Institute legal proceedings authorized by the department as set forth in s. 381.031(4).

History.—s. 12, ch. 4346, 1895; GS 1155; RGS 2159; CGL 3388; s. 1, ch. 63-64; ss. 19, 35, ch. 69-106; s. 1, ch. 77-119; s. 149, ch. 77-147.

386.041 Nuisances injurious to health.—

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases, and noisome odors which are harmful to human or animal life.

(b) Improperly built or maintained septic tanks, water closets, or privies.

(c) The keeping of diseased animals dangerous to human health.

(d) Unclean or filthy places where animals are slaughtered.

(e) The creation, maintenance, or causing of any condition capable of breeding flies, mosquitoes, or other arthropods capable of transmitting diseases, directly or indirectly to humans.

(f) Any other condition determined to be a sanitary nuisance as defined in s. 386.01.

(2) The Department of Health and Rehabilitative Services, its agents and deputies, or local health authorities are authorized to investigate any condition or alleged nuisance in any city, town, or place within the state, and if such condition is determined to constitute a sanitary nuisance, they may take such action to abate the said nuisance condition in accordance with the provisions of this chapter.

History.—s. 2, ch. 63-64; ss. 19, 35, ch. 69-106; s. 150, ch. 77-147.

386.051 Nuisances injurious to health, penalty.—Any person found guilty of creating, keeping, or maintaining a nuisance injurious to health shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 63-64; s. 337, ch. 71-136.

CHAPTER 387

POLLUTION OF WATERS

387.01 "Underground waters of the state" defined.—The term "underground waters of the state," when used in this chapter, shall include all underground streams and springs and underground waters within the borders of the state, whether flowing in underground channels or passing through the pores of the rocks.

History.—s. 1, ch. 6443, 1913; RGS 2160; CGL 3389.

387.02 Permit required for draining surface water or sewage into underground waters of state.—No municipal corporation, private corporation, person, or persons within the state shall use any cavity, sink, driven or drilled well now in existence, or sink any new well within the corporate limits, or within 5 miles of the corporate limits, of any incorporated city or town, or within any unincorporated city, town, or village, or within 5 miles thereof, for the purpose of draining any surface water or discharging any sewage into the underground waters of the state, without first obtaining a written permit from the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 6443, 1913; RGS 2161; CGL 3390; ss. 19, 35, ch. 69-106; s. 151, ch. 77-147.

387.03 Permits revocable and subject to change; filed with clerk.—

(1) Every permit for the discharge of sewage or surface water shall be revocable or subject to modification or change by the Department of Health and Rehabilitative Services. In addition to any notice required by chapter 120, the department shall serve notice of its intended action by publication for 2 weeks in a newspaper published in the county in which said well, cavity, or sink is located.

(2) All such permits, before becoming operative, shall be filed in the office of the clerk of the circuit court of the county in which such permit has been granted.

History.—s. 3, ch. 6443, 1913; RGS 2162; CGL 3391; ss. 19, 35, ch. 69-106; s. 152, ch. 77-147; s. 19, ch. 78-95.

387.04 Sewage defined.—For the purpose of this chapter, sewage shall be defined as any substance that contains any of the waste products, excrement or other discharge from the bodies of human beings or animals.

History.—s. 4, ch. 6443, 1913; RGS 2163; CGL 3392.

387.05 Sewage or surface drainage into underground waters of state to be discontinued within 10 days after order by Department of Health and Rehabilitative Services.—Every individual, municipal corporation, private corporation, or company shall discontinue the discharge within the corporate limits or within 5 miles of the corporate limits of any incorporated city or town, or within any unincorporated city, town, or village or within 5 miles thereof, of sewage or surface drainage into any of the underground waters of the state within 10 days after having been so ordered by the Department of Health and Rehabilitative Services.

History.—s. 5, ch. 6443, 1913; RGS 2164; CGL 3393; ss. 19, 35, ch. 69-106; s. 153, ch. 77-147.

387.06 Penalty for violation of provisions of this chapter.—Any municipal corporation, private corporation, person, or persons that shall discharge sewage or surface drainage, or permit the same to flow into the underground waters of this state, contrary to the provisions of this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The doing of the prohibited act for each day shall constitute a separate offense.

History.—s. 6, ch. 6443, 1913; RGS 5525; CGL 7691; s. 338, ch. 71-136.

387.07 Penalty for interference with water supply.—Whoever willfully or maliciously defiles, corrupts, or makes impure any spring or other source of water reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, sub-ch. 9, ch. 1637, 1868; RS 2665; GS 3603; RGS 5523; CGL 7689; s. 339, ch. 71-136.

387.08 Penalty for deposit of deleterious substance in lakes, rivers, streams, ditches, etc.—Any person, firm, company, corporation, or association in this state, or the managing agent of any person, firm, company, corporation, or association in this state, or any duly elected, appointed, or lawfully created state officer of this state, or any duly elected appointed or lawfully created officer of any county, city, town, municipality, or municipal government in this state, who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in this state, any rubbish, filth, or poisonous or deleterious substance or substances, liable to affect the health of persons, fish, or livestock, or place or deposit any such deleterious sub-

stance or substances in any place where the same may be washed or infiltrated into any of the waters herein named, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; provided, further, that the carrying into effect of the provisions of this section shall be under the supervision of the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 5954, 1909; RGS 5524; CGL 7690; ss. 19, 35, ch. 69-106; s. 340, ch. 71-136; s. 154, ch. 77-147.

387.09 Septic tanks; construction requirements.—Where soil and site conditions are suitable for the use of septic tank systems, metal septic tanks constructed in conformance with the requirements set by the Federal Housing Administration may be used; provided that no metal septic tanks shall be used where cinders are used as backfill material or where the ground water contains sufficient salt to be corrosive.

History.—s. 1, ch. 28309, 1953.

387.10 Proceedings for injunction.—

(1) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the Department of Health and Rehabilitative Services or an appropriate officer of the department is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter, such injunction to be issued without bond provided, however, no temporary injunction without bond shall be issued except after a hearing of which the respondent or respondents has or have been given not less than 7 days prior notice, and no temporary injunction without bond, which shall limit or prevent operations of an industrial, manufacturing, or processing plant shall be issued, unless at the hearing, it shall be made to appear by clear, certain, and convincing evidence that irreparable injury will result to the public from the failure to issue the same.

(2) In the event of the issue of a temporary injunction or restraining order hereunder without bond, then the state, in event said injunction or restraining order was improperly, erroneously, or improvidently granted, shall be liable in damages and to the same extent as if said injunction or restraining order had been issued upon application of a private litigant instead of a public litigant, and the state hereby waives its sovereign immunity and consents to be sued in any such case.

History.—ss. 1, 2, ch. 57-216; ss. 19, 35, ch. 69-106; s. 155, ch. 77-147.

CHAPTER 388

MOSQUITO CONTROL

388.011 Definitions.—As used in this act:

(1) "County" means a political subdivision of the state administered by a board of county commissioners.

(2) "District" means any mosquito control district established in this state by law for the express purpose of controlling arthropods within boundaries of said districts.

(3) "Board of commissioners" means the governing body of any mosquito control district, and may include boards of county commissioners when context so indicates.

(4) "Arthropod" means arthropods of public health importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies, and house flies.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 146, ch. 71-377; s. 156, ch. 77-147.

388.021 Creation of mosquito control districts.—The abatement or suppression of mosquitoes and other arthropods, whether disease-bearing or merely pestiferous, within any or all counties of Florida, is advisable and necessary for the maintenance and betterment of the comfort, health, welfare, and prosperity of the people thereof; and is found and declared to be for public purposes. All depressions, lagoons, marshes, ponds, or lakes wherein mosquitoes incubate or hatch are declared to be public nuisances, as harmful or inimical to the comfort, health, welfare, and prosperity of the inhabitants and may be abated as hereinafter provided. Therefore any city, town, or county, or any portion or portions thereof, whether such portion or portions include incorporated territory or portions of two or more counties in the state, may be created into a special taxing district for the control of mosquitoes and other arthropods under the provisions of this chapter.

History.—s. 2, ch. 59-195.

388.031 Petition for creation of district.—In order to create a district as authorized by this chapter, a petition signed by not less than 15 percent of the registered electors of said territory shall be filed with the board of county commissioners of the county in which said district is to be located. Said petition shall describe the territory to be included in said proposed district, the name of said district, and shall represent that the eradication or control of mosquitoes and other arthropods in said territory is necessary for the preservation of the public health, comfort, and welfare of the inhabitants thereof, and that it is feasible and practicable to eradicate or control mosquitoes and other arthropods in said territory, and shall request the board of county commissioners of said county to call and provide for an election to determine whether such district shall be created and

also for the purpose of electing a board of commissioners for said district.

History.—s. 2, ch. 59-195; s. 1, ch. 71-323.

388.041 Duty of county commissioners concerning petition.—At the same meeting or any subsequent meeting not later than 30 days after the receipt of said petition, the board of county commissioners shall investigate the facts and find and determine whether such petition has been duly signed by the requisite number of registered electors residing within said territory, and whether the improvements to be made by said district are for the benefit of the public health, comfort, and welfare of the inhabitants thereof, and whether it is feasible and practicable to eradicate or control mosquitoes and other arthropods in said territory, and shall order an election to be held in said territory to determine whether or not such territory shall be constituted into a district for the control of mosquitoes and other arthropods, and to elect a board of commissioners for said district. The finding and determination by the board of county commissioners that the said petition has been duly signed by the requisite number of registered electors residing within said territory, and that the improvements proposed to be made are for the public health, comfort, and welfare, and that the petition is in all respects strictly in accordance with the requirements of law, shall be regarded for all purposes as conclusive.

History.—s. 2, ch. 59-195; s. 1, ch. 71-323.

388.051 Election.—The board of county commissioners shall fix the date for said election and shall have a notice of such election published once each week during 4 successive weeks in a newspaper of general circulation published in each county incorporated within the boundaries of the proposed district. Said notice shall describe the territory proposed to be included in said district. The inspectors and clerks for said election shall be appointed by, and the ballots to be voted shall be prepared and furnished by, the board of county commissioners. The board of county commissioners shall designate the polling place or places at which such election shall be held. The inspectors and clerks shall make returns to the board of county commissioners and said board shall canvass said election returns and declare the result thereof at a meeting to be held as soon as practicable after said election. Upon the expiration of 20 days after the declaration of the result of such election by the board of county commissioners, such declaration of result shall be regarded for all purposes as conclusive.

History.—s. 2, ch. 59-195.

388.061 Election limited to registered electors.—At said election only registered electors residing within said district shall be qualified to vote.

History.—s. 2, ch. 59-195; s. 2, ch. 71-323.

388.071 Result of election.—If the board of county commissioners shall find and determine that the result of said election is adverse to the proposition of creating the proposed district for the control of mosquitoes and other arthropods under this chapter, no other election for the same purposes shall be held within 1 year thereafter; but if a majority of the votes cast at such special election shall be in favor of creating such district, then said board of county commissioners shall enter an order constituting the territory in which said special election was held, a district for the control of mosquitoes and other arthropods, designating said district by its name, and shall declare and publish the boundaries of said district once each week for 2 successive weeks in a newspaper of general circulation published in each county incorporated within the boundaries of the district.

History.—s. 2, ch. 59-195.

388.081 Ballot to contain names of candidates for commissioners.—The board of county commissioners shall cause to be printed on the ballots for said election the names of any qualified persons as candidates for the office of members of the board of commissioners of said district upon petition having been filed with the board of county commissioners signed by not less than 25 qualified electors for said election, which petition shall be filed with said board of county commissioners not less than 45 days before said election. Blank lines, however, shall be placed on said ballot so that names of persons voted for may be written thereon.

History.—s. 2, ch. 59-195; s. 1, ch. 75-255.

388.091 Form of ballot.—The ballot to be used at said election shall be in substantially the following form:

OFFICIAL BALLOT
..... MOSQUITO CONTROL DISTRICT
..... COUNTY, FLORIDA
SPECIAL ELECTION ...(Insert date)...

1. Shall ..... Mosquito Control District, ... County, Florida, be created?
..... Yes.
..... No.

2. Shall a separate or special board of commissioners conduct the work?
..... Yes.
..... No.

3. Make a cross mark (X) before the names of the candidates of your choice.

FOR COMMISSIONERS OF
MOSQUITO CONTROL DISTRICT:

VOTE FOR THREE	WRITE-IN VOTES
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

History.—s. 2, ch. 59-195.

388.101 District boards of commissioners; term of office.—

(1) District boards of commissioners shall consist of the three persons receiving the highest number of votes cast at such special election and shall be declared the commissioners under this chapter until their successors have been duly elected and qualified. Beginning with the next general election fol-

lowing the creation of the district, and in the general election each four years thereafter, the said commissioners shall be elected by the electors of the district, and the three persons receiving the highest number of votes cast in the general election shall serve 4 years and shall take office at the same time as do other county officers on the first Tuesday after the first Monday in January next after their election and serve on the same cycle as do other constitutional county officers.

(2) The board of county commissioners shall call and provide for said election. Members of the district board of commissioners shall be resident registered electors who are freeholders in said district.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236.

388.111 Same; vacancies.—In the event of a vacancy due to any cause in any board of commissioners, the same shall be filled by appointment by the Governor for the unexpired term.

History.—s. 2, ch. 59-195.

388.121 Same; organization.—As soon as practicable after such commissioners have been elected and qualified, they shall meet and organize by the election from among their number of a chairman, a secretary and a treasurer. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business.

History.—s. 2, ch. 59-195.

388.131 Same; surety bond.—Each commissioner, before he assumes office, shall be required to give the Governor a good and sufficient surety bond in the sum of $2,000, the cost thereof being borne by the district, conditioned on the faithful performance of the duties of his office, said bond to be approved and filed in the same manner as is that of the board of county commissioners. The failure of any person to make and file this bond within 10 days after his election shall create a vacancy on said board.

History.—s. 2, ch. 59-195.

388.141 Same; compensation.—Members of the board of commissioners shall each be paid $5 a day for each day's service; provided the per diem compensation shall not exceed the sum of $300 for each commissioner during any one year, and that the per diem herein provided for shall apply for services rendered for inspection of work or other services for the district under this chapter. Said members shall be reimbursed for traveling expenses incurred in the performance of their duties as provided in s. 112.061.

History.—s. 2, ch. 59-195; s. 13, ch. 63-400.

388.151 Same; meetings.—All boards of commissioners shall hold regular monthly meetings, and special meetings as needed, in the courthouse or in the offices of the district. The time and place of said regular meetings shall be on file in the office of the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; ss. 19, 35, ch. 69-106; s. 157, ch. 77-147.

388.161 Same; powers and duties.—

(1) The board of commissioners may do any and all things necessary for the control and elimination of all species of mosquitoes and other arthropods of public health importance and the board of commissioners is specifically authorized to provide for the construction and maintenance of canals, ditches, drains, dikes, fills, and other necessary works and to install and maintain pumps, excavators, and other machinery and equipment, to use oil, larvicide paris green, or any other chemicals approved by the Department of Health and Rehabilitative Services but only in such quantities as may be necessary to control mosquito breeding and not be detrimental to fish life.

(2) The board of commissioners shall have all the powers of a body corporate, including the power to sue and be sued as a corporation in said name in any court; to contract, to adopt and use a common seal and alter same at pleasure, to purchase, hold, lease, and convey such real estate and personal property as said board may deem proper to carry out the purpose of this chapter; to acquire by gift real estate, personal property, and moneys and to employ a field director and such trained personnel, legal, clerical or otherwise, and laborers as may be required. The board of commissioners shall promulgate such rules and regulations not inconsistent with the provisions of this chapter or with other legislation which in its judgment may be necessary for the proper enforcement of this chapter provided such rules and regulations are approved by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; ss. 19, 35, ch. 69-106; s. 158, ch. 77-147.

388.162 Same; direction of the program.—The program shall be administered for the board of commissioners by a qualified person. The Department of Health and Rehabilitative Services shall establish minimum qualifications for employment of a director in accordance with the responsibilities attached to the position.

History.—s. 2, ch. 63-236; ss. 19, 35, ch. 69-106; s. 159, ch. 77-147.

388.171 Same; may contract for work or employ direct.—The board of commissioners may have any and all work performed by contract with or without advertisement, or without contract, by machinery, equipment, and labor employed directly by the board of commissioners.

History.—s. 2, ch. 59-195.

388.181 Same; perform work necessary.—The respective districts of the state are hereby fully authorized to do and perform all things necessary to carry out the intent and purposes of this law.

History.—s. 2, ch. 59-195.

388.191 Same; eminent domain.—The board of commissioners may hold, control, and acquire by gift or purchase for the use of the district, any real or personal property, and may condemn any land or easements needed for the purposes of said district. Said board may exercise the right of eminent domain

and institute and maintain condemnation proceedings as provided in chapter 73.

History.—s. 2, ch. 59-195.

388.201 District budgets, hearing.—

(1) The fiscal year of districts operating under the provisions of this chapter shall be the 12-month period extending from October 1 of one year through September 30 of the following year. The governing board of the district shall before June 30 complete the preparation of a detailed work plan budget covering its proposed operations and requirements for arthropod control measures during the ensuing fiscal year, and for the purpose of determining eligibility for state aid, shall submit copies as may be required to the Department of Health and Rehabilitative Services for review and approval. The detailed work plan budget shall set forth, classified by account number, title and program items, and by fund from which to be paid, the proposed expenditures of the district for construction, for acquisition of land, and other purposes, for the operation and maintenance of the district's works, the conduct of the district generally, to which may be added an amount to be held as a reserve.

(2) The detailed work plan budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated amount to be raised by district taxes and from any and all other sources for meeting the district's requirements.

(3) On a date to be fixed by the board of commissioners, said board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the total amount of funds budgeted under each title classification of the budget, subtotals by fund under each title classification, and grand totals. The notice shall advise all owners of property subject to the district taxes that on a date, time, and place specified in the notice, opportunity will be afforded to such owners, their attorney or agent, to appear before the board, examine the work plan and detailed work plan budget if desired, and to show their objections to adoption of the proposed budget. The notice shall be published for 2 consecutive weeks, at not less than 7-day intervals, in a newspaper published in the county or counties having land in the district. The last insertion shall appear not less than 1 nor more than 2 weeks prior to the date set by the board for the hearing on the budget. If there be no such newspaper in the county, then the notice shall be posted as provided by s. 50.021.

(4) The hearing shall be by and before the governing board of the district on a date to be fixed by said board not earlier than 1 week and not later than 2 weeks after the date of the last publication of notice of intention to adopt the budget, and may be continued from day to day until terminated by the board. Promptly thereafter, the governing board shall give consideration to objections filed against adoption of the budget and in its discretion, may amend, modify, or change the tentative detailed work plan budget, and shall by September 15 following, adopt and execute on a form furnished by the Department of Health and Rehabilitative Services a certified budget for the district, which shall be the operating and fiscal guide for the district. Certified copies of this budget shall be submitted by September 15 to the department for approval.

(5) County commissioners' mosquito and arthropod control budgets shall be made and adopted as prescribed by subsections (1) and (2); summary figures shall be incorporated into the county budgets as prescribed by the Department of Banking and Finance.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 12, 19, 35, ch. 69-106; s. 160, ch. 77-147.

388.211 Change in district boundaries.—

(1) The board of commissioners of any district may, for and on behalf of said district or the qualified electors within or without said district, file a petition with the board of county commissioners in each county having land within said district, requesting it to call an election of the qualified electors of the territory proposed to be annexed to, or eliminated from, the boundaries of the district, and also of the qualified electors within the district, to determine whether or not the boundary lines of the district shall be changed to include, or exclude, certain lands as described in the petition.

(2) When such a petition is filed, the board of county commissioners shall call an election as provided for in this chapter for the creation of districts. If the majority of votes cast in each election favors the change in boundary, the board of county commissioners shall amend its order creating the district to conform with the change in boundary.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 3, ch. 71-323.

388.221 Tax levy.—The board of commissioners of such district may levy upon all of the real and personal taxable property in said district a special tax not exceeding 10 mills on the dollar during each year as maintenance tax to be used solely for the purposes authorized and prescribed by this chapter. Said levy shall be made each year not later than July 1 of each year by resolution of said board or a majority thereof, duly entered upon its minutes. Certified copies of such resolution executed in the name of said board by its chairman and secretary and under its corporate seal shall be made and delivered to the board of county commissioners of the county in which such district is located, and to the Department of Revenue not later than July 1 of such year. The board of county commissioners shall order the property appraiser of said county to assess and the collector of said county to collect the amount of taxes so assessed and levied by said board of commissioners of said district upon all of the taxable real and personal property in said district at the rate of taxation adopted by said board for said year and included in said resolution, and said levy shall be included in the warrants of the property appraiser and attached to the assessment roll of taxes for said county each year. The tax collector shall collect such taxes so levied by said board in the same manner as other taxes are collected and shall pay the same within the time and in the manner prescribed by law to the

treasurer of said board. The Department of Revenue shall assess and levy on all the railroad lines and railroad property and telegraph and telephone lines and telegraph and telephone property situated in said district in the amount of each such levy as in case of other state and county taxes, and collect said taxes thereon in the same manner as it is required by law to assess and collect taxes for state and county purposes, and remit the same to the treasurer of said board. All such taxes shall be held by said treasurer for the credit of said board and paid out by him as ordered by said board.

History.—s. 2, ch. 59-195; ss. 21, 35, ch. 69-106; s. 1, ch. 77-102.

388.231 Restrictions on use, loan or rental of equipment; charges.—

(1) Equipment purchased for use in control of mosquitoes and other arthropods and paid for with funds budgeted for arthropod control shall not be used for any private purpose. No county or district shall lend or rent equipment so purchased to any other department within the county, or to another county, district or any public agency or political subdivision of the state without the prior written approval of the Department of Health and Rehabilitative Services; nor shall it be so lent or rented without making a use or rental charge for the use thereof. The department is authorized to establish a fair use or rental charge on equipment so purchased and may require the maintenance of reasonable and proper records in connection with the loan or rental of such equipment.

(2) Any district, county, municipality or public agency using said equipment on a use or rental basis shall send a warrant made payable to the county or district, or to such control fund of the county owning the equipment, for the full payment of such use or rent at the end of each month. All funds received by a county or district from the renting of its equipment shall be deposited promptly by the county or district in their state fund account. Upon failure of any county or district to secure prior written approval from the department before lending or renting its equipment, or upon the failure of the county or district to collect rents due for the use of its equipment at rates established by the department, and to deposit said rents promptly under state funds, the department may immediately remove the equipment and utilize it for arthropod control purposes in any other area of the state.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 161, ch. 77-147.

388.241 Board of county commissioners vested with powers and duties of board of commissioners in certain counties.—In those counties voting against the formation of a separate or special board of commissioners, all the rights, powers and duties of a board of commissioners as conferred in this chapter shall be vested in the board of county commissioners of said county.

History.—s. 2, ch. 59-195.

388.251 Delegation of authority to county health department.—The board of county commissioners may authorize the county health department to administer and direct arthropod control in the county provided by this chapter, upon the following conditions:

(1) The county health department shall keep the books and make all reports required by this chapter.

(2) All purchases, whether by bid or otherwise, shall be made in accordance with the procedure followed by the board of county commissioners in making other purchases.

(3) The county health department shall submit to the board of county commissioners, with supporting vouchers and invoices, monthly itemized statements of expenses incurred in carrying out the control program in the county.

History.—s. 2, ch. 59-195.

388.261 State aid to districts; limitation on type of control; amount.—

(1) Every county or district budgeting local funds, derived either by special tax levy or funds appropriated or otherwise made available for the control of mosquitoes and other arthropods under a plan submitted by the county or district and upon approval by the Department of Health and Rehabilitative Services, shall be eligible to receive state funds, supplies, services, and equipment on a dollar for dollar matching basis up to but not exceeding $15,000 for any one county for any one year. These funds may be expended for any and all types of control measures approved by the department.

(2) In addition, every county or district budgeting local funds to be used exclusively for the control of mosquitoes and other arthropods under a plan submitted by the county or district and approved by the department, shall be eligible to receive state funds and supplies, services and equipment for permanent control measures up to but not exceeding 75 percent of the amount of local funds budgeted for such control. Should state funds appropriated by the Legislature be insufficient to grant each county or district 75 percent of the amount budgeted in local funds, the department shall prorate said state funds based on the amount of matchable local funds budgeted for expenditure by each county or district.

(3) Every county shall be limited to receive a total of $150,000 of state funds, exclusive of state funds brought forward, during any one year.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 162, ch. 77-147.

388.271 Prerequisites to participation.—

(1) Each county or district eligible to participate hereunder may begin participation on October 1 of any year by filing with the Department of Health and Rehabilitative Services not later than July 1 a work plan and detailed work plan budget providing for the control of mosquitoes or other arthropods. Following approval of the plan and budget by the Department of Health and Rehabilitative Services, two copies of the county's or district's certified budget based on the approved work plan and detailed work plan budget shall be submitted to the Department of Health and Rehabilitative Services not later than September 15 following. State funds, supplies, and services shall be made available to such county or district by and through the Department of Health and Rehabilitative Services immediately upon re-

lease of funds by the Executive Office of the Governor.

(2) All purchases of supplies, materials and equipment by counties or districts shall be made in accordance with the laws governing purchases by boards of county commissioners, except that districts with special laws relative to competitive bidding shall make purchases in accordance therewith.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 2, 3, ch. 67-371; ss. 19, 31, 35, ch. 69-106; s. 163, ch. 77-147; s. 130, ch. 79-190.

388.281 Use of state matching funds.—

(1) All funds, supplies and services released to counties and districts hereunder shall be used in accordance with the detailed work plan and certified budget approved by both the Department of Health and Rehabilitative Services and the county or district. The plan and budget may be amended at any time upon prior approval of the department.

(2) All funds, supplies and services released on the 75 percent matching basis shall be used exclusively for permanent eliminative measures, unless otherwise approved by the department. These measures include sanitary landfills, drainage, diking, filling of mosquito and other arthropod breeding areas, and the purchase, maintenance, and operation of all types of equipment including trucks, dredges, draglines, bulldozers, or any other type of machinery and materials utilized in ditching, ditch lining, ditch construction, diking, filling, hiring personnel, rental of equipment, and payment for contract work awarded to the lowest responsible bidder.

(3) Should a control problem exist in a county or district where it would not be economically sound or feasible to carry on permanent control work, a county or district may be authorized by the department to use 75 percent matching funds for temporary control measures.

(4) In any county or district where the arthropod problem has been eliminated, or reduced to such an extent that it does not constitute a health, comfort, or economic problem as determined by the department, the maximum amount of state funds available under this chapter shall be reduced to the amount necessary to meet actual need.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 164, ch. 77-147.

388.291 Eliminative control measures; supervision by Department of Health and Rehabilitative Services.—

(1) Any county or district may perform permanent eliminative control measures in conformity with good engineering practices in any area, provided the Department of Health and Rehabilitative Services cooperating with the county or district has approved the operating or construction plan, and it has been determined that the area or areas to be controlled would produce mosquitoes or other arthropods in significant numbers to constitute a health or comfort problem.

(2) The county or district shall manage the detailed business affairs and supervise said work, and the department shall advise the districts as to the best and most effective measures to be used in bringing about better temporary control and the permanent elimination of breeding conditions. The department may at its discretion discontinue any state aid provided hereunder in the event it finds the jointly agreed upon program is not being followed, or is not efficiently and effectively administered.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 165, ch. 77-147.

388.301 Payment of state funds; supplies and services.—State funds shall be payable quarterly, in accordance with the rules and regulations of the Department of Health and Rehabilitative Services, upon requisition by the department to the Comptroller. The department is authorized to furnish insecticides, chemicals, materials, equipment, vehicles, and personnel in lieu of state funds where mass purchasing may save funds for the state, or where it would be more practical and economical to utilize equipment, supplies, and services between two or more counties or districts.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 166, ch. 77-147.

388.311 Carry over of state funds and local funds.—State and local funds budgeted for the control of mosquitoes and other arthropods shall be carried over at the end of the county or district's fiscal year, and rebudgeted for such control measures the following fiscal year.

History.—s. 2, ch. 59-195.

388.321 Equipment to become property of the county or district.—All equipment purchased under this chapter with state funds made available directly to the county or district shall become the property of the county or district unless otherwise provided, and may be traded in on other equipment, or sold, when no longer needed by the county or district.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236.

388.322 Record and inventory of certain property.—A record and inventory of certain property owned by the district shall be maintained in accordance with s. 274.02.

History.—s. 2, ch. 63-236.

388.323 Disposal of surplus property.—Surplus property shall be disposed of according to the provisions set forth in s. 274.05 with the following exceptions:

(1) Serviceable equipment no longer needed by a county or district shall first be offered to any or all other counties or districts engaged in arthropod control at a price established by the board of commissioners owning the equipment. If no acceptable offer is received within a reasonable time, the equipment shall be offered to such other governmental units as defined in s. 274.05.

(2) The alternative procedure for disposal of surplus property, as prescribed in s. 274.06, shall be followed if it has been determined no other county, district, or governmental unit has need for the equipment.

(3) All proceeds from the sale of any real or tangible personal property owned by the county or district shall be deposited in the county's or district's state fund account unless otherwise specifically designat-

ed by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 63-236; ss. 19, 35, ch. 69-106; s. 167, ch. 77-147.

388.331 Audit.—All counties and districts carrying out programs for the control of mosquitoes and other arthropods involving the expenditure of state funds shall set up and maintain books and records under a method approved by the Auditor General and be subject to audit by same.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 8, ch. 69-82.

388.341 Reports of expenditures and accomplishments.—Each county and district participating under the provisions of this chapter shall within 30 days after the end of each month submit to the Department of Health and Rehabilitative Services a monthly report for the preceding month of expenditures from all funds for arthropod control, and such reports of activities and accomplishments as may be required by the department.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 168, ch. 77-147.

388.351 Transfer of equipment, personnel, and supplies during an emergency.—The Department of Health and Rehabilitative Services, upon notifying a county or district and obtaining its approval, is authorized to transfer equipment, materials, and personnel from one district to another in the event of an emergency brought about by an arthropod-borne epidemic or other disaster requiring emergency control.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 169, ch. 77-147.

388.361 Rules and regulations.—The Department of Health and Rehabilitative Services is hereby authorized and empowered to adopt rules and regulations necessary and appropriate to enable it to perform the work and responsibilities hereunder.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 170, ch. 77-147.

388.381 Cooperation by counties and district.—Any county or district carrying on an arthropod control program may cooperate with another county, district, or municipality in carrying out a program for the control of mosquitoes and other arthropods, by agreement as to the program and reimbursement thereof, when approved by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 171, ch. 77-147.

388.391 Control measures in municipalities and portions of counties located outside boundaries of districts.—Any district whose operation is limited to a portion of the county in which it is located may perform any control measures authorized by this chapter in any municipality located in the same county or in any portions of the same county, where there is no established district, when requested to do so by the municipality or county, pursuant to s. 388.381.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236.

388.401 Penalty for damage to property or operations.—Whoever shall willfully damage any of the property of any county or district created under this or other chapters, or any works constructed, maintained, or controlled by such county or district, or who shall obstruct or cause to be obstructed any of the operations of such county or district, or who shall knowingly or willfully violate any provisions of this chapter or any rule or regulation promulgated by any board of commissioners of any county or district shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 341, ch. 71-136.

388.411 Public lands, arthropod control.—

(1) It is declared to be in the best interests of the state that all public lands owned by the state, or any county, district, city, or other political unit, shall be subject to mosquito, sand fly, and other arthropod controls of the Department of Health and Rehabilitative Services not inconsistent with the provisions of subsection (4) in order to provide as nearly as possible a system of uniform and complete control.

(2) Any lands in the state hereafter granted by the state to a state or federal agency, county, district, or other political unit, shall contain a reservation or condition providing that arthropod control operations shall be conducted thereon, if deemed necessary, by the department except where the Governor shall deem that the same is unnecessary.

(3) As to lands not held by the United States, or any federal agency in the state, the department is authorized to enter negotiations for the purpose of working out agreements permitting the department, or any local antimosquito, sand fly, arthropod control unit cooperating with the department, to carry on arthropod control operations on any of said lands.

(4) When any lands or water areas subject to this act lie within an area where the department determines that mosquitoes, sand flies, or other arthropods of public health importance which may cause sickness or discomfort to the surrounding human population, may be bred, said areas shall be subject to control operations. The involved agencies shall mutually agree on the control procedure or plan and the methods employed shall be the minimum necessary and economically feasible and imposing the least hazard to the fish and wildlife being protected or managed in said areas. Such agreement shall be between the state or federal agencies managing the areas, the department, and the local mosquito control agency in whose jurisdiction these lands or waters may lie.

History.—ss. 1-4, ch. 61-382; ss. 19, 35, ch. 69-106; s. 172, ch. 77-147.

388.42 Laboratory west of St. Marks River; testing insecticides for arthropods control.—

(1) The Department of Health and Rehabilitative Services is hereby authorized to construct, maintain, and operate a laboratory at a suitable location on the Gulf Coast, west of the St. Marks River, for the purpose of testing insecticide resistance in dog flies, yellow flies, and other arthropods, and to carry out other experimental work with chemicals, insecticides, and other substances and procedures, for testing ef-

fective methods for the control of such flies and other arthropods.

(2) Any funds which may become available from the federal government, from the board of county commissioners of the county in which the laboratory is to be established, or from any other sources, may be used according to law in constructing, equipping and operating of said buildings.

History.—ss. 1, 2, ch. 63-443; ss. 19, 35, ch. 69-106; s. 173, ch. 77-173.

388.43 Florida Medical Entomology Laboratory.—

(1) The Florida Medical Entomology Laboratory, located in Vero Beach, shall be a research and training center for the state under the supervision of the Board of Regents. The laboratory shall be an operational unit of the University of Florida and an integral part of the Institute of Food and Agricultural Sciences.

(2) The Florida Medical Entomology Laboratory shall perform basic and applied research in the biology and control of biting insects and other arthropods of importance as transmitters of disease or as pest annoyances, with special attention to the needs of the various mosquito-control organizations, districts, counties, and municipalities of the state. On a quarterly basis, the laboratory shall provide the Department [1]of Health and Rehabilitative Services with such information as the department shall require to assist it in the performance of its duties with respect to mosquito control under this chapter. The laboratory shall also be a center for the training of students and personnel in the entomological aspects of public health, veterinary science, sanitation, mosquito control, drainage and irrigation design, wetlands management, and other areas of service requiring knowledge of medical entomology. Research and training may extend to international programs of the university under appropriate contract and grant arrangements with international, foreign, and federal agencies.

History.—s. 1, ch. 79-283.

[1]Note.—The words "of Health and Rehabilitative Services" were inserted by the editors to clarify the reference to "department." Although section 2, ch. 79-283, transferred the Florida Medical Entomology Laboratory from the Department of Health and Rehabilitative Services to the Division of Universities of the Department of Education, it is the Department of Health and Rehabilitative Services which has duties with respect to mosquito control under chapter 388.

CHAPTER 390

TERMINATION OF PREGNANCIES

390.001 Termination of pregnancies.—

(1) DEFINITIONS.—As used in this section, unless the context clearly requires otherwise:

(a) "Physician" means a doctor of medicine or osteopathic medicine licensed by the state under chapter 458 or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the United States or this state.

(b) "Approved facility" means:

1. A hospital licensed by the state; or

2. A medical facility licensed by the Department of Health and Rehabilitative Services pursuant to rules adopted for that purpose, provided such rules shall require regular evaluation and review procedures.

(2) TERMINATION IN LAST TRIMESTER; WHEN ALLOWED.—No termination of pregnancy shall be performed on any human being in the last trimester of pregnancy unless:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman; or

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the last trimester, and another physician is not available for consultation.

(3) PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of pregnancy shall be performed at any time except by a physician as defined in this section.

(4) CONSENTS REQUIRED.—Prior to terminating a pregnancy, the physician shall obtain the written informed consent of the pregnant woman or, in the case of a mental incompetent, the written consent of her court-appointed guardian.

(a) If the pregnant woman is under 18 years of age and unmarried, in addition to her written request, the physician shall obtain the written informed consent of a parent, custodian, or legal guardian of such unmarried minor, or the physician may rely on an order of the circuit court, on petition of the pregnant unmarried minor or another person on her behalf, authorizing, for good cause shown, such termination of pregnancy without the written consent of her parent, custodian, or legal guardian. The cause may be based on a showing that the minor is sufficiently mature to give an informed consent to the procedure, or based on the fact that a parent unreasonably withheld consent by her parent, custodian, or legal guardian, or based on the minor's fear of physical or emotional abuse if her parent, custodian, or legal guardian were requested to consent, or based upon any other good cause shown. At its discretion, the court may enter its order ex parte. The court shall determine the best interest of the minor and enter its order in accordance with such determination.

(b) If the woman is married, the husband shall be given notice of the proposed termination of pregnancy and an opportunity to consult with the wife concerning the procedure. The physician may rely on a written statement of the wife that such notice and opportunity have been given, or he may rely on the written consent of the husband to the proposed termination of pregnancy. If the husband and wife are separated or estranged, the provisions of this paragraph for notice or consent shall not be required. The physician may rely upon a written statement from the wife that the husband is voluntarily living apart or estranged from her.

(c) In the event a medical emergency exists and the above requirements have not been complied with, a physician may terminate a pregnancy if he has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman.

(5) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—If a termination of pregnancy is performed during viability, no person who performs or induces the termination of pregnancy shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. "Viability" means that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. Notwithstanding the provisions of this subsection, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

(6) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No person shall use any live fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation either prior to or subsequent to any termination of pregnancy procedure except as necessary to protect or preserve the life and health of such fetus or live, premature infant.

(7) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE.—Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital, nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

(8) EXCEPTION.—The provisions of this section shall not apply to the performance of a procedure which terminates a pregnancy in order to deliver a live child.

(9) PENALTIES FOR VIOLATION.—

(a) Any person who willfully performs, or participates in, the termination of a pregnancy in violation of the requirements of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or participates in the termination of a pregnancy in violation of the provisions of this section which results in the death of the woman shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 79-302.

390.002 Termination of pregnancies; reporting.—

(1) The director of any medical facility in which a pregnancy is terminated shall maintain a record of such procedures. The record shall include the date the procedure was performed, the reason for same, and the period of gestation at the time the procedure was performed. A copy of such record shall be filed with the Department of Health and Rehabilitative Services, which shall be responsible for keeping such records in a central place from which statistical data and analysis can be made.

(2) If the termination of pregnancy is not performed in a medical facility, the physician performing the procedure shall be responsible for maintaining the record and reporting as required in subsection (1).

(3) Records maintained pursuant to this section shall be privileged information and deemed to be confidential records and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

History.—s. 2, ch. 79-302.

390.011 Definitions.—As used in this act:

(1) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(2) "Abortion clinic" or "clinic" means any facility in which abortions are performed, other than a hospital or a physician's office which is not used primarily for the performance of abortions.

(3) "Department" means the Department of Health and Rehabilitative Services.

(4) "Hospital" means a facility licensed under chapter 395.

(5) "Physician" means a physician licensed under chapter 458 or chapter 459 or a physician practicing medicine or osteopathy in the employment of the United States or this state.

(6) "Third trimester" means the weeks of pregnancy after the 24th week of pregnancy.

History.—s. 1, ch. 78-382.

390.012 Powers of department; rules.—The department shall have the authority to develop and enforce standards for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics, and to that end it may adopt and enforce rules necessary and proper to carry out such standards. These rules shall be comparable to rules which apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions. The rules shall be reasonably related to the preservation of maternal health of the clients. The rules shall not impose a legally significant burden on the woman's freedom to decide whether to terminate her pregnancy. The rules shall provide for, but shall not be limited to:

(1) The establishment of minimum standards for the care and treatment of clients of an abortion clinic;

(2) The availability of aftercare services and emergency medical services to be administered by a hospital; and

(3) The transportation of patients requiring emergency care from an abortion clinic to a licensed hospital.

History.—s. 2, ch. 78-382.

390.013 Effective date of rules.—Any abortion clinic which is in operation at the time of adoption of any applicable rule under this act shall be given a reasonable time under the particular circumstances, not to exceed 1 year from the date of such adoption, within which to comply with such rule.

History.—s. 3, ch. 78-382.

390.014 Licenses; fees, display, etc.—

(1) No abortion clinic shall operate in this state without a currently effective license issued by the Department of Health and Rehabilitative Services.

(2) A separate license shall be required for each clinic maintained on separate premises, even though it is operated by the same management as another clinic; but a separate license shall not be required for separate buildings on the same premises.

(3) The annual license fee required for a clinic shall be nonrefundable and shall be equal to $1 times the authorized patient capacity of the clinic; however, the fee shall not be less than $35, nor more than $75.

(4) Counties and municipalities applying for licenses under this act shall be exempt from the payment of the license fees.

(5) The license shall be displayed in a conspicuous place inside the clinic.

(6) A license shall be valid only for the clinic to which it is issued, and it shall not be subject to sale,

assignment, or other transfer, voluntary or involuntary. No license shall be valid for any premises other than those for which it was originally issued.

History.—s. 4, ch. 78-382.

390.015 Application for license.—

(1) An application for a license to operate an abortion clinic shall be made to the department on a form furnished by it for that purpose. The application shall be accompanied by the applicable license fee.

(2) The application, which shall be made under oath, shall contain, among other things, the following:

(a) The name and address of the applicant if the applicant is an individual; or if the applicant is a firm, partnership, or association, the name and address of each member thereof; or if the applicant is a corporation, its name and address and the name and address of each of its officers.

(b) The name by which the clinic is to be known.

(c) The location of the clinic for which application is made and a statement that local zoning ordinances permit such location.

(d) The name of the person or persons under whose management or supervision the clinic will be operated.

History.—s. 5, ch. 78-382.

390.016 Expiration of license; renewal.—

(1) A license issued for the operation of an abortion clinic, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal of such license shall be submitted to the department on a form furnished by the department. The license may be renewed if the applicant has met the requirements of this act and of all rules adopted pursuant to this act.

(2) A licensee against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license which shall be effective until final disposition of the proceeding by the department. If judicial relief is sought from the order resulting from the revocation or suspension proceeding, the court having jurisdiction may order that the conditional license be continued for the duration of the judicial proceeding.

History.—s. 6, ch. 78-382.

390.017 Grounds for suspension or revocation of license.—The license of an abortion clinic may be revoked, or may be suspended for a period not to exceed 2 years, or the department may refuse to renew such license, if it is determined in accordance with the provisions of chapter 120 that the clinic has violated a provision of this act or any rule or lawful order of the department.

History.—s. 7, ch. 78-382.

390.018 Administrative penalty in lieu of revocation or suspension.—If the department finds that one or more grounds exist for the revocation or suspension of a license issued to an abortion clinic, the department may, in lieu of such suspension or revocation, impose a fine upon the clinic in an amount not to exceed $1,000 for each violation. The fine shall be paid to the department within 60 days from the date of entry of the administrative order. If the licensee fails to pay the fine in its entirety to the department within the period allowed, the license of the licensee shall stand suspended, revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further administrative or judicial proceedings.

History.—s. 8, ch. 78-382.

390.019 Inspections; investigations.—The department shall make or shall cause to be made an inspection of an abortion clinic prior to licensing such clinic, and it shall make such additional inspections and investigations as may be necessary to assure compliance with this act.

History.—s. 9, ch. 78-382.

390.021 Injunction.—In addition to the other powers provided by this act, the department may institute injunction proceedings in a court of competent jurisdiction to restrain or prevent the establishment or operation of an abortion clinic which does not have a license or is in violation of any provision of this act or of any rules adopted pursuant to this act.

History.—s. 11, ch. 78-382.

390.025 Abortion referral or counseling agencies.—

(1) As used in this section, an "abortion referral or counseling agency" is any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.

(2) An abortion referral or counseling agency, before making a referral or aiding a person in obtaining an abortion, shall furnish such person with a full and detailed explanation of abortion, including the effects of and alternatives to abortion. If the person advised is a minor, a good faith effort shall be made by the referral or counseling agency to furnish such information to the parents or guardian of the minor. No abortion referral or counseling agency shall charge or accept any fee, kickback, or compensation of any nature from a physician, hospital, clinic, or other medical facility for referring a person thereto for an abortion.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 79-302.

CHAPTER 391

CHILDREN'S MEDICAL SERVICES

391.011 Short title.—This act shall be known and may be cited as the "Children's Medical Services Act."

History.—s. 1, ch. 78-106.

391.016 Legislative intent.—The Legislature finds and declares that there is a need to provide medical services for needy children, particularly those with chronic, crippling or potentially crippling and physically handicapping diseases or conditions, and to provide leadership and direction in promoting, planning, and coordinating children's medical care programs so that the full development of each child's potential may be realized.

History.—s. 2, ch. 78-106.

391.021 Definitions.—When used in this act, unless the context clearly indicates otherwise:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Eligible individual" means a female of any age with a high-risk pregnancy or an individual below the age of 21 years who has an organic disease, defect, or condition which may hinder the achievement of his normal growth and development, and who meets the financial and medical eligibility standards established by the department. In addition, where specific legislative appropriation exists, individuals with long-term chronic diseases, such as cystic fibrosis, which originated during childhood and who received services under this act before the age of 21 years shall continue to be eligible beyond that age.

(3) "Medical services" includes the prevention, diagnosis, and treatment of human disease, pain, injury, deformity, or disabling physical conditions.

History.—s. 3, ch. 78-106.

391.026 Powers and duties of the department.—To administer its programs of children's medical services, the department shall have the following powers, duties, and responsibilities:

(1) To provide or contract for the provision of medical services to eligible individuals.

(2) To determine the medical and financial eligibility of individuals seeking medical services.

(3) To recommend priorities for the implementation of comprehensive plans and budgets.

(4) To coordinate a comprehensive delivery system for eligible individuals to take maximum advantage of all available federal funds.

(5) To promote, establish, and coordinate programs relating to children's medical services in cooperation with public and private agencies.

(6) To initiate, coordinate, and request review of applications to federal and state agencies for funds, services, or commodities relating to children's medical programs.

(7) To sponsor or promote grants for projects, programs, education, or research in the field of medical needs of children, with an emphasis on early diagnosis and treatment.

(8) To contract or be contracted with.

(9) To establish standards of eligibility for patients of children's medical services programs.

(10) To coordinate funding of medical care programs with state or local indigent health care funding mechanisms.

(11) To establish standards for patient care and facilities.

(12) To make rules to carry out the provisions of this act.

History.—s. 4, ch. 78-106.

391.031 Patient care centers.—The department shall select and designate hospitals, clinics, convalescent homes, specialized treatment centers, or other patient care centers for the provision of medical services. The department shall follow, whenever available, national guidelines for specialized patient care centers, provided that such centers most economically and efficiently serve eligible individuals in need of medical services and that programs are conducted within resources provided by the Legislature. In making such selections and designations, the department shall give priority to facilities in each district which demonstrate an emphasis on quality medical services. Emphasis shall be placed upon the clinic concept to provide superior patient care under the direction of specialists.

History.—s. 5, ch. 78-106.

391.036 Medical services providers; qualifications.—The department shall require that all providers of medical services under this act be duly licensed in the state, if such licensure is available, and meet such criteria as may be established by the department.

History.—s. 6, ch. 78-106.

391.041 Services to other state or local programs or institutions.—The department may initiate agreements with other state or local governmental programs or institutions for the coordination of medical care to eligible individuals receiving services from such programs or institutions.

History.—s. 7, ch. 78-106.

391.046 Financial determination.—The department shall determine the financial ability of individuals seeking medical services, or the financial ability of the parents or persons or other agencies having legal custody over such individuals, to pay the costs of such medical services. The department may pay reasonable travel expenses related to the determination of eligibility for or the provision of medical services.

History.—s. 8, ch. 78-106.

391.051 Qualifications of director.—The secretary of the department shall appoint as staff director of the Children's Medical Services Program Office a physician licensed and in good standing in any state who is experienced in providing medical care to children and who has recognized skills in leadership and the promotion of children's health programs.

History.—s. 9, ch. 78-106.

391.056 District program supervisors; appointment.—The program supervisor responsible to the district administrator to assist in the administration of the children's medical program in each district or subdistrict shall be appointed by the district administrator from the active panel of children's medical services physician consultants.

History.—s. 6, ch. 78-106.

391.061 Research.—The department may initiate, fund, and conduct research projects to improve the delivery of children's medical services. The department may cooperate with public and private agencies engaged in work of a similar nature.

History.—s. 10, ch. 78-106.

391.066 Reports.—The department shall submit an annual report to the Governor and the Legislature reflecting the goals and activities of and making recommendations for the improvement of children's medical services. This report shall be a part of the department's annual report to the Governor and Legislature required by s. 20.19(15).

History.—s. 11, ch. 78-106.

391.07 Indigent and semi-indigent cases.—Any child who has been provided with surgical or medical care or treatment under this act prior to being adopted shall continue to be eligible to be provided with such care or treatment after his adoption, regardless of the financial ability of the persons adopting the child.

History.—s. 6, ch. 13620, 1929; CGL 1936 Supp. 3640(6); s. 1, ch. 57-21; ss. 19, 35, ch. 69-106; s. 1, ch. 73-114; s. 178, ch. 77-147; s. 1, ch. 77-159; ss. 13, 14, ch. 78-106; s. 1, ch. 78-332.

CHAPTER 392

TUBERCULOSIS HOSPITALS

392.03 State Tuberculosis Hospital.—There shall be established within the state a hospital to be designated and known as "State Tuberculosis Hospital" for tubercular patients.

History.—s. 1, ch. 12284, 1927; CGL 3308.

392.04 Department of Health and Rehabilitative Services may establish tuberculosis hospitals; financing.—The Department of Health and Rehabilitative Services may establish, conduct, maintain, and operate not more than five tuberculosis hospitals for the treatment of persons suffering from said disease, and for that purpose obtain loans from the Federal Government, or any agency thereof, or from any other available source, and provide for the securing and repayment of said loans in any manner.

History.—s. 1, ch. 17469, 1935; CGL 1936 Supp. 3316(1); s. 1, ch. 22763, 1945; ss. 19, 35, ch. 69-106; s. 180, ch. 77-147.

392.05 Boards of county commissioners may contract with Department of Health and Rehabilitative Services for use of beds in tuberculosis hospitals by indigent tuberculars.—The boards of county commissioners of the several counties of the state may rent, lease, or otherwise contract with the Department of Health and Rehabilitative Services for the use of beds in such tuberculosis hospitals by tuberculous persons from their respective counties who are financially unable to pay for such treatment, under such rules and regulations as may be prescribed by the department.

History.—s. 2, ch. 17469, 1935; CGL 1936 Supp. 3316(2); ss. 19, 35, ch. 69-106; s. 181, ch. 77-147.

392.06 Department of Health and Rehabilitative Services to operate and prescribe rules for state tuberculosis hospitals.—The state tuberculosis hospitals shall be operated by and under the direction and control of the Department of Health and Rehabilitative Services under such rules and regulations as it may from time to time prescribe therefor.

History.—s. 5, ch. 12284, 1927; CGL 3312; ss. 19, 35, ch. 69-106; s. 182, ch. 77-147.

392.061 Prohibition of intoxicants.—It shall be unlawful for any person, firm, or corporation, regardless of whether a patient, visitor, or otherwise, to bring or possess any intoxicating liquor or beverage on the grounds or in any building of a state tuberculosis hospital, without the written permission and approval of the medical director of the hospital concerned. Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 29868, 1955; s. 342, ch. 71-136.

392.07 Admission of patients; funds contributed by counties.—

(1) Any tuberculous person who has been an actual bona fide and continuous resident of Florida for 1 year may be admitted to the hospitals by the [1][Department of Health and Rehabilitative Services] under rules and regulations prescribed by the [1][department]; provided, the county sending such patient shall have assumed responsibility for, and made satisfactory financial arrangements with the [1][department] for, the payment by such county of $1.25 per diem hospital charges for each such patient. If a person admitted to any of said hospitals is able to pay all or any part of his or her per diem hospital charges, the county sending such patient shall collect the $1.25 per diem required to be paid

by the county, and the county shall retain the $1.25 per diem to reimburse itself for the per diem charge it has paid or is obligated to pay for such patient. If the patient is able to pay more than $1.25 on his or her per diem charge such additional payment shall be made to the [1][department].

(2) The [1][department] may also admit to any hospital operated by it any other tuberculous person who may be certified to the [1][department] by any county in the state, or by any agency of the federal government, upon such terms and conditions as may be prescribed by said [1][department] and provided satisfactory arrangements are made with said [1][department] for the payment of all hospital charges for the care and maintenance of said tuberculous person while in the hospital.

(3) Fees and fee collections for the care, maintenance, or treatment of each tuberculous patient, in any of said hospitals or in any outpatient department of said hospitals shall be according to s. 402.33.

(4) All moneys required to be paid by the several counties and patients for the care and maintenance of patients in the hospitals or while being treated by the outpatient department, shall be paid to the [1][department], and said [1][department] shall forthwith transmit the same to the Treasurer of the state who shall place the same in two accounts as follows, to wit:

(a) Such amounts as the [1][department] shall from time to time designate as necessary to meet the interest and sinking fund requirements of the [1][department] shall be placed in the State Tuberculosis Hospitals Interest and Sinking Fund Trust Fund.

(b) The balance of the money transmitted to the Treasurer of the state shall be placed in the Hospitals Maintenance Trust Fund. All moneys from all sources received by the [1][department], other than from the state and other than the funds now or hereafter in the State Tuberculosis Hospitals Interest and Sinking Fund Trust Fund, shall be placed in a separate fund known as the "Hospitals Maintenance Trust Fund." All moneys now in or hereafter placed in:

1. The State Tuberculosis Hospitals Interest and Sinking Fund Trust Fund are hereby appropriated to the use of the [1][department] to be expended in the payment of interest and sinking fund charges of the [1][department]; and

2. The Hospitals Maintenance Trust Fund are hereby appropriated to the use of the [1][department] to be expended in carrying out its other powers and duties, and said moneys shall not be deducted from any sums of money otherwise appropriated by the state to the [1][department], and such moneys shall be disbursed as provided in s. 392.13.

History.—s. 1, ch. 18284, 1937; CGL 1940 Supp. 3316(4); s. 2, ch. 22763, 1945; s. 1, ch. 25240, 1949; s. 2, ch. 61-119; ss. 19, 35, ch. 69-106; s. 2, ch. 78-332.

[1]**Note.**—Bracketed words substituted by the editors for a reference to the Division of Health. See s. 3, ch. 75-48, which abolished the division and assigned its functions to the Department of Health and Rehabilitative Services.

392.071 Transfer of patients from other state hospitals to state tuberculosis hospitals.—

(1) The secretary of the Department of Health and Rehabilitative Services is authorized to assign new patients and to transfer patients from any state hospital or other facility of the department to any hospital designated for the treatment of tuberculosis when he deems that such assignment or transfer will be in the best interest of the patient and will be most suitable for his care and treatment. In making such assignment or transfer, consideration shall be given to such factors as the residence of the patient, facilities offered for the treatment of the patient, and the form of illness of the patient.

(2) The secretary is authorized to expend funds appropriated to the Department of Health and Rehabilitative Services for the care and treatment of patients in the state tuberculosis hospitals for the use and benefit of patients assigned or transferred to the state tuberculosis hospitals in accordance with the provisions and intent of this section. However, no new treatment programs shall be instituted hereunder until funding therefor is specifically appropriated for such new programs, it being the intent of the legislature to upgrade and more efficiently deliver existing services under presently authorized programs.

History.—ss. 1, 2, ch. 69-1742.

392.091 Ward of federal government may be received in tuberculosis hospital.—The Department of Health and Rehabilitative Services is hereby authorized and empowered, in its discretion, to receive for hospitalization, care, and treatment in any tuberculosis hospital operated by said department, any tuberculous ward or charge of the federal government or any agency thereof, under such rules and regulations and upon such terms and conditions as said department may from time to time prescribe. Said department is also authorized to enter into such contracts as it may deem necessary with the Federal Government, or any agency thereof, in relation to any of the powers hereby granted to said department.

History.—s. 1, ch. 22764, 1945; ss. 19, 35, ch. 69-106; s. 183, ch. 77-147.

392.11 Outpatient facilities.—The Department of Health and Rehabilitative Services may establish an outpatient facility in connection with the operation of said hospital and furnish to patients in such outpatient facility such treatments, medical assistance, and checkups as said department may deem necessary, and said department may prescribe from time to time such rules and regulations as may be found necessary for the proper conduct and operation of the outpatient facility of the hospital.

History.—s. 5, ch. 18284, 1937; s. 2, ch. 19025, 1939; CGL 1940 Supp. 3316(8); ss. 19, 35, ch. 69-106; s. 184, ch. 77-147.

392.12 Appropriation.—The Legislature shall include in its annual appropriations bill a sufficient sum for the purpose of carrying out the provisions of this chapter.

History.—s. 6, ch. 18284, 1937; s. 1, ch. 19016, 1939; CGL 1940 Supp. 3316(9); s. 69, ch. 26869, 1951; s. 1, ch. 73-305.

392.13 Disbursement of funds.—All expenses for the operation of the hospitals shall be approved by the superintendent of the hospital or an alternate designated in writing by the superintendent, and countersigned by the Secretary of Health and Reha-

bilitative Services or by a person or persons designated in writing by the Secretary.

History.—s. 8, ch. 12284, 1927; CGL 3315; s. 27, ch. 29615, s. 3, ch. 29868, 1955; s. 148A, ch. 71-377; s. 185, ch. 77-147.

392.14 Additional powers of department.—In the execution of its public health program functions, the Department of Health and Rehabilitative Services is hereby authorized to use any sums of money which it may heretofore have saved or which it may hereafter save from its regular operating appropriation, or to use any sums of money acquired by gift or grant, or any sums of money it may acquire by the issuance of revenue certificates of the hospital to match or supplement any state or federal funds, or any moneys received by said department by gift or otherwise, for the construction and equipment of additional facilities as may be in the opinion of said department required or deemed necessary.

History.—ss. 1, 2, ch. 20630, 1941; ss. 19, 35, ch. 69-106; s. 129, ch. 77-104.

392.242 W. T. Edwards Tuberculosis Hospital.—The Southwest Florida Tuberculosis Hospital at Tampa is named and designated the "W. T. Edwards Tuberculosis Hospital." However, if the Southwest Florida Tuberculosis Hospital in Tampa ceases to serve as a tuberculosis hospital, the last remaining state tuberculosis hospital in Florida shall be named and designated the "W. T. Edwards Tuberculosis Hospital." If and when the last remaining state tuberculosis hospital in the state assumes treatment of ailments other than tuberculosis, said hospital shall be named and designated the W. T. Edwards State Hospital.

History.—s. 1, ch. 67-299; s. 1, ch. 69-310.

392.243 A. G. Holley State Hospital.—The Southeast Florida Tuberculosis Hospital at Lantana shall be named and known as the "A. G. Holley State Hospital."

History.—s. 1, ch. 69-28.

392.25 Petition; contents.—When any physician, or other interested person, reports to the Department of Health and Rehabilitative Services, or its authorized representative, that any person is afflicted with tuberculosis and that such person so conducts himself as to expose other persons to the danger of infection, the department shall investigate the circumstances; and if after such investigation the department is of the opinion that an active case of tuberculosis is found, it shall encourage the person infected to take voluntary treatment therefor, such treatment to meet the minimum requirements prescribed by the department. If such afflicted person refuses to accept such voluntary treatment, or if his record and actions indicate that he will not actually persist in treatment in a tuberculosis hospital until he is no longer a danger to the public health, or if said afflicted person has absented himself from a state tuberculosis hospital against medical advice and without having been discharged by the medical director thereof, then the department or its authorized representative may file a petition setting forth such facts and asking that examination be conducted as herein provided. Such petition may be presented to the judge of the circuit court of the county wherein such person resides or is found.

History.—s. 1, ch. 26828, 1951; s. 4, ch. 29868, 1955; ss. 19, 35, ch. 69-106; s. 25, ch. 73-334; s. 186, ch. 77-147.

392.26 Order on petition; appointment of examining committee; notice; hearing on report of committee.—

(1) Whenever a petition is filed under the provisions of s. 392.25, the judge of the circuit court in the county in which said petition is submitted, shall:

(a) Appoint one intelligent citizen and two practicing physicians of good professional standing, who shall be doctors of medicine or doctors of osteopathic medicine, who shall constitute an examining committee.

(b) Enter an order directed to the person against whom the petition has been filed, advising him:

1. The petition has been filed, copy of which shall be attached to the order when served on such person; and

2. A committee, whose names shall appear in the order, has been appointed; and the order shall direct such person to appear before the committee for examination at the time and place, which shall be fixed by the committee, and due notice of the time and place of the examination shall also be served on such person, so that the committee may determine whether or not such person:

a. Has active tuberculosis and is dangerous to the public health; and

b. Is indigent or is possessed of sufficient available means to pay for his care and treatment at a hospital operated by the Department of Health and Rehabilitative Services.

(c) Fix the time and place for the hearing before the court on the report of the committee.

(2) The examining committee:

(a) May secure the presence of the alleged tuberculous infected person and shall make such thorough investigation of his condition as will enable the committee to determine whether or not he has active tuberculosis and is dangerous to the public health; and

(b) Shall determine whether or not he has sufficient available means to pay for his care and treatment at a hospital operated by the department; and

(c) Shall make a report of its findings, which shall be signed by each of the committeemen and which shall be immediately transmitted by it to the judge appointing the committee prior to the time set by the court for hearing thereon.

(3) If the committee finds and so reports to the court:

(a) The alleged tuberculous infected person does not have active tuberculosis and is not dangerous to the public health, the court shall enter an order dismissing the cause; or

(b) The alleged tuberculous infected person has active tuberculosis and is dangerous to the public health, the judge shall hold the hearing on the report at the time and place fixed in the order theretofore served on the person examined. At the hearing the alleged tuberculous infected person may appear in person or by counsel and contest the correctness of

such report and interpose his defense thereto. After the hearing the judge shall enter an appropriate order. If the judge determines that such person has active tuberculosis and is dangerous to the public health, he shall commit such person for compulsory isolation, quarantine, and compulsory treatment to the custody of the medical director of a hospital operated by the department for such period of time as shall, in the opinion of the medical director of the hospital, be necessary to improve the health of such person, so that he will not have active tuberculosis or will not be dangerous to the public health, and such order shall determine whether or not the person so committed has sufficient available means to pay for his care and treatment at a hospital operated by the department.

(4) The alleged tuberculous infected person shall have the right to summon witnesses in his own behalf, and if indigent and unable to procure the attendance of witnesses in his behalf, the court shall have summoned a reasonable number of witnesses for such person to be paid by the county.

(5) If the person against whom a petition has been filed under s. 392.25 shall refuse to present himself to said examining committee for examination or shall refuse to allow such committee to examine him, the judge appointing such committee may issue necessary process requiring the presence of such person before said committee for such examination, and the sheriff shall execute the process.

History.—s. 2, ch. 26828, 1951; s. 1, ch. 65-98; ss. 19, 35, ch. 69-106; s. 25, ch. 73-334; s. 187, ch. 77-147.

392.27 Detention of alleged tuberculous infected person pending hearing on report of examining committee.—Upon consideration of the petition filed under s. 392.25, and such other evidence as may be before him, the judge may enter an order:

(1) Determining that it is necessary for the protection of the public health that the alleged tuberculous infected person be confined until the disposition by the court of the report of the examining committee.

(2) Directing the sheriff to forthwith confine such alleged tuberculous infected person until the further order of the court, and that during such confinement he shall be quarantined or isolated by the sheriff, who shall enforce all applicable sanitary rules, laws, and regulations; provided, that the detention of the alleged tuberculous infected person shall be for such time as may reasonably be necessary for the examining committee to make its examination and report to the court and such further reasonable time as may be necessary for the disposition of the matter by the judge, but in no event shall the detention exceed 15 days unless for good cause shown, the time of the detention is extended by order of the judge.

History.—s. 3, ch. 26828, 1951.

392.28 Right of appeal from order committing person to state tuberculosis hospital.—Any person who shall feel aggrieved by the entry of an order of commitment shall have the period of time provided by the Florida Appellate Rules within which to appeal from said order to the circuit court. The filing of the notice of appeal shall not operate to supersede the effect of the order from which the appeal is taken. Every order entered under the terms of ss. 392.25-392.36 shall be executed forthwith unless the court entering such order or the appellate court, in its discretion, enters a supersedeas order and fixes the terms and conditions thereof. The appeal shall be taken in the manner provided by the Florida Appellate Rules.

History.—s. 4, ch. 26828, 1951; s. 25, ch. 63-559; s. 1, ch. 69-267.

392.281 Isolation; misconduct.—

(1) When any patient in any state tuberculosis hospital shall conduct himself in such a disorderly manner and in disregard of the rules and regulations of the hospital as to unreasonably disturb other patients or employees of the hospital, the medical director of said hospital may petition the judge of the circuit court of the county wherein the hospital lies to commit the patient to the custody of the medical director of a hospital operated by the Department of Health and Rehabilitative Services for quarantine, compulsory isolation, and compulsory treatment in facilities provided by the department for such compulsory isolation and treatment. The judge after considering the petition and support evidence may enter an order:

(a) Determining that it is necessary for the protection of the public health that the alleged tuberculous person be confined until the disposition by the court of the examining committee report; and

(b) Directing the medical director of the hospital operated by the department to confine the alleged tuberculous person until further order of the court and that during the confinement he shall be quarantined or compulsorily isolated by the director. The detention of the alleged tuberculous person shall be for such time as may be reasonably necessary for the examining committee to make its examination and report to the court, and such further reasonable time as may be necessary for the disposition of the matter by the judge, but in no event shall the detention exceed 15 days unless for good cause shown the time of detention is extended by order of the judge. If the judge determines that the patient has active tuberculosis and is dangerous to the public health and that he has conducted himself in such a disorderly manner so as to unreasonably disturb other patients or employees of the hospital, he shall commit the patient for compulsory isolation and treatment for a period of time as shall be necessary, in the opinion of the medical director of the hospital, to improve the health of such person so that he will not have active tuberculosis and be a danger to the public health.

(2) The alleged tuberculous infected person under this section shall have all the rights, including a hearing, counsel, witnesses, examining committee, and appeal, afforded tuberculous persons under ss. 392.25-392.36.

History.—s. 5, ch. 29868, 1955; s. 1, ch. 65-97; ss. 19, 35, ch. 69-106; s. 25, ch. 73-334; s. 188, ch. 77-147.

392.29 Department of Health and Rehabilitative Services authorized to provide adequate facilities; payment of cost of treatment.—The Department of Health and Rehabilitative Services is

hereby authorized and directed to provide adequate facilities for such compulsory isolation and treatment at one or more of the hospitals which are operated by it for the care and treatment of tuberculous patients. The cost of compulsory treatment, care, and maintenance of such persons at such state operated hospitals shall be provided for by the board of county commissioners of the county from which such patient is committed paying $1.25 per day to the department, and the remainder of such expense shall be paid for by the department. If such patient is able to pay all or any part of his per diem hospital charges, the board of county commissioners of the county from which he is committed shall collect and retain $1.25 per day thereof to reimburse itself for the $1.25 per diem charges it has paid or is obligated to pay for such patient to the department. If the patient is able to pay more than $1.25 on his per diem charges, such additional payment shall be made to the department.

History.—s. 5, ch. 26828, 1951; ss. 19, 35, ch. 69-106; s. 189, ch. 77-147.

392.30 Sheriff to deliver person to state tuberculosis hospital.—The judge, in his order committing a person under ss. 392.25-392.36 to one of the hospitals operated by the Department of Health and Rehabilitative Services, shall direct the sheriff of the county in which such person resides, to take such person into his custody and forthwith deliver him to the medical director of the state tuberculosis hospital named in the commitment.

History.—s. 6, ch. 26828, 1951; ss. 19, 35, ch. 69-106; s. 130, ch. 77-104; s. 190, ch. 77-147.

392.31 Return of person to state tuberculosis hospital.—Any person committed under ss. 392.25-392.36 who leaves the state tuberculosis hospital to which he has been committed without having been discharged by the medical director thereof shall be apprehended by the sheriff of the county in which such person is found and delivered forthwith to the state tuberculosis hospital from which he left.

History.—s. 7, ch. 26828, 1951; s. 6, ch. 29868, 1955; s. 130, ch. 77-104.

392.32 Appointment of counsel to represent indigent person.—In case of indigency, the court, upon application of a person against whom a petition has been filed under s. 392.25, may appoint a member of the bar of the court to represent such person.

History.—s. 8, ch. 26828, 1951.

392.33 Fees and other compensation; payment by board of county commissioners.—

(1) For the services required to be performed under the provisions of ss. 392.25-392.36 compensation shall be paid as follows:

(a) Each member of the examining committee appointed under s. 392.26 shall receive reasonable compensation, to be fixed in each case by the court appointing the members of the committee.

(b) The sheriff shall receive the same fees and mileage as are prescribed for like services in criminal cases.

(c) The counsel appointed by the court to represent an indigent person shall receive such reasonable compensation as shall be fixed by the court appointing him.

(2) All fees, mileage, and charges shall be taxed by the court as costs in each proceeding and shall be paid by the board of county commissioners out of the general or fine and forfeiture funds of the county.

History.—s. 9, ch. 26828, 1951; s. 25, ch. 73-334.

392.34 Service of notices, processes, and orders by sheriff.—All notices required to be given, all processes issued, and all orders entered, pursuant to ss. 392.25-392.36 shall be served by the sheriff of the county in which the alleged tuberculous person resides.

History.—s. 10, ch. 26828, 1951; s. 25, ch. 73-334.

392.35 Treatment by prayer or spiritual means in exercise of religious freedom.—Nothing in ss. 392.25-392.36 shall be construed to authorize or empower the detection or medical treatment of any person who desires treatment by prayer or spiritual means, in the exercise of religious freedom; provided, however, that such person shall be quarantined or isolated in his own home and while so quarantined or isolated shall comply with all applicable sanitary rules, laws, and regulations.

History.—s. 11, ch. 26828, 1951.

392.36 Forms to be prescribed.—The Department of Health and Rehabilitative Services shall prescribe and furnish to the circuit judges all forms required under ss. 392.25-392.35, and the court shall use such forms where appropriate.

History.—s. 12, ch. 26828, 1951; ss. 19, 35, ch. 69-106; s. 25, ch. 73-334; s. 191, ch. 77-147.

CHAPTER 393

DEVELOPMENTAL DISABILITIES

393.061 Short title.—This act shall be known and may be cited as the "Retardation Prevention and Community Services Act."

History.—s. 1, ch. 77-335.

393.062 Legislative findings and declaration of intent.—The Legislature finds and declares that existing state programs for the treatment of retarded and other developmentally disabled individuals, which often unnecessarily place clients in large state institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to a great majority of clients. A redirection in state treatment programs for the retarded and other developmentally disabled individuals is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that have the potential to prevent or reduce the severity of retardation and other developmental disabilities. Further, the Legislature declares that greatest priority shall be given to the development and implementation of community-based residential placements, services, and treatment programs for the retarded and other developmentally disabled individuals which will enable such individuals to achieve their greatest potential for independent and productive living, which will enable them to live in their own homes or in facilities located in their own communities, and which will permit clients to be diverted or removed from unnecessary institutional placements. Finally, the Legislature declares that, in developing community-based programs and services for retarded and other developmentally disabled individuals, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies.

History.—s. 1, ch. 77-335.

393.063 Definitions.—For the purposes of this chapter:

(1) "Caretaker" means a person 18 years of age or older who is a relative of the client, a person unrelated to the client, or the client himself, who provides a client with the type and level of care intended by this act.

(2) "Client" means any person accepted by the department for retardation or developmental disability services.

(3) "Day care service" means the care, protection, and supervision of a client for a period of less than 24 hours a day on a regular basis which supplements for the client, in accordance with his individual needs, daily care, enrichment opportunities, and health supervision.

(4) "Day facility" means any nonresidential facility.

(5) "Department" means the Department of Health and Rehabilitative Services.

(6) "Developmental disability" means a disorder or syndrome which is attributable to retardation, cerebral palsy, autism, or epilepsy and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely. For the purposes of this act, cerebral palsy shall not include individuals who are victims of strokes.

(7) "Developmental training facility" means any nonresidential facility which provides basic training and habilitation to clients.

(8) "Diagnostic evaluation" means a comprehensive set of examinations resulting in the distinguishing of retardation or other developmental disabilities from other conditions.

(9) "District" means a service district of the department.

(10) "Express and informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(11) "Family placement program" means an alternative to institutional placement, in which a caretaker provides a home for a client and assists him to the extent necessary for the client to participate in normal activities and to meet the demands of daily living.

(12) "Foster care facility" means a residential facility which provides a family living environment including supervision and care necessary to meet the

physical, emotional, and social needs of clients. The capacity of such a facility shall not be more than three clients.

(13) "Group home facility" means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of clients. The capacity of such a facility shall be at least 4 clients but not more than 16 clients.

(14) "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his condition and environment and to raise the level of his physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(15) "Intermediate care facility for the mentally retarded" or "ICF/MR" means a residential facility licensed in accordance with state law, and certified by the federal government pursuant to the Social Security Act, as a provider of medicaid services to persons who are mentally retarded or who have related conditions. The capacity of such a facility shall not be more than 120 clients.

(16) "Normalization principle" means the principle of letting the client obtain an existence as close to the normal as possible, making available to the client patterns and conditions of everyday life which are as close as possible to the norm and patterns of the mainstream of society.

(17) "Nursing home facility" means a nursing home facility licensed under chapter 400.

(18) "Reassessment" means a process which periodically develops, through semiannual review and annual revision of a client's habilitation plan, a knowledgeable statement of current needs and past development for each client.

(19) "Relative" means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or more.

(20) "Residential facility" means a facility providing room and board and personal care for a client.

(21) "Residential habilitation center" means a community residential facility operated primarily for the diagnosis, treatment, or rehabilitation of clients, which facility provides, in a structured residential setting, individualized continuing evaluation, planning, 24-hour supervision, and coordination and integration of health or rehabilitative services to help each client reach his maximum functioning capabilities. The capacity of such a facility shall not be less than 17 clients.

(22) "Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his age, cultural group, and community.

(23) "Sunland Center" means a state residential facility for the care, habilitation, and rehabilitation of clients, but shall not include any state-operated group home facility or residential habilitation center.

(24) "Treatment" means the prevention, amelioration, or cure of a client's physical and mental disabilities or illnesses.

History.—s. 1, ch. 77-335; s. 1, ch. 79-148; s. 153, ch. 79-400.

393.064 Prevention; plan and report to the Legislature.—

(1) The Department of Health and Rehabilitative Services, in carrying out its assigned purpose under s. 20.19(1) of preventing to the maximum extent possible the occurrence and incidence of physical and mental diseases and disabilities, shall give priority to the development, planning, and implementation of programs which have the potential to prevent or reduce the severity of retardation and other developmental disabilities. The department shall identify, through demonstration projects, through departmental program evaluation, and through monitoring of programs and projects conducted outside of the department, any medical, social, economic, or educational methods, techniques, or procedures which have the potential to effectively ameliorate retardation and other developmental disabilities. The department shall determine the costs and benefits that would be associated with such prevention efforts and shall implement, or recommend the implementation of, those methods, techniques, or procedures which are found likely to be cost-beneficial. The department in its legislative budget request shall identify funding needs for such prevention programs.

(2) In planning and developing its programs and recommendations relating to the prevention of retardation and other developmental disabilities, the department shall consider and evaluate the potential for new or improved programs in the following areas:

(a) Primary prevention:

1. Preconceptional.

2. Prenatal, including maternal nutrition, immunization, and special care for high risk populations, including teenage pregnancies.

(b) Secondary prevention:

1. Neonatal intensive care.

2. Early detection, including screening of high risk populations and mass population screening.

3. Early intervention, including medical services, developmental and behavioral therapy, and educational training.

(3) Other agencies of state government shall cooperate with and assist the department, within available resources, in implementing programs which have the potential to prevent, or reduce the severity of, retardation and other developmental disabilities and shall consider the findings and recommendations of the department in developing and implementing agency programs and formulating agency budget requests.

(4) The department shall submit to the President of the Senate and the Speaker of the House of Representatives, as part of the 5-year plan required by s. 393.069, a plan for programs designed to prevent and

reduce the severity of retardation and other developmental disabilities. The plan shall outline department proposals for the identification of appropriate prevention efforts, the development of prevention programs, and the provision of services under such programs. All data, projections, and estimates in the plan shall be arrayed by district. The plan shall be resubmitted annually as part of the 5-year plan. The plan shall contain the following elements:

(a) An identification and projection of potential client populations for which prevention programs might be considered.

(b) An inventory and evaluation of existing prevention programs, facilities, and services in the state, including client population served, cost of services provided, and identification of any needed program improvement or change.

(c) A listing of potential prevention efforts identified by the department; the estimated annual cost of providing such prevention services, both for a single client and for the anticipated target population as a whole; an identification of potential funding sources; and the projected benefits of providing such services.

(5) No funds appropriated for retardation programs shall be transferred pursuant to s. 216.292, unless there is a finding by the secretary that treatment programs for retardation and other developmental disabilities will not be adversely affected by the transfer and that the prevention services will be cost-efficient.

History.—s. 1, ch. 77-335; s. 92, ch. 79-164.

393.065 Intake.—

(1) Application for services shall be made in writing to the Department of Health and Rehabilitative Services, in the district in which the applicant resides. The department shall review each application for eligibility. The department may screen eligible applicants to determine the need for prevention or other services. When necessary to definitively identify client conditions or needs, the department may provide a diagnostic evaluation, subsequent to screening. Each applicant shall be determined to be in need of services through screening or the diagnostic evaluation process, prior to being accepted as a client.

(2) The department shall prescribe and provide an appropriate individual habilitation plan for each client. The parent or guardian of the client or, if competent, the client, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan shall include the most cost-beneficial, least restrictive environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan shall include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the department shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community.

(a) The department shall develop and prescribe by rule a standard habilitation plan form. This form shall be used by each district.

(b) In the interest of continuity of care, one member of the professional staff of the department shall be designated to be responsible for supervising implementation of an individual habilitation plan and recording the client's progress.

(c) The department shall place a client in the most appropriate, least restrictive, and most cost-beneficial residential facility according to his individual habilitation plan. Considerations for placement shall be made in the following order:

1. Client's own home or the home of a caretaker.
2. Foster care facility.
3. Group home facility.
4. Residential habilitation center.
5. Intermediate care facility for the mentally retarded.
6. Nursing home facility.
7. Sunland Centers.

(d) In developing a client's annual habilitation plan, the department shall identify measurable objectives for client progress and shall specify a time period expected for achievement of each objective.

(e) The department shall review progress in achieving the objectives specified in each client's habilitation plan, at least semiannually, and shall revise the plan annually, following consultation with the client, if competent, or with the parent or guardian of the client. The department shall annually report in writing to the client, if competent, or to the parent or guardian of the client with respect to the client's habilitative and medical progress.

(f) The department shall develop specific categories for the measurement of client progress.

History.—s. 1, ch. 77-335.

393.066 Community services and treatment for the retarded and other developmentally disabled.—

(1) The Department of Health and Rehabilitative Services shall plan, develop, organize, and implement its programs of services and treatment for the retarded and other developmentally disabled persons along district lines. The goal of such programs shall be to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.

(2) All programs of services and treatment for clients shall be administered through the districts, shall be based in the community, and shall serve all clients regardless of the type of residential setting in which the client lives. All departmental service personnel, other than those required to provide room and board and personal care to residents of state-operated institutions and facilities, shall be assigned by the district to community-based programs, provided that there is no net loss of federal funding from either title XX or title XIX of the Social Security Act. In addition, all purchased services shall be approved by the district.

(3) All services needed shall be purchased instead of provided directly by the department, when such arrangement is most cost-efficient, in accordance with s. 20.19(13).

(4) Community-based services shall, to the extent

of available resources, include:
(a) Day care services.
(b) Respite care services.
(c) Medical care services.
(d) Recreation.
(e) Physical therapy.
(f) Training, including developmental training.
(g) Social services.
(h) Parent training.
(i) Other habilitative and rehabilitative services as needed.

(5) The department shall utilize the services of private businesses, not-for-profit organizations, and units of local government whenever such services are more cost-efficient than providing such services directly by the department, including arrangements for provision of residential facilities.

(6) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the department shall promote the statewide development of day care services for clients who have a regular place of domicile and who do not require 24-hours-a-day care in a hospital or other health care institution, but who may, in the absence of day care services, require admission to a Sunland Center. Each day care service facility shall provide a protective physical environment for clients, make available to all day care service participants at least one meal on each day of operation, provide facilities to enable participants to obtain needed rest while attending the program, and provide social and educational activities designed to stimulate interest and provide socialization skills.

(7) For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the department is authorized to lease privately owned residential facilities under long-term rental agreements, if such rental agreements are projected to be less costly to the state over the useful life of the facility than state purchase or state construction of such a facility. In addition, the department is authorized to permit, on any public land to which the department holds the lease, construction of a residential facility for which the department has entered into a long-term rental agreement as specified in this subsection.

History.—s. 1, ch. 77-335.

393.067 Licensure of residential facilities.—

(1) An application for a license for a residential facility shall be made to the Department of Health and Rehabilitative Services on a form furnished by it and shall be accompanied by the appropriate license fee.

(2) The application shall be under oath and shall contain the following:

(a) The name and address of the applicant, if an individual; if the applicant is a firm, partnership, or association, the name and address of each member thereof; if the applicant is a corporation, its name and address and the name and address of each director and each officer thereof; and the name by which the facility is to be known.

(b) The location of the facility for which a license is sought.

(c) The name of the person or persons under whose management or supervision the facility will be conducted.

(d) The number and type of residents for which maintenance, care, or treatment is to be provided by the facility.

(e) A description of the types of services and treatment to be provided by the facility.

(f) Information relating to the number, experience, and training of the employees of the facility and to the moral character of the applicant and employees.

(g) Such other information as the department determines necessary to carry out the provisions of this chapter.

(3) The applicant shall submit evidence which establishes the good moral character of the applicant and of the manager or supervisor of the facility.

(4) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this chapter and all rules promulgated hereunder.

(5) The department shall promulgate rules establishing minimum standards for licensure for residential facilities, including minimum standards of quality and adequacy of care.

(6) The department may conduct unannounced inspections to determine compliance by residential facilities with the provisions of this chapter and the rules adopted pursuant thereto. The facility shall make copies of inspection reports available to the public upon request.

(7) Each residential facility licensed by the department shall forward annually to the department a true and accurate sworn statement of its costs of providing care.

(8) The department may audit the records of any residential facility which it has reason to believe may not be in full compliance with the provisions of this section.

(9) The department shall establish, for the purpose of control of costs, a uniform management information system and a uniform reporting system with uniform definitions and reporting categories.

History.—s. 1, ch. 77-335; s. 154, ch. 79-400.

393.068 Demonstration project.—The Department of Health and Rehabilitative Services shall conduct, or cause to be conducted, a combination demonstration project and evaluation study to determine the desirability of establishing a family placement program for retarded and developmentally disabled persons throughout the state. In carrying out the project, the department shall establish or cause to be established programs in at least three districts. When it is determined by the department to be more cost-effective and in the best interest of the client to maintain such client in the home of a caretaker in order to avoid unnecessary institutionalization, the parent or guardian of the client or, if competent, the client may enroll the client in the family placement program. The caretaker of a client enrolled in the family placement program shall be reimbursed according to a rate schedule set by the department.

(1) All existing community resources available to the client shall be utilized to support program objectives. Additional services may be incorporated into the program as appropriate and to the extent that

resources are available. The department is authorized to accept gifts and grants in order to carry out the program.

(2) The department may contract for the provision of any portion or all of the services required by the program. Such purchase of service contracts shall be used whenever the requirements of s. 20.19(13) exist.

(3) When possible, services shall be obtained under the "Florida Comprehensive Annual Services Program Plan under Title XX of the Social Security Act" and the "Florida Plan for Medical Assistance under Title XIX of the Social Security Act."

(4) To provide a range of personal services for the client, the use of volunteers shall be maximized. The department shall assure appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under the program.

(5) The department shall submit to the President of the Senate and the Speaker of the House of Representatives, as part of the 5-year plan required by s. 393.069, an evaluation report summarizing the progress of the family placement program. The report shall include the information and data necessary for an accurate analysis of the costs and benefits associated with the establishment and operation of the programs that were established.

History.—s. 1, ch. 77-335.

393.069 Departmental plan; submission to the Legislature.—The Department of Health and Rehabilitative Services shall submit to the President of the Senate and the Speaker of the House of Representatives, not later than January 31, 1978, a comprehensive 5-year plan for the provision of services to retarded and other developmentally disabled persons. Such comprehensive plan shall be updated and resubmitted not later than January 31 each calendar year through 1982. The comprehensive plan shall include, but need not be limited to, the following:

(1) The plan for departmental programs designed to prevent, and reduce the severity of, retardation and other developmental disabilities, required by s. 393.064.

(2) An identification and projection of retardation and developmental disability program needs, including service programs, personnel, facilities, and other needed resources; a projection of the cost of funding such program needs; and an estimation of the benefits attendant to funding such program needs.

(3) A review of the appropriateness and availability of the various categories or levels of care being provided in the state for clients, including an identification of gaps in service programs and an estimation of the extent and percentage of unserved need in each category or level of care.

(4) A plan for the use or alternative use or disposition of the Sunland Centers.

(5) An evaluation of the results of the demonstration project required by s. 393.068.

(6) A compilation of client progress reports, using the categories for measurement of client progress developed by the department pursuant to s. 393.065 and used in the development of each client's habilitation plan, along with a summary of overall client population progress by type of client and category of measurement.

(7) A statement and projection of client fee collections.

History.—s. 1, ch. 77-335.

393.071 Client fees.—The Department of Health and Rehabilitative Services shall charge fees for services provided to clients in accordance with s. 402.33.

History.—s. 1, ch. 77-335.

393.11 Hearing and order for involuntary admission to residential services; recommendation of examining commission.—

(1) When a person is retarded and requires involuntary admission to residential services provided by the retardation program of the Department of Health and Rehabilitative Services, the circuit court of the county in which the person resides shall have jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order that he may receive the care, treatment, and rehabilitation which he needs. It is the intent of the Legislature that, for the purpose of identifying developmental disabilities, diagnostic capability be established in every program function of the department in the districts, including, but not limited to, youth services, mental health, vocational rehabilitation, and social and economic services.

(2) In no case shall an order authorizing an admission to residential care be considered an adjudication of mental incompetency. In addition, any child involuntarily admitted to residential services of the retardation program of the department shall, upon reaching majority, be given a hearing to determine his competency. The hearing and order for involuntary admission shall be conducted and entered in the county in which the person is residing or in the county from which the original admittance was made. The hearing shall be conducted and the order entered according to the following procedure:

(a) Three persons, one of whom shall be a physician licensed and practicing under chapter 458, shall constitute a petition committee. These persons shall state under oath the name of the person being considered for involuntary admission, his residence, his family conditions, his physical condition, and the nature and extent of his retardation as established by competent evaluation.

(b) Upon receiving the petition, the court shall immediately appoint an examining commission to examine the person being considered for involuntary admission to residential services of the retardation program of the department. The court shall appoint no fewer than three disinterested experts qualified in the field of mental retardation, including at least one licensed and qualified physician, one licensed and qualified psychologist, and one qualified social worker, to examine the applicant and to testify in person at the hearing on admission to residential care. Members of the commission shall not be employees of the department or be associated with each other in practice or in employer-employee relationships. If there is not a practicing psychologist within the county who meets the above standards,

the judge may appoint one additional physician to be a member of the examining commission. Such expert testimony shall include, but not be limited to:

1. The degree of the applicant's retardation.
2. The purpose to be served by residential care.
3. The appropriate habilitation and treatment.

Other evidence regarding the appropriateness of the applicant's admission may be introduced at the hearing by any interested party.

(c) Hearing on the petition shall be held as soon as practicable after the petition is filed. The applicant shall be physically present throughout the entire proceeding, be represented by counsel, and be provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of his admission to residential care. All evidence shall be presented according to the usual rules of evidence. All stages of each proceeding shall be stenographically reported. The burden of proof shall be on the party alleging the appropriateness of the applicant's admission to residential care. The burden of proof shall be by clear and convincing evidence. In all cases, the court shall issue findings to support its decision and state the basis for such findings.

(d) An applicant shall be represented by counsel at all stages of a judicial admission proceeding. In the event an applicant cannot afford counsel, the court shall appoint a public defender not less than 20 days before the scheduled hearing. In all cases, a court-appointed, or otherwise procured, attorney shall represent the rights and legal interests of the applicant, regardless of who may initiate the proceedings or pay the attorney's fee.

(e) If the examining commission finds the examined person to be retarded or developmentally disabled and in need of treatment and rehabilitation within residential services of the retardation program of the department, these findings shall be reported to the court. The department shall then inform the court of all available services for the person. The court may order the involuntary admission of the person to residential services of the department. If the evidence presented to the court is not sufficient to warrant involuntary admission to residential services, but the court feels that residential services would be beneficial, the court may recommend that the person seek voluntary admission. The order of involuntary admission to residential care shall be accompanied by the report of the examining commission; shall explicitly document the degree of retardation, the purpose to be served by residential care, and the least restrictive placement for the person; and shall include copies of any other records that may be required by the department. Upon receiving the order and records, the department shall, within 45 days, provide the court with a copy of the person's habilitation plan outlining treatment and rehabilitative programs and documenting that the person has been placed in the most appropriate, least restrictive, and most cost-beneficial residential facility.

(3) Appeal of a final order in a judicial admission proceeding shall be by right in accordance with Art. V of the State Constitution and the Florida Appellate Rules. Pendency of an appeal pursuant to this section shall stay admission until a final determination is made.

(4) At any time and without notice, any person involuntarily admitted to the retardation program of the department, or his parent or legal guardian in his behalf, is entitled to a writ of habeas corpus to question the cause, legality, and appropriateness of the client's involuntary admission, upon proper application. Each client or his parent or legal guardian shall receive specific written notice of the right to petition for a writ of habeas corpus.

(5) The court which issues the initial order for involuntary admission of a person under this section may enter further orders to ensure that the person is receiving adequate care, treatment, habilitation, and rehabilitation within available resources.

History.—s. 4, ch. 10272, 1925; CGL 3677; s. 1, ch. 61-426; s. 5, ch. 67-65; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 4, ch. 73-308; s. 25, ch. 73-334; s. 8, ch. 75-259; s. 197, ch. 77-147; s. 2, ch. 77-335; s. 155, ch. 79-400.

393.115 Discharge.—

(1) DISCHARGE AFTER ADMISSION TO RESIDENTIAL CARE.—

(a) If, at any time after any person has been admitted to residential care for the retarded provided by the Department of Health and Rehabilitative Services, the resident, his parent or legal guardian, if the resident is not competent, or the department is of the opinion that the resident's admission is no longer appropriate, the department shall, upon request, immediately proceed for a hearing to determine the appropriateness of continued residential care for the resident.

(b) If the department determines that the resident's continued admission to residential care is not essential or that the resident is not dangerous to himself or others, as documented in the resident's written habilitation plan, the resident shall be immediately discharged by the department. If the department determines that the resident's continued admission is essential or that the resident is dangerous to himself or others, as documented in the resident's written habilitation plan, he shall remain admitted to residential care provided by the department.

(c) Nothing in this section shall in any way limit or restrict the resident's right to a writ of habeas corpus or the right of the department to transfer a resident receiving residential care to a program of appropriate services provided by the department when such is the appropriate habilitative setting for the resident.

(2) DISCHARGE AFTER CRIMINAL OR JUVENILE COMMITMENT.—Any mentally retarded person committed to the custody of the department pursuant to the provisions of the applicable criminal or juvenile court law shall be discharged in accordance with the requirements of the applicable criminal or juvenile court law.

History.—s. 7, ch. 7887, 1919; ss. 2, 3, ch. 10272, 1925; CGL 3669, 3674-3676; s. 1, ch. 61-426; ss. 19, 35, ch. 69-106; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 7, ch. 73-308; s. 194, ch. 77-147; s. 3, ch. 77-335; s. 19, ch. 78-95.

Note.—Former s. 393.05.

393.12 Competency.—

(1) The issue of competency shall be separate and distinct from a determination of the appropriateness

of admission to nonresidential services or residential care for a condition of mental retardation. No person shall be presumed incompetent solely by reason of his acceptance in nonresidential services or admission to residential care; nor shall any such person be denied the full exercise of all legal rights guaranteed to citizens of Florida and of the United States, except as expressly determined by an appropriate court of law.

(2) When there is clear reason to believe that a person is incompetent by reason of a condition of mental retardation, proceedings to determine the competency of the individual may be initiated in accordance with the provisions and requirements of chapter 744. Such proceedings shall be initiated only if an adjudication of incompetency is essential for the appointment of a legal guardian of the person or property of the mentally retarded person.

(3) The effect of an adjudication of incompetency and the procedures for restoration to competency shall be as provided in chapter 744.

(4) The judge conducting proceedings to determine the competency of a person may issue an order for the least restrictive type of guardianship for the person, pursuant to part III of chapter 744.

History.—s. 1, ch. 29853, 1955; s. 1, ch. 61-426; s. 26, ch. 63-559; s. 1, ch. 70-343; s. 5, ch. 73-308; s. 25, ch. 73-334; s. 4, ch. 77-335.

393.122 Applications for continued residential services.—

(1) Before October 1, 1977, the Department of Health and Rehabilitative Services shall notify each client who will be 18 years of age or older before January 1, 1978, who is presently receiving residential services from the department, and who has not been adjudicated incompetent, and the parents or next of kin of each such client, that the client will be discharged unless application for continuation of residential services is made by January 1, 1978.

(2) At least 90 days prior to the date that a client who is receiving residential services from the department and who has not been adjudicated incompetent reaches 18 years of age, the department shall notify the client and his parents or next of kin that the client will be discharged upon reaching 18 years of age unless application for continuation of residential services is made by that time.

(3) If a client is discharged from residential services under the provisions of this section, application for needed services shall be encouraged.

(4) No client receiving services from the department as of July 1, 1977, shall be denied continued services due to any change in eligibility requirements by chapter 77-335, Laws of Florida.

(5) Development of nonretarded developmental disability programs shall not effectuate a reduction or dilution of the ongoing financial commitment of the state through appropriations for mental retardation programs and services.

History.—s. 5, ch. 77-335.

393.13 Personal treatment of clients.—

(1) SHORT TITLE.—This act shall be known as "The Bill of Rights of Retarded Persons."

(2) LEGISLATIVE INTENT.—

(a) The Legislature finds and declares that the system of care which the state provides to mentally retarded individuals must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights. Further, the current system of care for retarded persons is in need of substantial improvement in order to provide truly meaningful treatment and habilitation.

(b) The Legislature further finds and declares that the design and delivery of treatment and services to the mentally retarded should be directed by the principles of normalization and therefore should:

1. Abate the use of large institutions.

2. Continue the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client.

3. Provide training and education to mentally retarded individuals which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

(c) It is the intent of the Legislature that duplicative and unnecessary administrative procedures and practices shall be eliminated, and areas of responsibility shall be clearly defined and consolidated in order to economically utilize present resources. Furthermore, personnel providing services should be sufficiently qualified and experienced to meet the needs of the clients, and they must be sufficient in number to provide treatment in a manner which is beneficial to the clients.

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of the retarded so that they may be exercised and protected. The mentally retarded person shall have all the rights enjoyed by citizens of the state and the United States.

2. To provide a mechanism for the identification, evaluation, and treatment of persons with mental retardation.

3. To divert those individuals from institutional commitment who, by virtue of professional diagnosis and evaluation, can be placed in less costly, more effective community environments and programs.

4. To mandate the development of a plan which will indicate the most effective and efficient manner in which to implement treatment programs which are meaningful to individuals with mental retardation, while safeguarding and respecting the legal and human rights of such individuals.

5. Once the plan mandated under the provisions of subparagraph 4. is presented to the Legislature, to fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.

6. To provide programs for the proper habilitation and treatment of the mentally retarded person, which shall include, but not be limited to, comprehensive medical care, education, recreation, physical therapy, training, social services, and habilitative and rehabilitative services suited to the needs of the individual regardless of age, degree of retardation, or handicapping condition. No mentally retarded person shall be deprived of these enumerated services by reason of inability to pay.

7. To fully effectuate the normalization principle

through the establishment of community services for the mentally retarded person as a viable and practical alternative to institutional care at each stage of individual life development. If care in an institutional facility becomes necessary, it should be in the least restrictive setting.

(e) It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of mentally retarded persons.

(3) CLIENT RIGHTS.—

(a) Clients shall have a right to dignity, privacy, and humane care.

(b) Clients shall have the right to religious freedom and practice. Nothing shall restrict or force infringement on a client's right to religious preference and practice.

(c) Clients shall have an unrestricted right to communication:

1. Each client shall be allowed to receive, send, and mail sealed, unopened correspondence. No client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.

2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication.

3. Clients shall have an unrestricted right to visitations. However, nothing in this provision shall be construed to permit infringement upon other clients' rights to privacy.

(d) Each client has the right to the possession and use of his own clothing and personal effects. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client's record, and a receipt for such effects shall be immediately given to the client, if competent, or his parent or legal guardian.

1. All money belonging to a client held by the department shall be held in compliance with subsections 402.17(2) and (7).

2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and shall not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be used or conserved for the personal use or benefit of the individual client as provided in subsection 402.17(2).

3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the department. All such personal effects and money, including interest, shall be promptly turned over to the client or his heirs.

(e) Each client shall receive education and training services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps. Clients may be provided with instruction in sex education, marriage, and family planning as prescribed in the client's individual habilitative program.

(f) Each client shall receive prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community.

1. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan, or in unnecessary or excessive quantities.

2. Daily notation of medication received by each client in a residential facility shall be kept in the client's record.

3. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.

4. Pharmacy services at each residential facility shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of chapter 465.

5. Pharmacy services shall be delivered in accordance with the provisions of chapter 465.

6. Prior to instituting a plan of experimental medical treatment or carrying out any necessary surgical procedure, express and informed consent shall be obtained from the client, if competent, or his parent or legal guardian. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:

a. The nature and consequences of such procedures.

b. The risks, benefits, and purposes of such procedures.

c. Alternate procedures available.

7. When the department is the legal guardian of a client, or the custodian of a client whose parent or legal guardian is unknown or unlocatable and whose physician is unwilling to perform surgery based solely on the client's consent, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The client shall be physically present, unless the client's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures. The express and informed consent of a person described in subparagraph 6. may be withdrawn at any time, with or without cause, prior to treatment or surgery.

8. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in

initiation of emergency medical care or treatment would endanger the health of the client.

(g) Clients shall be provided with suitable opportunities for behavioral and leisure time activities which include social interaction.

(h) Each client shall be provided with appropriate physical exercise as prescribed in the client's individual habilitation plan. Indoor and outdoor facilities and equipment for such physical exercise shall be provided.

(i) Each client shall receive humane discipline.

(j) No client shall be subjected to a treatment program to eliminate bizarre or unusual behaviors without first being examined by a physician to rule out the possibility that such behaviors are organically caused.

1. Treatment programs involving the use of noxious or painful stimuli shall be prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrative officer of the facility or the district administrator, the department head, and the district Human Rights Advocacy Committee. A thorough investigation of each incident shall be conducted and a written report of the finding and results of such investigation shall be submitted to the chief administrative officer of the facility or the district administrator and to the department head within 24 hours of the occurrence or discovery of the incident.

(k) Each client engaged in work programs which require compliance with federal wage and hour laws shall be provided with minimum wage protection and fair compensation for labor in accordance with the provisions of 29 CFR part 529.

(l) Clients shall have the right to be free from physical restraint. Physical restraints shall be employed only in emergencies to protect the client from imminent injury to himself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

1. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation, and allowance for change of position.

2. Totally enclosed cribs and barred enclosures shall be considered restraints.

3. Daily reports on the employment of restraints by those specialists authorized in the use of restraints shall be made to the appropriate chief administrator of the facility, and a monthly summary of such reports shall be relayed to the district administrator and the district Human Rights Advocacy Committee. The reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor.

4. The department shall post a copy of the rules and regulations promulgated under this section in each living unit of residential facilities. A copy of the rules and regulations promulgated under this section shall be given to all staff members of residential facilities and made a part of all preservice and inservice training programs.

(m)1. Each client shall have a central record. The record shall include data pertaining to admission and such other information as may be required under regulation by the department.

2. Unless waived by the client, if competent, or his parent or legal guardian if the client is incompetent, the client's central record shall be confidential. The client's central record shall not be a public record, and no part of it shall be released except:

a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or his parent or legal guardian, if the client is incompetent.

b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the department when the administrator of the facility or the secretary of the department deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.

3. All central records for each client in residential facilities shall be kept on uniform forms distributed by the department. The central record shall accurately summarize each client's history and present condition.

4. The client, if competent, or his parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.

(4) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of clients provided by this act shall be liable for damages as determined by law. Any person who acts in good-faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section shall not relieve any person from liability if such person is guilty of negligence, misfeasance, nonfeasance, or malfeasance.

(5) NOTICE OF RIGHTS.—Each client, if competent, or parent or legal guardian of each client if the client is incompetent, shall promptly receive from the Department of Health and Rehabilitative Services a written copy of this act. Each client able to comprehend shall be promptly informed in clear language of the above legal rights of mentally retarded persons.

(6) RESIDENT GOVERNMENT.—Each residential facility shall initiate and develop a program of resident government to hear the views and repre-

sent the interests of all clients served by the facility. The resident government shall be composed of residents elected by other residents, staff advisors skilled in the administration of community organizations, and a representative of the district Human Rights Advocacy Committee. The resident government shall work closely with the district Human Rights Advocacy Committee and the district administrator to promote the interests and welfare of all residents in the facility.

History.—ss. 1-7, ch. 75-259; s. 1, ch. 77-174; s. 7, ch. 77-335; s. 7, ch. 79-12; s. 9, ch. 79-320.

393.14 Multiyear plan.—

(1) The department is authorized to begin implementation of the provisions of this act within the limits of current appropriations. The [1][department] shall develop a multiyear plan which will provide for the phased-in implementation of the provisions of this act. The plan shall specify and operationalize the documented relationships between resource expenditures and client improvement. The multiyear plan for implementation shall be presented to the Legislature by January 1, 1976. The plan shall include, but not be limited to:

(a) An analysis and inventory of existing programs, facilities, and services dealing with the retarded and other developmentally disabled.

(b) A survey and analysis outlining the needs of the system of care for the retarded to accomplish the purpose and intent of this act. This analysis shall include:

1. Comprehensive information relating to the conceptual basis and statement of criteria which will be used for the identification and categorization of all [1][department] clients and the expected level and amount of service each category of client will require.

2. A description of the present client population, based on the above criteria.

3. Client population forecasts.

4. Client profiles.

5. Service area resources, needs, and capabilities.

6. Residential and nonresidential community programs.

7. An analysis of the future functions of institutions and their profile.

8. An analysis of the space, service program needs, and personnel and staffing ratios required by current acceptable standards.

9. An analysis of the financing necessary to implement needs, which shall include a statement of the actual cost necessary to implement each program and the actual cost of each unit of service to the client for both institutional and community placements.

(c) A plan for the coordination of the state's service, programs, and facilities for the retarded.

(d) An overall plan for facility design, which shall include the estimated cost, which will best serve the retarded, and which will integrate institutional services with community-based programs and facilities.

(e) A detailed study of methods to implement alternatives to institutionalization and how those methods can best be utilized.

(f) A multiple-year fiscal plan demonstrating the overall cost of implementation of this act as well as providing single fiscal year expenditures required in the interim towards complete implementation. This part of the plan shall include an estimate of the payments the [1][department] will expect to receive from those who are determined to be able to pay for all or part of the services they receive. The plan shall provide a suggested family income schedule which shall determine a family's contribution toward the care of a retarded child.

(2) Each year, commencing with the 1977 fiscal year, the department shall render a written report to the Legislature updating the plan, making recommendations for modification or improvement, and giving a detailed analysis of the manner and method, including funding, by which the Legislature can continue to implement the overall goals of the plan.

History.—s. 10, ch. 75-259.

[1]Note.—Bracketed word substituted by the editors for "division" (of Retardation of the Department of Health and Rehabilitative Services). See s. 3, ch. 75-48, which abolished the division and assigned its functions to the department.

393.15 Legislative intent; definition, Group-Living Home Trust Fund.—

(1) The Legislature finds and declares that the development of community-based treatment facilities for the retarded, autistic, or other developmentally disabled is desirable and recommended and should be encouraged and fostered by the state. The Legislature further recognizes that the development of such homes is financially difficult for private individuals, due to initial expenditures required to adapt existing structures to the special needs of the retarded, autistic, and other developmentally disabled clients who may come to reside in such homes. Therefore, it is the intent of the Legislature by this act to develop a loan trust fund to provide support and encouragement in the establishment of community-based group living homes for the retarded, autistic, and other developmentally disabled.

(2) As used in this act, "group-living home" means any residential facility operated, approved, or contracted with under the authority of the Department of Health and Rehabilitative Services, housing not less than 4 or more than 16 mentally retarded, autistic, or developmentally disabled persons. A group-living home may be a nonprofit corporation, partnership, or sole proprietorship.

(3) There is created a Group-Living Home Trust Fund in the State Treasury to be used by the Department of Health and Rehabilitative Services for the purpose of granting loans to eligible group-living homes for the initial costs of development of the group-living homes. Loans shall be made only to those group homes which are in compliance with the zoning regulations of the local community. Costs of development may include structural modification, the purchase of equipment and fire and safety devices, and the purchase of insurance. Such costs shall not include the actual construction of a group-living home.

(4) The department may grant to an eligible group-living home a lump sum loan in one payment not to exceed the cost to the group-living home of providing 2 months' care and maintenance to each mentally retarded, autistic, or developmentally disa-

bled person to be placed in the home by the department. Loans granted to group-living homes shall not be in lieu of payment for maintenance and care provided, but shall stand separate and distinct. The department shall promulgate rules, as provided in chapter 120, to determine the standards under which a group-living home shall be eligible to receive a loan as provided in this section.

(5) Any loan granted by the department under this section shall be repaid by the group-living home within 5 years. A group-living home operating as a nonprofit corporation meeting the requirements of s. 501(c)3 of the Internal Revenue Code shall submit to the department a statement setting forth the residential service it has provided during the year together with such other information as the department by rule shall require, and, upon approval of each such annual statement, the department shall forgive 20 percent of the outstanding principal balance of such loans granted prior to October 1, 1976, and shall forgive 20 percent of the principal and interest of such loans granted on or after October 1, 1976.

(6) If any group-living home which has received a loan under this section ceases to accept, or provide care and maintenance to, persons placed in the home by the department, or if such home shall file papers of bankruptcy, at that point in time the loan shall become an interest-bearing loan at the rate of 5 percent per annum on the entire amount of the initial loan which shall be repaid within a 1-year period from the date on which the home ceases to provide care or files papers in bankruptcy, and the amount of the loan due plus interest shall constitute a lien in favor of the state against all real and personal property of the group-living home. The lien shall be perfected by the appropriate officer of the department by executing and acknowledging a statement of the name of the home and the amount due on the loan and a copy of the promissory note, which shall be recorded by the department with the clerk of the circuit court in the county wherein the home is located. If the home has filed a petition for bankruptcy, the department shall file and enforce the lien in the bankruptcy proceedings. Otherwise, the lien shall be enforced in the manner provided in s. 85.011. All funds received by the department from the enforcement of the lien shall be deposited in the Group-Living Home Trust Fund.

History.—ss. 1-3, ch. 75-197; s. 1, ch. 76-128; s. 1, ch. 79-321.

393.16 Intermediate care facilities; definition; trust fund.—

(1) As used in this section, "facility" means any residential intermediate care facility for mentally retarded and other developmentally disabled persons which is operated by a corporation for profit or nonprofit corporation, by a partnership, or by a sole proprietorship; which is operated, approved, or contracted with under the authority of the department; and which houses not fewer than 4 or more than 25 mentally retarded or developmentally disabled persons.

(2) The Intermediate Care Facilities Trust Fund is established in the State Treasury to be administered by the department for the purpose of granting loans to eligible facilities for the initial costs of operating the facilities, not including costs of structural modification, the purchase of equipment or fire and safety devices, the purchase of insurance, or the actual construction of a facility.

(3) The department may grant to an eligible facility a lump sum loan in one payment, not to exceed 75 percent of the operating costs of the facility for up to 6 months' care and maintenance for each mentally retarded or developmentally disabled person to be placed in the facility by the department. Loans granted to facilities shall not be in lieu of payment for maintenance and care provided. Each such loan shall be used to provide programs and services as required under the federal regulations providing standards for intermediate care facility services (45 C.F.R. s. 249.13) and shall be granted to a facility only upon the completion of a facility licensure and certification survey conducted by the department. The department shall adopt rules establishing the minimum standards under which a facility may receive a loan under this section.

(4) Any loan granted under this section shall be repaid at no interest by the facility within 6 months of the receipt by the facility of its initial Medicaid payment.

(5) If any facility which has received such a loan ceases to accept, or to provide care and maintenance to, persons placed in the facility by the department or if any such facility files papers of bankruptcy, the loan shall become an interest-bearing loan, at the rate of 5 percent per annum on the entire amount of the loan, which shall be repaid within a 3-month period from the date on which the facility ceases to provide care or files papers in bankruptcy; and the amount of the loan due, plus interest, shall constitute a lien in favor of the state against all real and personal property of the facility. The lien shall be perfected by the appropriate officer of the department by executing and acknowledging a statement of the name of the facility and the amount due on the loan and a copy of the promissory note, which shall be recorded by the department with the clerk of the circuit court in the county wherein the facility is located. If the facility has filed a petition for bankruptcy, the department shall file and enforce the lien in the bankruptcy proceedings; otherwise, the lien shall be enforced in the manner provided in s. 85.011. All funds received by the department from the enforcement of such lien shall be deposited in the Intermediate Care Facilities Trust Fund.

(6) The corporation, partnership, or sole proprietor [1]operating a residential intermediate care facility shall execute an agreement prepared by the department that any funds received pursuant to this section shall be used solely for operating costs.

(7) It is the intent of the Legislature that no facility receive more than $160,000 pursuant to the provisions of this section.

(8) All facilities with approved certificates of need prior to July 1, 1979, regardless of the size of said facility, shall be eligible to benefit from the provisions of this section.

History.—ss. 1-3, ch. 79-172.

[1]**Note.**—The word "operating" was substituted for "of" by the editors.

393.20 Raymond C. Philips Research and Education Unit at Sunland Training Center at Gainesville.—

(1) There is created at the Sunland Training Center in Gainesville a research and education unit. Such unit shall be named the Raymond C. Philips Research and Education Unit. The functions of such unit shall include:

(a) Research into the etiology of mental retardation and developmental disabilities;

(b) Ensuring that new knowledge is rapidly disseminated throughout the Retardation Program Office system of the Department of Health and Rehabilitative Services;

(c) Diagnosis of unusual conditions and syndromes associated with retardation in clients identified throughout the Sunland system;

(d) Evaluation of families of clients with mental retardation of genetic origin in order to provide them with genetic counseling aimed at preventing the recurrence of the disorder in other family members;

(e) Ensuring that health professionals in the Gainesville Sunland Training Center have access to information systems that will allow them to remain updated on newer knowledge and maintain their postgraduate education standards; and

(f) Enhancing staff training for professionals throughout the department in the areas of genetics and developmental disabilities and in all aspects of retardation.

(2) The Department of Health and Rehabilitative Services shall have the authority to contract for the supervision and management of the Raymond C. Philips Research and Education Unit, and such contract shall include specific program objectives.

(3) The department shall conduct an ongoing evaluation and prepare an annual report to be submitted to the Governor and Legislature not later than April 1 each year reflecting the extent of implementation of program objectives and functions of the unit as provided in this section.

History.—ss. 1, 2, ch. 79-367.

CHAPTER 394

MENTAL HEALTH

PART I FLORIDA MENTAL HEALTH ACT (ss. 394.451-394.4781)

PART II INTERSTATE COMPACT ON MENTAL HEALTH (ss. 394.479-394.484)

PART III CHILDREN'S RESIDENTIAL AND DAY TREATMENT CENTERS (ss. 394.50-394.62)

PART IV COMMUNITY MENTAL HEALTH SERVICES (ss. 394.65-394.81)

PART V HOSPITALIZATION AND TREATMENT OF CRIMINALS, INSANITY ACQUITTEES, AND PERSONS INCOMPETENT TO STAND TRIAL (ss. 394.901-394.906)

PART I

FLORIDA MENTAL HEALTH ACT

394.451 Short title.—This part shall be known as "The Florida Mental Health Act" or "The Baker Act."

History.—s. 1, ch. 71-131.

394.453 Legislative intent.—It is the intent of the Legislature to authorize and direct the Department of Health and Rehabilitative Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. The department is directed to implement and administer mental health programs as authorized and approved by the Legislature, based on the department's annual program budget. It is the further intent of the Legislature that programs of the department shall coordinate the development, maintenance, and improvement of receiving and community treatment facilities within the programs of the district mental health boards as authorized by the Community Mental Health Act, part IV of this chapter. Treatment programs shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that patients shall be provided with emergency service and temporary detention for evaluation when required; that patients be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; and that individual dignity and human rights be guaranteed to all persons admitted to mental health facilities. It is further the intent of the Legislature that the least restrictive means of intervention be employed based on the individual needs of each patient within the scope of available services. Nothing in this act shall be construed to affect any policies relating to admission to hospital staff.

History.—s. 2, ch. 71-131; s. 198, ch. 77-147; s. 1, ch. 79-298.

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise:

(1) "Hospital" means a public or private hospital or institution or part thereof licensed by the Department of Health and Rehabilitative Services and equipped to provide inpatient care and treatment facilities, or any hospital under the supervision of the department.

(2) "Mental health professional" means an individual licensed or authorized to practice medicine or osteopathy under the laws of this state who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years inclusive of psychiatric residency; a [1]psychologist licensed pursuant to chapter 490 who has not less than 1 year of clinical experience postlicensure in the diagnosis and treatment of mental and nervous disorders; or, in counties in which individuals having such qualifications are not available, a physician licensed pursuant to chapter 458 or chapter 459 who has diagnosed

and treated mental and nervous disorders. For the purposes of initiating emergency admissions under s. 394.463(1)(b)3., initiating court-ordered evaluation pursuant to s. 394.463(2)(b)2., and certifying and testifying that a patient manifests criteria for involuntary placement pursuant to the provisions of [2]s. 394.467(2)(b)2. and (3)(a), "mental health professional" also means a registered nurse with a masters or doctoral degree in psychiatric nursing and 2 years of postmasters clinical experience under the supervision of a physician possessing the above-stated experience in diagnosis of mental and nervous disorders.

(3) "Mentally ill" means having a mental, emotional, or behavioral disorder which substantially impairs the person's mental health.

(4) "Department" means the Department of Health and Rehabilitative Services.

(5) "Secretary" means the secretary of the Department of Health and Rehabilitative Services.

(6) "Mental health board" means the board within a board district established in accordance with the provisions of the Community Mental Health Act, part IV of this chapter, for the purposes of administering the community mental health program.

(7) "Board district" means that area over which a single mental health board has jurisdiction for administering mental health programs as provided by the Community Mental Health Act, part IV of this chapter, and may consist of one or more services districts.

(8) "Facility" means any state-owned or state-operated hospital or state-aided community facility designated by the department to be utilized for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who are mentally ill, and any other hospital within the state approved and designated for such purpose by the department.

(9) "Community facility" means a facility which receives funds from the state under the Community Mental Health Act, part IV of this chapter.

(10) "Receiving facility" means a facility designated by the department to receive patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment, and also means a private facility when rendering services to a private patient pursuant to the provisions of this act.

(11) "Treatment facility" means a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for the treatment and hospitalization of persons who are mentally ill, including facilities of the United States Government, and also means a private facility when rendering services to a private patient pursuant to the provisions of this act. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the Veterans' Administration.

(12) "Private facility" means any hospital or facility operated by a nonprofit corporation or association or a proprietary hospital approved by the department.

(13) "Patient" means any mentally ill person who seeks hospitalization under this part, or any person for whom such hospitalization is sought.

(14) "Administrator" means the chief administrative officer of a receiving or treatment facility or his designee.

(15) "Staff member" means an employee of a receiving or treatment facility who has been designated as a staff member by the department.

(16) "Law enforcement officer" means any city police officer, officer of the State Highway Patrol, sheriff, or deputy sheriff.

(17) "Guardian" means a natural guardian of a minor or a legal guardian appointed by a court to maintain custody and control of the person or of the property of an incompetent.

(18) "Representative" means a person appointed to receive notice of proceedings for and during hospitalization and to take actions for and on behalf of the patient.

(19) "Court," unless otherwise specified, means the circuit court.

(20) "Judge," unless otherwise specified, means the judge of the Circuit Court or the judge designated to act under this act by the chief judge of a circuit.

(21) "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization and treatment.

(22) "Express and informed consent" means consent voluntarily given in writing after sufficient explanation and disclosure of the subject matter involved to enable the person whose consent is sought to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

History.—s. 3, ch. 71-131; s. 1, ch. 72-396; s. 1, ch. 73-133; s. 25, ch. 73-334; s. 199, ch. 77-147; s. 2, ch. 79-298.

[1]**Note.**—Chapter 490, which provided for licensing of psychologists, was repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

[2]**Note.**—This cross-reference is erroneous.

394.457 Operation and administration.—

(1) ADMINISTRATION.—The Department of Health and Rehabilitative Services, is designated the "Mental Health Authority" of Florida. The department shall exercise executive and administrative supervision over all mental health facilities, programs, and services.

(2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is responsible for the planning, evaluation, and coordination of a complete and comprehensive statewide program of mental health including community services, receiving and treatment facilities, child services, research, and training. The department is also responsible for the implementation of programs and coordination of efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services. It is responsible for establishing standards, providing technical assistance, and exercising supervision of mental health programs of state-supported community facilities and other facilities for the mentally ill. It shall stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness. The department may contract for residential

and nonresidential services to be provided by receiving and treatment facilities and shall promulgate rules to implement any such services.

(3) POWER TO CONTRACT.—The department may contract to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part with the following agencies: district mental health boards; public and private hospitals; clinics; laboratories; departments, divisions and other units of state government; the state colleges and universities; the community colleges; private colleges and universities; counties, municipalities, and any other governmental unit, including facilities of the United States Government; and any other public or private entity which provides or needs facilities or services. Services contracted for by the department may be reimbursed by the state at a rate up to 100 percent. The department shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

(4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The department may apply for, and accept any funds, grants, gifts, or services made available to it by any agency or department of the Federal Government or any other public or private agency or individual in aid of mental health programs. All such moneys shall be deposited in the state treasury and shall be disbursed as provided by law.

(5) RULES AND REGULATIONS; PERSONNEL.—

(a) The department shall adopt rules and regulations necessary for administration of this part in accordance with the Administrative Procedure Act, chapter 120.

(b) The department shall, by regulation, establish standards of education and experience for professional and technical personnel employed in mental health programs.

(6) HEARING OFFICERS.—

(a) One or more hearing officers shall be assigned by the Division of Administrative Hearings to conduct hearings for continued involuntary placement.

(b) Hearings on requests for orders authorizing continued involuntary placement filed in accordance with s. 394.467(4) shall be conducted in accordance with the provisions of s. 120.57(1), except that any order entered by the hearing officer shall be final and subject to judicial review in accordance with s. 120.68, except that orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. 394.467(5).

(7) PAYMENT FOR CARE OF PATIENTS.—Fees and fee collections for patients in treatment facilities shall be according to s. 402.33.

(8) DESIGNATION OF TREATMENT FACILITIES.—Florida State Hospital located at Chattahoochee, Gadsden County; G. Pierce Wood Memorial Hospital located at Arcadia, DeSoto County; South Florida State Hospital located at Hollywood, Broward County; and Northeast Florida State Hospital located at Macclenny, Baker County; and such other facilities as may be established by law or designated by the department in order to ensure availability of the least restrictive environment, including facilities of the United States Government, if such designation is agreed to by the appropriate governing body or authority, are designated as treatment facilities.

(9) DESIGNATION OF APPROVED PRIVATE PSYCHIATRIC FACILITIES.—Private psychiatric facilities may be approved by the department to provide emergency admission, court-ordered evaluation, and treatment on an involuntary basis. Such facilities are authorized to act in the same capacity as receiving and treatment facilities and are subject to all the provisions of this part, except that patients shall have the right to a hearing for continued involuntary placement every 90 days according to established hearing procedures set forth herein.

History.—s. 1, ch. 57-317; s. 1, ch. 59-222; s. 1, ch. 65-13; s. 3, ch. 65-22; s. 1, ch. 65-145; s. 1, ch. 67-334; ss. 11, 19, 31, 35, ch. 69-106; s. 4, ch. 71-131; s. 70, ch. 72-221; s. 2, ch. 72-396; s. 2, ch. 73-133; s. 25, ch. 73-334; s. 1, ch. 74-233; s. 200, ch. 77-147; s. 19, ch. 78-95; s. 3, ch. 78-332; s. 3, ch. 79-298.

Note.—Former s. 965.01(3), s. 402.10.

394.458 Introduction or removal of certain articles unlawful; penalty.—

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital, it is unlawful to introduce into or upon the grounds of any mental health hospital under the supervision or control of the Department of Health and Rehabilitative Services, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893; or

3. Any firearms or deadly weapon.

(b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.

(2) Whoever violates any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 75-253; s. 201, ch. 77-147; s. 1, ch. 77-174.

394.459 Rights of patients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—The policy of the state is that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, detained, or transported. Procedures, facilities, including jails, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with the noncriminal mentally ill except for the protection of the patient or others. If, in an emergency, a mentally ill person is placed in a jail, such a facility may be used only as long as the emergency exists and in no case, except felony criminal cases, longer than 5 days. In criminal cases, a jail may be used as an emergency facility no longer than 45 days. Treatment shall be provided to the patient by his mental

health professional or the receiving facility staff. No person who is receiving treatment for mental illness in a facility shall be deprived of any constitutional rights. However, if such a person is adjudicated incompetent pursuant to the provisions of this part, his rights may be limited to the same extent the rights of any incompetent person are limited by general law.

(2) RIGHT TO TREATMENT.—

(a) The policy of the state is that the department shall not deny treatment for mental illness to any person, and that no services shall be delayed at a receiving or treatment facility because of inability to pay.

(b) It is further the policy of the state that the least restrictive available treatment be utilized based on the individual needs and best interests of the patient.

(c) Each person who is admitted to a receiving or treatment facility, and each person who remains at a facility for a period in excess of 12 hours, shall be given a physical examination by a health practitioner authorized by law to give such examinations within 24 hours after arrival at any such facility.

(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.—

(a) All persons entering a facility shall be asked to give express and informed consent for treatment after disclosure to the patient if he is competent, or his guardian if he is a minor or is incompetent, of the purpose of the treatment to be provided, the common side effects thereof, alternative treatment modalities, the approximate length of care, and that any consent given by a patient may be revoked orally or in writing prior to or during the treatment period by the patient or his guardian. If a voluntary patient refuses to consent to or revokes consent for treatment, such patient shall be discharged within 3 days or, in the event the patient meets the criteria for involuntary placement, such proceedings shall be instituted within 3 days. If any patient refuses treatment and is not discharged as a result, treatment may be rendered such patient in the least restrictive manner on an emergency basis, upon the written order of a mental health professional when such mental health professional determines treatment is necessary for the safety of the patient or others. If any patient refuses to consent to treatment or revokes consent previously provided, and if, in the opinion of the patient's mental health professional, the treatment not consented to is essential to appropriate care for such patient hereunder, then the administrator shall immediately petition the hearing examiner for a hearing to determine the competency of the patient to consent to treatment. If the hearing examiner finds that the patient is incompetent to consent to treatment, he shall appoint a guardian advocate, who shall act on the patient's behalf relating to provision of express and informed consent to treatment. A guardian advocate appointed pursuant to the provisions of this act shall meet the qualifications of a guardian contained in part IV of chapter 744, except that no mental health professional, department employee, or facility administrator shall be appointed.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment, and prior to performing the procedure, written permission shall be obtained from the patient, if he is legally competent, from the parent or guardian of a minor patient, or from the guardian of an incompetent patient. The facility administrator or his designated representative may, with the concurrence of the patient's attending physician, authorize emergency surgical treatment if such treatment is deemed lifesaving and permission of the patient and his guardian or representative cannot be obtained.

(c) When the department is the legal guardian or representative of a patient, or is the custodian of a patient whose physician is unwilling to perform surgery based solely on the patient's consent and whose parent or legal guardian is unknown or unlocatable, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The patient shall be physically present, unless the patient's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedure.

(4) QUALITY OF TREATMENT.—

(a) Each patient in a facility shall receive treatment suited to his needs, which shall be administered skillfully, safely, and humanely with full respect for his dignity and personal integrity. Each patient shall receive such medical, vocational, social, educational, and rehabilitative services as his condition requires to bring about an early return to his community. In order to achieve this goal the department is directed to coordinate its mental health programs with all other programs of the department.

(b) If a patient is able to secure the services of a private mental health professional, he shall be allowed to see his mental health professional at any reasonable time. In addition, any patient's attending mental health professional may utilize the services of a consulting mental health professional for the purpose of aiding in evaluation, diagnosis, and treatment. Such consultant may be reimbursed in a manner to be determined by the department within available funds, for services related to this act. The department shall establish rules designed to facilitate examination and treatment by private mental health professionals on a consulting basis.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(a) Each patient in a facility has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the patient or others.

(b) Each patient shall be allowed to receive, send, and mail sealed, unopened correspondence, and no patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the patient or others, in which case the administrator

may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) If a patient's right to communicate is restricted by the administrator, written notice of such restriction shall be served on the patient and his guardian or representatives, and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate shall be reviewed at least every 90 days.

(d) The department shall establish reasonable rules governing visitors, visiting hours, and the use of telephones by patients in the least restrictive possible manner.

(e) Each patient receiving mental health treatment shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall verbally and in writing inform each patient of the procedure for reporting abuse. A written copy of said procedure, including the telephone number of the abuse registry and reporting forms, shall be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.—A patient's right to his clothing and personal effects shall be respected. The administrator may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the patient's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.—A patient in a facility who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules and regulations to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) EDUCATION OF CHILDREN.—The department shall provide education and training appropriate to the needs of all children in treatment facilities. Efforts shall be made to provide this education and training in the least restrictive setting available.

(9) CLINICAL RECORD; CONFIDENTIALITY.—A clinical record for each patient shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department. Unless waived by express and informed consent by the patient or his guardian or attorney, the privileged and confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency. The clinical record shall not be a public record and no part of it shall be released, except:

(a) The record may be released to mental health professionals, attorneys, and government agencies as designated by the patient, his guardian, or his attorney. A medical discharge summary of the clinical record of any patient committed to, or to be returned to, the Department of Corrections from the Department of Health and Rehabilitative Services shall be released to the Department of Corrections without charge upon its request. The Department of Corrections shall treat such information as confidential and shall not release such information except as provided in this section.

(b) The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

(c) The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the department when the administrator of the facility or secretary of the department deems it necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

(d) Information from the clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

(10) HABEAS CORPUS.—

(a) At any time, and without notice, a person detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the circuit court issue a writ for release. Each patient admitted to a facility for involuntary placement shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A patient or his guardian or representatives may file a petition in the circuit court in the county where the patient is hospitalized alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the circuit court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this part.

(11) TRANSPORTATION.—If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting the patient to a treatment facility, the governing board of the county from which the patient is hospitalized shall arrange for such required transportation. The department shall promulgate rules and regulations to insure safe and dignified transportation for all patients.

(12) DESIGNATION OF REPRESENTATIVES; NOTICE OF ADMISSION.—

(a) At the time a patient is admitted to a facility, the names and addresses of two representatives or one guardian shall be entered in the patient's clinical record.

1. A treatment facility shall give written notice of the patient's admission to his guardian or representatives.

2. A receiving facility shall give notice of admission to the patient's guardian or representatives by telephone or in person within 24 hours.

(b) If the patient has no guardian, he may designate one representative; the second representative, or both in the absence of designation of one representative by the patient, shall be selected by the facility. The first representative selected by the facil-

ity shall be made from the following in the order of listing:

1. The patient's spouse;
2. An adult child;
3. Parent;
4. Adult next of kin;
5. Adult friend;
6. Appropriate human rights advocacy committee as defined in s. 20.19; or
7. The department.

The second representative selected by the facility shall be without regard to the order of listing, except that the department shall only be selected as the representative of last resort in cases where the patient is receiving service in a state-operated facility. If the facility can locate only one person from the categories listed above, it shall only be required to select one representative.

(c) The patient shall be consulted with regard to the appointment of a representative and have authority to request that an appointed representative be replaced.

(d) Unless otherwise provided, notice to the patient's guardian or representatives shall be served by registered or certified mail or receipted hand delivery, and the date on which such notice was mailed shall be entered on the patient's clinical record.

(13) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of patients provided by this act shall be liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part shall be immune from civil or criminal liability for his actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section shall not relieve any person from liability if such person is guilty of negligence.

History.—s. 5, ch. 71-131; s. 3, ch. 73-133; s. 25, ch. 73-334; s. 2, ch. 74-233; s. 202, ch. 77-147; s. 1, ch. 78-434; s. 12, ch. 79-3; s. 4, ch. 79-298; s. 10, ch. 79-320.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

394.460 Rights of mental health professionals.—No mental health professional shall be required to accept patients for treatment of mental, emotional, or behavioral disorders. Such participation shall be voluntary.

History.—s. 4, ch. 73-133; s. 5, ch. 79-298.

394.461 Facilities; transfers of patients.—

(1) RECEIVING FACILITY.—The Department of Health and Rehabilitative Services may designate any community facility as a receiving facility for emergency, short term treatment and evaluation. The governing board of any county is authorized to contract with the department or with the mental health board of a board district, with the approval of the department, to set aside an area of any facility of the department to function, and be designated, as the receiving facility. Any other facility within the state, including a federal facility, may be so designated by the department at the request of and with the consent of the governing officers of the facility.

(2) TREATMENT FACILITY.—Any state-owned, state-operated, or state-supported facility may be designated by the department as a treatment facility. Any other facility, including a federal facility, may be so designated by the department at the request of, or with the consent of, its governing officers.

(3) TRANSFERS OF PATIENTS.—

(a) Any patient who has been admitted to a treatment or receiving facility on a voluntary basis and is able to pay for treatment in a private facility may apply to the department for transfer at his expense to such private facility. A patient may apply to the department for transfer from a private facility to a public facility. An involuntary patient may be transferred at the discretion of the department or upon application by the patient or the guardian of said patient.

(b) When the medical needs of the patient or efficient utilization of the facilities of the department require, a patient may be transferred from one facility of the department to another or, with the express and informed consent of the patient and his guardian or representatives, to a facility in another state.

(c) When any patient is to be transferred, notice shall be given to his guardian or representatives prior to the transfer.

[1](4) CRIMINALLY CHARGED OR CONVICTED MENTALLY ILL PERSONS.—

(a) There shall be established separate and secure facilities within the Department of Health and Rehabilitative Services for the treatment of any person:

1. Who has been determined to need treatment for a mental illness;
2. Who:
a. Has charges pending;
b. Has been convicted of a criminal offense;
c. Has been acquitted of a criminal offense by reasons of insanity; or
d. Is serving sentence for a criminal offense; and
3. Who has been determined by the Department of Health and Rehabilitative Services to:
a. Be dangerous to himself or others; or
b. Present a clear and present potential to escape.

(b) Such separate and secure facilities shall be maximum-security-grade buildings located on grounds distinct in location from other treatment facilities for persons who are mentally ill.

History.—s. 6, ch. 71-131; s. 3, ch. 72-396; s. 5, ch. 73-133; s. 1, ch. 77-90; s. 203, ch. 77-147; s. 6, ch. 79-298.
[1]**Note.**—Effective July 1, 1980.

394.463 Admission for emergency or evaluation.—

(1) EMERGENCY ADMISSION.—

(a) *Criteria.*—A person may be admitted to a receiving facility on emergency conditions if there is reason to believe that he is mentally ill and because of his illness is:

1. Likely to injure himself or others if allowed to remain at liberty; or
2. In need of care or treatment and lacks sufficient capacity to make a responsible application on his own behalf, and an ex parte order is obtained authorizing the admission.

(b) *Initiation of proceeding.*—An emergency admission may be initiated as follows:

1. A judge may enter an ex parte order stating

that a person appears to meet the criteria for emergency admission, giving the findings on which that conclusion is based and directing that a law enforcement officer take the person into custody and deliver him to the nearest receiving facility for emergency examination and treatment. The order of the court shall be made a part of the patient's clinical record; or

2. A law enforcement officer may take a person who appears to meet the criteria for emergency admission into custody and deliver him to the nearest receiving facility for emergency examination and treatment. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record; or

3. A mental health professional may execute a certificate that he has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for emergency admission, stating the observations upon which that conclusion is based. The mental health professional's certificate shall authorize a law enforcement officer to take the person into custody and deliver him to the nearest available receiving facility for emergency examination and treatment. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and mental health professional's certificate shall be made a part of the patient's clinical record.

(c) *Emergency examination.*—A patient who is admitted for an emergency examination and treatment by a receiving facility shall be examined by a mental health professional without unnecessary delay, and may be given such treatment as is indicated by good medical practice.

(d) *Release of patient.*—At any time the examining mental health professional concludes that the patient need not be retained in a receiving facility or that further evaluation is not necessary, the patient shall be discharged immediately unless the patient is under criminal charges, in which case he shall be returned to the custody of a law enforcement officer. The patient must be released within 48 hours of his admission except when the examining mental health professional concludes that there is reason to believe that the patient may require evaluation or treatment, in which case, unless the patient voluntarily gives express and informed consent to evaluation or treatment, a proceeding for court-ordered evaluation or involuntary placement shall be initiated.

(2) COURT-ORDERED EVALUATION.—

(a) *Criteria.*—A person may be admitted to, or retained in, a receiving facility for evaluation if there is reason to believe that he is mentally ill and because of his illness is:

1. Likely to injure himself or others if allowed to remain at liberty; or

2. In need of care or treatment which, if not provided, may result in neglect or refusal to care for himself and that such neglect or refusal poses a real and present threat of substantial harm to his well being.

(b) *Initiation of proceeding.*—A court-ordered evaluation may be initiated as follows:

1. Any person may file with the court a petition, executed under oath and supported by affidavits of two additional persons, requesting an evaluation of a person located in the county who is alleged to meet the criteria for a court-ordered evaluation; or

2. Any person may file with the court a petition executed under oath alleging that a person in the county meets the criteria for a court-ordered evaluation. The petition must be accompanied by the certificate of a mental health professional stating that he has examined the patient within the preceding 5 days and has found that the patient may be mentally ill and requires placement in a receiving facility for full evaluation.

(c) *Notice; hearing on petition.*—The judge shall set a hearing on the petition and shall serve notice of the time and place of such hearing on the patient, his guardian, if one has previously been appointed, and the person, if any, having custody and control of the patient. In the absence of a guardian, two other representatives for the service of the notice shall be designated by the court, one of whom, other than the person who filed the petition, shall be selected in the following order:

1. The patient's spouse;
2. An adult child;
3. Parent;
4. Adult next of kin;
5. Adult friend;
6. Appropriate human rights advocacy committee as defined in s. 20.19; or
7. The department.

The second representative shall be selected from the above list without regard to the order of listing, except that the department shall only be selected as the representative of last resort in cases where the patient is receiving services in a state-operated facility. The court shall make such efforts, as in its discretion it determines reasonable in view of the emergency, to contact the persons listed above in the order listed. The court shall notify any other person, including any persons whose names appear in the patient's court file, that the judge believes has a concern for the patient's welfare. The hearing shall be set within 5 days of the date of mailing the notice with a copy of the petition attached. The court shall grant a continuance upon application by the patient, his guardian, or a representative if such continuance is found necessary to permit preparation for the hearing. The hearing may be waived in writing by the patient. The patient and his guardian or representatives shall be informed of the right to counsel by the judge, and, if the patient cannot afford an attorney to represent him at the hearing, the judge shall appoint one. The patient shall be consulted with regard to the appointment of a representative and have authority to request that an appointed representative be replaced.

(d) *Order for evaluation.*—After a hearing or, if the hearing is waived by express and informed consent of the patient or his guardian, after a review of all evidence, if the judge is satisfied that immediate evaluation is necessary, he shall issue an order to any law enforcement officer, if other less restrictive

means are not available, to deliver the patient to a receiving facility for evaluation. If the judge is satisfied that evaluation is necessary, but that the patient need not be retained in a receiving facility immediately for his own safety or that of others, he may order the patient to appear at a designated receiving facility at a specified time within 3 days. If the patient fails to appear at the specified time, the order of the court, countersigned by the administrator of the facility to show that the person did not appear as ordered, shall authorize and direct any law enforcement officer to take the person into custody and deliver him to the specified receiving facility.

(e) *Evaluation by a receiving facility.*—A patient who is admitted to a receiving facility may be detained for a period not to exceed 5 days. The staff members of all receiving facilities shall encourage patients to apply for voluntary placement if placement appears necessary. Within the 5-day evaluating period one of the following actions shall be taken based on the individual needs of the patient:

1. The patient shall be released;
2. The patient shall be released for outpatient treatment by a community facility;
3. The patient shall give express and informed consent to placement as a voluntary patient; or
4. Proceedings for involuntary placement shall be initiated.

The least restrictive form of treatment shall be made available when determined by a receiving facility mental health professional to be necessary.

(3) DISCHARGE OF PATIENT.—At any time the patient is found not to require retention in a receiving facility for emergency treatment or evaluation, the receiving facility shall discharge the patient unless the patient is under criminal charges, in which case he shall be returned to the custody of a law enforcement officer. Notice of the discharge shall be given to the patient's guardian or representatives, to any mental health professional who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

History.—s. 7, ch. 71-131; s. 6, ch. 73-133; s. 204, ch. 77-147; s. 7, ch. 79-298.

394.465 Voluntary admissions.—

(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, or treatment any individual 18 years of age or older making application by express and informed consent for admission or any individual age 17 or under for whom such application is made by his parent or guardian pursuant to s. 394.467. If found to show evidence of mental illness and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility.

(b) A facility may admit for evaluation, diagnosis, or treatment any individual who makes application by express and informed consent therefor; however, any individual age 17 or under may be admitted only after a hearing to verify the voluntariness of the consent. If such individual is under 18 years of age, his parent or guardian may apply for his discharge, and the administrator shall release the patient within 3 days of such application for discharge.

(2) RIGHT OF VOLUNTARY PATIENTS TO DISCHARGE.—

(a) A facility shall discharge a voluntary patient who has sufficiently improved so that retention in the facility is no longer desirable. A patient may also be discharged to the care of a community facility. A voluntary patient or his guardian, representative, or attorney may request discharge in writing at any time following admission to the facility. This request may be submitted to a member of the staff of the facility for transmittal to the administrator. If the patient, or another on his behalf, makes an oral request for release to a staff member, such request shall be immediately entered in the patient's clinical record, and the patient must within 8 hours be given counseling and assistance in preparing a written request. If a written request is submitted to a staff member, it shall be delivered to the administrator within 16 hours. Within 3 days of delivery of a written request for release to the administrator, the patient must be discharged from the facility or a plan instituted for a discharge of the patient. Such plan shall be approved by the patient. If the administrator determines that the patient meets the criteria for involuntary placement, proceedings for involuntary placement must be initiated within 3 days of delivery of the written request, exclusive of weekends and legal holidays. If the patient was admitted on his own application and the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the express and informed consent of the patient. If the patient is under the age of 18, his parent or guardian may act for him.

(b) If the administrator, upon the advice of the patient's attending mental health professional, determines that the patient needs to be transferred to a long-term treatment facility and the patient refuses to go as a voluntary patient, the administrator shall be authorized to file a petition for involuntary placement.

(3) NOTICE OF RIGHT TO RELEASE.—At the time of his admission and each 6 months thereafter, a voluntary patient and his guardian or representatives shall be notified in writing of his right to apply for a discharge.

(4) TRANSFER TO VOLUNTARY STATUS.—Staff members of all treatment facilities shall encourage an involuntary patient to give express and informed consent to transfer to voluntary status unless the patient is under criminal charge, or unless the patient is unable to understand the nature of voluntary placement, or unless voluntary placement would be harmful to the patient, in which case a finding to this effect shall be entered in the patient's clinical record. Any involuntary patient who applies shall be transferred to voluntary status immediately, unless such transfer would not be in the best interest of the patient, in which case such finding shall be entered in the patient's clinical record and shall be subject to review every 90 days. When transfer to voluntary status occurs, notice shall be given to the patient and his guardian or representatives and, if the patient is involuntarily placed under an

order of court, to the court which entered such order.

(5) TRANSFER TO INVOLUNTARY STATUS.—A patient who has given express and informed consent to be hospitalized as a voluntary patient and, upon arrival at the treatment facility, refuses to remain as a voluntary patient may be detained by the treatment facility for a period not to exceed 3 days while the administrator of the treatment facility initiates procedures for involuntary placement.

History.—s. 8, ch. 71-131; s. 7, ch. 73-133; s. 109, ch. 73-333; s. 8, ch. 79-298.

394.467 Involuntary placement.—

(1) CRITERIA.—

(a) A person who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily hospitalized pursuant to such finding if he is mentally ill and, because of his illness, is manifestly dangerous to himself or others pursuant to s. 394.901.

(b) Any other person may be involuntarily placed if he is mentally ill and, because of his illness, is:

1. Likely to injure himself or others if allowed to remain at liberty, or

2. In need of care or treatment which, if not provided, may result in neglect or refusal to care for himself, and such neglect or refusal poses a real and present threat of substantial harm to his well being.

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be involuntarily placed in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. When a patient is not an inpatient in a receiving facility, the administrator of a designated receiving facility may make a recommendation for involuntary placement of a patient who has been given an examination, evaluation, or treatment by staff of the receiving facility or a private mental health professional. The hearing may be waived by express and informed consent in writing by the patient. The recommendation must be supported by the opinions of two mental health professionals, at least one of whom shall be a physician, who have personally examined the patient within the preceding 5 days that the criteria for involuntary placement are met. Such recommendation shall be entered on an involuntary placement certificate, which certificate shall authorize the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing. The certificate shall be filed with the court in the county where the patient is located and shall serve as a petition for a hearing regarding involuntary placement. A copy of the certificate shall also be filed with the department, and copies shall be served on the patient and his guardian or representatives, accompanied by:

(a) A written notice, in plain and simple language, that the patient or his guardian or representative may apply at any time for a hearing on the issue of the patient's need for involuntary placement if he has previously waived such a hearing.

(b) A petition for such hearing, which requires only the signature of the patient or his guardian or representative for completion.

(c) A written notice that the petition may be filed with a court in the county in which the patient is hospitalized at the time the certificate is executed and the name and address of the judge of such court.

(d) A written notice that the patient or his guardian or representative may apply immediately to the court to have an attorney appointed if the patient cannot afford one.

The petition may be filed in the county in which the patient is involuntarily placed at any time within 6 months of the date of the certificate. The hearing shall be held in the same county, and one of the patient's physicians at the facility shall appear as a witness at the hearing. If the hearing is waived, the court shall order the patient to be transferred to the least restrictive type of treatment facility based on the individual needs of the patient, or, if he is at a treatment facility, that he be retained there. However, the patient can be immediately transferred to the treatment facility by waiving his hearing without awaiting the court order. The involuntary placement certificate shall serve as authorization for the patient to be transferred to a treatment facility and as authorization for the treatment facility to admit the patient. The treatment facility may retain a patient for a period not to exceed 6 months from the date of admission. If continued involuntary placement is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order authorizing continued involuntary placement.

(3) PROCEDURE FOR HEARING ON INVOLUNTARY PLACEMENT.—

(a) If the patient does not waive a hearing or if the patient, his guardian, or a representative files a petition for a hearing after having waived it, the judge shall serve notice on the administrator of the facility in which the patient is placed and on the patient. The notice of hearing must specify the date, time, and place of hearing; the basis for detention; and the names of examining mental health professionals and other persons testifying in support of continued detention and the substance of their proposed testimony. The judge may serve notice on the state attorney of the judicial circuit of the county in which the patient is placed, who shall represent the state. The court shall hold the hearing within 5 days unless a continuance is granted. The patient, his guardian or representative, or the administrator may apply for a change of venue for the convenience of parties or witnesses or because of the condition of the patient. Venue may be ordered changed within the discretion of the court. The patient and his guardian or representative shall be informed of the right to counsel by the court. If the patient cannot afford an attorney, the court shall appoint one. The patient's counsel shall have access to facility records and to facility personnel in defending the patient. One of the mental health professionals who executed the involuntary placement certificate shall be a witness. The patient and his guardian or representative shall be informed by the judge of the right to an independent expert examination by a mental health professional. If the patient cannot afford a mental health professional, the judge shall appoint one. If the court concludes that the patient meets the criteria for involuntary placement, the judge shall order

that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that he be retained there or that he be treated at any other appropriate facility or service on an involuntary basis. The judge shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the judge finds that the patient is incompetent to consent to treatment, he shall appoint a guardian advocate who shall act on the patient's behalf relating to the provision of express and informed consent to treatment. The order shall adequately document the nature and extent of a patient's mental illness. The judge may adjudicate a person incompetent pursuant to the provisions of this act at the hearing on involuntary placement. The treatment facility may accept and retain a patient admitted involuntarily for a period not to exceed 6 months whenever the patient is accompanied by a court order and adequate documentation of the patient's mental illness. Such documentation shall include a psychiatric evaluation and any psychological and social work evaluations of the patient. If further involuntary placement is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order authorizing continued involuntary placement.

(b) The court shall provide a court order, a psychiatric evaluation, and other adequate documentation of each patient's mental illness to the administrator of a treatment facility whenever a patient is ordered for involuntary placement, whether by civil or criminal court. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or by criminal court order, who is not accompanied at the same time by adequate orders and documentation.

(4) PROCEDURE FOR CONTINUED INVOLUNTARY PLACEMENT.—

(a) If continued placement of an involuntary patient is necessary, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, request an order authorizing continued involuntary placement. This request shall be accompanied by a statement from the patient's mental health professional justifying the request and a brief summary of the patient's treatment during the time he was involuntarily placed. In addition, the administrator shall submit an individualized plan for the patient for whom it is requesting continued involuntary placement. Notification of this request for retention shall be mailed to the patient and his guardian or representative along with a completed petition, requiring only a signature, for a hearing regarding the continued hospitalization and a waiver of hearing form. The waiver of hearing form shall require express and informed consent and shall state that the patient is entitled to a hearing under the law; that he is entitled to be represented by an attorney at the hearing and, if he cannot afford an attorney, that one will be appointed; and that, if it is shown at the hearing that the patient does not meet the criteria for involuntary placement, he is entitled to be released. If the patient or his guardian or representative does not sign the petition, or if the patient does not sign a waiver within 15 days, the hearing officer shall notice a hearing with regard to the patient involved in accordance with s. 120.57(1).

(b) Any time continued involuntary placement is requested, the hearing officer may, on his own motion, notice a hearing.

(c) Any time continued involuntary placement is requested by the administrator, the administrator may request a hearing, and the hearing officer shall hold a hearing within 30 days of such request.

(d) The administrator shall not transfer any patient to voluntary status when he has reasonable cause to believe that the patient is dangerous to himself or others. In any case in which the administrator has reasonable cause to believe that an involuntary patient is dangerous to himself or others, the administrator shall request continued involuntary placement. In any case in which a request for continued involuntary placement is necessary, but the administrator after reviewing the case believes there is not reasonable cause to believe that the patient meets the criteria for involuntary placement at the time of application for transfer to voluntary status and the patient needs continued placement, the patient shall be transferred to a voluntary status.

(e) If the patient or his guardian or representative returns the signed petition noted in paragraph (a), the hearing officer shall notice a hearing in accordance with s. 120.57(1). The patient and his guardian or representative shall be informed of the right to counsel by the hearing officer. In the event a patient cannot afford counsel in a hearing before a hearing officer, the public defender in the county where the hearing is to be held shall act as attorney for the patient. The hearing shall be conducted in accordance with chapter 120.

(f) If the patient by express and informed consent waives his hearing or if at a hearing it is shown that the patient continues to meet the criteria for involuntary placement, the hearing officer shall sign the order for continued involuntary placement. The treatment facility shall be authorized to retain the patient for a period not to exceed 1 year. The same procedure shall be repeated prior to the expiration of each additional 1-year period the patient is retained.

(g) If continued involuntary placement is necessary for an individual admitted while serving a criminal sentence, but whose sentence is about to expire, or for an individual involuntarily placed while a minor, but who is about to reach the age of 18, the administrator shall petition the hearing officer for an order authorizing continued involuntary placement.

(h) At any hearing hereunder, the hearing examiner shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the hearing examiner finds that the patient is incompetent to consent to treatment, he shall appoint a guardian advocate who shall act on the patient's behalf relating to the provision of express and informed consent to treatment. If the hearing examiner finds the patient is competent to consent to treatment, then the patient's competence shall be restored, and any guardian advocate previously appointed shall be discharged.

(5) CONDITIONAL RELEASE OF CRIMINALLY CHARGED OR CONVICTED PATIENTS.—In the case of any patient who has been committed according to the provisions of s. 925.10 or s. 945.12, the committing court may order a conditional release based on an appropriate system of community follow-up, in which case the court may order the patient to appear periodically in a community clinic to insure the patient is following a prescribed treatment regimen.

History.—s. 9, ch. 71-131; s. 8, ch. 73-133; ss. 3, 4, ch. 74-233; s. 1, ch. 75-305; s. 17, ch. 77-121; s. 205, ch. 77-147; s. 1, ch. 77-174; ss. 2, 8, ch. 77-312; s. 19, ch. 78-95; s. 1, ch. 78-197; s. 9, ch. 79-298; s. 2, ch. 79-336.

394.468 Admission and release procedures.—Admission and release procedures and treatment policies of the department are governed solely by this act. Such procedures and policies shall not be subject to control by court procedure rules. The matters within the purview of this act are deemed to be substantive, not procedural.

History.—s. 9, ch. 77-312.

394.469 Discharge of patients.—

(1) POWER TO DISCHARGE.—At any time a patient is found no longer to meet the criteria for involuntary placement, the administrator may:

(a) Discharge the patient, unless the patient is under a criminal charge, in which case he shall be transferred to the custody of the appropriate law enforcement officer;

(b) Transfer the patient to voluntary status on his own authority or at the patient's request, unless the patient is under criminal charge; or

(c) Place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

(2) NOTICE.—Notice of discharge or transfer of status shall be given to the patient, his guardian or representatives, and, if the patient's involuntary placement was by order of a court, the court which entered such order.

(3) CONVALESCENT STATUS; INVOLUNTARY PLACEMENT.—An improved patient may be placed on convalescent status for a period of up to 1 year in the care of a less restrictive community facility when such action is in the best interest of the patient. Notice of the patient's placement on convalescent status shall be given to the patient and his guardian or representatives, to the community facility, and, if the patient's involuntary placement was by order of a court, to the court which entered the order. Placement on convalescent status shall include provisions for continuing responsibility by a community facility, including a plan for treatment on an outpatient basis. The administrator of the treatment facility from which the patient is given convalescent status may, at any time during the continuance of such convalescent status, return the patient to the treatment facility when the condition of the patient requires. An involuntary patient may be returned for the remainder of his authorized treatment period, and the treatment facility shall have up to 1 additional month during which to apply for continued involuntary placement.

History.—s. 10, ch. 71-131; s. 9, ch. 73-133; s. 10, ch. 79-298.

394.471 Validity of prior involuntary placement orders.—No involuntary placement of a mentally ill person, lawful before January 1, 1972, shall be deemed unlawful because of the enactment of this part. The department shall establish reasonable rules to require the administrator of each treatment facility to apply for an order authorizing continued involuntary placement of any patient for whom involuntary placement is necessary and who was initially involuntarily placed under an order of a court prior to July 1, 1972. Such prior orders, unless superseded by an order under this part, shall remain valid until July 1, 1973, after which all such orders shall be null and void and of no effect, and every patient retained shall become a voluntary patient unless previously placed on involuntary status pursuant to procedures under this part. Nothing in this part invalidates any order appointing a guardian or determining incompetency.

History.—s. 11, ch. 71-131; s. 11, ch. 79-298.

394.473 Attorneys' and mental health professionals' fees.—

(1) In case of indigency of any person for whom an attorney is appointed pursuant to the provisions of this part, the attorney shall be entitled to a reasonable fee to be determined by the circuit judge and paid from the general fund of the county from which the patient was involuntarily detained. In case of indigency of any such person, the court may appoint a public defender. The public defender shall receive no additional compensation other than that usually paid his office.

(2) When any person who previously retained an attorney is adjudged incompetent, the guardian of such incompetent shall be required to pay a reasonable fee to such attorney retained by the incompetent.

(3) In case of indigency of any person for whom the appearance of a mental health professional is required in a court hearing pursuant to the provisions of this act, the mental health professional, except a mental health professional who is classified as a full-time employee of the state or who is receiving remuneration from the state for his time in attendance at the hearing, shall be entitled to a reasonable fee to be determined by the court and paid from the general fund of the county from which the patient was involuntarily detained.

History.—s. 13, ch. 71-131; s. 10, ch. 73-133; s. 25, ch. 73-334; s. 12, ch. 79-298.

394.475 Acceptance, examination, and involuntary placement of Florida residents from out-of-state mental health authorities.—

(1) Upon request of the state mental health authorities of another state, the Department of Health and Rehabilitative Services is authorized to accept as patients, for a period of not more than 15 days, persons who are and have been bona fide residents of Florida for a period of not less than 1 year.

(2) Any person received pursuant to subsection (1) shall be examined by the staff of the state facility where such patient has been accepted, which examination shall be completed during the said 15-day period.

(3) If upon examination such a person requires continued involuntary placement, a petition for a hearing regarding involuntary placement shall be

filed with the circuit judge of the county wherein the treatment facility receiving the patient is located or the county where the patient is a resident.

(4) During the pendency of the examination period herein provided for and the pendency of the involuntary placement proceedings herein provided for, such person may continue to be detained by the treatment facility unless the circuit judge having jurisdiction enters his order to the contrary.

History.—s. 14, ch. 71-131; s. 25, ch. 73-334; s. 206, ch. 77-147; s. 13, ch. 79-298.

394.477 Residence requirements.—No person shall be involuntarily placed in a facility under the provisions of this part who has not been a bona fide resident of the state continuously for 1 year immediately preceding his involuntary placement. However, any person not a bona fide resident of the state may be involuntarily placed in a treatment facility pending transfer of said person back to the state of his residence. An indigent nonresident patient shall be transferred to the state of his residence at the expense of the county from which he was involuntarily placed. The treatment facility, with the approval of the department, shall retain any nonresident who cannot be transferred subject to the provisions of this part.

History.—s. 15, ch. 71-131; s. 14, ch. 79-298.

394.478 Autopsy of deceased patient.—In every case where a person is committed to and received as a patient in the Florida State Hospital, and shall die while a patient therein, it is lawful for the superintendent of the Florida State Hospital, and he may hold and perform, or cause to be held and performed, an autopsy on such deceased patient, when such deceased patient leaves surviving him no relative or guardian, or when said superintendent shall be unable to communicate with or contact any relative or guardian of such deceased patient for the purpose of procuring consent to such autopsy, and when in the judgment and discretion of the superintendent of the Florida State Hospital, such autopsy is in the interest of medical science necessary or desirable.

History.—s. 1, ch. 19367, 1939; CGL 1940 Supp. 3653(11).
Note.—Former s. 394.19.

394.4781 Residential care for psychotic and emotionally disturbed children.—

(1) DEFINITIONS.—As used in this section:

(a) "Psychotic or severely emotionally disturbed child" means a child so diagnosed by mental health professionals who have specialty training and experience with children. Such a severely emotionally disturbed child or psychotic child shall be considered by this diagnosis to benefit by and require residential care as contemplated by this section.

(b) "Department" means the Department of Health and Rehabilitative Services.

(2) FUNDING OF PROGRAM.—The department shall provide for the purposes of this section such amount as shall be set forth in the annual appropriations act as payment for part of the costs of residential care for psychotic or severely emotionally disturbed children.

(3) ADMINISTRATION OF THE PROGRAM.—

(a) The department shall provide the necessary application forms and office personnel to administer the purchase-of-service program.

(b) The department shall review such applications monthly and, in accordance with available funds, the severity of the problems of the child, the availability of the needed residential care, and the financial means of the family involved, approve or disapprove each application. If an application is approved, the department shall contract for or purchase the services of an appropriate residential facility in such amounts as are determined by the annual appropriations act.

(c) The department is authorized to promulgate such rules as are necessary for the full and complete implementation of the provisions of this section.

(d) The department shall purchase services only from those facilities which are in compliance with standards promulgated by the department.

History.—ss. 1-3, ch. 77-287; s. 156, ch. 79-400.

PART II

INTERSTATE COMPACT ON MENTAL HEALTH

394.479 Interstate compact on mental health.—The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be per-

mitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of, and incidental to, the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent

out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 71-219.

394.480 Compact administrator.—Pursuant to said compact, the Secretary of Health and Rehabilitative Services shall be the compact administrator who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact of any supplementary agreement or agreements entered into by this state thereunder.

History.—s. 2, ch. 71-219.

394.481 Supplemental agreements with other states.—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History.—s. 3, ch. 71-219.

394.482 Payment of financial obligations imposed by compact.—The compact administrator, subject to the approval of the Comptroller, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History.—s. 4, ch. 71-219.

394.483 Authorized actions by administrator.—The compact administrator is hereby directed to consult with the immediate family representatives or guardian of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the committing court, if any.

History.—s. 5, ch. 71-219.

394.484 Transmission of copies of act adopting compact.—Copies of this act shall upon its approval be transmitted by the Department of State to the governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments.

History.—s. 6, ch. 71-219.

PART III

CHILDREN'S RESIDENTIAL AND DAY TREATMENT CENTERS

394.50 Children's residential and day treatment centers.—There are established in this state children's residential and day treatment centers which shall be under the supervision and control of the Department of Health and Rehabilitative Services. The purpose of the centers shall be to provide for evaluation, care, treatment, and education of emotionally, mentally, or behaviorally disturbed children. The department is authorized to develop children's residential and day treatment centers and children's programs in such locations as it deems appropriate and within the limits of funds appropriated by the Legislature.

History.—s. 1, ch. 59-383; ss. 19, 35, ch. 69-106; s. 207, ch. 77-147; s. 2, ch. 78-434.

394.56 Voluntary admission to a center; procedure; etc.—

(1) Application for admission to a residential or day treatment program shall be made to the center on forms provided by the department. Applications should be signed by the parent or legal guardian of the applicant or, in absence of such, the person or agency having legal custody of the applicant. A child 12 years or older has the same right to volunteer for treatment without parental consent as specified in s. 394.465(1)(b). An application for admission to a residential or day treatment program shall be accompanied by a certificate signed by a physician licensed or authorized to practice in Florida under chapter 458 and by any comprehensive community mental

health center director or mental health clinic director, designated receiving facility, licensed clinical psychologist, or social or child care agency director. The certificate shall be based on an examination conducted not more than 15 days prior to the date of application. The application shall contain the history of and the results of any examinations of the applicant and a diagnosis of the applicant's condition, and it shall state that admission to the center, including related evaluation, treatment, and educational programs, would, in the physician's opinion, be beneficial to the child.

(2) Upon receipt of the application, the director of a center shall, on the basis of the certificate and any other evaluation methods he determines, accept or reject the applicant as a patient in the center. The director of the center shall determine the order of admission of applicants. The ability to pay shall never be a prerequisite to admission, evaluation, treatment, and education in a center.

History.—s. 7, ch. 59-383; ss. 19, 35, ch. 69-106; s. 4, ch. 70-432; s. 1, ch. 70-439; s. 25, ch. 73-334; s. 213, ch. 77-147; s. 3, ch. 78-434.

394.57 Involuntary admission to a center; procedure; etc.—Whenever any child in the state is believed to be severely emotionally, mentally, or behaviorally disturbed and voluntary admission is not possible, the involuntary admission criteria and procedures established in s. 394.467 shall be followed. In the event a child has been a patient in a children's residential or day treatment center on a voluntary basis and it becomes necessary to initiate involuntary proceedings, the criteria and procedures established in s. 394.467 shall be followed by the director of the center.

History.—s. 8, ch. 59-383; s. 5, ch. 70-432; s. 25, ch. 73-334; s. 23, ch. 78-414; s. 4, ch. 78-434.

394.58 Records.—The order of involuntary hospitalization shall be forwarded to the center. This shall be accompanied by a copy of the medical and psychiatric examination and a social history of the child.

History.—s. 9, ch. 59-383; ss. 19, 35, ch. 69-106; s. 214, ch. 77-147; s. 5, ch. 78-434.

394.59 Payment for care and treatment of patients.—Fees and fee collections for patients at a residential or day treatment center shall be based on the provisions of s. 402.33.

History.—s. 10, ch. 59-383; ss. 19, 35, ch. 69-106; s. 215, ch. 77-147; s. 4, ch. 78-332; s. 6, ch. 78-434.

394.60 Transfer of patients.—If the director of a center upon advice of his clinical staff determines that any child at the center is not responding to or benefiting from the treatment and education programs at the center and that such child is in need of further care, rehabilitation, special training, education, and treatment and would be more suitably cared for, rehabilitated, trained, educated, and treated at another of the state facilities under the Department of Health and Rehabilitative Services, the center shall request the child's transfer to the proper facility. Transfers of such child to a mental health facility or retardation facility shall follow the procedures as set forth in part I of chapter 394 and chapter 393, respectively.

History.—s. 11, ch. 59-383; ss. 19, 35, ch. 69-106; s. 131, ch. 77-104; s. 216, ch. 77-147; s. 24, ch. 78-414; s. 7, ch. 78-434.

394.61 Discharge of voluntary patients.—

(1) When a child has been a patient at a center and subject to care, treatment, and education, and the director, upon advice of his professional staff, is of the opinion that the child has sufficiently improved or will no longer benefit from care, treatment, and education at the center, the director may issue a certificate of discharge and discharge the child from the center.

(2) The director of the center shall discharge a child within 5 days of receipt of written request from the parent or legal guardian for discharge, unless the discharge is, in the opinion of the center staff, unsafe for the patient or others; in which case, the director of the center shall initiate proceedings for involuntary hospitalization within 3 days of the delivery of the written request. A center is authorized to retain a child after proceedings for involuntary admission have been initiated pending the outcome of the judicial decision. Upon discharge of a child who was involuntarily admitted, a copy of the certificate of discharge shall be mailed to the circuit judge who ordered the child's involuntary admission. A copy of the discharge certificate shall also be sent by registered or certified mail to the parent or guardian of the child. Upon the filing and docketing of the certificate, the case shall be terminated. In the event the parent or legal guardian cannot be found or refuses to accept custody of the discharged child, the child shall be placed in the care and custody of an appropriate community agency. If no community agency is willing or able to accept care and custody of the child, the circuit court of the judicial district from which the child was originally admitted shall place the child in the care and custody of the department. The circuit court may make such other order as it deems in the best interest of the child.

History.—s. 12, ch. 59-383; ss. 19, 35, ch. 69-106; s. 25, ch. 73-334; s. 217, ch. 77-147; s. 8, ch. 78-434.

394.62 Age limit.—Any child 5 to 14 years of age is eligible for admission to a children's residential or day treatment center.

History.—s. 13, ch. 59-383; s. 9, ch. 78-434.

PART IV

COMMUNITY MENTAL HEALTH SERVICES

394.65 Short title.—This part IV of this chapter shall be known as as "The Community Mental Health Act."

History.—s. 1, ch. 70-109.

394.66 Legislative intent.—It is the intent of the Legislature to:

(1) Organize and finance community mental health services in local communities throughout the state through locally administered and locally controlled community mental health programs.

(2) Better utilize existing resources at both the state and local levels in order to improve the effectiveness of necessary mental health services.

(3) Integrate state-operated and community mental health programs into a unified mental health system.

(4) Insure that all mental health professions are appropriately utilized in such mental health programs to provide a means for participation by local governments in the determination of the need for, and the allocation of, mental health resources.

(5) Establish a uniform ratio of state government responsibility and local participation in financing mental health services.

(6) Provide a means of allocating state mental health funds according to community needs.

(7) Insure that, to the maximum degree feasible, the districts of the Department of Health and Rehabilitative Services are the focal point of all district board activities, including budget submissions, grant applications, contracts, and other arrangements that can be effected at the district level.

(8) Include community mental health care as a component of the integrated delivery system of the Department of Health and Rehabilitative Services.

(9) Involve local citizens in the administration of community mental health services on a policy-making level.

(10) Insure nonduplication of the activities of the staffs of the district administrator and the mental health board or boards.

History.—s. 2, ch. 70-109; s. 30, ch. 75-48; s. 1, ch. 76-221.

394.67 Definitions.—When used in this part, unless the context clearly requires otherwise:

(1) "Service district" means a community service district as established by the department pursuant to s. 20.19(4)(a) for the purpose of providing community mental health services.

(2) "Governing body" means the chief legislative body of a county, a board of county commissioners, or boards of county commissioners in counties acting jointly, or their counterparts in a charter government.

(3) "District plan" or "plan" means the mental health plan adopted by a mental health board and approved by the district administrator and governing bodies in accordance with this part.

(4) "Department" means the Department of Health and Rehabilitative Services.

(5) "Program office" means the Mental Health Program Office of the Department of Health and Rehabilitative Services.

(6) "Advisory council" means a district advisory council as created by s. 20.19(5).

(7) "Patient fees" means compensation received by a community mental health facility for services rendered to clients from any source of funds, including city, county, state, federal, and private sources.

(8) "Local matching funds" means funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources.

(9) "Federal funds" means funds expended by a community mental health facility from federal sources for mental health facilities and programs. This is exclusive of federal funds that are deemed eligible by the Federal Government and are eligible through state regulation for matching purposes.

(10) "Mental health board" or "board" means the board within a Department of Health and Rehabilitative Services district or subdistrict established in accordance with provisions of this part for the purposes of coordinating community mental health programs.

(11) "Board district" means that area over which a single mental health board has jurisdiction for coordinating mental health programs as provided in this part. There may be more than one board district in a service district.

(12) "District administrator" means the person appointed by the Secretary of Health and Rehabilitative Services for the purpose of administering a department service district as set forth in s. 20.19.

(13) "Term" means a 2-year term of appointment on a mental health board.

(14) "Community mental health facility" means any facility in which all or any portion of the programs or services set forth in subparagraphs 394.75(2)(c)5. and 394.75(2)(e)2. and subsection 394.75(3) are carried out.

History.—s. 3, ch. 70-109; s. 2, ch. 76-221; s. 132, ch. 77-104.

394.69 District mental health boards.—Mental health boards shall be established as hereinafter provided to coordinate mental health services within department service districts or subdistricts as set forth in s. 20.19.

(1) Each district administrator shall initiate and coordinate the reorganization of the mental health board within his district.

(2) The district administrator shall decide if a mental health board shall be established within a subdistrict.

(3) In instances in which board district boundaries are altered, board responsibilities set forth in this part shall be transferred to the appropriate board on the effective date of this section.

(4) The total state funding of the operating budget of the board or boards within any Health and Rehabilitative Services district shall not exceed $125,000 and shall conform to the matching requirements of s. 394.76. The total operating budget, including all state, local, and federal funds, for the

boards in a service district with only one board shall be no greater than $200,000, and the total operating budget, including all state, local, and federal funds, for the boards in a service district with two or more boards shall be no greater than $225,000.

(5) Each board shall comply with the provisions for incorporation of nonprofit corporations as set forth in chapter 617.

History.—s. 5, ch. 70-109; s. 4, ch. 76-221; s. 1, ch. 77-174; s. 1, ch. 77-372; s. 157, ch. 79-400.

394.70 Method of appointment of mental health boards.—

(1) The mental health board shall be appointed by the governing body or bodies having jurisdiction in the board district. In its selection and appointment of the board, the governing body shall adhere to the following:

(a) First priority shall be given to individuals with a demonstrated commitment to the mental health of the general public.

(b) At least one member of a local governing body or bodies within the board district shall be a member of the mental health board. At least one member of the mental health board shall be a physician or psychiatrist.

(c) The terms of members of the board shall be for 2 years and shall be staggered. Vacancies by resignation or expiration of term shall be filled by the governing body or bodies which made the original appointment.

(d) When a person qualifies for membership on the board because he holds a specified office, membership on the board ceases when the term of office ceases. No person shall be appointed for more than four successive terms or 8 successive years on the board.

(e) No member of the board shall serve as a full-time or part-time employee of the Department of Health and Rehabilitative Services or as an employee or a member of a board of a community mental health facility or as an employee of the district mental health board.

(2)(a) The board shall consist of not fewer than 10 or more than 21 members who shall be as fairly representative as possible of a broad range of community mental health interests.

(b) When more than one governing body exists within the board district, each governing body shall be entitled to that number of appointments to the board as fairly represents its county's percentage of population in the board district. However, each county in the district or subdistrict shall have no less than one member.

(c) Each member of the board shall have a weighted vote, with no member having less than one vote, which weighted vote shall be determined by the following formula:

1. The representation of each governing body shall constitute a percentage of the total board votes equal to its county's percentage of the population of the board district as a whole.

2. The total number of votes assigned to the representation of each governing body shall be divided among that governing body's appointees to the board.

(d) In the event that a board member fails to attend two-thirds of the regular board meetings during the course of a year, it shall be the responsibility of the governing body by whom the member was appointed to designate a replacement. In addition, each board shall have a provision in its bylaws for defining misfeasance and malfeasance of duty. The board shall petition the governing body to replace any member guilty of either misfeasance or malfeasance.

(3) Board members shall serve without pay, but shall be entitled to travel and per diem expense as authorized by s. 112.061.

(4) Each board shall designate one of its members to serve as treasurer who, before he assumes office, shall post with the Department of State a surety bond in an amount to be set by the department with a surety approved by the department. Such bond shall be conditioned on the faithful discharge of the duties of the office and be made payable to the Governor.

History.—s. 6, ch. 70-109; s. 1, ch. 74-147; s. 5, ch. 76-221; s. 1, ch. 77-174.

394.71 Duties of board.—Subject to the provisions of this part and the regulations of the department, each mental health board:

(1) Shall review and evaluate the mental health needs, services, and facilities of its area of jurisdiction and prepare a district plan and budget based on its evaluation.

(2) Shall receive and disburse such funds as are entrusted to it by law or otherwise, including funds from both private and public sources, charitable foundations, and agencies of the Federal Government.

(3) Shall contract for state funds with the district administrator for the coordination and disbursement of such funds as provided in this part.

(4) Shall report to the governing body as to a program of community mental health services and facilities and submit an annual report to the governing body.

(5) May appoint a director of mental health for the board district.

(6) Shall schedule meetings with local governments, community and citizen groups, and service providers, no less than once a year, to enhance information exchange and access to decision making. Such meetings shall be advertised in a newspaper of general circulation in the board district, at least one time, no more than 10 days and no less than 7 days prior to such meeting. It is intended that such meetings shall be widely publicized.

History.—s. 7, ch. 70-109; s. 6, ch. 76-221.

394.72 Staff.—

(1) The board director appointed by the board shall meet such standards of training and experience as the department shall require by regulation. Applicants for such positions need not be residents of the city, county, or state and may be employed on a full-time or part-time basis. If a board is unable to secure the services of a person who meets the standards of the department, the board may select an alternate administrator, subject to the approval of the district administrator.

(2) The staff of the district administrator shall

not duplicate the activities of the staff of the district mental health board.

(3) No board staff member shall also be on the staff of a mental health service provider.

History.—s. 8, ch. 70-109; s. 1, ch. 70-439; s. 7, ch. 76-221.

394.73 Joint mental health programs in two or more counties.—

(1) Subject to rules and regulations established by the department, any county within a board district shall have the same power to contract for mental health services as the department has under existing statutes.

(2) In order to carry out the intent of this part and to provide mental health services in accordance with the district plan, the counties within a board district may enter into agreements with each other for the establishment of joint mental health programs. The agreements may provide for the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract with other participating counties.

(3) When a board district comprises two or more counties or portions thereof, it shall be the obligation of the mental health board to submit to the governing bodies, prior to the budget submission date of each governing body, an estimate of the proportionate share of costs of mental health services proposed to be borne by each such governing body.

(4) Any county desiring to withdraw from a joint program may submit to the board and to the district administrator a resolution requesting withdrawal therefrom together with a plan for the equitable adjustment and division of the assets, property, debts, and obligations, if any, of the joint program. Unless all participating counties agree to an earlier withdrawal, no county participating in a joint program may withdraw therefrom without the consent of the district administrator or earlier than 2 years after submission of the withdrawal resolution to the district administrator.

History.—s. 9, ch. 70-109; s. 1, ch. 70-439; s. 8, ch. 76-221.

394.74 Contracts for services.—

(1) Each mental health board, with the approval and subject to regulations of the department, and when funds are available for such purposes, is authorized to contract for state funds on a matching basis in the establishment and operation of local mental health programs with any hospital, clinic, laboratory, institution, or other appropriate service agency. Any such contract may be entered into notwithstanding that a local director of the mental health program is a member of the medical or consultant staff of such hospital, clinic, laboratory, institution, or other appropriate service agency.

(2) Contracts shall include, but not be limited to, the following:

(a) A provision that all programs must be available to the residents of the service district without regard to race, creed, color, national origin, age, sex, or ability to pay.

(b) Evidence of the availability of local matching funds.

(c) A requirement that the plan and budget of the board must conform to the department regulations and the priorities established thereunder.

(d) Standard contract forms shall be developed by the department for use between:

1. The district administrator and district mental health boards;

2. District mental health boards and community mental health service providers.

(3) Nothing in this part shall prevent any city or combination of cities from owning, financing, and operating a mental health program by entering into arrangements with the board to provide and be reimbursed for services provided as part of the district plan.

History.—s. 10, ch. 70-109; s. 9, ch. 76-221.

394.75 The board district plan.—

(1)(a) The board shall prepare a district mental health plan. The plan shall reflect both the program priorities established by the department and the needs of the district. The plan will include a list of the mental health services and the service providers which will receive state and county funds. A schedule, format, and procedure for plan development and review shall be promulgated by the department.

(b) The plan shall be submitted to the district administrator and to the governing bodies for review, comment, and approval.

(2) The plan shall:

(a) Describe the proposed objectives and programs.

(b) Set forth:

1. The sources of local matching funds.

2. Priorities for the services included in the plan for the next fiscal year.

(c) Provide:

1. The basis for reimbursement pursuant to the provisions of this part.

2. A plan for the coordination of services in such manner as to insure effectiveness and avoid duplication, fragmentation of services, and unnecessary expenditures.

3. For the most appropriate and economical use of all existing public and private agencies and personnel.

4. For the fullest possible and most appropriate participation by existing programs, state hospitals and clinics, public and private general and psychiatric hospitals, city, county, and state health and family service agencies, drug abuse and alcoholism programs, probation departments, physicians, psychologists, social workers, public health nurses, and all other public and private agencies and personnel which are required to, or may agree to, participate in the plan.

5. An inventory of all public and private mental health resources within the board district.

(d) Specify all other mental health services in addition to those included under the provisions of this part which the board district wishes to continue to operate in the next fiscal year and the estimated costs of such services.

(e) Include:

1. Provisions for evaluating mental health services in the board district. Program evaluations shall include studies of progress toward attainment of objectives, relative cost, and effectiveness of alternative comparable forms and patterns of services.

2. A projection of board district needs for mental health services for the succeeding 3-year period. The plan shall provide for the orderly and economical development of those services and shall indicate priorities and anticipated expenditures and revenues.

(3) The plan may include, but not be limited to, the establishment of any of the following services:

(a) Inpatient services;

(b) Outpatient services;

(c) Partial hospitalization services, such as day care, night care, or weekend care;

(d) Emergency services 24 hours per day available within one of the three services listed in paragraphs (a), (b), and (c);

(e) Consultation and education services available to community agencies and professional, personnel, and information services to the general public;

(f) Diagnostic services, including screening of persons referred for admission to state hospitals.

(g) Rehabilitative services, including vocational and educational programs;

(h) Precare and aftercare services in the community, including foster home placement, home visiting, and halfway houses;

(i) Training; and

(j) Research and evaluation.

(4) In developing the plan, optimum use shall be made of federal, state, and local funds which may be available for mental health planning.

(5) All departments of state government and all local public agencies shall cooperate with officials to assist them in mental health planning. Each district administrator shall, upon request and availability of staff, provide consultative services to the local mental health directors, governing bodies, and mental health boards.

History.—s. 11, ch. 70-109; s. 1, ch. 70-439; s. 10, ch. 76-221; s. 2, ch. 77-372.

394.76 Financial provisions.—

(1) The district administrator shall inform the board of which services included in the adopted district plan would be funded by the state.

(2) When allocating funds for mental health services, the district administrator shall use the following priorities:

(a) Plans shall be funded to continue all existing approved services in accordance with other provisions of this part.

(b) Plans shall be funded to expand existing programs or to establish new programs as determined by the district plans within the limits of available funds.

(3) If in any fiscal year the approved appropriation is insufficient to finance the programs and services specified by this part, the department shall have the authority to determine the amount of state funds available to each service district for such purposes in accordance with the priorities in both the state and district plans.

(4) The state's share of financial participation shall be determined by the following formula:

(a) The state's share shall be a percentage of the net balance determined by deducting from the total operating cost of services and programs as specified in subsection 394.75(3):

1. Those expenditures which are not reimbursable as provided in subsection (7).

2. Federal grants, excluding funds earned under title XX of the Social Security Act.

3. Inpatient fees and third party payments for services rendered to individual eligible inpatients for which reimbursement has been requested from the state.

(b) It is the intent to establish a uniform funding percentage of 75 percent state financial participation for all community-based, state-aided mental health and alcoholism prevention, treatment, and control programs by October 1, 1974. Effective October 1, 1974, the state's annual share of financial participation shall be 75 percent of the net balance, determined in accordance with paragraph (a).

(c) In order to be qualified for receipt of any state matching funds, there must be in existence within the board district applying for such funds those services described in paragraphs 394.75(3)(a)-(f). In addition, the board applying for such funds must submit annually to the district administrator a budget in such a form as prescribed by the department specifying how such funds will be used. The district administrator shall integrate such board district budgets into a single budget document for submission to the Secretary of Health and Rehabilitative Services. Upon application, the district administrator may allow a board to provide, or contract for the providing of, services identified in paragraphs 394.75(3)(a)-(f), upon a showing that such services are needed within the district and that establishment of the other services would be impractical.

(d) The expenditure of 100 percent of all third-party payments and fees for non-inpatient services shall be considered as eligible for state financial participation if such expenditures are in accordance with subsection (7).

(5) The district administrator is authorized to make investigations and to require audits of expenditures. The district administrator may authorize the use of private certified public accountants for such audits. Audits shall follow department guidelines.

(6) Claims for state reimbursement shall be made, utilizing a purchase of service approach, in such form and in such manner as the department shall determine.

(7) Expenditures subject to state reimbursement shall include expenditures for approved salaries of personnel; approved facilities and services provided through contract; operation, maintenance, and service cost; depreciation of facilities; and such other expenditures as may be approved by the district administrator. They shall not include expenditures for compensation to members of a community mental health board, except actual and necessary expenses incurred in the performance of official duties, or expenditures for a purpose for which state reimbursement is claimed under any other provision of law.

(8) Expenditures for capital improvements relating to construction of, additions to, purchase of, or renovation of a community mental health facility may be made by the state, provided said expenditures or capital improvements are part and parcel of a community mental health plan adopted by a board district and approved by the district administrator. Nothing shall prohibit the use of said expenditures for construction of, additions to, renovation of, or

purchase of facilities owned by a county, city, or other governmental agency of the state or a nonprofit entity. Such expenditures shall be subject to the provisions of subsections (4) and (6) above.

(9) State funds for community mental health services shall be matched by local matching funds on a three to one basis respectively. Governing bodies within a district or subdistrict shall be required to participate in the funding of mental health services under the jurisdiction of said governing body. The amount of the participation shall be at least that amount which, when added to other available local matching funds, is necessary to match state funds.

History.—s. 12, ch. 70-109; s. 1, ch. 70-439; s. 111, ch. 71-355; ss. 1, 2, ch. 72-386; s. 1, ch. 74-291; s. 11, ch. 76-221; s. 33, ch. 77-312; ss. 3, 5, ch. 77-372.

394.77 Control of costs.—The department shall establish, for the purposes of control of costs:

(1) A uniform management information system and cost accounting system for use by providers of community mental health services.

(2) A uniform reporting system with uniform definitions and reporting categories.

History.—s. 13, ch. 70-109; s. 1, ch. 70-439; s. 12, ch. 76-221.

394.78 Operation and administration.—

(1) The Department of Health and Rehabilitative Services shall administer this part and shall adopt rules and regulations necessary for its administration.

(2)(a) The department shall, by regulation, establish standards of education and experience for professional and technical personnel employed in mental health programs.

(b) Rules and regulations of the department shall be adopted in accordance with the Administrative Procedure Act under chapter 120.

(3) The district administrator shall review the district plan to determine that:

(a) It complies with the state plan, the requirements of this part, and the standards adopted under this part;

(b) The most effective and economical use will be made of available public and private mental health resources in the service district;

(c) Adequate provisions have been made for review and evaluation of the services provided in the service district.

(4) The district administrator and district governing bodies shall require modifications in the district plan which they deem necessary to bring the plan into conformance with the provisions of this part. Each governing body shall have the authority to require necessary modification to only that portion of the district plan which affects mental health programs and services within the jurisdiction of said governing body.

(5) In unresolved disputes regarding this part or rules established pursuant to this part, providers and boards will adhere to formal procedures as provided by the rules and regulations established by the department.

History.—s. 14, ch. 70-109; s. 1, ch. 70-439; s. 13, ch. 76-221; s. 4, ch. 77-372.

394.79 State plan.—

(1) The program office shall prepare a state plan which shall be in conformity with federal requirements. The state plan shall be annually revised, shall consider the community mental health needs set forth in the district plans, shall list core programs, and shall include a system of priorities for allocating state mental health funds to the service district.

(2) The program office shall consult with the local district administrators and mental health boards in developing the state plan.

(3) The state plan shall be reviewed and revised as necessary to provide a basis for allocating mental health funds throughout the state. The state plan and the system of priorities shall encourage innovations by community mental health programs.

History.—s. 15, ch. 70-109; s. 1, ch. 70-439; s. 14, ch. 76-221.

394.80 Authorization to appropriate funds.—The several cities and counties of this state are authorized to appropriate funds to support all or any portion of the cost of services and construction not met through support by the state or federal governments.

History.—s. 16, ch. 70-109.

394.81 Current state financial aid continued.—The department shall continue to provide financial aid to all programs and facilities which are receiving state aid on December 31, 1976, if:

(1) The board district within which the program or facility is located provides the minimum required services, as defined in s. 394.75(3)(a)-(f); or

(2) The district administrator is satisfied that such services will be provided within a reasonable period, or is satisfied that the other provisions of s. 394.76(4)(c), are applicable; and

(3) There is no decrease in local funds and local financial participation in the program.

History.—s. 17, ch. 70-109; s. 1, ch. 70-439; s. 15, ch. 76-221.

PART V

HOSPITALIZATION AND TREATMENT OF CRIMINALS, INSANITY ACQUITTEES, AND PERSONS INCOMPETENT TO STAND TRIAL

394.901 Involuntary hospitalization of persons adjudicated not guilty by reason of insanity.—

(1) CRITERIA.—A person who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily hospitalized pursuant to such finding if he is mentally ill and, because of his mental illness, is manifestly dangerous to himself or others.

(2) PROCEDURE FOR ADMISSION.—Any

court order directing the hospitalization of a person adjudicated not guilty by reason of insanity shall adequately document the nature and extent of the patient's mental illness. Such documentation shall include a psychiatric evaluation. In addition, other documentation may be provided, to the extent possible, by at least one state-employed psychiatrist, psychologist, or physician, a psychiatrist, psychologist, or physician as designated by the district mental health board, or a community mental health center psychiatrist, psychologist, or physician. Every person acquitted of criminal charges by reason of insanity shall be admitted for hospitalization and treatment in accordance with the provisions of this section. The treatment facility may accept and retain a patient so admitted for a period not to exceed 6 months whenever the patient is accompanied by a court order and adequate documentation of the patient's mental illness. Such documentation shall include a psychiatric evaluation and any psychological and social work evaluations of the patient and shall document the results of any criminal investigation on the patient. If further hospitalization is necessary at the end of the patient's authorized treatment period, the administrator shall apply to the hearing examiner for an order authorizing continued hospitalization.

(3) PROCEDURE FOR CONTINUED HOSPITALIZATION.—

(a) If continued hospitalization of a patient admitted pursuant to this section is necessary, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, request an order authorizing continued hospitalization. This request shall be accompanied by a statement from the patient's physician justifying the request and a brief summary of the patient's treatment during the time he was hospitalized. In addition, the administrator shall submit an individualized plan for the patient for whom continued hospitalization is requested. Notification of this request for retention shall be mailed to the patient and his guardian or representative along with a completed petition for a hearing regarding the continued hospitalization and a waiver-of-hearing form. The waiver-of-hearing form shall state that the patient is entitled to a hearing under the law; that he is entitled to be represented by an attorney at the hearing and, if he cannot afford an attorney, that one will be appointed; and that, if it is shown at the hearing that the patient does not meet the criteria for involuntary hospitalization specified in subsection (1), he is entitled to be released. If the patient or his guardian or representative does not file the petition, or if the waiver is not returned within 15 days, the hearing officer shall notice a hearing with regard to the patient involved in accordance with s. 120.57(1).

(b) Any time continued hospitalization is requested, the hearing officer may, on his own motion, notice a hearing.

(c) Any time continued hospitalization is requested by the administrator, the administrator may request a hearing, and the hearing officer shall hold a hearing within 30 days of such request.

(d) The administrator shall not transfer any patient to voluntary status when he has reasonable cause to believe that the patient is manifestly dangerous to himself or others. In any case in which the administrator has reasonable cause to believe that an involuntary patient is manifestly dangerous to himself or others, the administrator shall request continued hospitalization. In any case in which a request for continued hospitalization is necessary, but the administrator after reviewing the case believes there is not reasonable cause to believe that the patient meets the criteria for involuntary hospitalization at the time of application for transfer to voluntary status and the patient needs continued hospitalization, the patient shall be transferred to a voluntary status.

(e) If the patient or his guardian or representative returns the signed petition noted in paragraph (a), the hearing officer shall notice a hearing in accordance with s. 120.57(1). The patient and his guardian or representative shall be informed by the hearing officer of the right to counsel. In the event a patient cannot afford counsel in a hearing before a hearing officer, the public defender in the county where the hearing is to be held shall act as attorney for the patient. The hearing shall be conducted in accordance with chapter 120.

(f) If the hearing is waived or if at a hearing it is shown that the patient continues to meet the criteria for involuntary hospitalization, the hearing officer shall sign the order for continued hospitalization. The treatment facility shall be authorized to retain the patient for a period not to exceed 1 year. The same procedure shall be repeated prior to the expiration of each additional 1-year period the patient is retained.

(4) RELEASE OF PATIENTS COMMITTED PURSUANT TO AN ACQUITTAL BY REASON OF INSANITY.—

(a) The committing court shall retain jurisdiction in the case of any patient committed to a mental hospital pursuant to this section.

(b) The administrator shall not release any such patient without first notifying the state attorney from the committing county at least 30 days in advance of the anticipated date of release. The state attorney may request a hearing before a hearing officer to be held within 15 days. A continuance not to exceed 5 days may be granted at the discretion of the hearing officer. The state attorney from the committing county shall represent the interest of the state at such hearing. The patient and his guardian or representative shall be informed of the right to counsel by the hearing officer. In the event a patient cannot afford counsel in a hearing before a hearing officer, the public defender in the county where the patient is being held or a court-appointed attorney shall act as attorney for the patient. If, at a hearing, it is shown that the patient continues to meet the criteria for involuntary hospitalization specified in subsection (1), the hearing officer shall sign the order for continued hospitalization pursuant to paragraph (3)(f). If, at a hearing, it is shown that the patient does not continue to meet such criteria for involuntary hospitalization, the hearing officer shall sign an order allowing the release of the patient. However, no patient who has been committed in a

criminal case shall be released from a mental hospital except by order of the committing court.

(c) In all proceedings under this subsection, both the patient and the state attorney shall have the right to a hearing before the committing court. In these proceedings, evidence may be presented by the hospital administrator, the state attorney, and the patient. The patient shall have the right to counsel. In the event a patient cannot afford counsel, the public defender of the county in which the proceedings arise or court-appointed counsel shall act as attorney for the patient. After hearing all the evidence, the judge shall deliberate and render a decision based exclusively on whether the patient continues to meet the criteria for involuntary hospitalization specified in subsection (1). If the patient does not meet the criteria, the judge shall find that the patient should be released. The hearing provided for herein shall be held within 60 days from the date of the request for such hearing; otherwise, the patient shall be released in accordance with the order of the hearing officer.

(5) CONDITIONAL RELEASE OF INSANITY ACQUITTEE PATIENTS.—In the case of any patient who has been committed according to the provisions of this section, the committing court may order a conditional release based on an appropriate system of community follow-up, and such release shall specify responsibility for the receipt of follow-up treatment and reports to the court for failure to comply with the order of the court. In such case, the court shall order the patient to appear periodically in a community clinic to ensure that the patient is following a prescribed treatment regimen.

History.—s. 1, ch. 79-336.
cf.—s. 394.467 Involuntary placement.

394.905 Program for treatment of patients involuntarily hospitalized because incompetent to stand trial.—

(1) It is the intent of the Legislature that treatment programs for those patients found to be incompetent to stand trial and, therefore, involuntarily hospitalized in certain mental health facilities under the Florida Rules of Criminal Procedure be provided in such manner as to insure the full protection of the rights of said patients as set forth in part I of chapter 394. It is further intended by the Legislature that facilities or parts of facilities in which such patients who are found to be dangerous or present a security risk are placed for purposes of treatment be established and available for use at the earliest possible time and that said facilities or parts of facilities be made secure in order to control the ingress and egress of the facility and to protect the patient, hospital personnel, other patients, and citizens in adjacent communities.

(2) The Department of Health and Rehabilitative Services is authorized and directed to locate, establish, and maintain, by not later than January 1, 1977, a secure and separate unit or units for the treatment of patients who, under the Florida Rules of Criminal Procedure, have been involuntarily hospitalized for reason of having been determined by the court to be incompetent to stand trial and who have been found by the Department of Health and Rehabilitative Services to have the clear and present potential to escape or to cause severe injury to themselves or others. The unit or units shall be sufficient to accommodate the number of patients involuntarily hospitalized under the conditions noted above and shall be designed and administered so that ingress and egress may be strictly controlled by staff responsible for unit security. Such security staff shall be independent of treatment staff and shall meet or exceed the uniform minimum standards for employment and training of correctional officers established by the Correctional Standards Council under the provisions of ss. 944.581-944.593. The Department of Health and Rehabilitative Services may contract with the Department of Corrections or any law enforcement unit of county or local government or with any entity licensed under chapter 493, whichever shall cost less, for the provision of security services in said units, should such an arrangement prove effective, cost beneficial, and not detrimental to treatment.

(3) Any current provisions of law to the contrary notwithstanding, the Department of Health and Rehabilitative Services, in consultation with the Department of Administration, for purposes of expediting the implementation of this act, shall have the sole responsibility for the appointment of architects and engineers, approval of plans, and awarding of contracts to make available the secure and separate mental health treatment unit or units provided under subsection (2). The provisions of s. 287.055, regarding a public emergency shall apply, and the Department of Health and Rehabilitative Services is authorized to contract for the use or reuse of plans.

(4) The Department of Health and Rehabilitative Services is authorized to promulgate rules, enter into contracts, and do such things as may be necessary and incidental to assure compliance with and to carry out the provisions of this act in accordance with the above stated legislative intent.

History.—ss. 1-4, ch. 76-194; s. 133, ch. 77-104; s. 13, ch. 79-3; s. 1, ch. 79-336.
Note.—Former s. 394.851.

394.906 Use of chemical weapons; restrictions.—

(1) As used in this section:

(a) "Chemical weapon" means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as "mace."

(b) "Institutional security officer" means a staff member who meets the requirements of s. 394.851(2) and who is responsible for providing security to a facility and patients and personnel therein, for the enforcement of rules, and for the investigation of unauthorized activities.

(c) "Forensic unit" means a secure mental health facility which is used for any patient:

1. Who has been determined to need treatment for a mental illness;

2. Who:

a. Has charges pending;

b. Has been convicted of a criminal offense;

c. Has been acquitted by reason of insanity of a criminal offense; or

d. Is serving a sentence for a criminal offense; and

3. Who has been determined by the Department of Health and Rehabilitative Services:

a. To be dangerous to himself or others; or

b. To present a clear and present potential to escape.

(2) In case of emergency and when necessary to provide protection and security to any patient or to the personnel, equipment, buildings, or grounds of a facility, an institutional security officer may, when authorized by the administrator of the forensic unit or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic unit; however, such weapon shall be used only to the extent necessary to provide such protection and security. Under no circumstances shall any such officer carry a chemical weapon on his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

History.—s. 1, ch. 77-31; s. 1, ch. 79-336; s. 158, ch. 79-400.

Note.—Former s. 394.4671; s. 394.86 (1978 Supplement).

CHAPTER 395

HOSPITAL LICENSING AND REGULATION

PART I GENERAL PROVISIONS (ss. 395.01-395.25)

PART II HEALTH CARE COST CONTAINMENT (ss. 395.501-395.514)

PART I

GENERAL PROVISIONS

[1]**395.01 Definitions.**—As used in this chapter:

(1) "Hospital" means any establishment that offers:

(a) Services more intensive than those required for room, board, personal services, and general nursing care; and

(b) Facilities and beds for use beyond 24 hours by 10 or more nonrelated individuals requiring diagnosis, treatment or care for illness, injury, deformity, infirmity, abnormality disease or pregnancy, and regularly makes available at least: clinical laboratory services, diagnostic X-ray services, treatment facilities for surgery, or obstetrical care or other definitive medical treatment of similar extent, and one registered nurse on duty at all times.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

(4) "Licensing agency" means the Department of Health and Rehabilitative Services.

(5) "Ambulatory surgical center" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center.

History.—s. 1, ch. 24091, 1947; s. 11, ch. 25035, 1949; ss. 1, 2, ch. 57-80; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-24; s. 218, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**395.02 Purpose.**—The purpose of this chapter is to provide for the development, establishment, and enforcement of standards:

(1) For the care and treatment of individuals in hospitals or ambulatory surgical centers and,

(2) For the construction, maintenance, and operation of hospitals or ambulatory surgical centers, which, in the light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals or ambulatory surgical centers.

History.—s. 2, ch. 24091, 1947; s. 3, ch. 76-168; s. 2, ch. 77-24; s. 1, ch. 77-457.

[1]**Note.**—As amended, effective October 1, 1977. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**395.03 Licensure.**—After December 31, 1947, in the case of a hospital, and after January 1, 1978, in the case of an ambulatory surgical center, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital or ambulatory

surgical center in this state without a license under this law.

History.—s. 3, ch. 24091, 1947; s. 3, ch. 76-168; s. 3, ch. 77-24; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.04 Application for license; disposition of fees; expenses.—

(1) An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder.

(2) Each application for a hospital or ambulatory surgical center license, or renewal thereof, shall be accompanied by a license fee, in accordance with the following schedule:

(a) The annual license fee required of a hospital or ambulatory surgical center facility licensed by this chapter shall be at the rate of $1 per bed; except that the minimum license fee hereunder shall be $35 and the maximum fee $200.

(b) Such fees shall be payable to the Department of Health and Rehabilitative Services to be deposited with the State Treasurer into the General Revenue Fund.

(3) The expenses of the Department of Health and Rehabilitative Services incurred in carrying out the provisions of this chapter shall be paid from moneys appropriated for that purpose. The Department of Health and Rehabilitative Services shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

History.—s. 4, ch. 24091, 1947; s. 1, ch. 61-33; s. 7, ch. 67-520; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 4, ch. 77-24; s. 219, ch. 77-147; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.045 Minimum standards for clinical laboratory test results and diagnostic X-ray results.—

(1) Each hospital or ambulatory surgical center licensed under this chapter and each nursing home licensed under chapter 400, as a requirement for issuance or renewal of its license, shall establish minimum standards for acceptance of results of clinical laboratory tests performed outside of the hospital, ambulatory surgical center, or nursing home. Such minimum standards shall require licensure of the clinical laboratory under the provisions of chapter 483 or adherence to standards and procedures comparable to licensure requirements which assure the quality and accuracy of the clinical laboratory test as determined by the Department of Health and Rehabilitative Services and which are subject to the approval of the hospital medical staff and the board of trustees of the hospital and such other standards as are deemed necessary by the hospital, ambulatory surgical center, or nursing home. Results of clinical laboratory tests performed prior to admission which meet the minimum standards shall be accepted in lieu of routine examinations required upon admission and clinical laboratory tests which may be ordered by a physician for patients of the hospital, ambulatory surgical center, or nursing home.

(2) Each hospital or ambulatory surgical center licensed under this chapter and each nursing home licensed under chapter 400, as a requirement for issuance or renewal of its license, shall establish minimum standards for acceptance of results of diagnostic X rays performed outside of the hospital, ambulatory surgical center, or nursing home. Such minimum standards shall require licensure or registration of the source of ionizing radiation under the provisions of chapter 290. Diagnostic X-ray results which meet the minimum standards shall be accepted in lieu of routine examinations required upon admission and diagnostic X rays which may be ordered by a physician for patients of the hospital, ambulatory surgical center, or nursing home.

History.—ss. 1, 2, ch. 75-231; s. 3, ch. 76-168; s. 5, ch. 77-24; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 159, ch. 79-400.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.05 Issuance and renewal of license.— Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and hospital or ambulatory surgical center facilities meet the requirements established under this law. New hospitals or hospitals that are in substantial compliance with this chapter and with the regulations of the Department of Health and Rehabilitative Services may be issued provisional licenses; however, such provisional licenses shall not be granted for a period of more than 1 year. A license, unless sooner suspended or revoked, shall be renewable annually upon payment of that fee prescribed by s. 395.04(2), payable and expendable as set out in s. 395.04, and upon filing by the licensee, and approval by the licensing agency, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulations. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

History.—s. 5, ch. 24091, 1947; s. 7, ch. 67-520; s. 3, ch.76-168; s. 6, ch. 77-24; s. 1, ch. 77-291; s. 1, ch. 77-457.
[1]Note.—As amended by ch. 77-24, effective October 1, 1977. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.06 Denial or revocation of license.—The licensing agency is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law.

History.—s. 6, ch. 24091, 1947; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 220, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.065 Hospital disciplinary powers.—

(1) The medical staff of any hospital licensed pursuant to this chapter is authorized to suspend, deny, revoke, or curtail the staff privileges of any staff member for good cause, which shall include, but not

be limited to:

(a) Incompetence.

(b) Negligence.

(c) Being found an habitual user of intoxicants or drugs to the extent that the physician is deemed dangerous to himself or others.

(d) Being found liable by a court of competent jurisdiction for medical malpractice.

However, the procedures for such actions shall comply with the standards outlined by the Joint Commission of Accreditation of Hospitals and the Principles of Participation in the Federal Health Insurance Program for the Aged.

(2) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any hospital, hospital medical staff, or hospital disciplinary body or its agents or employees for any action taken in good faith and without malice in carrying out the provisions of this section.

History.—s. 13, ch. 75-9; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

395.0653 Use of hospital and staff.—

(1) Any hospital licensed under this chapter in considering and acting upon applications for staff membership or professional clinical privileges shall not deny the application of a qualified doctor of medicine licensed under chapter 458, doctor of osteopathy licensed under chapter 459, doctor of dentistry licensed under chapter 466, [1]or doctor of podiatry licensed under chapter 461 for such staff membership or professional clinical privileges within the scope of his respective licensure solely because the applicant is licensed under any of said chapters.

(2) Nothing herein shall restrict in any way the authority of the medical staff of the hospital to review for approval or disapproval all applications for appointment and annual reappointment to all categories of staff and make recommendations on each to the governing authority, including delineation of privileges to be granted in each case. In making such recommendations and in delineation of privileges, each applicant shall be considered on an individual basis pursuant to criteria applied equally to all other disciplines.

(3) Within 180 days after July 1, 1979, the governing body of every hospital shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. These standards and procedures shall be available for public inspection.

History.—s. 1, ch. 79-105.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

395.066 Prohibition of interference with prescription of amygdalin (laetrile).—No hospital or health facility shall interfere with the physician-patient relationship by restricting or forbidding the use of amygdalin (laetrile), when prescribed or administered by a physician licensed under chapter 458 or chapter 459 and requested by a patient, unless the substance as prescribed or administered by the physician is found to be harmful by the State Boards of Medical Examiners and Osteopathic Medical Examiners in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120. Furthermore, no hospital or health facility shall remove the staff privileges of a physician solely because said physician prescribed or administered amygdalin (laetrile) to a patient under the conditions set forth in this act.

History.—s. 1, ch. 77-30.

395.067 Prohibition of interference with prescription of dimethyl sulfoxide (DMSO).—No hospital or health facility shall interfere with the physician-patient relationship by restricting or forbidding the use of dimethyl sulfoxide (DMSO) when prescribed or administered by a physician licensed under chapter 458 or chapter 459 and requested by a patient, unless the substance as prescribed or administered by the physician is found to be harmful by the State Boards of Medical Examiners and Osteopathic Medical Examiners in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120. Furthermore, no hospital or health facility shall remove the staff privileges of a physician solely because said physician prescribed or administered dimethyl sulfoxide (DMSO) to a patient under the conditions set forth in this act.

History.—s. 1, ch. 78-129.

[1]395.07 Rules and enforcement.—

(1) The licensing agency shall adopt, amend, promulgate, and enforce rules in accordance with the provisions of chapter 120 with respect to all hospitals or ambulatory surgical centers, or different types of hospitals or ambulatory surgical centers, to be licensed hereunder. However, it is understood that no rule shall be promulgated hereunder by the licensing agency which would have the effect of denying a license to a hospital, ambulatory surgical center, or other institution required to be licensed hereunder solely by reason of the school or system of practice employed or permitted to be employed by physicians therein, provided, such school or system of practice is recognized by the laws of this state; nothing in the preceding part of this sentence shall be construed to limit the powers of the licensing agency to provide and require minimum standards for the maintenance and operation of those hospitals or ambulatory surgical centers, and the treatment of patients in those hospitals or ambulatory surgical centers, which receive federal aid, to meet minimum standards related to such matters in said hospitals or ambulatory surgical centers which may now or hereafter be required by appropriate federal officers or agencies in pursuance of federal law or promulgated in pursuance of federal law.

(2) The licensing agency shall promulgate and adopt initial rules with respect to ambulatory surgical centers no later than October 1, 1977.

History.—s. 7, ch. 24091, 1947; s. 3, ch. 76-168; s. 7, ch. 77-24; s. 221, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.08 Effective date of regulations.—Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a

reasonable time, under the particular circumstances not to exceed 1 year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards.

History.—s. 8, ch. 24091, 1947; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.09 Inspections and consultations.—

(1) The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendation with respect to compliance with the regulations and standards herein authorized. The licensing agency shall approve or disapprove the plans and specifications within 60 days after receipt of the plans review fee payment as required in subsection (2). The licensing agency may be granted one 15-day extension for the review period, if the secretary of the department so approves. If the licensing agency fails to act within the specified time, it shall be deemed to have approved the plans and specifications. When the licensing agency disapproves plans and specifications, it shall set forth in writing the reasons for said disapproval. Necessary conferences and consultations may be provided as necessary.

(2) The licensing agency is authorized to charge a fee, not to exceed one-half of 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the costs of purchasing necessary additional architectural and engineering services to meet the requirements of this section. Fee payment shall accompany the initial submission of final plans and specifications. Notwithstanding any other provisions of law to the contrary, all money received by the licensing agency pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

(3) When the licensing agency determines that a county or municipality is qualified to inspect and review plans and specifications, the licensing agency may delegate to that county or municipality the authority to review and approve plans and specifications, based upon the statewide standards of the licensing agency. The time limits for approval or disapproval of plans and specifications by the licensing agency established in subsection (1) shall apply to the county or municipality. When such county or municipal approval is used in lieu of licensing agency approval, the fee charged by the licensing agency for such services shall be waived.

History.—s. 9, ch. 24091, 1947; s. 8, ch. 67-520; s. 3, ch. 76-168; s. 1, ch. 77-188; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.105 Hospital rules; chiropractor access to diagnostic reports.—Each hospital shall adopt rules and regulations pursuant to chapter 120 which provide for reasonable access by licensed chiropractors to the reports of diagnostic X-rays and laboratory tests of institutions licensed pursuant to this chapter, subject to the same rules and regulations as licensed physicians. However, nothing contained in the provisions of this section shall require a hospital to grant staff privileges to a chiropractor.

History.—s. 1, ch. 75-52; s. 3, ch. 76-168; s. 223, ch. 77-147; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.12 Information confidential.—Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure.

History.—s. 12, ch. 24091, 1947; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.13 Annual report of licensing agency.—The licensing agency shall prepare and publish an annual report of its activities and operations under this law.

History.—s. 13, ch. 24091, 1947; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.15 Penalties.—Any person establishing, conducting, managing, or operating any hospital or ambulatory surgical center without a license under this law shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $100 for the first offense and not more than $500 for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

History.—s. 15, ch. 24091, 1947; s. 3, ch. 76-168; s. 8, ch. 77-24; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.16 Injunction.—Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law upon the advice of the Department of Legal Affairs which shall represent the licensing agency in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of a hospital or ambulatory surgical center without a license under this law.

History.—s. 16, ch. 24091, 1947; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 9, ch. 77-24; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.171 Use of term "hospital" or "ambulatory surgical center" prohibited.—It shall be unlawful for any person, persons, associations, copart-

nerships, corporations, or institutions to use or advertise to the public in any way or by any medium whatsoever their facility as a "hospital" or "ambulatory surgical center" unless such facility shall have first secured a license under the provisions of this chapter. Nothing in this chapter shall apply to veterinary hospitals or to commercial business establishments using the word "hospital" or "ambulatory surgical center" as a part of a trade name; provided no treatment of human beings is done or performed on the premises of such establishments.

History.—s. 1, ch. 67-36; s. 3, ch. 76-168; s. 10, ch. 77-24; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

395.176 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a hospital or an ambulatory surgical center licensed under this chapter.

(2) The Department of Health and Rehabilitative Services shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the department, such penalties may include any disciplinary action available to the department under the appropriate licensing laws. In the case of an entity not licensed by the department, such penalties may include:

(a) A fine not to exceed $1,000;

(b) If applicable, a recommendation by the department to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106.

[1]395.19 Treatment of sexual assault victims.— All hospitals licensed under this chapter that provide emergency room services may arrange for the rendering of appropriate medical attention and treatment to victims of sexual assault through:

(1) Such gynecological, psychological, and medical services as are needed by the victim.

(2) The administration of medical examinations, tests, and analyses required by law enforcement personnel in the gathering of evidence required for investigation and prosecution.

(3) The training of medical support personnel competent to provide the medical services and treatment as described in subsections (1) and (2).

Such hospitals may also arrange for the protection of the victim's anonymity while complying with the laws of this state and the encouragement of the victim to notify law enforcement personnel and cooperate with them in apprehending the suspect.

History.—s. 1, ch. 75-182; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]395.20 Itemized patient bill; form and content prescribed by the Department of Health and Rehabilitative Services.—

[2](1) Within 7 days following discharge or release from confinement in a hospital or nursing home, or within 7 days after the earliest date at which the loss or expense from the confinement or service may be determined, which in the case of long-term confinement may be the monthly charge, the hospital or nursing home providing the service shall submit to the patient, or to his survivor or legal guardian as may be appropriate, an itemized statement detailing in language comprehensible to an ordinary layman the specific nature of charges or expenses incurred by the patient, which in the initial billing shall contain a statement of specific services received and expenses incurred for each such item of service, enumerating in detail the constituent components of the services received within each department of the hospital or nursing home and including unit-price data on rates charged by the hospital or nursing home as may be prescribed by the Department of Health and Rehabilitative Services. This statement shall not include charges of hospital-based or nursing home-based physicians if billed separately.

(2) On each such itemized statement there shall appear the words "A FOR-PROFIT (or NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or NURSING HOME) LICENSED BY THE STATE OF FLORIDA" or substantially similar words sufficient to identify clearly and plainly the ownership status of the hospital or nursing home.

[2](3) In any billing for hospital or nursing home services subsequent to the initial billing for such services, the patient or his survivor or legal guardian may elect, at his option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (1).

(4) No physician, dentist, hospital, or nursing home may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, hospital, or nursing home is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the patient.

History.—ss. 1, 2, ch. 75-187; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-198.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 2, ch. 79-198, provides that, if chapter 395 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-198, shall also be repealed on the same date as is therein provided.

cf.—s. 400.141 Administration and management of nursing facilities.

395.202 Patient records; copies; examination.—

(1) Any licensed hospital shall, upon request, and only after discharge of the patient, furnish to any person admitted therein for care and treatment or treated thereat, or such person's guardian, curator, personal representative, or anyone designated by such person in writing, a true and correct copy of all records in the possession of the hospital, except progress notes and consultation report sections of a psychiatric nature concerning the care and treatment performed therein by the hospital, provided the person requesting such records agrees to pay a reasonable charge for the copying of said records, and further shall allow examination of the original records in its possession, or microfilms or other suit-

able reproductions of the records, upon such reasonable terms as shall be imposed to assure that the records shall not be damaged, destroyed, or altered.

(2) The provisions of this act shall not apply to any hospital whose primary function is to provide psychiatric care to its patients.

History.—ss. 1, 9, ch. 78-171.

395.21 Effective date of rules.—Any ambulatory surgical center which is in operation at the time of promulgation of any applicable rules under this chapter shall be given a reasonable time under the particular circumstances, not to exceed 1 year from the date of such promulgation, within which to comply with such rules.

History.—s. 11, ch. 77-24.

395.22 Insurance coverage.—No individual or group health insurance policy providing coverage on an expense incurred basis, nor individual or group service or indemnity type contract issued by a nonprofit corporation, nor any self-insured group health benefit plan or trust, of any kind or description, shall be issued unless coverage provided for any service performed in an ambulatory surgical center is provided if such service would have been covered under the terms of the policy or contract as an eligible in-patient service.

History.—s. 12, ch. 77-24.

395.25 Examinations for cancer of the cervix and breast.—

(1) Each hospital licensed by the state shall offer, in writing, a cytologic examination for cancer of the cervix and an examination by manual palpation to determine the possible existence or possible signs of cancer of the breast to every female patient 18 years of age or older who is admitted to said hospital, unless such examinations are considered contraindicated or inappropriate by the attending physician, or unless the patient's hospital records indicate that such tests were performed within the preceding 12 months. Every patient to whom the tests are offered shall have the right to refuse in writing on the advice of a physician or on her own judgment.

(2) Each hospital shall provide to the female patient a printed form which contains both the offer and a space for indicating consent or refusal, and such form shall include a list indicating the charges for these tests and any other accompanying charges. Such a consent or refusal shall be informed consent or refusal, evidenced by the patient's signature, and made a part of the patient's hospital record.

(3) The results of such examinations and an explanation of the results shall be provided to the patient and made a part of her hospital record. The hospital record shall indicate when the tests are not applicable.

(4) No hospital shall be liable in damages for a patient's failure to seek medical attention based on test results, nor shall a hospital be liable for a patient's informed consent or refusal to undergo the tests.

(5) The provisions of this act shall not apply to any hospital whose primary function is to provide psychiatric care to its patients.

History.—ss. 5-9, ch. 78-171.

PART II

HEALTH CARE COST CONTAINMENT

395.501 Short title.—This part shall be known and may be cited as the "Health Care Cost Containment Act of 1979."

History.—s. 1, ch. 79-106.

395.502 Definitions.—As used in this act:

(1) "Commissioner" means the Insurance Commissioner.

(2) "Board" means the Hospital Cost Containment Board created by s. 395.503.

(3) "Consumer" means any person other than a person who administers health activities, provides health services, has a fiduciary interest in a health facility or other health agency, or has a material financial interest in the rendering of health services.

(4) "Major health care purchaser" means 1 of the 10 largest private employers in the state, a commercial health insurer, or a hospital service plan corporation licensed under chapter 641.

(5) "Cross-subsidization" means that the revenues from one type of hospital service are sufficiently higher than the costs of providing such service as to offset some of the costs of providing another type of service in the hospital. Cross-subsidization results from the lack of a direct relationship between charges and the costs of providing a particular hospital service or type of service.

(6) "Department" means the Department of Insurance.

(7) "Hospital" means a health care institution as defined in s. 395.01(1), but shall not include any health care institution providing services for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination.

(8) "State health planning agency" means the agency designated by the Governor to perform the health planning and development functions prescribed by s. 1523, Pub. L. No. 93-641, the National

Health Planning and Resources Development Act of 1974.

(9) "Health systems agency" means the agency defined in s. 381.493(3)(h).

History.—s. 1, ch. 79-106.

395.503 Hospital Cost Containment Board.—(1) MEMBERSHIP.—There is created the Hospital Cost Containment Board, which shall be located for administrative and budgetary purposes in the Department of Insurance. The board shall be composed of nine members and shall include three major health care purchasers including at least two representatives of the health insurance industry, three health care providers including at least two hospital administrators, and three consumers, one of whom shall represent the elderly. The Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives shall appoint the board. The Insurance Commissioner shall appoint one major health care purchaser, one health care provider, and one consumer who represents the elderly. The President of the Senate and the Speaker of the House of Representatives shall each appoint one major health care purchaser who represents the health insurance industry, one health care provider who shall be a hospital administrator, and one consumer.

(2) TERMS; VACANCIES.—Members of the board shall serve for terms of 4 years each. No member shall serve on the board for more than two consecutive terms. A vacancy shall be filled by the appointing authority within not more than 60 days from the date in which the vacancy occurs, which appointment shall be for the remainder of the unexpired term.

(3) OFFICERS; MEETINGS; COMPENSATION.—The members of the board shall elect a chairman and vice chairman from its members biennially. The chairman and vice chairman of the board shall serve 2-year terms. The board shall meet as frequently as its duties require, but not less than four times a year, except that the first meeting shall be called by the Insurance Commissioner prior to August 1, 1979. The board shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions. Five members shall constitute a quorum, but a vacancy on the board shall not impair its power to act. No action of the board shall be effective unless five members concur therein. The members of the board shall be remunerated at the rate of $50 per diem while on official board business and shall be reimbursed for their expenses while on official business for the board in accordance with the provisions of s. 112.061.

(4) STAFF; FACILITIES; EQUIPMENT.—Upon recommendation of the board, the Insurance Commissioner shall employ such staff as are necessary to fulfill the responsibilities and duties of the board. The staff shall be assigned to the board on a full-time basis. The staff of the board shall be subject to the career service law, chapter 110. The board may contract with persons outside the board for services necessary to carry out its activities when this will promote efficiency, avoid duplication of effort, and make best use of available expertise. The board may apply for and receive and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to hospital health care costs.

(5) COMMITTEES.—The board may create committees from its membership, and may create such ad hoc advisory committees in specialized fields, related to the functions of hospitals, as it deems necessary. The members of any ad hoc advisory committee shall be entitled to reimbursement for expenses incurred, including travel expenses.

History.—s. 1, ch. 79-106.

395.504 Powers and duties of board.—To properly carry out its authority, the board shall:

(1) Require the submission by hospitals of such financial and accounting data as the board deems necessary in order to have available the statistical information necessary to properly conduct budget reviews. Such data shall include, but not be limited to, necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The board shall also obtain from each hospital a current schedule of charges as well as any subsequent amendments or modifications of that schedule as it may desire.

(2) When reviewing the budget under this part for each hospital, take into account the recommendations of appropriate health systems agencies and the designated state health planning agency to ensure compliance with ss. 381.493-381.498, the Health Facilities and Health Services Planning Act.

(3) Conduct studies for and provide its findings to the Department of Health and Rehabilitative Services with respect to the financial feasibility of applications for certificates of need filed pursuant to ss. 381.493-381.498. In addition, the board shall make recommendations to any health systems agency with regard to new capital expenditures within that agency's geographic jurisdiction.

(4) Advise on the integration of the requirements of state health care cost containment efforts with other state health regulations, such as certification of need and federal requirements pertaining to the delivery of health services.

(5) Consult with and make recommendations to the commissioner with respect to analyses and studies of hospital health care costs and related matters which may be undertaken by the board.

History.—s. 1, ch. 79-106.

395.505 Rules; public hearings; investigations; subpoena power.—In addition to the powers granted to the board elsewhere in this part, the board is authorized to:

(1) Adopt, amend, and repeal rules respecting the exercise of the powers conferred by this part which are applicable to the promulgation of rules.

(2) Hold public hearings, conduct investigations, and subpoena witnesses, papers, records, and documents in connection therewith. The board may ad-

minister oaths or affirmations in any hearing or investigation.

(3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed objects and purposes of this part.

History.—s. 1, ch. 79-106.

395.507 Uniform system of financial reporting.—

(1) The board shall, by rule, after consulting with appropriate professional and governmental advisory bodies and [1]holding public hearings, and considering existing and proposed systems of accounting and reporting utilized by hospitals, specify a uniform system of financial reporting based on a uniform chart of accounts developed after considering the American Hospital Association Chart of Accounts, the American Institute of Certified Public Accountants Hospital Audit Guide, and generally accepted accounting principles. However, this provision shall not be construed to authorize the board to require hospitals to adopt a uniform accounting system. As a part of such uniform system of financial reporting, the board may require the filing of any information relating to the cost, to both the provider and the consumer, of any service provided in such hospital except the cost of a physician's services which is billed independently of the hospital.

(2) For the purposes of this section, and in order to allow meaningful comparisons, the board shall, by rule, classify hospitals according to characteristics, including, but not limited to, size, range of services provided, special services offered, cost centers, and duration of care.

(3) In establishing such uniform reporting procedures, the board shall, among other issues, take into consideration the need for financial data which reflects the average bill per day and the average bill per stay billed by the hospital and the degree of cross-subsidization by cost center.

(4) When appropriate, the reporting system shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals, as distinguished from those incurred in connection with educational research and other nonpatient-related activities, including, but not limited to, charitable activities of such hospitals.

(5) When more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(6) All reports filed under this part, except privileged medical information, shall be open to public inspection.

(7) The board shall have the right of inspection of hospital books, audits, and records, including records of individual or corporate ownership.

(8) All hospitals shall submit reports to the board on forms adopted by the board and based on the system promulgated by the board. The system shall be initially effective at such time and date as the board shall direct, but no earlier than January 1, 1980. In determining the initial effective date and subsequent dates for reporting requirements, the board shall consider both the immediate need for uniform facility reporting information to effectuate the purposes of this part and the administrative and economic difficulties which hospitals face in compliance, but in no event shall such effective date be later than July 1, 1980. The board shall require such interim reports as it deems desirable to utilize whatever portions of the uniform system that are available prior to July 1, 1979.

History.—s. 1, ch. 79-106.

[1]Note.—The word "holding" was inserted by the editors.

395.508 Hospital costs and finances; analyses, studies and reports.—

(1) The board shall from time to time undertake analyses and studies relating to hospital health care costs, making maximum use of health systems agencies and the designated state health planning agency whenever possible, and to the financial status of any hospital or hospitals subject to the provisions of this part and may publish and disseminate such information as it deems desirable in the public interest.

(2) The board shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with the board hereunder as will advance the purposes of this part.

History.—s. 1, ch. 79-106.

395.509 Review of hospital budgets, rates, and charges.—

(1) The board shall have the power to initiate, upon timely receipt of the reports required herein, such reviews or investigations of hospital budgets, rates, and charges as the board deems necessary. For purposes of budget, rate, and charge comparison, the board may establish classes or groupings of hospitals according to characteristics, including, but not limited to, size, range of services provided, special services offered, cost centers, and duration of care. The board may also establish statistical indicators to serve as measures of comparison with respect to the relative efficiency of hospital performance. Such statistical indicators shall include, but not be limited to, the percentage increase in rates for the current year over the preceding year for each hospital.

(2) The board is empowered to review any hospital's projected annual revenues and the rates and charges proposed by the hospital to generate those revenues. At least annually, the board shall publish and disseminate to the public an in-depth study comparing the rates and charges and other relevant information of all hospitals, both statewide and by county.

(3) The board is authorized to review the budget of any hospital at a public hearing if it finds that the hospital's rates and charges or other statistical indicators as the board may define are in the upper 20 percent of such indicators for all hospitals in its class or group. However, this authorization shall not be construed to limit the authority of the board to hold public hearings pursuant to s. 395.505(2).

(4) The board may publish its findings in connection with any review conducted under this section and shall publish its findings in connection with any hearings conducted under this section in the newspaper of largest general circulation in the county in which the hospital is located.

(5) In conducting reviews of budgets, rates, and

charges under this part, the board shall consider the need for increased efficiency in hospital operation, the need to close surplus beds or to convert them to meet unfilled needs, and the need to discontinue existing services which are unnecessarily duplicative of services available in the area served by the hospital.

(6) Physicians who provide services within a hospital are exempt from the provisions of this part, provided that they bill for their services independently of the hospital.

History.—s. 1, ch. 79-106.

395.511 Quality assurance programs.—Each hospital shall maintain a quality assurance program, which program shall include monitoring of the necessity of admission, appropriateness of the length of stay, proper utilization of services, and the evaluation of the quality of services rendered.

History.—s. 1, ch. 79-106.

395.512 Budget; expenses; assessments; hospital cost containment program account.—

(1) The board shall biennially prepare a budget which shall include an estimate of income and expenditures for administration and operation of the hospital cost containment program for the biennium, to be submitted to the Governor for transmittal to the Legislature for approval. Subject to the approval of the Legislature, expenses of the program shall be financed by assessments against hospitals in an amount to be determined biennially by the board, but not to exceed 0.04 percent of each hospital's gross operating costs for the provision of hospital services for its last fiscal year ending on or before June 30 of the preceding calendar year, except that for the fiscal biennium 1979-1981 this act shall constitute legislative authorization for expenditures and positions by the board within the above-stated limits. Beginning October 1, 1979, the assessments shall be levied and collected quarterly. All moneys collected are to be deposited by the Treasurer in the Hospital Cost Containment Trust Fund in the general fund, which account is hereby created.

(2) Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the board in succeeding years.

History.—s. 1, ch. 79-106.

395.513 Program accountability.—On or before March 1 of each year, the board shall prepare and transmit to the Governor and the Legislature a report of hospital cost containment program operations and activities for the preceding year. This report shall include copies of summaries, compilations, and supplementary reports required by the act, together with such facts, suggestions, and policy recommendations as the board deems necessary. The board shall specifically state its findings and recommendations on the following issues:

(1) The extent to which Florida hospitals are meeting guidelines and goals established by the national voluntary effort program for reducing the rate of increase in hospital rates;

(2) The extent to which cross-subsidization affects the rates and charges for different types of hospital services; and

(3) Whether the Legislature should vest in the board additional authority to regulate hospital rates.

History.—s. 1, ch. 79-106.

395.514 Penalty.—Any hospital which refuses to file reports or other information required to be filed under the provisions of this part shall be punished by a fine not exceeding $1,000 a day [1]for each day in violation, to be fixed, imposed, and collected by the board. Each day in violation shall be considered a separate offense. Knowing and willful falsification of a report required under this act shall be grounds for removal of a hospital's license under s. 395.06.

History.—s. 1, ch. 79-106.

[1]Note.—The words "for each day" were inserted by the editors.

CHAPTER 396

ALCOHOLISM

396.012 Short title.—This chapter shall be known and cited as the "Comprehensive Alcoholism Prevention, Control, and Treatment Act."

History.—s. 1, ch. 71-132.

396.022 Findings and declaration of purposes.—

(1) Alcohol abuse and alcoholism are increasing throughout the country and in Florida. Alcohol abuse can seriously impair health and lead to chronic and habitual alcoholism. Alcoholism is recognized as an illness or disease that requires attention and treatment through health and rehabilitative services.

(2) Alcoholism prevention, treatment, and control programs should, whenever possible, be community based; provide a comprehensive range of services, including emergency treatment, under proper medical auspices on a coordinated basis; and be integrated with, and involve, the active participation of a wide range of public and nongovernmental agencies, especially community mental health programs.

(3) Existing laws have not been adequate to prevent alcohol abuse or to provide sufficient education, treatment, and rehabilitation services for the alcoholic. Increasing education, treatment, and rehabilitation services and closer coordination of efforts offer the best possibility of reducing alcohol abuse and alcoholism. A major commitment of health and social resources is required to institute an adequate and effective state program for the prevention and treatment of alcohol abuse and alcoholism.

(4) The criminal law is not an appropriate device for preventing or controlling health problems. Dealing with public inebriates as criminals has proved expensive, unproductive, burdensome, and futile. The recognition of this fact and the concurrent establishment of modern public health programs for the medical management of alcohol abuse and alcoholism will facilitate early detection and prevention of alcoholism and effective treatment and rehabilitation of alcoholics and early diagnosis and treatment of other concurrent diseases.

(5) Handling alcohol abusers and alcoholics primarily through health and other rehabilitative programs relieves the police, courts, correctional institutions, and other law enforcement agencies of a burden that interferes with their ability to protect citizens, apprehend law violators, and maintain safe and orderly streets.

(6) Voluntary treatment for alcoholism is more appropriate than involuntary treatment. Civil commitment should be used only where an alcoholic is in immediate danger of serious harm or if he presents a substantial danger to other persons.

(7) There is a need to establish and maintain a comprehensive program for the control of drunkenness and the prevention and treatment of alcoholism throughout Florida.

(8) An alcoholic, except in specified instances enumerated herein, shall be treated as a sick person and provided adequate and appropriate medical, psychiatric, and other humane rehabilitative treatment services for his illness. All public officials in the state shall take cognizance of this legislative policy and this chapter shall be construed in a manner consistent therewith.

History.—s. 2, ch. 71-132.

396.032 Definitions.—For the purposes of this chapter:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the Secretary of Health and Rehabilitative Services.

(3) "Treatment and research center" means any center or facility maintained and operated by the state which conducts treatment and rehabilitative programs and services for alcoholics.

(4) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for alcoholics, including, but not limited to, detoxification centers, licensed hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(5) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that it injures his health or substantially interferes with his social or economic functioning, or to the extent that he has lost the power of self-control with respect to the use of such beverages.

(6) "Peace officer" means any state, county, or municipal public safety officer, including policemen, sheriffs, deputy sheriffs, members of any county public safety department, members of the highway patrol, or any other public safety officers having the power of arrest.

(7) "Physician" means a doctor of medicine or a

doctor of osteopathic medicine, and shall include, unless otherwise specified herein, an intern or resident enrolled in an intern or resident training program affiliated with an approved medical school, hospital, or other facility through which such programs are normally conducted.

History.—s. 3, ch. 71-132; s. 134, ch. 77-104; s. 225, ch. 77-147.

396.042 Duties and functions of the department.—

(1) It shall be the duty of the Department of Health and Rehabilitative Services to formulate and effect a plan for the prevention, care, treatment, and rehabilitation of alcoholics.

(2) In formulating and effecting the plan defined in subsection (1), the department shall:

(a) Furnish such aid to alcoholics in any manner which, in its judgment, will afford the greatest benefit to said alcoholics, and shall have the power in this connection to make suitable arrangements with hospitals or clinics which in its discretion shall be deemed advisable to afford proper treatment, care, or rehabilitation of alcoholics.

(b) Provide services through existing mental health centers, clinics, and other appropriate treatment resources.

(c) Carry on educational and informational programs on alcoholism for the benefit of the general public, alcoholics, professional persons, or others who care for or may be engaged in the care and treatment of alcoholics.

(d) Cooperate with physicians and treatment resources in making arrangements for the treatment and care of indigent alcoholics, and may arrange for payment for hospital care on a cost basis for such indigent alcoholics.

(e) Formulate, undertake, and carry out a research and evaluation program on alcoholism; participate in, cooperate with, and assist, as in its discretion shall be deemed advisable, other properly qualified agencies, including any agency of the Federal Government, schools of medicine, and hospitals or clinics, in planning and conducting research on the prevention, care, treatment and rehabilitation of alcoholics.

(f) Serve as a clearing house for information relating to alcoholism.

(g) Develop, encourage, and foster statewide, regional, and local plans and programs in the field of alcoholism, which, whenever possible, will be carried out through the services and programs provided under the Community Mental Health Act, part IV of chapter 394.

(h) Review, comment upon, and assist public agencies and local governments with applications for grants or other funds for services for alcoholics to be submitted to the Federal Government.

(i) Prepare, or advise the Governor in the preparation of, a comprehensive alcoholism plan for inclusion in the comprehensive health plan to be submitted for federal funding pursuant to the Comprehensive Health Planning and Public Health Services Amendments of 1966, Public Law 91-616, and other bills providing for federal funding and support.

(j) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent and to treat alcoholism; and

(k) Encourage alcoholism rehabilitation programs in businesses and industries in the state.

History.—s. 4, ch. 71-132; s. 226, ch. 77-147.

396.052 Treatment and rehabilitation program.—

(1) The Department of Health and Rehabilitative Services shall employ a variety of treatment methods and shall provide or arrange for a variety of treatment facilities in order that the needs of persons afflicted with alcoholism and of persons who are intoxicated and in need of emergency medical and other care may be fully and expeditiously met. To the fullest extent possible the department shall utilize the facilities, and coordinate its programs with the programs, of community mental health centers presently existing or hereafter to be established. Treatment services and facilities shall include but need not be limited to the following:

(a) Emergency medical-social services and facilities. Facilities and services to render emergency medical care, including detoxification, and emergency social services shall be open 24 hours every day, and shall be located conveniently near population centers so as to be quickly and easily accessible to patients. Such facilities and services shall provide for the immediate physical and social needs, including the needs for medication and shelter of intoxicated persons, and shall also provide for initial examination, diagnosis, and referral. Each such facility or service shall be affiliated with, or constitute a part of, the general medical service of a licensed hospital or other medical facility, but need not be physically a part of such hospital or facility.

(b) Outpatient facilities, including, but not limited to, clinics, vocational rehabilitation services and community mental health centers.

(c) Intermediate care services, including, but not limited to, partial hospitalization and supportive residential facilities, such as community mental health centers, foster home placement, hostels, and halfway houses. The intermediate care facilities may be operated by, or may be jointly operated with, state or local, public or private, agencies approved by the department.

(d) Inpatient short term or extended care facilities for diagnostic study, intensive study, treatment, and rehabilitation of alcoholics. The facilities may be part of licensed hospitals, mental hospitals, or community mental health centers, and may be provided to inmates of any correctional facility. The Florida Alcoholism Treatment and Research Center at Avon Park in Highlands County, created under former chapter 396, shall continue as a treatment, training, and research center operated by the department.

(2) The department, subject to applicable provision of law, may arrange for the use of local and private treatment facilities on a cooperative basis, by contractual, cost-sharing, or other method of joint or shared support, whenever the director, subject to the policies of the department, considers this to be the most effective and economical course to follow. Authority is granted to the division to accept, receive, administer, and expend any moneys or materi-

als, gifts, or grants from whatever source and to contract for services with, or make grants to, any governmental units, agencies, or departments, federal, state, or local, and any treatment resource having available approved treatment, rehabilitation, or educational services relating to alcoholism.

History.—s. 5, ch. 71-132; s. 227, ch. 77-147.

396.062 Acceptance for treatment; regulations.—The Department of Health and Rehabilitative Services shall adopt, amend, promulgate, and enforce such rules and regulations as may be deemed necessary to carry out the purposes of this chapter. In establishing such rules and regulations the department shall be guided by the following standards:

(1) A patient shall be initially assigned to, or transferred to, outpatient or intermediate rather than inpatient care, unless he is found to require inpatient care for medical reasons, or unless he is found to be likely to inflict physical harm on himself or others if not admitted.

(2) Whenever possible, a patient shall be treated on a voluntary, rather than an involuntary, basis.

(3) No person shall be denied treatment solely because he has withdrawn from an inpatient or outpatient facility against medical advice on one or more prior occasions, or because he has relapsed one or more times after earlier treatment.

History.—s. 6, ch. 71-132; s. 228, ch. 77-147.

396.072 Treatment and services for intoxicated persons.—

(1) Any person who is intoxicated in a public place and who appears in need of help, if he consents to the proffered help, may be assisted to his home or to an appropriate treatment resource, whether public or private, by a peace officer. Any person who is intoxicated in a public place and appears to be incapacitated shall be taken by the peace officer to a hospital or other appropriate treatment resource. A person shall be deemed incapacitated when he appears to be in immediate need of emergency medical attention, or when he appears to be unable to make a rational decision about his need for care.

(2) In detaining an intoxicated person and taking him to a treatment resource, the peace officer shall proceed whenever possible with the consent of the intoxicated person. If the person appears to be incapacitated and refuses his consent, he may be taken to a hospital or other appropriate treatment resource against his will, but unreasonable force shall not be used; or, for his own protection, he may be detained in protective custody by the police or public safety authority in any municipal or county jail or other detention facility for up to 72 hours. In addition, nothing contained in this section shall prevent the use of any municipal or county jail or other detention facility as a treatment resource in the same manner and to the same extent as is authorized by the other provisions of this chapter. If such protective custody is utilized and if the detention facility is not also a treatment resource, the officer in charge of the detention facility shall, within the first 8 hours of detention, notify the nearest treatment resource of the detention of the intoxicated person. It shall be the duty of the treatment resource, if necessary and appropriate, to arrange for the transportation from the detention facility to an appropriate treatment facility. The department, through any of its agencies, including the district mental health boards, shall annually notify in writing each municipal and county public safety office of the name, address, and phone number of the treatment resource nearest each detention facility.

(3) Any person who is brought to a treatment resource shall be examined by a physician as soon as possible. The physician in charge of the treatment resource may admit a person as a patient or refer him to another facility for diagnosis or treatment. The treatment resource may provide emergency help to a person who is not admitted as a patient.

(4) Any person who at the time of admission to a treatment resource is incapacitated shall remain at the facility until he is no longer incapacitated, but not longer than 96 hours after his admission as a patient. Any person admitted to a treatment resource who is not incapacitated at the time of admission, or any person who is no longer incapacitated, may consent to remain at the treatment resource for as long as the person in charge believes warranted, but any patient who is not incapacitated shall be free to leave the facility at any time.

(5) Any person who is not admitted to a treatment resource or who is not referred to another resource and who has no funds may be taken to his home, if he has one.

(6) When a patient is admitted to a treatment resource, his family or next of kin shall be notified as promptly as possible. If a patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) The peace officer, in detaining an intoxicated person or in taking him to a treatment resource, shall be deemed to be taking him into protective custody. A taking into protective custody under this section shall not be considered an arrest for any purpose, and no entry or other record shall be made to indicate that he has been arrested or has been charged with a crime.

(8) A peace officer and any public safety office or agency who or which acts under this section shall be considered as acting in the conduct of their official duty and shall not be held criminally or civilly liable for false arrest or false imprisonment.

(9) If the physician in charge of the treatment resource determines that such a course is for the patient's benefit, a patient in a treatment resource shall be encouraged to agree to further diagnosis and to voluntary treatment at suitable inpatient, outpatient, or intermediate care facilities.

History.—s. 7, ch. 71-132; s. 1, ch. 74-257; s. 1, ch. 76-79.

396.082 Voluntary treatment of alcoholics.—

(1) Any person may voluntarily apply for treatment for alcoholism directly to any treatment resource. The disability of minority for persons under 18 years of age is removed for the purpose of obtaining rehabilitative or medical treatment for alcoholism or alcohol abuse from a private physician licensed to practice medicine under chapter 458 or chapter 459 or from a hospital, public clinic, treatment resource, or facility administered, authorized, or licensed by the Department of Health and Rehabilitative Services. Consent to such treatment by a

minor shall have the same force and effect as though it were executed by a person who has reached his majority. Any such consent shall not be subject to later disaffirmance by reason of minority.

(2) The administrator in charge of any public inpatient, outpatient, or intermediate facility, subject to the rules and regulations established by the director, may determine who shall be admitted for treatment. Private treatment resources may establish their own admission policies, including provisions for payment for services.

(3) Upon his discharge from, or upon leaving, a public treatment facility, a patient shall be encouraged to consent to appropriate outpatient, intermediate care, or other aftercare treatment. If it appears to the administrator in charge of the treatment facility, upon the advice of the attending physician, that the patient is an alcoholic who requires such help, the division may arrange for assistance in obtaining supportive services and residential facilities, such as maintenance in a hostel or halfway house operated by the department or by any other state or private agency.

History.—s. 8, ch. 71-132; s. 2, ch. 76-79.

396.092 Emergency commitment of alcoholics.—

(1) A person may be admitted to a treatment resource for emergency care and treatment upon application accompanied by the certificate of one licensed physician. The application may be made by any one of the following: The certifying physician, the patient's spouse or guardian, any relative of the patient, or any other responsible person. The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has threatened, attempted, or actually inflicted physical harm upon himself or another. The physician's certificate shall state that he has examined the person within 2 days of the certificate date and shall set out the facts to support the physician's conclusion that the person is an alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages and that unless immediately committed he is likely to inflict physical harm upon himself or others.

(2) The administrator in charge of a treatment resource may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application by the administrator in charge of the facility, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than 5 days. If, however, a petition for involuntary commitment pursuant to s. 396.102 has been filed within such 5 days, and if the administrator in charge of a facility finds, upon the advice of the attending physician, that grounds for emergency commitment still exist, he may retain the person until the petition has been heard and determined, but in no event longer than 20 days following the filing of the petition.

History.—s. 9, ch. 71-132.

396.102 Involuntary treatment of alcoholics.—

(1) A person may be ordered to an appropriate treatment resource other than a state-operated mental hospital by the Circuit Court upon the petition of his spouse or guardian, any next of kin, a physician, the head of any state treatment and research center, the sheriff of the county where such person resides or is found, the chief of police of the municipality in which such person resides or is found, or any three citizens of the state. The petition shall allege:

(a) That the person is an alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages, and

(b)1. That he has threatened, attempted or actually inflicted physical harm on himself or others, or

2. That he is in need of care and that by reason of chronic alcoholism his judgment has been so impaired that he is incapable of appreciating his need for care and of making a rational decision in regard thereto. A mere refusal to undergo treatment shall not, however, by itself constitute evidence of lack of judgment with respect to the need for care.

The petition shall be accompanied by a certificate of a licensed physician who has examined the person within 2 days of the submission of the petition. The certificate shall set forth the physician's findings in support of the allegation of the petition. If the person whose commitment is sought has refused to submit to an evaluation, the fact of such refusal shall be alleged in the petition.

(2) Upon receipt of the petition, the court shall fix a date for a hearing on the issues no later than 10 days from the date the petition was received. The court shall give notice of the hearing to the petitioner, to the person whose commitment is sought, to his next of kin other than the petitioner, to his parents or legal guardian if he is a minor, to the head of the facility to which he has been committed if he has been committed for emergency care, and to any other person whose presence the court deems advisable. Copies of the petition and certificate shall be delivered to all of the parties, together with the notice of hearing.

(3) At the hearing the court shall hear all relevant testimony, including the testimony of at least one physician, either in person or by an affidavit, who has examined the person whose commitment is sought. The person whose commitment is sought shall be present unless the court has reason to believe that his presence is likely to be injurious to him; in this event the court shall appoint a guardian ad litem to represent him throughout the proceeding. The court shall examine the person whose commitment is sought in open court or, if it be deemed advisable, out of court. If the person whose commitment is sought has refused to be examined by a physician, he shall be afforded an opportunity to consent to examination by a court-appointed physician. If he

refuses and there is sufficient evidence to believe that the allegations of the petition are likely to be true, or, in any case, if the court believes that more evidence is necessary, the court may make a preliminary order committing the person to an appropriate treatment resource for a period of not more than 5 days for purposes of further evaluation. If after hearing all relevant evidence, including the results of any case findings, the court finds that the grounds for involuntary commitment have been met by clear and convincing proof, the court shall make a final order stating its findings and ordering the person to treatment at or through a treatment resource deemed appropriate by the court. However, with respect to the state treatment and research center, the court shall be guided and restricted by the admission policies and procedures relating to such facilities established by the department. If the court, after the hearing, determines that the person should be ordered to treatment by reason of alcoholism, the court shall seek advice as to available treatment resources from the board district in the court's jurisdiction established under part IV of chapter 394, the Community Mental Health Act, and may seek such assistance from any other appropriate community agency or treatment resource. If, in the course of the hearing, the court has reason to believe that the person, because of mental illness other than, or in addition to, alcoholism, is likely to injure himself or others if allowed to remain at liberty, or is in need of care or treatment and lacks sufficient capacity to make a responsible application on his own behalf, the court may initiate involuntary hospitalization proceedings under the provisions of part I of chapter 394.

(4) A person ordered to treatment pursuant to this section shall remain under the treatment designated by the court for a period of 30 days unless sooner discharged. At the end of the 30-day period, he shall automatically be discharged unless the treatment resource, prior to the expiration of such period, obtains a court order for his recommitment upon the same grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because he is an alcoholic who is likely to inflict physical harm on himself or others, the treatment resource shall apply for recommitment unless such likelihood no longer exists.

(5) A person recommitted under the provisions of subsection (4) who has not been discharged by the treatment resource before the end of the 90-day period shall automatically be discharged at the expiration of that period unless the treatment resource, prior to the expiration of such period, obtains a court order on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 6 months. Further recommitment orders for a period not to exceed 6 months for each such order may be obtained on the grounds set forth in subsection (1) if the person has not been discharged.

(6) Upon receipt of a petition for recommitment pursuant to subsection (4) or subsection (5), the court shall fix a date for hearing no later than 10 days from the date the petition was received. Notice of the application and the date of the hearing fixed by the court shall be served on the petitioner, on the person whose commitment is sought, on his next of kin, on the original petitioner under subsection (1), if different from the petitioner for recommitment, on one of his parents or on his legal guardian if he is a minor, and on any other person whose presence the court deems advisable. At the hearing the court shall proceed in the same manner set forth in subsection (3).

(7) The treatment resource may require any person committed under the provisions of this chapter to undergo such treatment as in its judgment will benefit him, including treatment at any inpatient, outpatient, or intermediate care facility.

(8) A person committed to the custody of a treatment resource for care shall be discharged at any time prior to the end of the period for which he has been committed when the following conditions are met:

(a) In the case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon himself or others, when such likelihood no longer exists;

(b) In the case of an alcoholic committed on the grounds of need of treatment and care, accompanied by incapacity to make a determination respecting such need, either when such incapacity no longer exists or when it is evident that further treatment and care will not bring about further significant improvements in such person's condition.

(9) The person whose commitment or recommitment is sought shall be informed of his right to contest the application, to be represented by counsel at every stage of any and all proceedings relating to his commitment and recommitment, and to have counsel appointed for him by the court or provided for him by the court, if he wants the assistance of counsel and is financially unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall appoint counsel for him regardless of his wishes. Further, the person whose commitment or recommitment is sought shall be informed of his right to be examined by a physician of his choice. If the person is financially unable to obtain a physician and requests examination by a physician, a physician shall be appointed or provided by the court.

(10) A person committed under the provisions of this chapter may at any time seek to be discharged from commitment by writ of habeas corpus.

History.—s. 10, ch. 71-132; s. 25, ch. 73-334; s. 2, ch. 74-257; s. 3, ch. 76-79.

396.105 Involuntary treatment of habitual abusers.—Upon the petition of any treatment resource, spouse, guardian, or next of kin, a person determined by the court to be an habitual abuser may be committed by the court, after notice and hearing as provided in this chapter, to outpatient treatment for not more than 120 days or to inpatient treatment for not more than 60 days, or both, subject to recommitment pursuant to s. 396.102(4). For the purpose of this section, "habitual abuser" means any person who has been treated for alcoholism under the provisions of s. 396.072, s. 396.082, s. 396.092, or

s. 396.102 three or more times during the 12 months prior to the hearing.

History.—s. 4, ch. 76-79.

396.112 Records of alcoholics and intoxicated persons.—

(1) The registration and other records of emergency services and of other treatment resources, whether inpatient, intermediate or outpatient, utilized under this chapter shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the treatment records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any proceeding held pursuant to s. 396.102. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

(3) Notwithstanding the provisions of subsections (1) and (2), the secretary or his designees may open patients' records for purposes of significant research into the causes and treatment of alcoholism. The secretary shall not open such records, however, unless application is made by a researcher or research agency of professional repute, and unless the need for the records and the significance of the research for which they are to be used has been demonstrated to his satisfaction. Records shall not be opened under this subsection unless adequate assurances are given that patients' names and other identifying information will not be disclosed by the applicant.

History.—s. 11, ch. 71-132.

396.122 Visitation and communication of patients.—

(1) Subject to reasonable regulations regarding hours of visitation established by the Department of Health and Rehabilitative Services or by the agency in charge of a facility, alcoholics who are either voluntary or involuntary patients in any inpatient facility under this chapter shall be allowed opportunity for adequate consultation with counsel, and as much opportunity for continuing contact with family and friends as is consistent with an effective institutional program.

(2) The department may make reasonable rules regarding the use of the telephone by patients and the receipt of mail and other communications by patients in such facilities.

History.—s. 12, ch. 71-132; s. 229, ch. 77-147.

396.131 Criminal commitment.—A person charged with or convicted of a crime may be committed to an appropriate treatment resource in accord with the provisions of law relating to probation, parole, or other disposition of persons charged with or convicted of criminal offenses.

History.—s. 13, ch. 71-132.

396.141 Payment for the care of alcoholics.—

(1) Fees and fee collections for the care, maintenance, or treatment of alcoholics under any provision of this chapter shall be according to s. 402.33. However, the payment thereof, in advance or otherwise, shall never be a prerequisite to the care, maintenance, and treatment of any person under any circumstances whatsoever. In cases of commitments to treatment and research centers, such charges and expenses shall be fixed or approved by the board of county commissioners of the county wherein the patient is or has been committed. Any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against the person or his duly authorized personal representative, parent or legal guardian, shall be brought by the state attorney of the judicial circuit in which said person was committed or by the Department of Legal Affairs or both such state attorney and Department of Legal Affairs, as the case may be, as party plaintiff.

(2) Notwithstanding anything to the contrary in this chapter, a private hospital or private facility, whether an outpatient or an inpatient unit, shall not be required to accept any person for treatment through commitment proceedings or otherwise, unless adequate arrangements for payment of the cost of such services are made.

(3) Any person assisted under this chapter or his responsible relatives may be required to contribute toward the cost of his subsistence, care or treatment, to the extent provided in applicable law and regulations. No person may be discriminated against on the basis of indigence.

History.—s. 14, ch. 71-132; s. 5, ch. 78-332.

396.151 False information or lack of probable cause to secure involuntary treatment; penalty.—

(1) Any person who knowingly furnishes false information for the purpose of securing the involuntary treatment of any individual to any facility for the treatment of alcoholism shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by fine not exceeding $5,000, or both.

(2) Any individual who, without probable cause for believing a person to be an alcoholic:

(a) Causes or conspires with or assists another to cause the involuntary treatment of any such person under this chapter, or

(b) Causes or conspires with or assists another to cause the denial to any person of any right accorded to him under this chapter

shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by fine not exceeding $5,000, or both.

(3) Any individual who, without probable cause for believing a person to be an alcoholic, executes a petition, application, or certificate, pursuant to this chapter, by which such individual secures or attempts to secure the involuntary treatment or involuntary restraint of any such person shall be guilty

of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by fine not exceeding $5,000, or both.

History.—s. 15A, ch. 71-132; s. 3, ch. 74-257.

396.1515 Immunity from personal liability.—The Department of Health and Rehabilitative Services or the administrator of any treatment facility acting pursuant to the provisions of this chapter shall be entitled to rely in good faith upon the representations made for admission by any individual or any certification with respect to any individual made by a licensed physician. All persons acting in good faith, reasonably and without negligence in connection with the preparation or execution of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of an individual under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.

History.—s. 15A, ch. 71-132; s. 230, ch. 77-147.

396.161 Local ordinances affecting intoxication and public drinking offenses forbidden.—No county, municipality, or other political subdivision of this state shall adopt any local law, ordinance, resolution, or regulation having the force of law rendering public intoxication in and of itself or being a common drunkard or being found in enumerated places in an intoxicated condition, an offense, a violation, or the subject of criminal or civil penalties or sanctions of any kind. Nothing herein contained shall affect any laws, ordinances, resolutions, or regulations against drunken driving, driving under the influence of alcohol, or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment.

History.—s. 17, ch. 71-132; s. 1, ch. 73-263; s. 4, ch. 74-257.

[1]**396.171 Advisory council.**—In order to comply with any requirements or conditions for receipt of federal moneys provided by any present or future acts of Congress, the department may create an advisory council, or designate an existing advisory council, for the purpose of consulting with and advising the department in carrying out the provisions of this chapter.

History.—s. 18, ch. 71-132; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 397

REHABILITATION OF DRUG DEPENDENTS

397.011 Purpose and intent of chapter; disposition of convicted offenders.—

(1) It is the purpose of this chapter to encourage the fullest possible exploration of ways by which the true facts concerning drug abuse and dependence may be made known generally and to provide a comprehensive program of human renewal for drug dependents in rehabilitation centers and aftercare programs. This program is designed to assist in the rehabilitation of persons dependent on the drugs controlled by chapter 893. It is further designed to protect society against the social contagion of drug abuse and to meet the need of drug dependents for medical, psychological, and vocational rehabilitation, while at the same time safeguarding their individual liberties.

(2) It is the intent of the Legislature to provide an alternative to criminal imprisonment for individuals capable of rehabilitation as useful citizens through techniques not generally available in state or local prison systems. For a violation of any provision of chapter 893, Florida Comprehensive Drug Abuse Prevention and Control Act, relating to possession of any substance regulated thereby, the trial judge may, in his discretion, require the defendant to participate in a drug rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services pursuant to the provisions of this chapter, provided the director of such program approves the placement of the defendant in such program. Such required participation may be imposed in addition to or in lieu of any penalty or probation otherwise prescribed by law, provided the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

History.—s. 1, ch. 70-183; s. 3A, ch. 71-222; s. 135, ch. 77-104.

397.021 Definitions.—When used in this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Drug dependent" means a person who is dependent upon, or by reason of repeated use is in imminent danger of becoming dependent upon, any substance controlled under chapter 893.

(3)(a) "DATE center" means a drug abuse treatment and education center, and includes, but is not limited to, the following:

1. A residential rehabilitation center, which is a live-in facility operating 24 hours a day, 7 days a week, staffed by professional and para-professional persons offering therapeutic programs for drug dependent persons.

2. A nonresidential day care center, which is a facility offering therapeutic programs operated by trained professional and para-professional persons for treatment of drug dependent persons who are able to live in their own homes in the community.

3. An education information center, which is an information center facility offering education and information to drug dependent persons, their families, and the general community, but which engages in no direct treatment. Such a center may make referrals to approved treatment facilities.

4. A communication center or rap house, which is a program oriented toward youth with the goal of prevention of drug dependency. Such a center may make referrals to appropriate treatment facilities.

5. A hot line, which is a telephone installed to respond to requests for information about drugs, drug treatment facilities, and emergency treatment centers.

6. A drug dispensing program, which is the scheduled dispensing or administering of drugs, including methadone, pursuant to a permit or license issued by an appropriate federal authority.

(b) "DATE center" shall not include the following:

1. "Nursing homes" or "homes" as that term is defined in s. 400.021(7).

2. Drug abuse education program established pursuant to s. 233.067.

(4) "Detoxification" means the administering of methadone or other drug in decreasing doses, pursuant to federal permit, as a substitute narcotic drug to reach a drug free state in a period not to exceed 21 days in order to withdraw an individual who is dependent on heroin or other morphine-like drugs from the use of these drugs.

(5) "Drug abuser" means a person who is so habitually dependent on the use of controlled substances as to have lost the power of self-control with respect to their use, and

(a) Who is dangerous to himself or others as a result of such abuse, or

(b) Whose judgment has been so impaired as a result of such abuse that he cannot rationally appreciate his need for care.

(6) "Treatment resource" means any licensed public or private facility, service, or program providing treatment or rehabilitation services for drug abusers, including, but not limited to, a residential rehabilitation center; a nonresidential day care center; a community mental health center, clinic or program; or a drug-dispensing program.

(7) "Controlled substances" means the substances listed in the following subsections of s. 893.03:

(1) SCHEDULE I.—Paragraphs (a) and (b) and subparagraphs 1., 2., 3., 7., 8., 13., and 14. of paragraph (c).

(2) SCHEDULE II.—Subparagraphs 1., 2., and 3. of paragraph (a) and paragraphs (b) and (c).

(3) SCHEDULE III.—Paragraph (a).

(4) SCHEDULE IV.—Paragraphs (a), (f), (h), and (k).

History.—s. 1, ch. 70-183; s. 1, ch. 71-222; ss. 1, 4, 5, ch. 72-302; s. 1, ch. 73-154; s. 23, ch. 73-331; s. 1, ch. 74-172.

397.031 Duties of department.—The Department of Health and Rehabilitative Services, hereinafter referred to as "department," shall:

(1) Formulate a comprehensive plan for diagnosis, treatment, and education in the areas of drug abuse and dependence and revise such plan from time to time.

(2) Promote, develop, establish, coordinate, and conduct unified programs for education, prevention, diagnosis, treatment, and rehabilitation in the field of drug abuse and dependence and for cooperation with other federal, state, local, and private agencies.

(3) Provide public education and training and disseminate and gather information relating to drug abuse and dependency.

(4) Promote, develop, establish, coordinate, and conduct through the department or any approved agency, public or private, unified programs for education, prevention, diagnosis, research, treatment, aftercare, community referral, and rehabilitation in the field of drug abuse and dependency and, within the amount made available by appropriation, to implement and administer such programs.

(5) Establish a funding program for the dissemination of available federal, state, and private funds to units of state or local government or private organizations which establish and implement approved local drug abuse education or treatment programs.

(6) Promulgate rules and regulations for the implementation of the authority and responsibilities within this chapter, and employ persons responsible for implementing the purposes of this chapter.

(7) Establish guidelines and provide for the systematic and comprehensive evaluation of the effectiveness of various programs licensed by the department.

History.—s. 2, ch. 70-183; s. 1, ch. 70-439; s. 2, ch. 71-222; s. 20, ch. 79-12.

397.041 Hospital and outpatient facilities for drug dependents.—

(1) The department shall have the authority to designate facilities within the department to be used exclusively or partially for the treatment of drug dependents. These facilities may be operated as inpatient or outpatient programs.

(2) The department shall establish procedures whereby persons who are drug dependents may seek admission to these programs on a voluntary basis.

(3) The department shall have the authority to contract with other governmental or private agencies for additional treatment facilities or programs. The department is encouraged to establish these programs on a regional basis with emphasis on prevention and preventive education.

(4) Any person within the care or custody of any division of the department may be transferred for treatment to any program for hallucinogenic, barbiturate, or narcotic drug abuse problems approved by the department.

(5) No person who voluntarily enters any hospital or outpatient facility or program for treatment of drug dependency shall be retained in such facility or program against his will, nor shall such volunteer be confined in or assigned to any penal institution.

History.—s. 3, ch. 70-183; s. 1, ch. 70-439.

397.051 Applications for treatment of drug dependency.—

(1) Any drug dependent who wishes to submit himself for treatment and cure may apply to the department for admission to drug treatment programs operated or approved by the department.

(2) Drug dependents who submit themselves for voluntary treatment shall be admitted to programs within the financial and space capabilities of the department.

(3) The department shall establish a fee system for treatment and the fees shall be assessed in accordance with the person's ability to pay.

History.—s. 4, ch. 70-183; s. 1, ch. 70-439.

397.052 Involuntary treatment.—

(1) A person may be ordered to treatment at an appropriate treatment resource by the Circuit Court upon the petition of his spouse, a parent or guardian, any next of kin, a physician, the head of any state treatment facility or rehabilitation center, the sheriff of the county where such person resides or is found, or any three citizens of the state.

(a) The petition shall allege that the person:

1. Is a habitual abuser of controlled substances not pursuant to a lawful prescription;

2. Has lost the power of self-control with respect

to the use of such controlled substances; and

3. Has threatened, attempted, or actually inflicted, physical harm on himself or others, or is in need of medical treatment and care and, by reason of drug abuse, his judgment has been so impaired that he is incapable of appreciating his need for care and of making a rational decision in regard thereto. A mere refusal to undergo treatment shall not, however, by itself constitute evidence of lack of judgment with respect to the need for care.

(b) The petition shall be accompanied by a certificate of a physician and a certificate of a person possessing training and experience in drug abuse treatment and rehabilitation, said certificates to be based on an examination of the drug abuser made within 10 days prior to the filing of the petition. The certificates shall set forth their findings in support of the allegations of the petition. If the person whose treatment is sought has refused to submit to an examination, the fact of such refusal shall be alleged in the petition.

(2) Upon receipt of the petition, the court shall fix a date for a hearing on the issues no later than 10 days from the date the petition was received. The court shall give notice of the hearing to:

(a) The petitioner;

(b) The person whose treatment is sought, his next of kin other than the petitioner, and his parents or legal guardian, if he is a minor; and

(c) To any other person whose presence the court deems advisable.

Copies of the petition and certificate shall be delivered to all of the parties, together with the notice of hearing.

(3) At the hearing, the court shall hear all relevant testimony, including testimony of those providing certificates pursuant to subsection (1). The person whose treatment is sought shall be present unless the court has reason to believe that his presence is likely to be injurious to him; in this event, the court shall appoint a guardian ad litem to represent him throughout the proceeding. The court shall examine the person whose treatment is sought in open court or, if it is deemed advisable, out of court. If the person whose treatment is sought has refused to be examined, he shall be afforded an opportunity to consent to examination by a court-appointed physician and by a person possessing training and experience in drug abuse treatment and rehabilitation appointed by the court. If he refuses and there is sufficient evidence to believe that the allegations of the petition are likely to be true, or, in any case, if the court believes that more evidence is necessary, the court may preliminarily order the person to an appropriate treatment resource for a period of not more than 5 days for purposes of an examination. If, after hearing all relevant evidence, including the results of any case findings, the court finds that the grounds for court-ordered treatment have been met by clear and convincing proof, the court shall make a final order stating its findings and ordering the person to treatment at or through a treatment resource deemed appropriate by the court. Except in the case of a person who is ordered to treatment on the grounds that he is likely to inflict physical harm upon himself or others, the court shall not order a person's treatment unless there is sufficient evidence that an appropriate treatment resource is available.

(4) A person ordered to treatment pursuant to this section shall remain under the treatment designated by the court for a period of 30 days unless sooner discharged. At the end of the 30-day period, he shall automatically be discharged unless the treatment resource, prior to the expiration of such period, obtains renewal of the order for treatment upon the same grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been ordered to treatment because he is a drug abuser who is likely to inflict physical harm on himself or others, the treatment resource shall apply for a renewal of the order to treatment unless such likelihood no longer exists.

(a) A person reordered to treatment, who has not been discharged by the treatment resource before the end of the 90-day period, shall automatically be discharged at the expiration of that period unless the treatment resource, prior to the expiration of such period, obtains a court order on the grounds set forth in subsection (1) for renewal of the order for treatment for a further period not to exceed 6 months.

(b) Upon receipt of a petition for renewal of the order for treatment, the court shall fix a date for hearing no later than 10 days from the date the petition was received. Notice of the application and the date of the hearing fixed by the court shall be served on:

1. The petitioner;

2. The person whose treatment is sought, his next of kin, and one of his parents or his legal guardian if he is a minor;

3. The original petitioner, if different from the petitioner for renewal of the order for treatment; and

4. Any other person whose presence the court deems advisable.

At the hearing the court shall proceed in the manner previously set forth herein.

(5) A person ordered to treatment in, and who is in the custody of, a treatment resource for care shall be discharged at any time prior to the end of the period for which he has been ordered to treatment when one of the following conditions are met:

(a) In the case of a drug abuser ordered to treatment on the grounds of likelihood of infliction of physical harm upon himself or others, when such likelihood no longer exists; or

(b) In the case of a drug abuser ordered to treatment on the grounds of need of treatment and care, accompanied by incapacity to make a determination respecting such need, either when such incapacity no longer exists or when it is evident that further treatment and care will not bring about further significant improvements in such person's condition.

(6) The person whose treatment is sought shall be informed of his right to contest the application, to be represented by counsel at every stage of proceedings relating to his order to treatment, and to have counsel appointed for him by the court, if he desires the assistance of counsel and is financially unable to

obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall appoint counsel for him regardless of his wishes. Further, the person for whom treatment is sought shall be informed of his right to be examined by a physician and a person of his choice who possesses training and experience in drug-abuse treatment and rehabilitation. If the person is financially unable to obtain such services and requests such examinations, the court shall provide payment for the required examinations.

(7) A person ordered to treatment under the provisions of this chapter may at any time seek to be discharged from treatment by writ of habeas corpus.

History.—s. 2, ch. 74-172.

397.053 Records of drug abusers.—

(1) The registration and other records of treatment resources, whether inpatient, intermediate, or outpatient, shall remain confidential, and information which has been entered in the records shall be considered confidential information.

(2) No part of the treatment records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without consent to treatment personnel for use in connection with the treatment of such person and to counsel representing the person in any proceeding held pursuant to s. 397.052. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

(3) Notwithstanding the provisions of this section, the secretary of the department or his designee may open patients' records for purposes of significant research into the causes and treatment of drug abuse. The secretary shall not open such records, however, unless application is made by a researcher or research agency of professional repute, and unless the need for the records and the significance of the research for which they are to be used has been demonstrated to his satisfaction. Records shall not be open under this subsection unless adequate assurances are given that patients' names and other identifying information will not be disclosed by the applicant.

History.—s. 2, ch. 74-172.

397.054 Visitation and communication of patients.—

(1) Subject to reasonable regulations regarding hours of visitation established by the Department of Health and Rehabilitative Services or by the agency in charge of a facility, drug abusers who are either voluntary or involuntary patients in any inpatient facility under this chapter shall be allowed opportunity for adequate consultation with counsel, and as much opportunity for continuing contact with family and friends as is consistent with an effective treatment program.

(2) The facility may make reasonable rules regarding the use of the telephone by patients and the receipt of mail and other communications by patients in such facilities.

History.—s. 2, ch. 74-172; s. 231, ch. 77-147.

397.055 Payment for care.—

(1) Fees and fee collections for the care, maintenance, or treatment of drug abusers under any provision of this chapter shall be according to s. 402.33. However, the payment thereof, in advance or otherwise, shall never be a prerequisite to the care, maintenance, and treatment of any person under any circumstances whatsoever in a public facility. Any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against the person or his duly authorized personal representative, parent, or legal guardian shall be brought by the state attorney of the judicial circuit in which said person was ordered to treatment or by the Department of Legal Affairs or by both such state attorney and Department of Legal Affairs.

(2) Notwithstanding any other provision to the contrary in this chapter, a private hospital or private facility, whether an outpatient or an inpatient unit, shall not be required to accept any person for treatment through court proceedings or otherwise.

(3) Any person assisted under this chapter or his responsible relatives may be required to contribute toward the cost of his subsistence, care, or treatment to the extent provided in applicable law and regulations. No person may be discriminated against on the basis of indigence.

History.—s. 2, ch. 74-172; s. 1, ch. 77-174; s. 6, ch. 78-332.

397.056 False information or lack of probable cause to secure an order to treatment; penalty.—

(1) Any person who knowingly furnishes false information for the purposes of securing an order to treatment for any person for the treatment of drug abuse is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who, without probable cause for believing a person to be a drug abuser, causes or conspires with or assists another to cause any person to be ordered to treatment under this chapter, or causes or conspires with or assists another to cause the denial to any person of any right accorded to him under this chapter, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who, without probable cause for believing a person to be a drug abuser, executes a petition, application, or certificate pursuant to this chapter by which such individual causes or attempts to cause any person to be ordered to treatment is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 74-172.

397.057 Immunity from personal liability.—

The administrator of any treatment resource acting pursuant to the provisions of this chapter shall be entitled to rely in good faith upon the recommenda-

tions made for admission by any individual, or any certification with respect to any individual, filed in conjunction with judicial proceedings for involuntary treatment of a drug abuser. All persons acting in good faith, reasonably, and without negligence in connection with the preparation or execution of petitions, applications, certificates, or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of a person under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.

History.—s. 2, ch. 74-172.

397.061 Department's cooperation with courts.—The department may, within its resources, cooperate with any court of proper jurisdiction in treating, counseling, examining, or otherwise aiding a person before the court with a narcotic, barbiturate, or hallucinogenic drug problem, or may aid the court with whatever resources are available in meeting whatever stipulations the court may make for probation of such individual.

History.—s. 5, ch. 70-183.

[1]**397.071 Program classification.**—The department shall classify drug abuse programs according to character and range of services provided. Whenever it deems distinctions in its standards, rules, and regulations to be appropriate as among different classes of DATE centers, it may make such distinctions.

History.—s. 3, ch. 71-222; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.081 License required.**—

(1) It is unlawful to operate or maintain a DATE center without first being licensed by the department.

(2) With each application for license for a DATE center submitted to the department there shall be included a comprehensive outline of the proposed rehabilitative program.

History.—s. 3, ch. 71-222; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.091 Expiration of license and renewal; regular and interim licenses.**—

(1) A regular license issued for operation of a DATE center, unless sooner suspended or revoked, shall expire 12 months from the date of issue, unless the same shall have been renewed prior thereto for the next succeeding year. A license shall be renewed upon the filing of application for such renewal on forms prescribed by the department.

(2) Licensed operators against whom a revocation or suspension proceeding is pending at the time of license renewal shall be issued an interim license effective until final disposition by the department of such revocation proceedings. If the final order of the department is appealed from, the court before whom the appeal is taken may order the extension of the interim license for a period of time to be specified in said order.

(3) Interim licenses for not to exceed 90 days may be issued by the department to those applicants who have substantially complied with all the requirements for regular licensing and for which action has been initiated to satisfy all requirements. Interim licenses shall be renewed only in cases of extreme hardship and in which the failure to fully comply with the requirements was not caused by the applicant. The obligations of the interim licensee are the same as those of a regular licensee.

History.—s. 3, ch. 71-222; s. 2, ch. 73-154; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.092 Refusal of license; revocation.**—The department shall have authority to deny, suspend, or revoke a DATE center license for cause. All hearings shall be held within the county in which the licensee or applicant operates or applies for license to operate a DATE center as defined in s. 397.021(3).

History.—s. 3, ch. 71-222; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 19, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.093 Procedure for reinstatement of revoked or suspended license.**—When a license has been revoked or suspended, the licensee, if he has not previously had a license revoked or suspended under this chapter, may at any time after the determination has become final request an opportunity to show that the reasons for the revocation or suspension of license have been corrected and that the license should be reinstated. No licensee who has previously had a license suspended or revoked under this chapter may request a license reinstatement prior to 1 year after the determination becomes final.

History.—s. 3, ch. 71-222; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 19, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.094 Violations.**—Any person establishing, conducting, managing, or operating any DATE center without proper license under this chapter shall be subject to injunctive proceedings to restrain and enjoin the operation of any DATE center in violation of the provisions hereof.

History.—s. 3D, ch. 71-222; s. 2, ch. 72-302; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.095 Right of entry and inspection.**—The department or any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any DATE center licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with the provisions of this chapter and any rules and regulations in force pursuant thereto. Such right of entry and inspection shall also extend to any premises which the department has reason to believe is being operated or maintained as a DATE center without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the Circuit Court authorizing same. Any application for a DATE center license made pursuant to this chapter shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is

sought in order to facilitate verification of the information submitted on or in connection with such application.

History.—s. 3, ch. 71-222; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.096 Information confidential.**—Information received by authorized persons employed by, or volunteering services to, a DATE center or received by the licensing agency through files, reports, inspection, or as otherwise authorized under this chapter shall be deemed privileged and confidential information and shall not be disclosed in such a manner as to identify individuals.

History.—s. 3, ch. 71-222; s. 3, ch. 72-302; s. 1, ch. 76-132; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.098 Drug dispensing programs; prohibitions.**—Drug dispensing programs which do not provide supporting rehabilitative programs such as counseling, therapy, or vocational rehabilitation are prohibited and shall not be licensed as provided herein. Any violation of this provision shall be subject to injunctive proceedings in accordance with s. 397.094.

History.—s. 6, ch. 72-302; s. 4, ch. 73-154; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**397.099 Removal of disabilities of minors in order to obtain rehabilitative or medical treatment.**—The disability of nonage of minors is removed for the purpose of obtaining rehabilitative or medical treatment for drug abuse or dependency from a private physician licensed to practice medicine under chapter 458 or chapter 459 or a hospital, public clinic, or facility administered, authorized, or licensed by the Department of Health and Rehabilitative Services. Consent to treatment by a minor shall have the same force and effect as though it was executed by a person who has reached the legal age of majority. Any such consent shall not be subject to later disaffirmance by reason of minority.

History.—s. 7, ch. 72-302; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

397.10 Legislative intent.—It is the intent of the Legislature to provide a meaningful alternative to criminal imprisonment for individuals capable of rehabilitation as useful citizens through techniques and programs not generally available in state or federal prison systems or programs operated by the Department of Health and Rehabilitative Services. It is the further intent of the legislature to encourage trial judges to use their discretion to refer persons charged with, or convicted of, violation of laws relating to drug abuse or violation of any law committed under the influence of a narcotic drug or medicine to a state-licensed drug rehabilitation program in lieu of, or in addition to, imposition of criminal penalties.

History.—s. 1, ch. 73-350; s. 232, ch. 77-147.

397.11 Definitions.—As used in ss. 397.10-397.20:

(1) "Drug rehabilitation program" means a drug rehabilitation program licensed under the provisions of this chapter.

(2) "Department" means the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 73-350.

397.12 Reference to drug abuse program.—When any person, including any juvenile, has been charged with or convicted of a violation of any provision of chapter 893, or of a violation of any law committed under the influence of a controlled substance, the court, Department of Health and Rehabilitative Services, Department of Corrections, or Parole and Probation Commission, whichever has jurisdiction over that person may, in its discretion require the person charged or convicted to participate in a drug rehabilitation program licensed by the department under the provisions of this chapter. If referred by the court, said referral may be in lieu of, or in addition to, final adjudication, imposition of any penalty or sentence, or any other similar action. If the accused so desires final adjudication, his constitutional right to trial shall not be denied. The court may consult with or seek the assistance of any agency, public or private, or any person concerning such a referral. Assignment to a drug program may be contingent upon budgetary considerations and availability of space.

History.—s. 3, ch. 73-350; s. 2, ch. 74-340; s. 7, ch. 77-120; s. 233, ch. 77-147; s. 14, ch. 79-3.

397.13 Procedures.—

(1) The order of referral of any person under the provisions of s. 397.12 shall be in writing and shall be signed by the referral source. The order shall specify the name and address of the drug rehabilitation program to which the person is referred, the date upon which the person's participation in the program shall commence, and the maximum length of time the person may be required to participate in the program. In no event shall the total time of the penalty, probation, and program participation exceed the maximum length of sentence possible for the offense of which the person is charged or convicted.

(2) One copy of the order of referral shall be sent by registered mail to both the department and to the drug rehabilitation program director.

History.—s. 4, ch. 73-350; s. 2, ch. 74-340.

397.14 Attendance records; notification to the referral source.—Each drug rehabilitation program to which a person is referred under the provisions of ss. 397.10-397.20 shall keep an accurate daily record of attendance of those persons referred. If any referred person does not attend in any 3 or more consecutive days, the program director shall immediately notify the source which referred such person.

History.—s. 5, ch. 73-350; s. 2, ch. 74-340.

397.15 Refusal to admit.—The director of any drug rehabilitation program licensed under the provisions of this chapter may refuse to admit any person referred to the program under the provisions of ss. 397.10-397.20. Refusal to admit shall be commu-

nicated immediately and in writing to the source proposing such referral.

History.—s. 6, ch. 73-350; s. 2, ch. 74-340.

397.16 Expulsion from program.—The director of any drug rehabilitation program may expel any person referred to the program under the provisions of ss. 397.10-397.20 when, in the judgment of the director, the person is not cooperative with the program. The expulsion of any such person shall be communicated immediately in writing to the source which referred the person expelled. If referred by the court, the court shall reassess and determine the appropriate sentence or adjudication.

History.—s. 7, ch. 73-350; s. 2, ch. 74-340.

397.17 Successful completion of program.—When any person successfully completes a drug rehabilitation program to which he was referred under the provisions of ss. 397.10-397.20, such completion may be satisfaction in full of all penalties for violation of the law regarding which he was charged or convicted.

History.—s. 8, ch. 73-350.

397.18 Method of payment.—The Department of Health and Rehabilitative Services shall maintain a separate account for the purpose of reimbursing drug rehabilitation programs for expenses of treating persons referred to the program under the provisions of ss. 397.10-397.20. The provisions of s. 216.292 to the contrary notwithstanding, funds appropriated shall be spent only for the purposes of ss. 397.10-397.20. All payments shall be contingent on the availability of funds.

History.—s. 9, ch. 73-350; s. 2, ch. 74-340.

397.19 Requirements of participation in fund.—In order to receive funds from the Drug Abuse Trust Fund, the drug rehabilitation program shall correctly and properly submit the daily attendance records for each month for each referred person to the department not later than the fifteenth day of the succeeding month. The program director shall review all daily attendance records, and shall certify the accuracy of the records with his notarized signature.

History.—s. 10, ch. 73-350.

397.20 Reimbursement schedule.—Every drug rehabilitation program participating under the provisions of ss. 397.10-397.20 shall be reimbursed for the expense of participation of referred persons in their programs in the following manner:

(1) If the program is classified as a residential rehabilitation center pursuant to s. 397.021(3)(a)1., the program shall receive from the drug abuse program the amount of $5 per day for each person referred. Payment for treatment shall be reimbursable for 90 days, and may be granted for an additional 90 days upon the written recommendation of the treatment director and approval of the referral source.

(2) If the program is classified as a nonresidential day care center pursuant to s. 397.021(3)(a)2., the program shall receive from the drug abuse program $2 per day for each person referred. Payment for treatment shall be reimbursable for 90 days, and may be granted for an additional 90 days upon the written recommendation of the treatment director and approval of the referral source.

History.—s. 11, ch. 73-350; s. 1, ch. 74-340; s. 1, ch. 77-174.

CHAPTER 399

ELEVATORS

399.01 Definitions.—When used in this chapter:

(1) The term "division" shall mean the Division of Hotels and Restaurants of the Department of Business Regulation.

(2) The term "elevator" shall mean all machinery, construction, apparatus, and equipment used in raising and lowering a car, cage, or platform vertically between permanent rails or guides, and shall include all elevators, power dumbwaiters, escalators, gravity elevators, moving walks, endless belt man lifts, powered lifts for sewage pump stations and other lifting or lowering apparatus permanently installed between rails or guides, but shall not include hand operated dumbwaiters, construction hoists, or other similar temporary lifting or lowering apparatus, provided that the provisions of this chapter shall not be applicable to elevators, dumbwaiters, escalators, gravity elevators, or other lifting apparatus or device installed and operating in private residences while such premises are used solely as private residences.

(3) The term "inspector" shall mean an inspector qualified by the division to inspect elevators and lifting apparatus in the state.

(4) The term "alteration" of an elevator shall mean a change in the use, classification, operation, control, motor, brake, character of power supply, capacity, dead weight of car or counterweights, car travel, speed, sizes or number of hoists or counterweight ropes, guide rails, car or counterweight safety devices, or safety governors, application for which is filed with the division under the provisions of this chapter.

(5) The term "existing installation" of an elevator shall mean an installation before July 1, 1971.

(6) The term "new installation" of an elevator, shall mean a complete elevator, dumbwaiter, escalator, or special equipment installation, the application for which is filed with the division after July 1, 1971.

History.—s. 1, ch. 24096, 1947; s. 1, ch. 57-227; ss. 16, 35, ch. 69-106; s. 10, ch. 71-157; s. 1, ch. 71-228; s. 151, ch. 71-377.

399.02 General requirements.—

(1) The requirements of this chapter shall apply to all installations of elevators, as defined, as hereinafter specified.

(2) The division shall adopt an elevator safety code the same as or similar to the latest revision of the "American Standard Safety Code for Elevators, Dumbwaiters and Escalators," which is hereinafter referred to as the "Elevator Safety Code."

(3) The division only shall have the power to grant exceptions or permit the uses of other devices or methods as may be provided by the Elevator Safety Code.

(4) All new and existing elevators shall have a serial number assigned by the division painted on or attached to the elevator car in plain view and also to the driving mechanism. This serial number shall be shown on all required certificates.

(5)(a) A permit shall be obtained from the Division of Hotels and Restaurants before erecting or constructing new elevators, moving such apparatus from one hoistway to another, or before making alterations to existing equipment.

(b) The contractor, company, or individual employed to do the work, shall submit an application for a permit accompanied by specifications and drawings showing the proposed construction, hoistway and elevator construction, and mode of operation in such form as the division may prescribe.

(6)(a) The manufacturer, constructor, or contractor of the elevator, dumbwaiter, escalator, moving walk, endless belt man lift, or powered lift for sewage pump station shall be responsible for failure of the equipment or of any part thereof until the elevator has been approved by the division and put in service. The manufacturer, constructor, or contractor shall be responsible for all tests of new and altered equipment until the installation has been approved by the division.

(b) The owner or his duly appointed agent shall be responsible for the safe operation and proper maintenance of the elevator, dumbwaiter, escalator, moving walk, endless belt man lift, or powered lift for sewage pump station after it has been approved by the division and placed in service. The owner or his agent shall make periodic inspections, maintain in proper working order all parts of the elevator installation, and make and be responsible for all tests and inspections which the division may require. However, if the responsibilities referred to above are specifically transferred by the terms of a lease, the responsibilities of the owner of the equipment may be assigned to a tenant or lessee who is the user of the equipment.

History.—s. 2, ch. 24096, 1947; s. 2, ch. 57-227; ss. 16, 35, ch. 69-106; ss. 2-4, ch. 71-228; s. 1, ch. 74-17; s. 4, ch. 77-109; s. 3, ch. 78-235.

399.03 Design, installation, and alterations of elevators.—

(1) All new elevators, dumbwaiters, and escalators shall be designed and installed in accordance with the requirements of the Elevator Safety Code.

(2) All alterations to, and relocations of, elevators, dumbwaiters, and escalators, installed after the adoption of this act, shall meet the requirements of the Elevator Safety Code.

(3) Elevators, dumbwaiters and escalators installed before July 1, 1971, may be used without being rebuilt to comply with the requirements of the Elevator Safety Code; provided, however, all such elevators shall be maintained in a safe operating condition and shall be subject to inspections and tests required by s. 399.08.

(4) Elevators, dumbwaiters and escalators, moved from one shaft or location to another, shall conform to the requirements of the Elevator Safety Code.

(5)(a) Existing installations may be altered to obtain the advantage of any provisions of the Elevator Safety Code, provided the safety requirements covering such provisions are met.

(b) Where alterations are made to existing installations, any part of the installation which is directly affected as to safety, due to the alteration, shall comply with the requirements of the Elevator Safety Code, subject also to the following subsections.

(6) Where an increase is made in the contract load, the installation shall meet the requirements of the Elevator Safety Code for car and counterweight safeties, interlocks, and terminal stopping devices.

(7) Where an increase is made in the contract speed, the installation shall meet the requirements of the Elevator Safety Code for car and counterweight safeties, buffers, speed governor, interlocks, and terminal stopping devices.

(8) Where any change is made in the method of operation, or type of control, the installation shall meet the requirements of the Elevator Safety Code for interlocks and terminal stopping devices.

(9) Where any change is made in the classification, the installation shall meet all of the requirements of the Elevator Safety Code.

(10)(a) Damaged or defective parts shall be wholly or partially replaced at the discretion of the division; broken parts subject to bending, tension, or torsional stresses, and parts upon which the support of the car depends, shall not be welded.

(b) Ordinary repairs or replacement on existing installations may be made with parts equivalent in material, strength and design to those replaced. Such repairs and replacements need not conform to the requirements of this chapter.

History.—s. 3, ch. 24096, 1947; s. 3, ch. 57-227; ss. 16, 35, ch. 69-106; ss. 5, 6, ch. 71-228.

399.035 Passenger elevator accessibility requirements for the physically handicapped.—

(1) Passenger elevators in buildings on which construction is begun after October 1, 1978, shall be made accessible to physically handicapped persons in accordance with the standard "Suggested Minimum Passenger Elevator Requirements for the Handicapped" of the National Elevator Industry, Inc. (July 1976 edition, as revised May 1977), with the following exceptions:

(a) Floor level numbers or letters, essential control designation symbols, and communication system identification markings on the inside control panel of the elevator car shall be raised a minimum of .025 inch, and a Braille symbol which is raised a minimum of .025 inch shall be placed directly adjacent to each such control marking and at a minimum of 15 inches in height. No control marking may be recessed.

(b) In a building having one or more passenger elevators which do not provide access to every floor level, every pair of passenger elevator hallway call buttons in the building shall be marked with Arabic and Braille symbols which indicate floor levels to which access is provided. Such symbols shall be placed directly above each pair of call buttons. In all other buildings, hallway call buttons need not be marked with Arabic or Braille symbols.

(c) Door jamb markings shall be a minimum of 2 inches high and raised a minimum of .025 inch.

(d) Each elevator shall have a handrail on one wall, preferably the rear wall. The rail shall be smooth with no sharp edges and shall not be more than 1½ inches wide. Its minimum length shall be 1 inch less than the width of the car wall. The inside surface of the rail shall be 1½ inches clear of the car wall. The distance from the top of the rail to the car floor shall be at least 31 inches and not more than 33 inches. Padded or tufted material or decorative materials such as wallpaper, vinyl, cloth, or the like shall not be used on handrails.

(e) Each passenger elevator in a building covered by this section shall be available for the use at all times by authorized persons to assist the physically handicapped in the event of emergency evacuation. All the requirements of rules 211.3 and 211.4 of the American National Standards Institute standard ANSI 17.1b-1973 shall be complied with to meet the requirements of this paragraph.

(f) Any building more than three stories high shall contain at least one conveniently located passenger elevator which will accommodate an ambulance stretcher 76 inches long and 24 inches wide in the horizontal position.

(g) The exception provided in the "Suggested Minimum Passenger Elevator Requirements for the Handicapped" in paragraph 6 of the standard for elevators in schools, institutions, or other buildings specifically authorized by local authorities is not applicable in this state.

(2) This section supersedes all other state laws and regulations and local ordinances and regulations affecting the accessibility of passenger elevators to the physically handicapped, and the standards established by this section may not be modified by municipal or county ordinance.

History.—s. 1, ch. 78-235.

399.04 Inspectors.—

(1) To carry out the provisions and the intent and purpose of this chapter, the division is authorized, and its duty shall be, to appoint and fix salaries of the necessary state elevator inspectors on a merit basis, and may delegate to such inspectors such powers and authority as may be necessary to enable

them to effectively discharge their duties, provided, however, that no person shall be appointed to such position unless he has had 7½ years practical experience in the construction, installation, or inspection of elevators.

(2)(a) No other person shall be authorized to act as an inspector of elevators, unless he holds a current certificate of competency from the division as provided in this section.

(b) Initial application for a certificate of competency shall be in writing, stating school education of applicant, employment history, and present employer, and shall be accompanied by a fee of $10. Except as otherwise provided in this section, the eligibility of applicants for a certificate of competency shall be determined by written and practical examinations, such examinations to be given under the supervision of the division. The examinations shall cover the construction, installation, operation, maintenance, and repair of elevators and their appurtenances.

(c) Each certificate of competency shall be issued for a calendar year and shall expire at the end of the year unless renewed by the division. Each application for annual renewal of a certificate of competency shall be accompanied by a renewal fee of $5.

(3) Certificates of competency shall be issued to applicants who have successfully completed examinations for inspector, and any certificate holder may make inspections required by s. 399.05, when employed by the division, or an insurance company, in accordance with regulations of the division.

(4) Certificates of competency may be revoked by the division for cause.

History.—s. 4, ch. 24096, 1947; s. 11, ch. 25035, 1949; s. 4, ch. 57-227; ss. 1, 2, ch. 61-194; s. 1, ch. 65-421; ss. 16, 35, ch. 69-106; s. 7, ch. 71-228; s. 9, ch. 78-95.

399.05 Permit to erect; fees; inspection and tests of new, moved, or altered installations.—

(1)(a) Before any permanent elevator shall be erected, removed to a different location, or whenever any changes or repairs are made which alter its construction or the classification, grade or rated lifting capacity thereof, detailed plans and specifications of the said apparatus, in duplicate, shall be submitted to the division for approval, the permit fee required under paragraph (b) shall be paid, and a permit obtained from the division for such work. Where plans and specifications are submitted to, and approved by the division, a permit for the erection or other work shall be issued upon payment of the permit fee required by paragraph (b). A final inspection shall be made of the apparatus when installed or repairs completed, before final approval shall be given by the division. The elevator shall not be operated until such final inspection and approval be given, unless a temporary permit be granted by the said division.

(b) Each applicant for a permit from the division pursuant to paragraph (a) shall pay the division a fee which shall be deposited in the Hotel and Restaurant Trust Fund, established under s. 509.072, and which shall be based on the cost of the installation. Fees shall be set by rule by the division and shall not exceed $50.

(2) The operation or use of any new, altered, or moved elevator is prohibited until such equipment has passed tests and inspection as required by this section and a certificate to this effect has been issued in accordance with s. 399.07.

(3) The person or firm installing, moving, or altering elevators shall notify the division in writing, at least 7 days before completion of the work and shall, in the presence of a representative of the division, subject the new, moved, or altered portions of the equipment to tests required to show that such equipment meets the requirements of this chapter.

History.—s. 5, ch. 24096, 1947; s. 1, ch. 65-12; s. 2, ch. 65-421; ss. 16, 35, ch. 69-106; s. 8, ch. 71-228; s. 5, ch. 75-184; s. 93, ch. 79-164; s. 1, ch. 79-342.

399.06 Registering of existing installations, reports of inspectors; annual license fees.—

(1) Every inspector shall forward to the division a full report of each inspection made of any elevator, as required to be made by him under the provisions of s. 399.05, showing the exact condition of the said elevator. If this report indicates that the said elevator is in a safe condition to be operated, the division shall issue a certificate of operation for a capacity not to exceed that named in the said report of inspection, which certificate shall be valid for 1 year after the date of inspection unless the certificate is suspended or revoked by the division. No elevator may lawfully be operated on or after January 1, 1948, without having such a certificate conspicuously posted thereon; where there is an elevator cab it shall be posted conspicuously therein.

(2) If any elevator be found which, in the judgment of an inspector, is dangerous to life and property, or is being operated without the operating certificate required by s. 399.07, such inspector may require the owner or user of such elevator to discontinue its operation, and the inspector shall place a notice to that effect conspicuously on or in such elevator. Such notice shall designate and describe the alteration or other change necessary to be made in order to insure safety of operation, date of inspection, and time allowed for such alteration or change. Such inspector shall immediately report all facts in connection with such elevator to the division. In the event a certificate has been issued for such elevator, the said certificate shall be suspended and not renewed until such elevator has been placed in safe condition. In such case, where an elevator has been placed out of service, the owner or user of such elevator shall not again operate the same until repairs have been made and authority given by the division to resume operation of the said elevator.

(3) The owner or user of every elevator, escalator, dumbwaiter, moving walk, endless walk, endless belt man lift, or powered lift for sewage pump station subject to this chapter shall pay to the division an annual license or inspection fee, which will be deposited in the Hotel and Restaurant Trust Fund, as established under s. 509.072, as a prerequisite to issuance of a certificate of operation pursuant to subsection (1) and which shall be based upon the type of installation and the number of floors served thereby. Fees shall be set by rule by the division and shall not exceed $50.

History.—s. 6, ch. 24096, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 28318, 1953; s. 3, ch. 65-421; ss. 16, 35, ch. 69-106; ss. 9, 10, ch. 71-228; s. 6, ch. 75-184; s. 94,

ch. 79-164; s. 2, ch. 79-342.

399.07 Certificates.—

(1) A certificate shall be issued by the division where inspections and tests as required by s. 399.05 show that elevators are installed in accordance with the requirements of this chapter.

(2) Certificates shall be printed on a 6-inch wide by 9-inch high card and suitably framed in metal with a glass cover.

(3) Certificates shall show the serial number of the elevator for which it is issued, as required in subsection (4) of s. 399.02.

(4) The required certificate shall be posted in a conspicuous location in the elevator car, and on, near, or plainly visible from the dumbwaiter, escalator, amusement device, or special equipment.

(5) The division may permit the temporary use of any elevator, dumbwaiter, or escalator, for passenger or freight service during the installation or alteration, under the authority of a limited certificate, issued by it for each class of service. Such limited certificate shall not be issued until the elevator shall have been tested under contract load, the hoistway is fully enclosed, the hoistway doors and interlocks are installed, the car is completely enclosed, including door or gate and top, all electrical safety devices are installed and properly functioning, and terminal stopping equipment is in place for a safe runby and proper clearance. When cars are provided with temporary enclosures, the operating means shall be by constant pressure push button or lever type switch. The car speed shall not exceed 150 feet per minute. The governor tripping speed shall not exceed 175 feet per minute.

(6) Limited certificates shall be issued for a period not to exceed 30 days. Such certificates may be renewed at the discretion of the division.

(7) Where a limited certificate is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted on, near, or visible from each entrance to such elevator, dumbwaiter or escalator.

(8) The required certificate shall contain a provision informing any person who enters the elevator that it is unlawful to smoke or ignite any substance when said elevator is in operation and shall further indicate the penalty for violation of said law. This subsection shall only apply to certificates issued after October 1, 1974.

History.—s. 7, ch. 24096, 1947; s. 11, ch. 25035, 1949; ss. 16, 35, ch. 69-106; s. 11, ch. 71-228; s. 2, ch. 74-115.

cf.—s. 823.12 Smoking in elevators unlawful.

399.08 Routine inspections, tests, and maintenance.—

(1) Elevators as defined under s. 399.01 shall be inspected by an inspector at least once each calendar year.

(2) Whenever the division shall, from inspection of any elevator, determine that in the interest of the public safety such elevator or any part or appliance thereof, is out of order and in an unsafe condition contrary to the requirements of this chapter the division shall have the power to order the discontinuance of the use of any such elevator and to compel the person, firm, or corporation having control or possession or use thereof to discontinue such use until such elevator or part or appliance thereof, has been satisfactorily repaired or replaced so that the said elevator is in a safe and proper condition as required by this chapter.

(3) The division shall certify the inspection of each elevator which, after inspection, is judged to be in conformity with the requirements of this chapter. This certification shall be in the form of an endorsement of the certificate required in s. 399.07, and shall include the date of the inspection and the name of the inspector.

(4) When an elevator service contract or public liability insurance policy is maintained for an elevator, the division may accept, in lieu of the inspection provided for in this section, an annual elevator inspection report made pursuant to such service contract or public liability insurance policy for said elevator. The division shall make such regulations as it deems appropriate to assure the adequacy of such inspection.

History.—s. 8, ch. 24096, 1947; ss. 16, 35, ch. 69-106; s. 11, ch. 71-157; s. 12, ch. 71-228.

399.10 Enforcement of law.—It shall be the duty of the division to enforce the provisions of this chapter.

History.—s. 10, ch. 24096, 1947; ss. 16, 35, ch. 69-106.

399.11 Penalties.—

(1) Whoever violates any of the provisions of this chapter, or the rules and regulations of the division, as herein provided for, or who shall fail or neglect to pay the fees herein provided for, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever continues to operate his elevator or other lifting or lowering apparatus, after notice to discontinue its use as set forth in subsection (2) of s. 399.06, shall be likewise fined $25 for each day the said elevator or lifting or lowering apparatus has been operated after the service of the said notice, in addition to the fines above set forth.

(3) All fines collected under this chapter shall be forwarded to the division, which shall pay the same into the State Treasury to the credit of the division.

(4) Whoever commences the erection, removal to a different location, or alteration of any elevator for which a permit is required by s. 399.05 of this chapter without having obtained from the division a permit therefor shall pay to the division a civil penalty of $50 in addition to the fee specified for such permit.

History.—s. 11, ch. 24096, 1947; s. 10, ch. 26484, 1951; s. 4, ch. 65-421; ss. 16, 35, ch. 69-106; s. 346, ch. 71-136.

399.12 Construction of law.—Nothing contained in this chapter shall be construed to prevent the inspection of elevators by dealers in elevators or elevator equipment, or inspectors for insurance companies, but such inspection shall not be in lieu of the state inspection, as provided in this chapter, unless such inspector shall have qualified with the division as herein provided.

History.—s. 12, ch. 24096, 1947; s. 11, ch. 25035, 1949; ss. 16, 35, ch. 69-106.

399.13 Municipalities or counties, cooperation with.—The division may enter into cooperative agreements with municipalities or counties which maintain their own elevator inspection departments

whereby such municipalities or counties may issue permits for the erection, alteration or repair of elevators and may provide the regular inspection of elevators as contemplated by this chapter. Each such agreement shall include provision that the municipality or county shall furnish promptly to the division a copy of each permit issued by it for erection, alteration, or repair of an elevator and a copy of each final inspection report made after completion of such erection, alteration, or repair; and may include such provisions as the division deems necessary for the efficient and proper administration of this chapter. The division may make inspections of elevators in such municipalities or counties for the purpose of determining that the provisions of this chapter are being met; and may cancel its agreement with any municipality or county which it finds has failed to comply substantially with such agreement and the provisions of this chapter.

History.—s. 13, ch. 24096, 1947; s. 5, ch. 65-421; ss. 16, 35, ch. 69-106; s. 12, ch. 71-157.

CHAPTER 400

NURSING HOMES AND RELATED HEALTH CARE FACILITIES

PART I NURSING HOMES (ss. 400.011-400.333)

PART II ADULT CONGREGATE LIVING FACILITIES (ss. 400.401-400.451)

PART III HOME HEALTH AGENCIES (ss. 400.461-400.504)

PART IV ADULT DAY CARE CENTERS (ss. 400.55-400.565)

PART V HOSPICES (ss. 400.601-400.615)

PART I

NURSING HOMES

[1]**400.011 Purpose.**—The purpose of this chapter is to provide for the development, establishment, and enforcement of basic standards for the health, care, and treatment of persons in nursing homes and related health care facilities, and for the construction, maintenance, and operation of such institutions which will insure safe and adequate care, treatment, and health of persons in such facilities.

History.—s. 1, ch. 69-309; s. 1, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**400.021 Definitions.**—When used in this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Administrator" means the licensed individual who has the general administrative charge of a facility.

(3) "Manager" or "supervisor" means the individual in charge of homes for aged, homes for special services, and related health care facility homes.

(4) "Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including those places operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for 3 or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but shall not include any place providing care and treatment primarily for the acutely ill. A facility offering services for less than 3 persons shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

(5) "Nursing home facility" means any facility

which provides nursing services as defined in chapter 464 and is licensed according to this chapter.

(6) "Home for special services" means a related health care facility which provides specialized health care services, including personal and custodial care, but not continuous nursing services.

(7) "Related health care facility home" means a facility for the aged, home for special services, or other home as defined in rules and regulations of the department.

(8) "Nursing service" means such services or acts as may be rendered, directly or indirectly, to and in behalf of a person by individuals as defined in s. 464.021.

(9) "Custodial service" means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the aged or infirm.

(10) "Existing facilities" means those licensed facilities which were in operation, or those proposed facilities which began construction or renovation of a building under final plans approved by the department, for the purpose of operating such facilities prior to July 7, 1970.

(11) "New facility" means those facilities which were constructed or renovated for the purpose of operating an institution according to architectural plans approved by the department subsequent to July 7, 1970.

(12) "Board" means the [2]State Board of Examiners of Nursing Home Administrators.

History.—s. 2, ch. 69-309; ss. 19, 35, ch. 69-106; s. 2, ch. 70-361; s. 1, ch. 70-439; ss. 21, 25, ch. 75-233; s. 3, ch. 76-168; s. 234, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See ch. 79-227, which repealed provisions relating to the State Board of Examiners of Nursing Home Administrators and created the Board of Nursing Home Administrators.

[1]400.022 Patients' rights.—

(1) All nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the patients residing in such facilities and shall treat such patients in accordance with the provisions of said statement. The statement shall insure each patient the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to have private communications with any person of his or her choice.

(c) The right to present grievances on behalf of himself, herself, or others to the facility's staff or administrator, to governmental officials, or to any other person, without fear of reprisal, and to join with other patients or individuals within or outside of the facility to work for improvements in patient care.

[2](d) The right to manage his or her own financial affairs or to delegate such responsibility to the facility, but only to the extent of the funds held in trust by the facility for the patient. A quarterly accounting of any transactions made on behalf of the patient shall be furnished to the patient or the person responsible for the patient.

(e) The right to be fully informed, in writing, prior to or at the time of admission and during his or her stay, of services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates.

(f) The right to be adequately informed of his or her medical condition and proposed treatment, unless otherwise indicated by his or her physician, and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by his or her physician, and to know the consequences of such actions.

(g) The right to receive adequate and appropriate health care consistent with established and recognized practice standards within the community and with rules as promulgated by the department.

(h) The right to have privacy in treatment and in caring for personal needs, confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions.

(i) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement of the services provided by the facility, including those required to be offered on an as-needed basis.

(j) The right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may only be applied by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(k) The right to be transferred, reclassified, or discharged only for medical reasons, for the welfare of other patients, or for nonpayment for his or her stay and the right to be given reasonable advance notice of any transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home.

(l) The right to freedom of choice in selecting a health care facility.

(m) The right to have copies of the facility's rules and regulations and an explanation of his or her responsibility to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other patients.

(2) Each nursing home shall provide a copy of the statement required by subsection (1) to each patient or his or her guardian at or before the patient's admission to a facility and to each staff member of a facility. Each such facility shall prepare a written plan and provide appropriate staff training to implement the provisions of this section.

(3) Any violation of the patient's rights set forth in this section shall constitute grounds for action by the department under the provisions of s. 400.102.

History.—s. 8, ch. 76-201; s. 1, ch. 77-174; ss. 1, 9, ch. 79-268.

[1]**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of Part I by that act.

[2]**Note.**—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

,023

[1]400.041 Nursing facilities; categories for licensing.—For the administration of this chapter, facilities shall be licensed in the following categories.

(1) Nursing home.

(2) Home for special service.

(3) Such other health-related categories as may be defined by rules and regulations issued by the department.

History.—s. 3, ch. 69-309; s. 3, ch. 70-361; s. 21, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.051 Homes or institutions exempt from the provisions of this chapter.—

(1) The following shall be exempt from the provisions of this chapter:

(a) Any facility, institution, or other place operated by the Federal Government or agency thereof.

(b) Any institution which offers its services primarily for medical treatment or surgery and is licensed by the state.

(2) Any facility or institution operated only for persons who rely exclusively upon treatment by prayer or spiritual means, in accordance with the creed or tenets of any organized church or religious denomination, shall be exempt only from any requirement of this chapter or rule and regulation adopted pursuant thereto requiring medical examinations or medical treatment of residents or patients therein.

History.—s. 4, ch. 69-309; s. 4, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.062 License required; fee; disposition; display, etc.—

(1) It is unlawful to operate or maintain a facility without first obtaining from the Department of Health and Rehabilitative Services a license authorizing such operation.

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. However, a separate license shall not be required for separate buildings on the same grounds.

[2](3) The annual license fee required of a facility licensed by this chapter shall be at the rate of $2 per bed. The minimum license fee hereunder shall be $26, and the maximum fee shall be $300, no part of which shall be returned. The annual license fee shall be comprised of two parts. Part I of the license fee shall be the basic license fee, which shall not exceed $75 per facility. Part II shall be the patient protection fee, which shall not exceed $225 per facility. Funds generated by license fees collected in accordance with this section shall be divided between both parts in the following manner:

(a) To a maximum of $75, half of the fee collected from any facility shall be a basic license fee and shall be deposited in the General Revenue Fund.

(b) A maximum of $225 generated from fees collected hereunder shall be deposited in the Patient Protection Trust Fund that shall be established by the Department of Administration. Funds so deposited shall be appropriated in a grants-in-aid category and directed to the Department of Health and Rehabilitative Services specifically to pay, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a patient removed from a nursing home facility on a temporary, emergency basis.

(4) Counties or municipalities applying for licenses under this chapter shall be exempt from the payment of license fees provided herein.

(5) The license shall be displayed in a conspicuous place inside the facility.

(6) A license shall be valid only in the hands of the individual, firm, partnership, association, or corporation to whom it is issued, and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which originally issued.

History.—s. 5, ch. 70-361; s. 3, ch. 76-168; s. 235, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 79-268.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]Note.—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

400.063 Patient Protection Trust Fund.—

(1) The [1]Department of Administration shall establish a Patient Protection Trust Fund for the purpose of collecting and disbursing funds generated from the license fees as provided for in s. 400.062(3)(b). Such funds shall be directed to the Department of Health and Rehabilitative Services to pay for the appropriate alternate placement, care, and treatment of patients who are removed from a nursing home facility in which the department determines that existing conditions or practices constitute an immediate danger to the health, safety, or security of the nursing home patients.

(2) Any patient receiving care and treatment in an appropriate alternate placement as provided for in this section shall be returned to the facility from which he was removed, and funds expended on his behalf as provided for in this section shall be terminated within 2 days after the department certifies that the condition or conditions requiring the patient's removal have been corrected and that the necessary relicensure or recertification has been accomplished.

(3) Funds authorized under this section shall be expended on behalf of all patients transferred to an alternate placement, at the usual and customary charges of the facility used for the alternate placement, provided that no other source of private or public funding is available, and the state shall only be liable for the cost of such alternate placement to the extent that funds are available in the Patient Protection Trust Fund. However, such funds shall not be expended on behalf of a patient who is eligible for Title XIX of the Social Security Act, if the alternate placement accepts Title XIX of the Social Security Act.

(4) The department is authorized to promulgate rules necessary to implement the provisions of this section.

(5) If part I of this chapter is repealed in accordance with the intent expressed in the Regulatory

Reform Act of 1976, as amended by chapter 77-457, Laws of Florida, or as subsequently amended, it is the intent of the Legislature that this section shall also be repealed on the same date as is therein provided.

History.—ss. 3, 9, ch. 79-268.

[1]**Note.**—See ch. 79-190, which transferred many powers and duties of the Department of Administration elsewhere.

[1]400.071 Application for license.—

(1) Application for license as required by s. 400.062 shall be made to the Department of Health and Rehabilitative Services on forms furnished by it, and shall be accompanied by the appropriate license fee.

(2) The application shall be under oath and shall contain the following:

(a) The name and address of the applicant if an individual; if the applicant is a firm, partnership, or association, the name and address of every member thereof; if the applicant is a corporation, its name and address and the name and address of its director and officers and of each person having at least a 10 percent interest in the corporation; and the name by which the facility is to be known.

(b) The name of any person whose name is required on the application under the provisions of paragraph (a) and who owns at least a 10 percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.

(c) The location of the facility for which a license is sought and an indication, as in the original application, that such location conforms to the local zoning ordinances.

(d) The name of the person or persons under whose management or supervision the facility will be conducted and the name of its licensed administrator.

(e) The number and type of residents for which maintenance, care, or nursing is to be provided.

(f) Information relating to the number, experience, and training of the employees of the facility and of the moral character of the applicant and employees which the department requires by regulation.

(3) The applicant shall submit evidence which establishes the good moral character of the applicant, manager, supervisor, and administrator.

(4) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the home in accordance with the requirements of this chapter and all rules and regulations promulgated hereunder.

(5) If the applicant offers continuing-care agreements as defined in chapter 651, proof shall be furnished that such applicant has obtained a certificate of authority as required for operation under that chapter. This provision shall not apply prior to 12 months from the date of the adoption of the rules by the Department of Insurance as contemplated by s. 651.101.

[2](6) As a condition of initial licensure, each facility, except one offering continuing-care agreements as defined in chapter 651, must agree to accept recipients of Title XIX of the Social Security Act on a temporary, emergency basis. The persons who the department may require such facilities to accept are those recipients of Title XIX of the Social Security Act who are residing in a facility in which existing conditions constitute an immediate danger to the health, safety, or security of the nursing home facility's patients.

History.—s. 6, ch. 69-309; ss. 19, 35, ch. 69-106; ss. 5, 6, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 2, ch. 76-201; s. 236, ch. 77-147; s. 2, ch. 77-323; s. 1, ch. 77-457; ss. 4, 9, ch. 79-268.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

cf.—s. 395.045 Minimum standards for clinical laboratory test results and diagnostic X rays.

[1]400.102 Action by department against facility; grounds.—

(1) Any of the following conditions shall be grounds for action by the Department of Health and Rehabilitative Services against a facility:

(a) An intentional or negligent act materially affecting the health or safety of residents of the facility;

(b) Misappropriation or conversion of the property of a resident of the facility;

(c) Violation of provisions of this chapter or of minimum standards, rules, or regulations promulgated pursuant thereto; and

(d) Any act constituting a ground upon which application for a license may be denied.

(2) If the department has reasonable belief that any of the said conditions exist, it shall take the following action:

(a) In the case of an applicant for original licensure, denial action as provided in s. 400.121;

(b) In the case of an applicant for relicensure or a current licensee, administrative action as provided in s. 400.121, or injunctive action as authorized by s. 400.125; and

(c) In the case of a facility operating without a license, injunctive action as authorized in s. 400.125.

History.—s. 8, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 237, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.111 Expiration of license; renewal.—

[2](1) Licenses issued for the operation of a facility, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the Department of Health and Rehabilitative Services, and licenses shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this chapter and all rules and regulations promulgated hereunder. New facilities which are in substantial compliance with this section and with the rules of the Department of Health and Rehabilitative Services, but which have deficiencies, may be issued conditional licenses pending correction of deficiencies.

(2) Licensees against whom a revocation or sus-

pension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the aforesaid administrative order, the court having jurisdiction may issue such orders regarding the issuance of a conditional permit during the pendency of the said judicial proceeding.

History.—s. 10, ch. 69-309; ss. 19, 35, ch. 69-106; s. 7, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 238, ch. 77-147; s. 1, ch. 77-457; ss. 5, 9, ch. 79-268.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

[1]400.121 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedure.—

(1) The Department of Health and Rehabilitative Services may deny, revoke, or suspend a license or impose an administrative fine, not to exceed $500 per violation per day, for a violation of any provision of s. 400.102 (1)(a), (b), or (d). All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.

(2) The department, as a part of any final order issued by it under the provisions of this chapter, may impose such fine as it deems proper, except that such fine shall not exceed $500 for each violation. Each day a violation of this chapter occurs shall constitute a separate violation and shall be subject to a separate fine, but in no event shall any fine aggregate more than $5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23.

(3) The department may issue an order immediately suspending or revoking a license when it determines that any condition in the facility presents a danger to the health, safety, or welfare of the patients in the facility.

(4) The department may impose an immediate moratorium on admissions to any facility when the department determines that any condition in the facility presents a threat to the health, safety, or welfare of the patients in the facility.

History.—s. 11, ch. 69-309; s. 1, ch. 69-267; ss. 19, 35, ch. 69-106; s. 9, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 239, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 6, 9, ch. 79-268.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

[1]400.125 Injunction proceedings authorized.—

(1) The Department of Health and Rehabilitative Services may institute injunction proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this chapter or any minimum standard, rule, regulation, or order issued or entered into pursuant thereto; or

(b) Terminate the operation of a home where any of the following exist:

1. Failure to take preventive or corrective measures in accordance with any order of the department.

2. Failure to abide by any final order of the department once it has become effective and binding.

3. Any violation as provided in s. 400.121 constituting an emergency requiring immediate action.

(2) Such injunctive relief may include temporary and permanent injunction.

History.—s. 10, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 240, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.141 Administration and management of nursing facilities.—Every facility shall comply with all applicable standards, rules, and regulations of the Department of Health and Rehabilitative Services and shall:

(1) Be under the administrative direction and charge of a licensed administrator, supervisor, or manager.

(2) Have available the regular, consultative, and emergency services of physicians licensed by the state.

(3) Provide for the access of its residents to dental and other health-related services, recreational services, rehabilitative services, and social-work services appropriate to their needs and conditions and not directly furnished by the facility. When a geriatric outpatient nurse clinic is conducted in accordance with rules adopted by the department, outpatients attending such a clinic shall not be counted as part of the nursing facility's general patient population, nor shall the nursing staff of the geriatric outpatient clinic be counted as part of the nursing staff of the facility, until the case load exceeds 15 a day.

(4) Maintain its premises and equipment and conduct its operations in a safe and sanitary manner.

(5) If the facility furnishes food service, provide a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by attending physicians. In making rules and regulations to implement this subsection, the department shall be guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics.

(6) Keep full records of resident admissions, discharges and medical and general health status, including medical records, personal and social history, and identity and address of next of kin or other persons who may have responsibility for the affairs of the residents. The records shall be open to inspection by the department.

(7) Keep such fiscal records of its operations and conditions as may be necessary to provide information pursuant to this chapter.

History.—s. 13, ch. 69-309; ss. 19, 35, ch. 69-106; s. 12, ch. 70-361; s. 3, ch. 76-168; s. 241, ch. 77-147; s. 3, ch. 77-401; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 395.20 Itemized patient bill; form and content to be prescribed by the Department of Health and Rehabilitative Services.

[1]400.151 Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed at the time

of admission or prior thereto by the facility and the resident or his designee or legal representative. Each party to the contract shall be entitled to a duplicate original thereof, and the facility shall keep on file all contracts which it has with residents. The facility shall not destroy or otherwise dispose of any such contract until 5 years after its expiration or such longer period as may be provided in the rules and regulations of the department.

(2) Each contract to which this section applies shall contain express provision specifically setting forth the services and accommodations to be provided by the facility, the rates or charges therefor, and any other matters which the parties deem appropriate.

(3) No contract or any provision thereof shall be construed to relieve any facility of any requirement or obligation imposed upon it by this chapter or standards, rules, or regulations in force pursuant thereto.

History.—s. 14, ch. 69-309; ss. 19, 35, ch. 69-106; s. 13, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.162 Property and personal affairs of patients.—

(1) The admission of a resident to a facility and his presence therein shall not confer on the facility or its owner, administrator, manager, supervisor, employees, or representatives any authority to manage, use, or dispose of any property of the resident; nor shall such admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident, except what may be necessary for the safety and orderly management of the facility.

(2) No facility and no owner, administrator, manager, supervisor, employee, or representative thereof shall act as guardian, trustee, or conservator for any resident of the facility or any of such resident's property.

(3) A facility shall provide for the safekeeping of personal effects, funds, and other property of the resident in the facility. Whenever necessary for the protection of valuables, or in order to avoid unreasonable responsibility therefor, the facility may require that they be excluded or removed from the facility and kept at some place not subject to the control of the facility.

(4) A facility shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

[2](5) Any funds or other property belonging to or due to a resident or expendable for his account which are received by a facility shall be trust funds, shall be kept separate from the funds and property of the facility, and shall be used or otherwise expended only for the account of the resident. The facility shall post a surety bond with the clerk of the circuit court in the county in which the facility is located in an amount equal to twice the average monthly balance in the patient trust fund during the prior year or $5,000, whichever is greater. The bond shall be executed by the facility as principal and a surety company authorized and licensed to do business in the state as surety. The bond shall be conditioned upon the faithful compliance of the facility with the provisions of this section and shall run to the Governor for the benefit of any resident injured by the facility's violation of the provisions of this section. However, as an alternative to posting a surety bond, the facility may enter into a self-insurance agreement to pool its liability for patient trust funds with one or more other facilities in accordance with rules adopted by the department. Funds contained in the pool shall run to any resident suffering financial loss as a result of the facility's violation of the provisions of this section. Such funds shall be awarded to any resident in an amount equal to the amount that the resident can establish by affidavit or other adequate evidence was deposited in trust with the facility and which could not be paid to the resident within 30 days of the resident's request. The department shall promulgate rules with regard to the establishment, organization, and operation of such self-insurance pools. Such rules shall include, but shall not be limited to, requirements for monetary reserves to be maintained by such self-insurers to assure their financial solvency. Moneys or securities received as advance payment for care shall at no time exceed the cost of care for a 6-month period. At least every 3 months, the facility shall furnish the resident and the guardian, trustee, or conservator, if any, for the resident a complete and verified statement of all funds and other property to which this subsection applies, detailing the amounts and items received, together with their sources and disposition. In any event, the facility shall furnish such a statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property on account of a resident also shall be entitled to receive such statement annually and upon discharge or transfer and such other report as it may require pursuant to law.

[2](6) In the event of a patient's death, a facility shall place all trust funds of the patient in an interest-bearing account until such time as the trust funds are disbursed pursuant to the provisions of the Florida Probate Code. Such trust funds shall be kept separate from the funds and the property of the facility and from the funds and property of the residents of the facility. In the event the trust funds of the deceased patient are not disbursed pursuant to the provisions of the Florida Probate Code within 2 years of the patient's death, the trust funds shall be deposited in the Patient Protection Trust Fund and expended as provided for in s. 400.063.

History.—s. 15, ch. 69-309; s. 14, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 9, ch. 79-268.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

cf.—s. 395.20 Itemized patient bill.

[1]400.17 Bribes, kickbacks, etc., prohibited.—

(1) As used in this section:

(a) "Kickback" means that part of the payment for items or services which is returned to the payor by the provider of such items or services with the intent or purpose to induce the payor to purchase the

items or services from the provider.

(b) "Bribe" means any consideration corruptly given, received, promised, solicited, or offered to any individual with intent or purpose to influence the performance of any act or omission.

(2) Whoever furnishes items or services directly or indirectly to a nursing home patient and solicits, offers, or receives any:

(a) Kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment; or

(b) Return of part of an amount given in payment for referring any such individual to another person for the furnishing of such items or services;

shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by fine not exceeding $5,000, or both.

(3) No person shall, in connection with the solicitation of contributions to nursing homes, willfully misrepresent or mislead anyone, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if such is not the fact.

(4) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of nursing homes by any agent, employee, owner, or representative of a nursing home shall be grounds for denial, suspension, or revocation of the license for any nursing home on behalf of which such contributions were solicited.

(5) The admission, maintenance, or treatment of a nursing home patient whose care is supported in whole or in part by state funds shall not be made conditional upon the receipt of any manner of contribution or donation from any person. However, this shall not be construed to prohibit the offer or receipt of contributions or donations to a nursing home which are not related to the care of a specific patient. Contributions solicited or received in violation of this subsection shall be grounds for denial, suspension, or revocation of a license for any nursing home on behalf of which such contributions were solicited.

History.—s. 16, ch. 69-309; s. 16, ch. 70-361; s. 3, ch. 76-168; s. 3, ch. 76-201; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

400.176 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a nursing home licensed under this chapter.

(2) The Department of Health and Rehabilitative Services shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the department, such penalties may include any disciplinary action available to the department under the appropriate licensing laws. In the case of an entity not licensed by the department, such penalties may include:

(a) A fine not to exceed $1,000;

(b) If applicable, a recommendation by the department to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106.

[1]400.18 Closing of nursing facility.—

(1) Whenever a facility voluntarily discontinues operation, and during the period when it is preparing for such discontinuance, it shall inform the department and the local health systems agency of the district wherein the facility is located within 90 days of the discontinuance of operation. The facility also shall inform the resident or the next of kin, legal representative, or agency acting on the resident's behalf of the fact, and the proposed time, of such discontinuance and give at least 90 days' notice so that suitable arrangements may be made for the transfer and care of the resident. In the event any resident has no such person to represent him, the facility shall be responsible for securing a suitable transfer of the resident prior to the discontinuance of operation. The department shall be responsible for arranging for the transfer of those patients requiring transfer who are receiving assistance under s. 409.266.

(2) A representative of the department shall be placed in a facility 30 days prior to the voluntary discontinuance of operation, or immediately upon notice from the department of involuntary discontinuance of operation of a facility to:

(a) Monitor the transfer of patients to other facilities.

(b) Insure that the rights of patients are protected.

(3) Immediately upon discontinuance of operation of a facility, the owner shall surrender the license therefor to the department, and the license shall be canceled.

History.—s. 17, ch. 69-309; ss. 19, 35, ch. 69-106; s. 15, ch. 70-361; s. 3, ch. 76-168; s. 4, ch. 76-201; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.19 Right of entry and inspection.—

(1) The department and any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any facility licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with the provisions of this chapter and rules in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing same. Any application for a facility license or renewal thereof, made pursuant to this chapter, shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application.

[2](2) The department shall annually conduct at

least one unannounced inspection to determine compliance by the nursing home facility with statutes, and with rules promulgated under the provisions of those statutes, governing minimum standards of construction, quality and adequacy of care, and rights of patients. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the department to any unauthorized person shall constitute cause for suspension of not less than 5 working days according to the provisions of chapter 110.

History.—s. 18, ch. 69-309; ss. 19, 35, ch. 69-106; s. 17, ch. 70-361; s. 3, ch. 76-168; s. 5, ch. 76-201; s. 1, ch. 77-457; ss. 35, 36, ch. 79-190.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 36, ch. 79-190 (C.S. for H.B.'s 1604 and 1649), provides that, if ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 61 of this act shall also be repealed on the same date as is therein provided. As a result of floor amendments to C.S. for H.B.'s 1604 and 1649, s. 61 was renumbered as s. 35 and is probably the section intended.

[1]400.191 Availability, distribution, and posting of reports and records.—

(1) The department shall, within 60 days from the date of an annual inspection visit or within 30 days from the date of any interim visit, forward the results of all inspections of nursing home facilities to:

(a) The regional nursing home ombudsman committee in whose district the inspected facility is located.

(b) At least one public library or, in the absence of a public library, the county seat in the county in which the inspected facility is located.

(c) The district administrator of the department in whose district the inspected facility is located.

(d) The health systems agency in whose district the inspected facility is located.

(e) The [2]Board of Examiners of Nursing Home Administrators.

(2) Each nursing home facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of such reports shall be retained in said records for not less than 5 years from the date said reports are filed or issued.

(3) Any records, reports, or documents which by state or federal law or regulation are deemed confidential shall not be distributed or made available for purposes of compliance with this section unless and until such confidential status expires.

(4) Any records of a nursing home facility determined by the department to be necessary and essential to establish lawful compliance with any rules or standards shall be made available to the department on the premises of the facility.

(5) Every nursing home shall:

(a) Post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public, a concise summary of the last inspection report pertaining to the nursing home and issued by the department, with references to the page numbers of the full reports, noting any deficiencies found by the department and the actions taken by the nursing home to rectify such deficiencies and indicating in such summaries where the full reports may be inspected in said nursing home.

(b) Upon request, provide to any person who has completed a written application with an intent to be admitted to, or to any resident of, such nursing home, or to any relative, spouse, or guardian of such person, a copy of the last inspection report pertaining to the nursing home and issued by the department, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

History.—s. 6, ch. 76-201.

[1]**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of Part I by that act.

[2]**Note.**—See ch. 79-227, which repealed provisions relating to the State Board of Examiners of Nursing Home Administrators and created the Board of Nursing Home Administrators.

[1]400.20 Licensed nursing home administrator required; limitation on number of facilities to be subject to administrator's supervision.—

(1) No nursing home shall operate except under the supervision of a licensed nursing home administrator, and no person shall be a nursing home administrator unless he is the holder of a current license as provided by law.

(2) If the facilities involved are of a class or classes found by the Department of Health and Rehabilitative Services to be of a character, size, and type of operation making it reasonable for a single administrator, manager, or supervisor to perform such functions effectively for more than one facility, such administrator, manager, or supervisor of a facility may function as an administrator, manager, or supervisor for not more than three facilities. As part of the classifications made pursuant to this section, the department shall determine and fix specific limits on the number of facilities of particular classes which may be supervised by the same individual acting as administrator, manager, or supervisor. No administrator, manager, or supervisor shall accept employment in violation of this subsection, and no owner of a facility shall knowingly employ any person in violation thereof.

History.—s. 19, ch. 69-309; s. 18, ch. 70-361; s. 3, ch. 76-168; s. 242, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.23 Rules; minimum standards; fee for review of plans.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this chapter shall include standards by which a reasonable and consistent quality of patient care may be insured and the results of such patient care can be measured and by which safe and sanitary nursing homes can be provided. It is further intended that a minimum amount of the time of professionals providing nursing home care be required to insure compliance with the reporting requirements of these rules.

(2) Pursuant to the intention of the Legislature, the department shall publish and enforce rules to implement the provisions of this chapter, which shall include reasonable and fair minimum standards in relation to:

(a) The location and construction of the facility; including plumbing, heating, lighting, ventilation,

and other housing conditions which will insure the health, safety, and comfort of residents, including an adequate call system. Separate standards shall be provided for physical plant of new and existing facilities. The department shall enforce the applicable uniform fire safety standards established by the State Fire Marshal pursuant to s. 633.05(8).

(b) The number and qualifications of all personnel, including management, medical, and nursing personnel, and aides, orderlies and support personnel, having responsibility for any part of the care given residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene which will insure the health and comfort of residents.

(d) The equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof.

(3) Not later than January 1, 1979, the department shall promulgate rules establishing uniform procedures for the evaluation of nursing home facilities, measuring the degree of each facility's compliance with the standards set forth in this section, as indicated by inspection results. Such procedures shall include a detailed listing of the types, and degree of severity or unacceptability, of deficiencies which inspections might indicate. The department shall further devise a system of rating nursing home facilities based upon the deficiencies noted in the inspection process. Such a system shall include two rating categories entitled A and C. A ratings shall be assigned to nursing homes which meet minimum standards. C ratings shall be assigned to nursing homes which do not meet minimum standards and are therefore issued conditional licenses. The rating assigned to each nursing home facility on the basis of its immediately prior inspection shall be deemed a part of the results and findings of that inspection and shall be conspicuously posted within the nursing home facility to which it applies. For purposes of review and comment, ratings assigned to facilities shall be forwarded by the department to the regional nursing home ombudsman committee in whose district the facility is located. A nursing home facility may appeal the assignment of a particular rating to the department within 20 days after notice of its assignment.

[2](4) Not later than December 1, 1976, the department shall promulgate rules to provide that, when the minimum standards established under subsection (2) are not met, such deficiencies shall be classified according to the nature of the deficiency. The department shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those which the department determines present an imminent danger to the patients or guests of the nursing home facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the department, is required for correction. Notwithstanding the provisions of s. 400.121(8), a class I deficiency is subject to a civil penalty in an amount not less than $1,000 and not exceeding $5,000 for each and every deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the department determines have a direct or immediate relationship to the health, safety, or security of the nursing home facility patients, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than $500 and not exceeding $1,000 for each and every deficiency. A citation for a class II deficiency shall specify the time within which the deficiency is required to be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the department determines to have an indirect or potential relationship to the health, safety, or security of the nursing home facility patients, other than class I or II deficiencies. A class III deficiency shall be subject to a civil penalty of not less than $100 and not exceeding $500 for each and every deficiency. A citation for a class III deficiency shall specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

[2](5) Civil penalties paid by any nursing home facility under the provisions of subsection (4) shall be deposited in the Patient Protection Trust Fund and expended as provided in s. 400.063.

(6) The department shall approve or disapprove the plans and specifications within 60 days after receipt of the plans review fee payment, as required in subsection (7). The department may be granted one 15-day extension for the review period, if the secretary of the department so approves. If the department fails to act within the specified time, it shall be deemed to have approved the plans and specifications. When the department disapproves plans and specifications, it shall set forth in writing the reasons for said disapproval. Necessary conferences and consultations may be provided as necessary.

(7) The department is authorized to charge a fee, not to exceed 0.5 percent of the estimated construction cost or the actual cost of review, whichever is less, for services rendered in conducting the review of plans and specifications for each new project, in an amount sufficient to cover the costs of purchasing necessary additional architectural and engineering services to meet the requirements of this section. Fee payment shall accompany the initial submission of final plans and specifications. Notwithstanding any other provisions of law to the contrary, all money received by the department pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

(8) When the department determines that a county or municipality is qualified to inspect and review plans and specifications, the department may delegate to that county or municipality the authority to review and approve plans and specifications

based upon the statewide standards of the department. The time limits for approval or disapproval of plans and specifications by the department established in subsection (6) shall apply to the county or municipality. When such county or municipal approval is used in lieu of departmental approval, the fees charged by the department for such services shall be waived.

History.—s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 76-168; s. 7, ch. 76-201; s. 2, ch. 76-252; s. 2, ch. 77-188; s. 13, ch. 77-401; s. 1, ch. 77-457; s. 1, ch. 78-393; ss. 8, 9, ch. 79-268.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 9, ch. 79-268, provides that, if part I of ch. 400 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-268 shall also be repealed on the same date as is therein provided.

[1]400.241 Prohibited acts; penalties for violations.—

(1) It is unlawful for any person or public body to establish, conduct, manage, or operate a home as defined in this chapter without obtaining a valid current license.

(2) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, nursing home care or service or custodial services without obtaining a valid current license. It shall be unlawful for any holder of a license issued pursuant to the provisions of this chapter to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

(3) Violation of any provision of this chapter or of any minimum standard, rule, or regulation adopted pursuant thereto shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation shall be considered a separate offense.

History.—s. 11, ch. 70-361; s. 347, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.25 Educational program authorized.— The Department of Health and Rehabilitative Services may conduct a clinic or seminar at such times and places as shall be convenient for the greatest number at which information may be offered in the general field of health education, management, and other subjects that will increase the knowledge and efficiency of applicants or licensees hereunder. The [2]State Board of Examiners of Nursing Home Administrators must approve the educational content of such clinic or seminar if it is intended to satisfy the educational requirements of the Board of Examiners of Nursing Home Administrators.

History.—s. 24, ch. 69-309; ss. 19, 35, ch. 69-106; s. 21, ch. 70-361; s. 3, ch. 76-168; s. 243, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See ch. 79-227, which repealed provisions relating to the State Board of Examiners of Nursing Home Administrators and created the board of Nursing Home Administrators.

[1]400.261 Duty of [2]Board of Examiners of Nursing Home Administrators.—The [2]Florida State Board of Examiners of Nursing Home Administrators of the [3]Department of Professional and Occupational Regulation shall consult and advise with the department in matters of policy affecting administration of this chapter.

History.—s. 20, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See ch. 79-227, which repealed provisions relating to the State Board of Examiners of Nursing Home Administrators and created the Board of Nursing Home Administrators.

[3]**Note.**—See ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to the "Department of Professional Regulation."

[1]400.29 Annual report of nursing home facilities.—On or before January 1, 1977, and annually thereafter, the department shall publish a report, available to the public, which shall include, but not be limited to:

(1) A list by name and address of all nursing home facilities in this state.

(2) Whether such nursing home facilities are proprietary or nonproprietary.

(3) The rating of each nursing home facility.

(4) The name of the owner or owners.

(5) The total number of beds.

(6) The number of private and semiprivate rooms.

(7) The religious affiliation, if any, of such nursing home facility.

(8) The languages spoken by the administrator and staff of such nursing home facility.

(9) The number of full-time employees and their professions.

(10) Whether or not such nursing home facility accepts Medicare or Medicaid patients.

(11) Recreational and other programs available.

History.—s. 9, ch. 76-201.

[1]**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of Part I by that act.

[1]400.301 Legislative intent.—The Legislature finds and declares that conditions in nursing homes in Florida are such that the personal and health care needs of residents are not insured either by regulation of the Department of Health and Rehabilitative Services or the good faith of the nursing home industry. Furthermore, there is no formal mechanism whereby a nursing home resident or his representative may make a complaint against a nursing home facility or its employees. The Legislature declares further that concerned citizens are more effective advocates of the rights of others than government agencies. It is the intent of the Legislature, therefore, to provide an alternative to the present method of correcting nursing home deficiencies, by establishing voluntary citizen nursing home ombudsman committees at the state and district levels to receive, investigate, and resolve complaints against nursing home facilities. It is the intent of the Legislature that the environment in nursing home facilities should be conducive to the dignity and independence of residents.

History.—s. 24, ch. 75-233; s. 3, ch. 76-168; s. 6, ch. 77-401; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.304 Establishment of a State Nursing Home Ombudsman Committee; duties; membership.—

(1) There is hereby created in the office of the

Governor a State Nursing Home Ombudsman Committee hereafter referred to as "State Ombudsman Committee."

(2) The duties of the State Ombudsman Committee shall be:

(a) To help establish and coordinate the district ombudsman committees throughout the state.

(b) To serve as an appellate body in receiving from the district ombudsman committees complaints not resolved at the district level.

(c) To develop procedures for eliciting, receiving, responding to, and resolving complaints made by, and on behalf of, nursing home facility residents.

(d) To elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a nursing home facility.

(e) To prepare an annual report to the President of the Senate, the Speaker of the House, and the Governor containing an appraisal of the problems of nursing home facility residents and recommendations for improving nursing home facility care and treatment.

(3) The State Ombudsman Committee shall be composed of nine members appointed by the Governor, to include the following: One physician who includes in his practice elderly patients; one registered nurse; one nursing home administrator; one licensed pharmacist; one dietitian; two representatives who are, or represent, nursing home residents; one attorney; and one professional social worker. The Governor shall elicit nominations from related professional organizations. Except for the nursing home administrator, the registered nurse, and the licensed pharmacist, each member of the State Ombudsman Committee shall certify to having no association with a nursing home facility for reward or profit.

(4) All members shall serve for 2-year terms, except that at the time of first appointment four of the members shall be appointed to 2-year terms and four of the members shall be appointed to a 1-year term. A member may serve two consecutive terms. Any vacancy which occurs shall be filled by the Governor. The term of any member missing three consecutive regular meetings without cause shall be declared vacant.

(5) The State Ombudsman Committee shall elect from its second-year members a chairman for a term of 1 year. The chairman shall select a secretary from among the members. The secretary shall chair the committee in the absence of the chairman.

(6) The State Ombudsman Committee shall meet upon the call of the chairman, at least quarterly or more frequently as needed.

(7) Members shall receive no compensation but shall be reimbursed for per diem and travel expenses as provided for in s. 112.061.

(8) The State Ombudsman Committee is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from any adult protective services programs of the department as provided for under ss. 409.026 and 828.043.

History.—s. 26, ch. 75-233; s. 3, ch. 76-168; s. 7, ch. 77-401; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, and by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to those dates.

[1]400.307 District nursing home ombudsman committees; duties; membership.—

(1) There shall be at least one nursing home ombudsman committee in each of the districts of the department.

(2) The duties of the district ombudsman committee are:

(a) To serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a nursing home facility.

(b) To discover, investigate, and determine the existence of abuse and neglect in any nursing home facility and to use the procedures provided for in s. 827.09 when applicable.

(c) To elicit, receive, respond to, and resolve complaints made by, or on behalf of, nursing home residents.

(d) To review, for their effect on the rights of nursing home residents, all existing or proposed rules and regulations relating to nursing homes.

(e) To enter any nursing home facility, with or without prior notice, pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) To review Medicaid patients' personal property and money accounts pursuant to an investigation to obtain information regarding a specific complaint or problem.

(3) Each district ombudsman committee shall be composed of 12 members appointed by the Governor from the district, to include the following: One medical doctor whose practice includes a substantial number of geriatric patients; one registered nurse; one nursing home administrator; one licensed pharmacist; one dietitian; five nursing home residents or representative consumer advocates for nursing home residents; one attorney; and one professional social worker. The Governor shall elicit nominations from related professional organizations. Except for the nursing home administrator, pharmacist, and nurse, each member of the committee shall certify to having no association with a nursing home facility for reward or profit.

(4) All members shall serve 2-year terms, except that at the time of first appointment six of the members shall be appointed to 2-year terms and six of the members shall be appointed to 1-year terms. A member may serve two consecutive terms. Any vacancy which occurs shall be filled by the Governor. The term of any member missing three consecutive regular meetings without cause shall be declared vacant.

(5) The district ombudsman committee shall elect from its second-year members a chairman for a term of 1 year. The chairman shall select a secretary from among the members of the committee. The secretary shall chair the committee in the absence of the chairman.

(6) The district ombudsman committee shall meet upon the call of the chairman, at least once a month or more frequently as needed to handle emergency situations.

(7) A member of a district ombudsman committee shall receive no compensation but shall be reimbursed for travel expenses both within and outside

the county of residence in accordance with the provisions of s. 112.061.

(8) The district ombudsman committees are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the district ombudsman committees in providing requested information and agency representatives at committee meetings.

History.—s. 27, ch. 75-233; s. 3, ch. 76-168; s. 136, ch. 77-104; s. 8, ch. 77-401; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 2, ch. 78-393.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, and by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to those dates.

[1]400.311 Procedures for receiving complaints.—

(1) The State Ombudsman Committee shall establish state and district procedures for receiving complaints against a nursing home facility or its employee.

(2) These procedures shall be posted in full view in every nursing home facility. Every resident or representative of a resident shall receive, upon admission to a nursing home facility, a printed copy of the procedures of the state and the district ombudsman committees.

History.—s. 28, ch. 75-233; s. 3, ch. 76-168; s. 9, ch. 77-401; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.314 Investigation of complaints.—

(1) A district ombudsman committee shall investigate any complaint of a resident or resident's representative based on an action by an administrator or employee of a nursing home facility which might be:

(a) Contrary to law.

(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law.

(c) Based on a mistake of fact.

(d) Based on improper or irrelevant grounds.

(e) Unaccompanied by an adequate statement of reasons.

(f) Performed in an inefficient manner.

(g) Otherwise erroneous.

(2) In an investigation, both the state and district ombudsman committees have the authority to:

(a) Make inquiries and obtain information as is necessary to carry out the purposes of this act.

(b) Enter without notice to inspect the premises of a nursing home facility for purposes of investigating a specific complaint.

(c) Hold hearings.

History.—s. 29, ch. 75-233; s. 3, ch. 76-168; s. 10, ch. 77-401; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.317 Procedures for resolving a complaint.—

(1) Any complaint deemed valid and requiring remedial action by the district ombudsman committee shall be identified and brought to the attention of the nursing home administrator in writing. Upon receipt of such document, the administrator, in concurrence with the committee chairman, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming the committee may:

(a) Extend the target date if the committee has reason to believe such action would facilitate the resolution of the complaint.

(b) Make public the complaint, the committee's recommendations, and the response of the nursing home facility; however, in no case shall the names of individuals involved in the complaint be disclosed.

(c) Refer the complaint to the State Ombudsman Committee.

(2) Upon referral from the district ombudsman committee, the State Ombudsman Committee assumes the responsibility for the disposition of the complaint. If a nursing home facility fails to take action on a complaint found valid by the State Ombudsman Committee, the state committee may:

(a) Make public the complaint, the committee's recommendations, and the response of the nursing home facility; however, in no case shall the names of the individuals involved in the complaint be disclosed.

(b) Recommend to the department changes in rules and regulations for inspecting and licensing nursing home facilities.

(c) Refer the complaint to the state attorney for prosecution if there is reason to believe the nursing home facility or its employee is guilty of a criminal act.

(d) Recommend to the department that the nursing home no longer receive payments under the State Medical Assistance Program (Medicaid).

(e) Recommend that the Department of Health and Rehabilitative Services initiate procedures for revocation of license in accordance with chapter 120.

History.—s. 30, ch. 75-233; s. 3, ch. 76-168; s. 244, ch. 77-147; s. 11, ch. 77-401; s. 1, ch. 77-457; s. 19, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.321 Confidentiality.—

(1) All matters before the state or district nursing home ombudsman committees concerning abuse or denial of rights of an individual client of a nursing home facility shall be confidential and exempt from the provisions of chapter 119. All other matters before the committee shall be open to the public and subject to chapter 119.

(2) Members of any nursing home ombudsman committee shall not be required to testify in any court with respect to matters held to be confidential under s. 400.414 except as may be necessary to enforce the provisions of this act.

History.—ss. 31, 32, ch. 75-233; s. 3, ch. 76-168; s. 12, ch. 77-401; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]400.324 Immunity.—Any person making a complaint pursuant to this act who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

History.—s. 33, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]**400.327 Penalty.**—Anyone knowingly or willfully taking action against a person making a complaint under this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 34, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

400.33 Legislative intent.—It is the intent of the Legislature to encourage the development of programs for community-based care for the elderly as an alternative to institutionalization. The Legislature finds and declares that routine health care provided on an outpatient basis is one such program, the availability of which would fill an unmet need, improve the quality and quantity of health care available to elderly persons while minimizing the cost of such care, and reduce the incidence of unnecessary or premature institutionalization of elderly persons. The purpose of this act is to encourage the development of geriatric outpatient nurse clinics to make such services available. The Legislature intends that existing and available nursing facility treatment rooms be used for geriatric outpatient nurse clinics in order that the cost of such programs be kept low.

History.—s. 1, ch. 77-401.

400.331 Definitions.—As used in this act:

(1) "Geriatric patient" means any patient who is 60 years of age or older.

(2) "Geriatric outpatient nurse clinic" means a site for the provision of health care to geriatric patients on an outpatient basis, which is staffed by a registered nurse or by a physician's assistant.

(3) "Department" means the Department of Health and Rehabilitative Services.

(4) "Nursing facility" means a facility licensed under this part.

History.—s. 2, ch. 77-401.

400.332 Funds received not revenues for purpose of medical assistance program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the medical assistance program as set forth in s. 409.266.

History.—s. 4, ch. 77-401.

400.333 Evaluation and report.—

(1) The department shall evaluate the effectiveness of geriatric outpatient nurse clinics to determine:

(a) The feasibility and desirability of continuing to encourage the development of such clinics;

(b) The suitability of nursing facilities as the location for such clinics;

(c) The appropriateness of having such clinics conducted by registered nurses or physicians' assistants; and

(d) The impact of a rural or urban location on such clinics.

(2) This evaluation shall cover the period October 1, 1977, through September 30, 1978, and shall include the following items:

(a) A description of clinic facilities, equipment, personnel, and patient eligibility criteria;

(b) A summary of numbers and types of clients served, type of care provided, and cost per patient, including direct and indirect costs; and

(c) Such other factors as the department deems necessary for an accurate analysis of the costs and benefits associated with the establishment and operation of geriatric outpatient nurse clinics.

(3) The results of the evaluation shall be reported to the President of the Senate and the Speaker of the House of Representatives not later than January 1, 1979. The department shall report annually, in a like fashion, the ongoing experience of geriatric outpatient nurse clinics in the state, for as long as such reports are deemed appropriate by the department.

History.—s. 5, ch. 77-401.

PART II

ADULT CONGREGATE LIVING FACILITIES

400.401 Short title; purpose.—

(1) This act may be cited as the "Adult Congregate Living Facilities Act."

(2) The purpose of this act is to provide for the development, establishment, and enforcement of basic standards which will insure safe and adequate care of persons in adult congregate living facilities providing personal services.

History.—ss. 1, 2, ch. 75-233.

400.402 Definitions.—When used in this part, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the Secretary of the Department of Health and Rehabilitative Services.

(3) "Administrator" means an individual who has general administrative charge of an adult congregate living facility.

(4) "Adult congregate living facility," hereinafter referred to as "facility," means any institution, building or buildings, residence, private home, boarding home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal services for fewer than four adults shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services. This definition shall not apply to transient rentals as defined in s. 212.03 or to college dormitories.

(5) "Existing facility" means any facility in operation or under a construction or renovation contract prior to July 1, 1975.

(6) "New facility" means any facility constructed or renovated after June 30, 1975.

(7) "Personal services" means services in addition to housing and food service which include, but are not limited to: Personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, and any other related service which the department may define. Personal service does not include medical services.

History.—s. 3, ch. 75-233.

400.404 Facilities to be licensed; exemptions.—

(1) For the administration of this part, facilities to be licensed by the department shall include all adult congregate living facilities as defined in this part.

(2) The following shall be exempt from the provisions of this part:

(a) Any facility, institution, or other place operated by the federal government or any agency thereof.

(b) Any institution which offers its services primarily for medical treatment or surgery and is licensed by the state.

(c) Any facility licensed under part I.

History.—ss. 4, 5, ch. 75-233.

400.407 License required; fee, display.—

(1) It is unlawful to operate or maintain a facility without first obtaining from the department a license authorizing such operation.

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. A separate license shall not be required for separate buildings on the same grounds.

(3) The annual license fee required of a facility shall be determined by the department, but shall not exceed $100.

(4) Counties or municipalities applying for licenses under this act shall be exempt from the payment of license fees.

(5) The license shall be displayed in a conspicuous place inside the facility.

(6) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than that for which originally issued.

History.—s. 6, ch. 75-233; s. 8, ch. 79-12.

400.411 Application for license.—

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee.

(2) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part.

(3) If the applicant offers continuing care agreements as defined in chapter 651, proof shall be furnished that such applicant has obtained a certificate of authority as required for operation under that chapter. This provision shall not apply prior to 12 months from the date of the adoption of the rules by the Department of Insurance as contemplated by s. 651.101.

History.—s. 7, ch. 75-233; s. 3, ch. 77-323.

400.414 Denial, suspension, revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.

(2) Any of the following actions by a facility or its employee shall be grounds for action by the department against a facility:

(a) An intentional or negligent act materially affecting the health or safety of a resident of the facility.

(b) Misappropriation or conversion of the property of a resident of the facility.

(c) Violation of the provisions of this act or of any minimum standards or rules promulgated hereunder.

(3) The department shall be responsible for all investigations and inspections conducted pursuant to the provisions of this act.

History.—s. 8, ch. 75-233.

400.417 Expiration of license; renewal; conditional license or permit.—

(1) Licenses issued for the operation of a facility, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the department, and licenses shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this act and all rules promulgated hereunder. The facility shall file with the application satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part.

(2) Licensees against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue

a conditional permit for the duration of the judicial proceeding.

History.—s. 9, ch. 75-233.

400.421 Injunction proceedings authorized.—

(1) The department may institute injunction proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this act or any minimum standard, rule, or order issued or entered into pursuant thereto; or

(b) Terminate the operation of a facility where any of the following exist:

1. Failure to take preventive or corrective measures in accordance with any order of the department.

2. Failure to abide by any final order of the department once it has become effective and binding.

3. Violation of any provision of this act or of any rule or standard promulgated pursuant thereto, which violation constitutes an emergency requiring immediate action.

(2) Such injunctive relief may be temporary or permanent.

History.—s. 10, ch. 75-233.

400.424 Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed at the time of admission or prior thereto, between the facility and the resident or his designee or legal representative. Each party to the contract shall be provided with a duplicate original thereof, and the facility shall keep on file all such contracts. The facility shall not destroy or otherwise dispose of any such contract until 5 years after its expiration, or such longer period as may be provided in the rules of the department.

(2) Each contract shall contain express provisions specifically setting forth the services and accommodations to be provided by the facility, the rates or charges, and other matters which the parties deem appropriate. The purpose of any advance payment and a refund policy for such payment shall be covered in the contract.

(3) No contract, or any provision thereof, shall be construed to relieve any facility of any requirement or obligation imposed upon it by this act or by standards or rules in force pursuant thereto.

History.—s. 11, ch. 75-233.

400.427 Property and personal affairs of residents.—

(1) The admission of a resident to a facility and his presence therein shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident; nor shall such admission or presence confer on any of such persons any authority or responsibility for the personal affairs of the resident, except what may be necessary for the safe and orderly management of the facility or for the safety of the resident.

(2) A facility or owner, administrator, employee, or representative thereof may not act as the court-appointed guardian, trustee, or conservator for any resident of the facility or any of such resident's property.

(3) A facility, upon mutual consent with the resident, shall provide for the safekeeping in the facility of personal effects or funds of the resident not in excess of $100. A facility shall keep complete and accurate records of all such funds and personal effects received for safekeeping.

(4) Any funds or other property belonging to or due to a resident, or expendable for his account, which are received by a facility shall be trust funds which shall be kept separate from the funds and property of the facility and other residents, or shall be specifically credited to such resident. Such trust funds shall be used or otherwise expended only for the account of the resident. Upon request, but not more often than once every 3 months unless upon order of a court of competent jurisdiction, the facility shall furnish the resident and his guardian, trustee, or conservator, if any, a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. In any event, the facility shall furnish such statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property to the account of a resident shall also be entitled to receive such statement annually and upon the discharge or transfer of the resident.

History.—s. 12, ch. 75-233.

400.431 Closing of facility.—

(1) Whenever a facility voluntarily discontinues operation, it shall inform the department in writing at least 80 days prior to the discontinuance of operation. The facility shall also, at such time, inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the fact and the proposed time of such discontinuance. In the event a resident has no person to represent him, the facility shall be responsible for referral to an appropriate social service agency for placement.

(2) Immediately upon discontinuance of the operation of a facility, the owner shall surrender the license therefor to the department, and the license shall be canceled.

History.—s. 13, ch. 75-233.

400.434 Right of entry and inspection.—Any duly designated officer or employee of the department shall have the right to enter upon and into the premises of any facility licensed pursuant to this act, at any reasonable time, in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing same. Any application for a facility license or renewal thereof made pursuant to this act shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for

which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 14, ch. 75-233; s. 1, ch. 77-174.

400.437 Ad hoc committee on congregate living facilities.—

(1) An ad hoc committee shall be appointed by the secretary when major revisions are being considered for this act or for the rules and minimum standards implementing its provisions. The ad hoc committee shall assist the department in reviewing all rules, standards, and procedures and shall recommend changes as appropriate.

(2) The ad hoc committee shall be composed of at least 15 members which shall include the following:

(a) Five residents of facilities.

(b) Five owners or administrators of facilities.

(c) Five members representing the department.

(3) Members of the ad hoc committee shall receive no compensation but shall be reimbursed for per diem and travel expenses by the department in accordance with the provisions of s. 112.061.

History.—s. 15, ch. 75-233.

400.441 Rules establishing minimum standards.—Pursuant to the intention of the Legislature to provide safe and sanitary facilities, the department shall promulgate, publish, and enforce rules to implement the provisions of this act, which shall include reasonable and fair minimum standards in relation to:

(1) The maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, lighting, ventilation, and other housing conditions, which will insure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection suitable to the size of the structure.

(2) The number and qualifications of all personnel having responsibility for the care of residents.

(3) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will insure the health and comfort of residents.

(4) The care and maintenance of residents.

History.—s. 16, ch. 75-233.

400.444 Construction and renovation; requirements.—The requirements for the construction and renovation of a facility shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled, and the state minimum building code.

History.—s. 17, ch. 75-233; s. 3, ch. 79-152.

400.447 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, personal services as defined in this act, without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

History.—s. 18, ch. 75-233.

400.451 Existing facilities to be given reasonable time to comply with rules and standards.— Any facility as defined in this act which is in operation on July 1, 1975, or at the time of promulgation of any applicable rules or standards adopted pursuant to this act, may be given a reasonable time, not to exceed 6 months, within which to comply with such rules and standards.

History.—s. 19, ch. 75-233.

PART III

HOME HEALTH AGENCIES

400.461 Short title; purpose.—

(1) This act shall be known and may be cited as the "Home Health Services Act."

(2) The purpose of this act is to provide for the development, establishment, and enforcement of basic standards which will insure the safe and adequate care of persons receiving health services in their own homes.

History.—ss. 36, 37, ch. 75-233.

400.462 Definitions.—When used in this part, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Home health agency," hereinafter referred to as "agency," means any public agency or private organization, or a subdivision of such an agency or organization, whether operated for profit or not, which provides home health services.

(3) "Home health services," hereinafter referred to as "services," means health and medical services and medical supplies furnished to an individual by a home health agency or by others under arrange-

ments with the agency, on a visiting basis, in a place of residence used as an individual's home. Such services may include, but are not limited to, the following:

(a) Part-time or intermittent nursing care.

(b) Physical, occupational, or speech therapy.

(c) Medical social services, homemaker services, home health aide services, and nutritional guidance.

(d) Medical supplies, other than drugs and biologicals prescribed by a physician, and the use of medical appliances.

History.—s. 38, ch. 75-233.

400.464 Agencies to be licensed.—Any agency providing home health services as defined in this act shall be licensed by the department to operate in this state. However, any agency or organization operated by an agency of the federal government shall be exempt from the provisions of this act.

History.—s. 39. ch. 75-233.

400.467 License required; fee; display.—

(1) It is unlawful to operate an agency without first obtaining from the department a license authorizing such operation.

(2) The annual license fee required of an agency shall be in an amount determined by the department but shall not exceed $100. However, counties or municipalities applying for licenses under this part shall be exempt from the payment of license fees.

(3) The license shall be displayed in a conspicuous place inside the agency and shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall a license be valid for any agency other than that for which originally issued.

History.—s. 40, ch. 75-233.

400.471 Application for license.—

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee.

(2) The applicant shall file with the application satisfactory proof that the agency is in compliance with this act and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the agency in accordance with the requirements of this act.

(3) The department shall not issue a license to a home health agency which fails to receive a certificate of need under the provisions of ss. 381.493-381.497.

History.—s. 41, ch. 75-233; s. 7, ch. 77-400.

400.474 Denial, suspension, revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.

(2) Any of the following actions by an agency or its employee shall be grounds for action by the department against an agency:

(a) Violation of provisions of this act or of any minimum standards or rules promulgated hereunder.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

History.—s. 42. ch. 75-233.

400.477 Expiration of license; renewal; conditional license or permit.—

(1) Licenses issued for the operation of an agency, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department, and licenses shall be renewed if the applicant has first met the requirements established under this act and all rules promulgated hereunder. The agency shall file with the application satisfactory proof that the agency is in compliance with this act and all rules and minimum standards promulgated hereunder and satisfactory proof of financial ability to operate and conduct the agency in accordance with the requirements of this act.

(2) Agencies against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

History.—s. 43, ch. 75-233.

400.481 Injunction proceedings authorized.—The department may institute injunction proceedings in a court of competent jurisdiction when violation of the provisions of this act or of any minimum standards or rules promulgated hereunder constitutes an emergency affecting the immediate health and safety of a patient.

History.—s. 44, ch. 75-233.

400.484 Right of inspection.—Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant thereto. The right of inspection shall also extend to any agency which the department has reason to believe is being operated as an agency without a license, but no such inspection of any agency shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from a circuit court authorizing same. Any application for an agency license or renewal thereof made pursuant to this act shall constitute permission for any inspection of the agency for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 45, ch. 75-233.

400.487 Establishment and review of plan of treatment.—

(1) A plan of treatment shall be established for each patient receiving care or treatment provided by a licensed nurse or by a physical, occupational, or speech therapist, by the physician who is responsible for the care of the patient. The original plan of treatment shall be signed by the physician and reviewed

by the physician in consultation with agency personnel involved in providing services to the patient, at such intervals as the severity of the patient's illness requires, but in any instance, at least every 2 months.

(2) Each patient shall be provided, upon request and prior notification of the physician responsible for the care of the patient, a copy of the plan of treatment established and maintained for that patient by the home health agency.

History.—s. 46, ch. 75-233.

400.491 Clinical records.—The home health agency shall maintain for each patient a clinical record which includes the services the agency provides directly and those provided through arrangement with another agency. Such records shall contain pertinent past and current medical, nursing, social and other therapeutic information, the plan of treatment, and other such information as is necessary for the safe and adequate care of the patient. When home health services are terminated, the record shall show the date and reason for termination.

History.—s. 47, ch. 75-233.

400.494 Information confidential.—Information received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient without the written consent of that patient or his guardian.

History.—s. 48, ch. 75-233.

400.497 Rules establishing minimum standards.—Pursuant to the intent of the Legislature to provide safe and adequate home health services, the department shall promulgate, publish, and enforce rules to implement the provisions of this act within 90 days of the effective date of this act, which shall include reasonable and fair minimum standards in relation to:

(1) Scope of services to be provided.

(2) The qualifications and minimum training requirements of all agency personnel.

(3) Procedures for administering drugs and biologicals.

(4) The desirability and practicality of accepting patients for services.

(5) Insuring that the services provided by a home health agency are in accordance with the plan of treatment established for each patient.

History.—s. 49, ch. 75-233.

400.501 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, home health services as defined in this act without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for an agency other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

History.—s. 50, ch. 75-233.

400.504 Agencies to be given reasonable time to comply with rules and standards.—Any agency as defined in this act which is in operation as of July 1, 1975, or at the time of promulgation of any applicable rules or standards adopted pursuant to this act may be given a reasonable time, not to exceed 1 year from the date of publication, within which to comply with such rules and standards and obtain a license. Any home health agency operating and providing services in the state and having a provider number issued by the U. S. Department of Health, Education, and Welfare on or before April 30, 1976, shall not be denied a license on the basis of not having received a certificate of need.

History.—s. 51, ch. 75-233; s. 10, ch. 76-201.

PART IV

ADULT DAY CARE CENTERS

400.55 Purpose.—The purpose of this part is to develop, establish, and enforce basic standards for adult day care centers in order to assure that a protective environment and preventive, remedial, and restorative services are provided.

History.—s. 1, ch. 78-336.

400.551 Definitions.—When used in this part, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Owner/operator" means any individual who has general administrative charge of an adult day care center.

(3) "Adult day care center," hereinafter referred to as "center," means any building or buildings, or other place, whether operated for profit or not, which undertakes through its ownership or manage-

ment to provide, for a part of the 24-hour day, basic services to three or more adults, not related to the owner/operator by blood or marriage, who require such services.

(4) "Basic services" shall include, but not be limited to, providing a protective setting, social activities, leisure-time activities, self-care training, rest, nutritional services, and, when possible, speech and physical therapy.

(5) "Supportive and optional services" include, but are not limited to, direct transportation services, legal consultation, consumer education, and referrals for follow-up services.

(6) "Participant and program data" shall include, but not be limited to, number of participants, frequency of participation, distance traveled, hours of operation, number of referrals from a center to other programs, facilities or institutions, and incidence of illness.

History.—s. 2, ch. 78-336.

400.552 Centers to be licensed.—For the administration of this part, facilities to be licensed by the department shall include all adult day care centers as defined in this part which are not otherwise exempt as provided in s. 400.553.

History.—s. 3, ch. 78-336.

400.553 Exemptions.—The following shall be exempt from the provisions of this part:

(1) Any facility, institution, or other place operated by the federal government or any agency thereof.

(2) Any federally funded congregate meals program.

(3) Any adult congregate living facility licensed by the state.

(4) Any nursing home facility licensed by the state.

History.—s. 4, ch. 78-336.

400.554 License required; fee; exemption; display.—

(1) It is unlawful to operate or maintain a center without first obtaining from the department a license authorizing such operation. The department is responsible for licensing adult day care centers in accordance with the provisions of this part.

(2) Separate licenses shall be required for centers maintained on separate premises, even though operated under the same management. Separate licenses shall not be required for separate buildings on the same grounds.

(3) The annual license fee required of a center shall be determined by the department, but shall not exceed $75.

(4) County-operated or municipally operated centers applying for licensure under this part shall be exempt from the payment of license fees.

(5) The license shall be displayed in a conspicuous place inside the center.

(6) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.

History.—s. 5, ch. 78-336.

400.555 Application for license.—

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee unless the applicant is exempt from payment of the fee as provided in s. 400.554(4).

(2) The applicant for licensure shall furnish satisfactory proof of financial ability to operate and conduct the center in accordance with the requirements of this part.

(3) The applicant for licensure shall furnish proof of adequate liability insurance coverage.

History.—s. 6, ch. 78-336.

400.556 Denial, suspension, revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.

(2) Either of the following actions by a center or its employee shall be grounds for action by the department against a center or its employee:

(a) An intentional or negligent act materially affecting the health or safety of participants in the center.

(b) A violation of the provisions of this part or of any standards or rules promulgated hereunder.

(3) The department shall be responsible for all investigations and inspections conducted pursuant to the provisions of this part.

History.—s. 7, ch. 78-336.

400.557 Expiration of license; renewal; conditional license as permit.—

(1) A license issued for the operation of a center, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. At least 60 days prior to the expiration date, an application for renewal shall be submitted to the department. Licenses shall be renewed, upon the filing of an application on forms furnished by the department, if the applicant has first met the requirements established under this part and all rules promulgated hereunder. The center shall file with the application satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part.

(2) Licensees against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

History.—s. 8, ch. 78-336.

400.558 Injunction proceedings authorized.—

(1) The department may institute injunction proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this part or any standard, rule, or order issued or entered into pursuant thereto; or

(b) Terminate the operation of a center where any of the following exist:

1. Failure to take preventive or corrective measures in accordance with any order of the department.

2. Failure to abide by any final order of the department once it has become effective and binding.

3. Violation of any provision of this part or of any rule or standard promulgated pursuant thereto, which violation constitutes an emergency requiring immediate action.

(2) Such injunctive relief may be a temporary or permanent injunction.

History.—s. 9, ch. 78-336.

400.559 Closing of center.—

(1) Whenever a center voluntarily discontinues operation, it shall inform the department in writing at least 30 days prior to the discontinuance of operation. The center shall also, at such time, inform each participant of the fact and the proposed time of such discontinuance.

(2) Immediately upon discontinuance of the operation of a center, the owner/operator shall surrender the license therefor to the department and the license shall be canceled.

History.—s. 10, ch. 78-336.

400.56 Right of entry and inspection.—Any duly designated officer or employee of the department shall have the right to enter upon and into the premises of any center licensed pursuant to this part, at any reasonable time, in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe are being operated or maintained as a center without a license, but no such entry or inspection of any premises shall be made without the permission of the owner/operator in charge thereof unless a warrant is first obtained from the circuit court authorizing same. Any application for a center license or renewal made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 11, ch. 78-336.

400.561 Ad hoc committee on adult day care centers.—

(1) An ad hoc committee shall be appointed by the secretary when major revisions are being considered for this part or for the rules and standards implementing its provisions. The ad hoc committee shall assist the department in reviewing all rules, standards, and procedures and shall recommend changes as appropriate.

(2) The ad hoc committee shall be composed of at least 11 members which shall include the following:

(a) Four owners/operators of centers.

(b) Four members representing the department.

(c) Three members of the general public.

(3) Members of the ad hoc committee shall receive no compensation, but shall be reimbursed for per diem and travel expenses by the department in accordance with the provisions of s. 112.061.

(4) In the year following July 1, 1978, the ad hoc committee may convene as often as is necessary for the performance of its duties.

History.—s. 12, ch. 78-336.

400.562 Rules establishing standards.—

(1) Pursuant to the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the department, within 1 year of July 1, 1978, shall promulgate and publish rules to implement the provisions of this part, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county, or city ordinances shall be resolved in favor of those having statewide effect. Such standards shall relate to:

(a) The maintenance of centers, not in conflict with the provisions of chapter 553, and based upon the size of the structure and number of participants, relating to plumbing, heating, lighting, ventilation, and other building conditions, including adequate meeting space, which will insure the health, safety, and comfort of participants and protection from fire hazard.

(b) The number and qualifications of all personnel having responsibility for the care of participants.

(c) All sanitary conditions within the center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will insure the health and comfort of participants.

(d) Programs and basic services promoting and maintaining the health of participants and encouraging leisure and recreational activities, interaction, and communication among participants.

(e) Transportation and other supportive and optional services.

(f) Data and information relative to participants and programs.

(2) Enforcement of standards pursuant to the promulgation of rules under this part shall not take effect until 6 months following the promulgation of such rules.

History.—ss. 13, 18, ch. 78-336.

400.563 Construction and renovation; requirements.—The requirements for the construction and the renovation of a center shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled, and the state minimum building code.

History.—s. 14, ch. 78-336; s. 4, ch. 79-152.

400.564 Prohibited acts; penalty for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public, in any way, by any medium whatever, basic services as defined in this part, without obtaining a valid current license. It is

unlawful for any holder of a license issued pursuant to the provisions of this part to advertise or hold out to the public that it holds a license for a center other than that for which it actually holds a license.

(2) Any person convicted of violating the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

History.—s. 15, ch. 78-336.

400.565 Existing centers to be given reasonable time to comply with rules and standards.—Any center as defined in this part which is in operation on July 1, 1978, or at the time of promulgation of any applicable rules or standards adopted pursuant to this part, may be given a reasonable time, not to exceed 6 months from the promulgation of such rules, within which to comply with such rules and standards.

History.—s. 16, ch. 78-336.

PART V

HOSPICES

400.601 Definitions.—When used in this act, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Hospice" or "hospice program" means an autonomous, centrally administered nonprofit, as defined in chapter [1]617, medically directed, nurse-coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and his family. It employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available 24 hours a day, 7 days a week and is provided on the basis of need regardless of inability to pay.

(3) "Hospice care team" means an interdisciplinary team which is a working unit composed by the integration of the various helping professions and lay persons providing hospice care. Such team shall, as a minimum, consist of a physician licensed pursuant to chapter 458 or chapter 459, a nurse licensed pursuant to chapter 464, a social worker, [2]a member of the clergy or a counselor, and volunteers.

(4) "Hospice services" means items and services furnished to an individual by a hospice, or by others under arrangements with such a program, in a place of temporary or permanent residence used as the terminally ill individual's home for the purpose of maintaining that individual at home; or, if the terminally ill individual needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the inpatient facility of the hospice program.

(5) "Medically directed" means that the delivery of medical care is directed by a hospice physician licensed pursuant to chapter 458 or chapter 459 who is employed by the hospice for the purposes of providing ongoing palliative care as a participating care giver on the hospice care team.

(6) "Palliative care" means the reduction or abatement of pain and other troubling symptoms by appropriate coordination of all elements of the hospice care team needed to achieve needed relief of distress.

(7) "Patient" means the terminally ill individual receiving hospice services.

(8) "Terminally ill" refers to a medical prognosis of limited expected survival, of 1 year or less at the time of referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone outside the context of symptom control are no longer appropriate.

History.—s. 1, ch. 79-186.

[1]Note.—Reference to ch. 617 was substituted for "417" by the editors to correct an obvious typographical error.

[2]Note.—The words "a member of the" were inserted by the editors.

400.602 Licensure required; display, transferability of license.—

(1) On or after July 1, 1980, no public or private agency or person shall establish, conduct, or maintain a hospice program or organization providing hospice services or hold itself out to the public as a hospice without first obtaining a license therefor from the department.

(2) The license shall be displayed in a conspicuous place inside the hospice program office; shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued; and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall a license be valid for any hospice other than that for which originally issued.

History.—s. 3, ch. 79-186.

400.603 Certificate-of-need holders; time for compliance with requirements for licensure.—Any public or private agency or person who has obtained a certificate of need for a hospice program but who, by July 1, 1980, will only have the hospice home-care program operational, shall be licensed as a hospice under this act; however, if by January 1, 1981, such hospice program has not fully implement-

ed the homelike inpatient hospice care and outpatient hospice care portions of the hospice program, the license will immediately be revoked.

History.—s. 4, ch. 79-186.

400.604 Exemptions.—Services provided by a hospital, nursing home, or other health care facility, health care provider, or care giver shall not be considered to constitute a hospice program of care unless such facility, health care provider, or care giver establishes a free-standing or distinct hospice unit, staff, facility, and services to provide hospice home care, homelike inpatient hospice care, and outpatient hospice care under a separate and distinct administrative authority of a hospice program.

History.—s. 5, ch. 79-186.

400.605 Administration; forms; fees; rules; fines.—The administration of this act is vested in the Department of Health and Rehabilitative Services, which shall:

(1) Prepare and furnish all forms necessary under the provisions of this act in relation to applications for licensure or renewals thereof.

(2) Collect in advance (and the applicant so served shall pay to it in advance) at the time of filing an application for a license or at the time of renewal of a license a fee of $100.

(3) Adopt rules, within the standards of this act, necessary to effect the purposes of this act.

(4) Impose administrative fines pursuant to this act, not to exceed $1,000 per fine, for any violation of the provisions of this act.

History.—s. 2, ch. 79-186.

400.606 License; application; renewal; conditional license or permit.—

(1) An application shall be filed on a form prescribed by the department and shall be accompanied by the appropriate license fee as well as satisfactory proof that the hospice is in compliance with this act and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the hospice in accordance with the requirements of this act.

(2) A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department, and the license shall be renewed if the applicant has first met the requirements established under this act and all rules promulgated hereunder and has provided the information described in subsection (1) in addition to the application.

(3) A hospice program against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

(4) The department shall not issue a license to a hospice which fails to receive a certificate of need under the provisions of ss. 381.493-381.497, as amended by ch. 79-186, Laws of Florida.

History.—s. 6, ch. 79-186.

400.607 Denial, suspension, or revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine, which shall not exceed $1,000 per violation, in the manner provided in chapter 120.

(2) Any of the following actions by a hospice program or any of its employees shall be grounds for action by the department against a hospice program:

(a) Violation of provisions of this act or of any standards or rules promulgated hereunder.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

History.—s. 7, ch. 79-186.

400.608 General requirements for hospice programs.—

(1) A hospice care program shall coordinate its services with those of the patient's primary or attending physicians.

(2) A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice program may contract out for some elements of its services for a patient and family; however, direct patient care must be maintained with the patient and the hospice care team so that overall coordination of services, which is responsive and appropriate to the patient and family needs, can be maintained by the hospice care team.

(3) A hospice care team shall be responsible for inpatient, outpatient, and home-care aspects of care.

(4) Any inpatient facility shall be under the direct and sole administration of the hospice program.

(5) Hospice care shall provide symptom control provided by a hospice care team skilled in medical and psychosocial management of distressing signs and symptoms.

(6) The hospice shall have a medical director, licensed pursuant to chapter 458 or chapter 459, who shall have responsibility for medical direction of the care and treatment of patients and their families rendered by the hospice care teams.

(7) Hospice care will be available 24 hours a day, 7 days a week.

(8) A hospice program shall have a bereavement program which shall provide a continuum of supportive and therapeutic services for the family, including formal and informal individual, family, and group treatment modalities used as needed to support the bereaved family.

(9) A hospice program shall foster independence of the patient and his family by providing training, encouragement, and support so that the patient and family can care for themselves as much as possible.

(10) The unit of care in a hospice program shall be the patient and family.

(11) A hospice program will provide a continuum of care and a continuity of care givers throughout the length of care for the patient and to the family through the bereavement period.

(12) A hospice program of care shall not impose

the dictates of any value or belief system on its patients and their families.

(13) Admission to a hospice program shall be made by a physician licensed pursuant to chapter 458 or chapter 459 and shall be dependent on the expressed request and informed consent of the patient and family.

(14) Accurate and current records shall be kept on all patients and their families.

(15) A professional nurse licensed pursuant to chapter 464 shall be employed on a full-time basis by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice care team.

History.—s. 8, ch. 79-186.

400.609 Components of hospice programs of care.—Each hospice program shall consist of three components or modes of care which afford the terminally ill individual and the family of the terminally ill individual a range of service delivery which can be tailored to specific needs of the patient and family at any point in time. These three components are:

(1) HOSPICE HOME CARE.—This form of delivery of services shall be the primary form of care. The services of the hospice home care program shall be of the highest quality and shall be provided by the interdisciplinary, interactive qualified hospice team members.

(2) INPATIENT HOSPICE CARE.—The inpatient facility is a backup to hospice home care and shall primarily be used only for short-term stays. The hospice facility shall be designed in such a manner to provide comfort, warmth, safety, privacy, and dignity for the terminally ill patient and the family. Every possible accommodation shall be made to avoid creating an institutional atmosphere. The facility shall provide as homelike an atmosphere as practicable. There shall be a continuum of care and a continuity of care givers between the hospice home program and the inpatient aspect of care to the extent practicable.

(3) OUTPATIENT HOSPICE CARE.—The hospice outpatient service shall meet the same standards of quality as applied to inpatient care and hospice home care, considering the inherent differences between inpatients and outpatients with respect to their needs and modes of treatment. The hours for daily operation and the location of the place where the services are provided shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

History.—s. 9, ch. 79-186.

400.610 Administration and management of a hospice program.—

(1) A hospice program shall have a clearly defined organized governing body, consisting of a minimum of seven persons who are representative of the local community at large, which has autonomous authority for the conduct of the hospice program.

(2) The hospice program shall have a director, administrator, or manager who shall be responsible for the overall coordination and administration of the hospice program.

History.—s. 10, ch. 79-186.

400.611 Interdisciplinary records of care.—An up-to-date, interdisciplinary record of care being given and patient and family status shall be kept. Records shall contain pertinent past and current medical, nursing, social, and other therapeutic information and such other information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

History.—s. 11, ch. 79-186.

400.612 Right of inspection.—Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant hereto. The right of inspection shall also extend to any hospice program which the department has reason to believe is being operated as a hospice without a license, but no such inspection of any hospice shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from a circuit court authorizing same. Any application for a license or renewal thereof made pursuant to this act shall constitute permission for any inspection of the hospice for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 12, ch. 79-186.

400.613 Patient record information confidential.—Information received by persons employed by, or providing services to, a hospice or received by the licensing agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient's guardian, or the patient's family.

History.—s. 13, ch. 79-186.

400.614 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public in any way by any medium whatever to be a hospice as defined in this act without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a hospice program other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of a continuing violation shall be considered a separate offense.

History.—s. 14, ch. 79-186.

400.615 Rules.—The department shall, by January 1, 1980, promulgate applicable rules and standards in furtherance of the purpose of this act and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(1) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records; and

(4) Provision for contractual arrangements for professional and ancillary hospice services.

History.—s. 15, ch. 79-186.

CHAPTER 401

MEDICAL TELECOMMUNICATIONS AND TRANSPORTATION

PART I EMERGENCY TELECOMMUNICATION SYSTEMS (ss. 401.013-401.027)

PART II EMERGENCY MEDICAL SERVICES GRANTS (ss. 401.101-401.121)

PART III MEDICAL TRANSPORTATION SERVICES (ss. 401.21-401.47)

PART I

EMERGENCY TELECOMMUNICATION SYSTEMS

401.013 Legislative intent.—It is the intention and purpose of the Legislature that a statewide system of regional emergency medical telecommunications be developed whereby maximum use of existing radio channels is achieved in order to more effectively and rapidly provide emergency medical service to the general population. To this end, all emergency medical service entities within the state are directed to provide the Division of Communications of the Department of General Services with any information the division requests for the purpose of implementing the provisions of s. 401.015, and such entities shall comply with the resultant provisions established pursuant to this part.

History.—s. 1, ch. 73-254.

401.015 Statewide regional emergency medical telecommunication system.—The Division of Communications of the Department of General Services is authorized and directed to develop a statewide system of regional emergency medical telecommunications. For the purpose of this part, the term telecommunications shall mean those voice, data, and signaling transmissions and receptions between emergency medical service components, including, but not limited to: ambulances; rescue vehicles; hospitals or other related emergency receiving facilities; emergency communications centers; physicians and emergency medical personnel; paging facilities; law enforcement and fire protection agencies; and poison control, suicide, and disaster control centers. In formulating such a system, the division shall divide the state into appropriate regions and shall develop a program which shall include, but not be limited to, the following provisions:

(1) A requirements provision, which shall state the telecommunications requirements for each emergency medical entity comprising the region.

(2) An interfacility communications provision, which shall depict the telecommunications interfaces between the various medical service entities which operate within the region and state.

(3) An organizational layout provision, which shall include each emergency medical entity and the number of radio operating units (base, mobile, handheld, etc.) per entity.

(4) A frequency allocation and use provision, which shall include on an entity basis each assigned and planned radio channel and the type of operation (simplex, duplex, half duplex, etc.) on each channel.

(5) An operational provision, which shall include dispatching, logging, and operating procedures pertaining to telecommunications on an entity basis and regional basis.

(6) An emergency medical service telephone provision, which shall include the telephone and the numbering plan throughout the region for both the public and interface requirements.

History.—s. 2, ch. 73-254.

401.018 System coordination.—

(1) The statewide system of regional emergency medical telecommunications shall be developed by the Division of Communications, which division shall be responsible for the implementation and coordination of such system into the state telecommunications plan. The division shall adopt any necessary rules and regulations for implementing and coordinating such a system.

(2) The Division of Communications shall be designated as the state frequency coordinator for the special emergency radio service.

History.—s. 3, ch. 73-254.

401.021 System director.—The director of the Division of Communications is designated as the director of the statewide telecommunications system of the regional emergency medical service and, for the purpose of carrying out the provisions of this part, is authorized to coordinate the activities of the telecommunications system with other interested state, county, local, and private agencies.

History.—s. 4, ch. 73-254.

401.024 System approval.—From July 1, 1973, no emergency medical telecommunications system shall be established or present systems expanded without prior approval of the Division of Communications.

History.—s. 5, ch. 73-254.

401.027 Federal assistance.—The director of the Division of Communications is authorized to apply for and accept federal funding assistance in the development and implementation of a statewide emergency medical telecommunications system.

History.—s. 6, ch. 73-254.

PART II

EMERGENCY MEDICAL SERVICES GRANTS

401.101 Short title.—This part shall be known and may be cited as the "Florida Emergency Medical Services Grant Act of 1973."

History.—s. 1, ch. 73-262.

401.104 Legislative intent.—It is the legislative intent that emergency medical services are essential to the health and well-being of all citizens and that private and public expenditures for adequate emergency medical services represent a constructive and essential investment in the future of the state and our democratic society. A major impediment to the provision of adequate and economic emergency medical services to all citizens is the inability of governmental and private agencies within a service area to respond cooperatively in order to finance the systematic provision of such services. This grant program is established to encourage and assist such cooperative efforts.

History.—s. 2, ch. 73-262.

401.107 Definitions.—As used in this part, unless the context clearly requires otherwise:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Local agency" means the board of county commissioners of the various counties in the state.

(3) "Emergency medical services" means the provision of medical care and transportation to sick, injured, or otherwise incapacitated persons on the streets, highways, waterways, or airways of this state.

History.—s. 3, ch. 73-262; s. 245, ch. 77-147.

401.111 Emergency medical services grant program; authority.—The Department of Health and Rehabilitative Services is hereby authorized to make grants to local agencies in accordance with any agreement entered into pursuant to this part. These grants shall be designed to assist said agencies in providing emergency medical services. The cost of administering this program shall be paid by the department from funds appropriated to it.

History.—s. 4, ch. 73-262; s. 246, ch. 77-147.

401.113 Department; powers and duties.—Grants made under the provisions of this part shall be contingent upon the local agency providing a sum equal to the grant amount. In addition, grants shall be disbursed in accordance with the conditions set forth in s. 401.117 and under such terms and subject to such conditions as the department may establish. The appropriation for this grant program shall be divided into two parts with 60 percent of the available appropriation used to fund applications from local agencies in counties with less than 50,000 residents while the remaining 40 percent shall be used to fund applications from local agencies in counties with more than 50,000 residents. An application from more than one local agency for a joint program shall qualify the applicants to receive funds from their category individually or from the population category of their combined resident population. Resident population shall be determined by the latest official state estimate prepared pursuant to s. 23.019. If, after 9 months of any fiscal year, the applications in either category do not equal or exceed the amount of money allocated to that category, the remainder of the funds may be applied for by any applicant.

History.—s. 5, ch. 73-262; s. 1, ch. 77-174.
cf.—s. 11.031 Official census.

401.117 Grant agreements; conditions.—The Department of Health and Rehabilitative Services shall use the following guidelines in developing the procedures for grant disbursement:

(1) The need for emergency medical services and the requirements of the population to be served.

(2) All emergency vehicles and attendants must conform to state standards established by law or regulation of the department.

(3) All vehicles shall contain minimum equipment and supplies as required by law or regulation of the department.

(4) All vehicles shall have at a minimum a direct communications linkup with the operating base and hospital designated as the primary receiving facility.

(5) Emphasis shall be accorded to applications that contain one or more of the following provisions:

(a) Services provided on a county, multicounty, or areawide basis.

(b) A single provider, or a coordinated provider, method of delivering services.

(c) Coordination of all communication links, including police, fire, emergency vehicles, and other related services.

History.—s. 6, ch. 73-262; s. 247, ch. 77-147.

401.121 Rules and regulations.—The department is authorized to make rules and regulations necessary to carry out the purposes of this part, including funds and assistance to nonprofit volunteer ambulance organizations desiring to comply with the Florida Emergency Medical Services Act of 1973.

History.—s. 7, ch. 73-262.

PART III

MEDICAL TRANSPORTATION SERVICES

[1]**401.21 Short title.**—Sections 401.21-401.47 shall be known and may be cited as the "Florida Emergency and Nonemergency Medical Services Act."

History.—s. 1, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 3, 10, ch. 79-280.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**401.23 Definitions.**—As used in this act, unless the context clearly indicates otherwise:

(1) "Ambulance" means any private or publicly owned land, air, or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, air, land, or water transportation of persons who are in need of emergency medical attention.

(2) "Emergency medical technician (EMT)" means any person who possesses a valid basic emergency medical technician's certificate issued pursuant to the provisions of this act.

(3) "Ambulance driver" means any person who possesses a valid emergency ambulance driver's certificate issued pursuant to the provisions of this act.

(4) "License" means any authorization to provide ambulance or nonemergency medical transportation services issued pursuant to the provisions of this act.

(5) "Permit" means any authorization issued pursuant to the provisions of this act for a vehicle to be operated as an ambulance or as a nonemergency medical transportation vehicle.

(6) "Certificate" means any authorization issued pursuant to the provisions of this act to a person to act as an emergency medical technician, an emergency ambulance driver, or a paramedic.

(7) "Department" means the Department of Health and Rehabilitative Services.

(8) "Secretary" means the secretary of Health and Rehabilitative Services.

(9) "Paramedic" means a person certified by the department to administer advanced life-support techniques, based on accepted national standards.

(10) "Responsible supervision" means direct physician supervision through two-way voice communication or, when such voice communication is unavailable, through established standing orders, developed and supervised by a licensed physician.

(11) "Established standing orders" means written orders, developed and supervised by a licensed physician, outlining the steps to be followed for handling a particular medical situation or resolving a particular medical problem.

(12) "Advanced life support" means treatment of life-threatening medical emergencies through the use of techniques such as intubation, drugs, intravenous fluids, telemetry, and cardiac defibrillation, by a qualified person.

(13) "Physician" means a physician licensed under the provisions of chapter 458 or chapter 459.

(14) "Advanced life-support services/fire rescue" means any fire department which provides advanced life-support services, but which does not routinely transport those [2]persons receiving such services.

(15) "Nonemergency medical transportation vehicle" means any privately or publicly owned land, air, or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, air, land, or water transportation of persons with nonemergency conditions requiring specialized transportation, including [3]a vehicle operated by a wheelchair ambulance service company.

History.—s. 3, ch. 73-126; s. 3, ch. 76-168; s. 248, ch. 77-147; s. 1, ch. 77-347; s. 1, ch. 77-457; ss. 1, 4, 10, ch. 79-280.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—The word "persons" was inserted by the editors.

[3]**Note.**—The words "a vehicle operated by a" were inserted by the editors.

[1]**401.24 Emergency and nonemergency medical transportation services; state plan.**—The department is responsible for the improvement and regulation of emergency and nonemergency medical transportation services. In addition to the duties otherwise imposed by this act, it shall develop and periodically revise a comprehensive state plan for emergency and nonemergency medical transportation services. The state plan shall include, but not be limited to:

(1) Procedures for facility and system planning.

(2) Requirements for the operation and coordination of ambulances, nonemergency transportation vehicles, and other medical care components.

(3) The definition of areas of responsibility for regulation and planning.

History.—s. 4, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 10, ch. 79-280.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.25 Emergency or nonemergency medical transportation service license.—

(1) Every person, firm, corporation, association, or governmental entity owning or acting as agent for the owner of any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of transporting sick, injured, handicapped, or otherwise incapacitated persons upon the streets, highways, waterways, or airways of this state shall submit a written application to the Department of Health and Rehabilitative Services. Hospitals transporting their own patients in their own vehicles are exempt from this section if they do not charge a fee for this service.

(2) The application shall include:

(a) The name and business address of the operator and owner of the ambulance service, nonemergency medical transportation service, proposed ambulance service, or proposed nonemergency medical transportation service.

(b) The name under which the applicant will operate.

(c) A list of the names and addresses of all officers, directors, and shareholders.

(d) A description of each vehicle to be used, including the make, model, year of manufacture, mileage, motor and chassis numbers, passenger capacity, size, and gross weight of each vehicle; state or federal aviation or marine registration number where applicable; and the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant's vehicle or vehicles.

(e) The location and description of each place from which the emergency or nonemergency medical transportation service will operate.

(f) A statement reasonably describing the geographic area or areas to be served by the applicant.

(g) Such other information as the department deems reasonable and necessary.

(3) The department shall issue a license for operation within 60 days of the filing of the application to any applicant complying with the following requirements:

(a) The applicant has paid the fees required by s. 401.34.

(b) The ambulances, equipment, vehicles, drivers, attendants, and services meet the requirements of this act, including appropriate rules and regulations.

(c) The applicant has furnished evidence of adequate insurance coverage for claims arising out of injury or death of persons and damage to the property of others resulting from any cause for which the owner of said business or service would be liable. The applicant shall provide insurance in such sums and under such terms as required by the department.

(d) The applicant has obtained a certificate of public convenience and necessity from the county commission in each county in which the applicant will operate.

(4) The department is authorized to suspend or revoke a license at any time if it determines that the licensee has failed to maintain compliance with the requirements prescribed for operating an emergency or nonemergency medical transportation service.

(5) Licenses issued in accordance with the provisions of this act shall be valid for a period of 1 year from the date of issuance.

(6) The requirements for renewal of any license issued under the provisions of this act shall be the same as requirements current at the time of renewal for original licensure.

(7) The department shall issue temporary licenses to applicants presently providing emergency or nonemergency medical transportation service but not meeting required standards, valid for a period not to exceed 1 year, when it determines that there is no other such service available in an area and that the public interest, safety, and convenience will be served. As a condition for the issuance of a temporary license, the applicant must initiate appropriate steps to insure that the business or service meets the prescribed standards within 1 year from the date of issuance of the license.

(8) The governing body of each county is authorized to adopt ordinances providing reasonable standards for certificates of public convenience and necessity for emergency or nonemergency medical transportation services.

History.—ss. 5, 16, ch. 73-126; s. 3, ch. 76-168; s. 249, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 6, 10, ch. 79-280.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.26 Medical transportation service vehicle permits.—

(1) Every emergency or nonemergency medical transportation service licensed under the provisions of this act shall possess a valid permit for each ambulance or vehicle in use. Application for such permits shall be made upon forms and in accordance with procedures prescribed by the Department of Health and Rehabilitative Services.

(2) Prior to issuing an original or a renewal permit for a vehicle, the department shall inspect each vehicle and determine whether it meets all requirements of vehicle design, construction, communications, medical equipment and supplies, and sanitation prescribed in this act for such vehicle and in regulations promulgated by the department.

(3) The department is authorized to suspend or revoke a permit if it determines that the vehicle or its equipment fails to meet the requirements specified in this act or in the regulations of the department.

(4) Permits issued in accordance with the provisions of this section shall be valid for a period of 1 year from the date of issuance.

(5) The requirements for renewal of any permit issued under the provisions of this act shall be the same as requirements current at the time of renewal for an original permit.

(6) The department may issue a temporary permit for any vehicle not meeting required standards, valid for a period not to exceed 1 year, when it determines that there is no other emergency or nonemergency medical transportation service available in an

area and that the public interest, safety, and convenience will be served. As a condition for the issuance of a temporary permit, the emergency or nonemergency medical transportation service owner must initiate appropriate steps to insure that within 1 year the vehicle will conform to the prescribed regulations.

History.—s. 6, ch. 73-126; s. 3, ch. 76-168; s. 250, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 7, 10, ch. 79-280.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.27 Certification and standards for personnel.—

(1) After January 1, 1974, every ambulance not specifically excluded from the provisions of this act, when transporting a sick, injured, wounded, incapacitated, or helpless person, shall be occupied by at least two persons, one of whom holds either a valid emergency medical technician's certificate or a medical or registered nursing license, as provided for in chapters 458, 459, or chapter 464. In addition, the driver shall possess a valid emergency ambulance driver's certificate.

(2) Any person desiring certification as an emergency medical technician or an emergency ambulance driver shall make application to the Department of Health and Rehabilitative Services upon forms provided by the department. The department shall determine whether the applicant meets the prescribed qualifications for certification as set forth in this section and in the regulations promulgated by the department and issue a certificate if the applicant meets the qualifications.

(3) An applicant for an emergency medical technician's certificate must:

(a) Have completed an emergency medical technician training program of at least 80 hours or its equivalent, approved by the department.

(b) Complete any appropriate refresher training as required by the department.

(c) Be free from addiction to alcohol or any narcotic drug.

(d) Be free from any physical or mental defect or disease which might impair the applicant's ability to attend an ambulance.

(e) Have taken and passed an examination for emergency medical technicians, developed or required by the department.

(f) Hold a valid American Heart Association Cardiopulmonary Resuscitation (CPR) course card or its equivalent.

(4) An applicant for an emergency ambulance driver's certificate must meet all standards required of an emergency medical technician, except the 80-hour training required in paragraph (3)(a) and the requirements of paragraphs (3)(e) and (f), and in addition:

(a) Must have completed, when applicable, within the past 2 years, a defensive driving course or a flight safety or water vehicle operator's safety course, approved by the department.

(b) Must hold, if applicable, a valid Florida chauffeur's license.

(c) Must hold a Federal Aviation Administration instrument flight reference rating or marine certificate, if applicable.

(d) Must hold a valid American Red Cross Standard First Aid and Personal Safety Course Card or its equivalent.

(5) Emergency medical technician and emergency ambulance driver's certificates are valid for a period of 3 years from the date of issuance and may be renewed if the holder meets the prescribed qualifications at the time of renewal.

(6) The department is authorized to suspend or revoke a certificate at any time if it determines that the holder fails to meet the prescribed qualifications.

(7) A provisional certification may be issued to an applicant upon completion of such training as required by the department, and such provisional certification shall be conditioned upon the applicant's taking the steps necessary to undertake the next available examination for certification developed or required by the department, for which the applicant is eligible or qualified. The department shall revoke a provisional certification of an applicant who fails to pass or appear for the next available examination for which the applicant is eligible or qualified.

History.—s. 7, ch. 73-126; s. 3, ch. 76-168; s. 251, ch. 77-147; s. 1, ch. 77-257; s. 2, ch. 77-347; s. 1, ch. 77-457; s. 19, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.29 Communications.—The Division of Communications of the Department of General Services, with the assistance of the Department of Health and Rehabilitative Services and the state comprehensive health planning agency, shall plan for and work towards the establishment of a comprehensive emergency medical services communication system, which shall include at least the following components:

(1) Programs aimed at locating and reporting accidents and acute illnesses both on and off the highways.

(2) A statewide emergency medical services notification system.

(3) A statewide emergency reporting telephone number.

(4) A system of patient referral.

(5) State and areawide communications systems.

(6) Minimum standards of communication for all appropriate medical components.

History.—s. 9, ch. 73-126; s. 3, ch. 76-168; s. 253, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.30 Records.—All ambulance businesses or services licensed under the provisions of this act shall maintain accurate records of emergency calls, upon such forms as may be prescribed or provided by the Department of Health and Rehabilitative Services, and containing such information as may be required by the department. Such records shall be available for inspection by the department at any reasonable time, and copies thereof shall be furnished to the department upon request.

History.—s. 10, ch. 73-126; s. 3, ch. 76-168; s. 254, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]401.31 Inspection and examination.—

(1) In order to carry out the requirements of this act, the Department of Health and Rehabilitative Services shall inspect each emergency and each nonemergency medical transportation service licensee, including ambulances, vehicles, equipment, personnel, records, premises, and operational procedures, at reasonable times and whenever such inspection is deemed necessary by the department, but in no event less frequently than once a year. The periodic inspection required by this section shall be in addition to other state or local motor vehicle safety inspections required for ambulances or other motor vehicles under general law or ordinance.

(2) The department shall, in the course of the inspections provided for in subsection (1), determine the continuing compliance of each business, ambulance, vehicle, emergency medical technician, and driver with the requirements of this act and the rules promulgated by the department.

History.—s. 11, ch. 73-126; s. 3, ch. 76-168; s. 255, ch. 77-147; s. 3, ch. 77-347; s. 1, ch. 77-457; ss. 8, 10, ch. 79-280.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.32 Transfer or assignment.—No certificate, permit, or license issued under the provisions of this act shall be assignable or transferable by the person to whom issued, except upon approval by the Department of Health and Rehabilitative Services. A transfer or assignment shall be conducted in the same manner and subject to the same application, investigation, fees, and standards as original applications.

History.—s. 12, ch. 73-126; s. 3, ch. 76-168; s. 256, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.33 Exemptions.—

(1) The following vehicles or ambulances are exempt from the provisions of this act:

(a) A privately owned vehicle not ordinarily used in the business of transporting persons who are sick, injured, wounded, incapacitated, or helpless.

(b) A vehicle rendering services as an ambulance in the event of a major catastrophe or emergency when ambulances with permits based in the locality of the catastrophe or emergency are incapacitated or insufficient in number to render the services needed.

(c) Ambulances based outside this state, except that any such ambulance receiving a person within this state for transport to a location within this state shall comply with the provisions of this act.

(2) Volunteer personnel operating any ambulance owned and operated by a volunteer emergency squad chartered by the state as a corporation not for profit prior to October 1, 1973, or a volunteer emergency squad operated by county commissions which shall be approved by the department as to suitability and need to serve areas having a population not in excess of 5,000 persons, shall be exempt from the provisions of s. 401.27, provided the competence of the volunteers is certified to by two physicians licensed by chapters 458 or 459 practicing in the county in which the volunteer squad operates and the volunteer squad serves an area defined by the department having a population not in excess of 5,000 persons. The department shall define with geographic certainty the boundaries of service for the area served by such volunteer squads. The exemption provided by this subsection shall expire January 1, 1976.

(3) The provisions of chapter 79-280, Laws of Florida, shall not apply to public bus system vehicles.

History.—s. 13, ch. 73-126; s. 1, ch. 74-334; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 79-280.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.34 Fees.—

(1) Every organization and person subject to the provisions of this act shall pay to the department the following fees:

(a)	Original license	$30
(b)	Renewal of an original license	15
(c)	Original vehicle permit	15
(d)	Renewal of an original vehicle permit	10
(e)	Original certificate (EMT)	15
(f)	Renewal of an original certificate (EMT)	10
(g)	Original certificate (paramedic)	25
(h)	Renewal of an original certificate (paramedic)	15

(i) In lieu of the charges for individual certification set forth in paragraphs (e) and (f), any volunteer emergency squad chartered by the state as a corporation not for profit may pay the department under the following schedule, which shall entitle each individual to certification as provided in paragraphs (e) and (f) without further charge:

1.	0 to 24 persons	$100
2.	25 to 49 persons	125
3.	50 to 74 persons	175
4.	75 to 99 persons	250
5.	100 to 124 persons	350
6.	125 to 149 persons	475
7.	150 persons	500

(2) Fees charged under this section shall be used toward the administration of this act.

History.—s. 14, ch. 73-126; s. 2, ch. 74-334; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 4, ch. 77-347; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.35 Rules.—In consultation with appropriate representatives of emergency medical teams employed by public agencies and nonemergency medical transportation services, the Department of Health and Rehabilitative Services shall promulgate rules necessary to carry out the purposes of this act. These rules shall provide at least:

(1) Minimum standards governing the sanitation and maintenance of emergency and nonemergency medical transportation vehicles.

(2) Minimum standards governing emergency medical technician and driver training and qualifications.

(3) Minimum standards for ambulance equipment and supplies at least as comprehensive as those promulgated by the American College of Surgeons, including provisions for two-way communications.

(4) Minimum standards at least equal to those recommended by the United States Department of Transportation governing vehicle design and construction.

(5) On or before January 1, 1978, minimum standards for design and construction of vehicles providing advanced life-support services, standards for equipment, and vehicle staffing standards.

History.—s. 15, ch. 73-126; s. 3, ch. 76-168; s. 257, ch. 77-147; s. 5, ch. 77-347; s. 1, ch. 77-457; ss. 8, 10, ch. 79-280.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

401.355 Licenses exempt from regulation by Florida Public Service Commission.—Notwithstanding any other provision of law, vehicles required to be licensed under this act shall not be subject to regulation under chapter 323 or chapter 350, and all statutory powers, duties, and functions of the Florida Public Service Commission with respect to such vehicles are hereby declared to be void and inoperative.

History.—s. 11, ch. 79-280.

[1]401.36 Liability.—No act or omission of any emergency medical technician, paramedic, or ambulance driver, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall impose any liability upon the licensee, emergency medical technician, ambulance driver, paramedic, or supervising physician; upon any hospital; or upon any federal, state, county, city, or other local government unit or its employees. This section does not relieve the licensee, emergency medical technician, driver, paramedic, physician, or hospital from liability while rendering such emergency care if such licensee, emergency medical technician, driver, paramedic, physician, or hospital is guilty of negligence.

History.—s. 17, ch. 73-126; s. 3, ch. 76-168; s. 6, ch. 77-347; s. 1, ch. 77-457; s. 95, ch. 79-164.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.37 Consent.—No licensee, emergency medical technician, driver, paramedic, physician, or hospital licensed in this state shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

History.—s. 18, ch. 73-126; s. 3, ch. 76-168; s. 7, ch. 77-347; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.38 Participation in federal programs.—The department shall develop federal funding proposals and apply for all federal funds available to carry out the purposes of this act. The department is authorized to participate in those federal programs aimed at the delivery of emergency medical services or nonemergency medical transportation services and shall include such programs in its comprehensive plan.

History.—s. 19, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 8, 10, ch. 79-280.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.39 Additional regulations.—Nothing in this act shall be construed as preventing any county or city, whether acting jointly or independently, from enacting additional regulations not in contravention of the provisions of this act.

History.—s. 20, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.40 Service operated by funeral establishment.—Any emergency or nonemergency medical transportation service operated out of a facility licensed under chapter 470 shall keep its records separate from those of the funeral establishment and maintain a separate phone number.

History.—s. 21, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 8, 10, ch. 79-280.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.41 Penalties.—

(1) Any person violating, or failing to comply with, any provision of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Each day that a violation of this act is committed or permitted to continue shall constitute a separate and distinct offense under this section.

History.—s. 22, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.42 Injunctive relief.—The secretary may cause to be instituted a civil action for injunctive relief in an appropriate circuit court to prevent violation of any provision of this act or any rule or regulation adopted by the department pursuant to the provisions of this act.

History.—s. 22, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.43 Fraudulently obtaining services from ambulance licensee.—Whoever, willfully and with intent to defraud, obtains or attempts to obtain services from an ambulance service licensee is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 23, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]401.44 Turning in a false alarm.—Whoever summons an ambulance or reports that an ambulance is needed when such person knows or has reason to know that the services of an ambulance are not needed is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 24, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]401.45 Denial of emergency treatment; civil liability.—

(1) No person shall be denied treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment at any hospital licensed under chapter 395 that operates an emergency department providing emergency treatment to the public.

(2) A hospital or its employees or any physician or dentist responding to an apparent need for emergency treatment pursuant to this section shall not be held liable in any action arising out of a refusal to render emergency treatment or care if reasonable care is exercised in determining the condition of the person and in determining the appropriateness of the facilities and the qualifications and availability of personnel to render such treatment.

History.—s. 26, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

401.46 Advanced life support services, certification.—

(1) Any person, firm, corporation, association, or governmental entity which seeks to provide or is now providing advanced life-support services as an ambulance or fire rescue service shall be certified by the department as having met minimum standards promulgated by the department, which shall include, but shall not be limited to, standards for intensive care vehicles, staffing requirements for such intensive care vehicles, and such other requirements necessary to maintain acceptable standards for advanced life-support services. Advanced life-support services/fire rescue vehicles may retain their fire department identity and may use color schemes, insignia, names, monograms, or other distinguishing characteristics which are acceptable to the fire department to designate such vehicles as advanced life-support vehicles.

(2) Any emergency medical services system employing or utilizing paramedics to perform advanced life-support procedures must employ, or contract with, a medical director, who shall be a licensed physician, to supervise, and accept responsibility for the medical performance of, the emergency medical technicians and paramedics functioning for that emergency medical services system.

History.—s. 8, ch. 77-347; s. 2, ch. 79-280.

401.47 Paramedics.—

(1) On January 1, 1978, the department shall establish, by rule, educational and training criteria and examinations for the certification of paramedics which shall require proficiency in providing cardiopulmonary resuscitation and defibrillation, the administration of drugs, and the performance of other necessary procedures to administer advanced life-support services. The department shall allow 1 year from the date on which the rules authorized under this subsection are published for affected persons to comply with such rules and standards. In carrying out the provisions of this section and prior to public hearings as provided in chapter 120, the department shall consult with employees, who represent no less than nine public employers who are certified by a licensed physician or local medical society, whichever is applicable, and who are performing advanced life support service as members of the employers' emergency medical team. Said rules shall be published at least 3 months prior to the effective date of this section. Provisional certification as provided in section 401.27(7) shall not be applicable to this section.

(2) Any person desiring certification as a paramedic shall make application to the department on forms provided by the department. The department shall issue certification as a paramedic to those persons who meet the qualifications established in rules promulgated by the department.

(3) Paramedics shall administer advanced life-support services only under the responsible supervision of a licensed physician.

(4) Any person who has not been certified by the department as having met the qualifications for certification as a paramedic and who holds himself out as a paramedic is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.084 or by fine not exceeding $500.

History.—s. 9, ch. 77-347.

CHAPTER 402

HEALTH AND REHABILITATIVE SERVICES; MISCELLANEOUS PROVISIONS

402.04 Award of scholarships and stipends; disbursement of funds; administration.—The award of scholarships or stipends provided for herein shall be made by the Department of Health and Rehabilitative Services, hereinafter referred to as the department. The department shall handle the administration of the scholarship or stipend and the Department of Education shall, for and on behalf of the department, handle the notes issued for the payment of the scholarships or stipends provided for herein and the collection of same. The department shall prescribe regulations governing the payment of scholarships or stipends to the school, college, or university for the benefit of the scholarship or stipend holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated by the Legislature and shall be paid upon vouchers approved by the department and properly certified by the Comptroller.

History.—s. 4, ch. 29880, 1955; s. 10, ch. 59-1; s. 2, ch. 65-13; ss. 15, 19, 35, ch. 69-106; s. 259, ch. 77-147.

402.05 Requisites for holding scholarship and stipend.—Scholarships or stipends are to be awarded only to such residents of the state as intend to make psychiatric social work, psychiatry, psychiatric nursing, and clinical psychology their professions. Among other essential requisites for holding a scholarship or stipend hereunder are citizenship, residence in Florida for a period of 1 year, good moral character, good health, exceptional scholarship, and the applicant shall have met the entrance requirement at a college or university for their professional specialization.

History.—s. 5, ch. 29880, 1955.

402.06 Notes required of scholarship holders.—Each person who receives a scholarship or stipend as provided for in this chapter shall execute a promissory note under seal, on forms to be prescribed by the Department of Education, which shall be endorsed by his parent or guardian or, if he is 18 years of age or older, by some responsible citizen and shall deliver said note to the Department of Health and Rehabilitative Services. Each note shall be payable to the state and shall bear interest at the rate of 5 percent per annum beginning 90 days after completion or termination of the training program. Said note shall provide for all costs of collection to be paid by the maker of the note. Said note shall be delivered by the Department of Health and Rehabilitative Services to said Department of Education for collection and final disposition.

History.—s. 6, ch. 29880, 1955; s. 2, ch. 65-13; s. 1, ch. 69-59; ss. 15, 35, ch. 69-106; s. 18, ch. 77-121; s. 260, ch. 77-147.

402.07 Payment of notes.—Prior to the award of a scholarship or stipend provided herein for trainees in psychiatric social work, psychiatry, clinical psychology, or psychiatric nursing, the recipient thereof must agree in writing to practice his profession in the employ of any one of the following institutions or agencies for 1 month for each month of grant immediately after graduation or, in lieu thereof, to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years:

[1](1) The staff of one of the state hospitals of the Division of Mental Health;

[1](2) The Division of Retardation;

(3) The Department of Corrections;

(4) A mental health clinic or guidance center;

(5) One of the state-operated universities;

[1](6) The Division of Health;
[1](7) The Bureau of Alcoholic Rehabilitation;
[1](8) The Division of Vocational Rehabilitation;
(9) A Circuit Court exercising jurisdiction in connection with juveniles;
(10) A public school;
(11) Such other accredited social agencies or state institutions as may be approved by the [2][Department of Health and Rehabilitative Services.]

History.—s. 7, ch. 29880, 1955; s. 1, ch. 59-249; s. 1, ch. 65-511; s. 2, ch. 65-14; s. 1, ch. 69-58; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 25, ch. 73-334; s. 8, ch. 77-120; s. 15, ch. 79-3.
[1]**Note.**—All divisions within the Department of Health and Rehabilitative Services were abolished by s. 3, ch. 75-48.
[2]**Note.**—Bracketed words substituted by the editors for "council." See s. 29, ch. 75-48, which abolished all advisory councils to the department.

402.12 National Community Mental Health Centers Act.—Any federal funds accruing to the state for the purposes of carrying out the National Community Mental Health Centers Act of 1963 shall be paid to the Department of Health and Rehabilitative Services for expenditure as directed by said department.

History.—s. 1, ch. 63-305; ss. 19, 35, ch. 69-106; s. 262, ch. 77-147.
Note.—Former s. 965.16.

402.16 Proceedings by department.—
(1) Whenever it becomes necessary for the welfare and convenience of any of the institutions now under the supervision and control of the Department of Health and Rehabilitative Services, or which may hereafter be placed under the supervision and control of said department, to acquire private property for the use of any of said institutions, and the same cannot be acquired by agreement satisfactory to the said department and the parties interested in, or the owners of said private property, the department is hereby empowered and authorized to exercise the right of eminent domain, and to proceed to condemn the said property in the same manner as provided by law for the condemnation of property.
(2) Any suit or actions brought by the said department to condemn property as provided in this section shall be brought in the name of the Department of Health and Rehabilitative Services, and it shall be the duty of the Department of Legal Affairs to conduct the proceedings for, and to act as counsel for the said Department of Health and Rehabilitative Services.

History.—ss. 1, 2, ch. 7947, 1919; CGL 5104, 5105; ss. 1, 2, ch. 20873, 1941; s. 22, ch. 20930, 1941; s. 3, ch. 65-369; ss. 11, 19, 35, ch. 69-106.
Note.—Former s. 73.22; s. 965.061.

402.161 Authorization for sale of property.—
(1) The [1][department] is authorized to sell any real or personal property that it acquired by way of donation, gift, contribution, bequest, or devise from any person, persons, or organizations when such real or personal property is determined by the [1][department] not to be necessary for use in connection with the work of the [1][department]. All proceeds derived from the sale of such property shall be transmitted to the State Treasury to be credited to the department.
(2) The department is authorized to use for [1][department] purposes any moneys realized from the sale of any such real or personal property. It is expressly declared to be the intention of the Legislature that such moneys are appropriated to the department and may be used by it for [1][department] purposes. However, such moneys shall be withdrawn in accordance with law. Such moneys are appropriated to the use of the department in addition to other funds which have been or may otherwise be appropriated for [1][department] purposes.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 1, ch. 70-439; s. 17, ch. 78-433.
[1]**Note.**—Bracketed word substituted by the editors for "division" (of Family Services). See s. 3, ch. 75-48, which abolished the division and assigned its functions to the Department of Health and Rehabilitative Services.
Note.—Former s. 409.065.

402.17 Claims for care and maintenance; trust property.—The Department of Health and Rehabilitative Services shall protect the financial interest of the state with respect to claims which the state may have for the care and maintenance of clients of the department. The department shall hold in trust and administer money of clients and property designated for the personal benefit of clients.
(1) CLAIMS FOR CARE AND MAINTENANCE.—
(a) The department shall perform the following acts:
1. Receive and supervise the collection of sums due the state.
2. Bring any court action necessary to collect any claim the state may have against any client, former client, guardian of any client or former client, executor or administrator of the client's estate, or any person against whom any client or former client may have a claim.
3. Obtain a copy of any inventory or appraisal of the client's property filed with any court.
4. Obtain from the Social and Economic Services Program Office a financial status report on any client or former client, including the ability of third parties responsible for such client to pay all or part of the cost of the client's care and maintenance.
5. Petition the court for appointment of a guardian or administrator for an otherwise unrepresented client or former client should the financial status report or other information indicate the need for such action. The cost of any such action shall be charged against the assets or estate of the client.
6. Represent the interest of the state in any litigation in which a client or former client is a party.
7. File claims with any person, firm, or corporation or with any federal, state, county, district, or municipal agency on behalf of an unrepresented client.
8. Represent the state in the settlement of the estate of deceased clients or in the settlement of estates in which a client or a former client against whom the state may have a claim has a financial interest.
(b) The Department of Health and Rehabilitative Services may charge off accounts if it certifies that the accounts are uncollectible after diligent efforts have been made to collect them. If the department certifies an account to the Department of Legal Affairs, setting forth the circumstances upon which it predicates the uncollectibility, and if the Department of Legal Affairs concurs, the account shall be charged off.
(2) MONEY OR OTHER PROPERTY RE-

CEIVED FOR PERSONAL USE OR BENEFIT OF ANY CLIENT.—The department shall perform the following acts:

(a) Accept and administer in trust any money or other property received for personal use or benefit of any client.

(b) Deposit the money in banks qualified as state depositories.

(c) Withdraw the money and use it to meet current needs of clients.

(d) As trustee, invest in the manner authorized by law for fiduciaries money not used for current needs of clients.

(3) DEPOSIT OF FUNDS RECEIVED.—Funds received by the Department of Health and Rehabilitative Services in accordance with s. 402.33 shall be deposited into a trust fund for the operation of the department.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any client affected by the provisions of this section, any unclaimed money held in trust by the department or by the State Treasurer for him shall be applied first to the payment of any unpaid claim of the state against the client, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) LEGAL REPRESENTATION.—To the extent that the budget will permit, the Department of Legal Affairs shall furnish the legal services to carry out the provisions of this section. Upon the request of the Department of Health and Rehabilitative Services, the various state and county attorneys shall assist in litigation within their jurisdiction. The said department may retain legal counsel for necessary legal services which cannot be furnished by the Department of Legal Affairs and the various state and county attorneys.

(6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.—

(a) The Department of Health and Rehabilitative Services may deposit any funds of clients in its possession in any bank in the state or may invest or reinvest such funds in bonds or obligations of the United States for the payment of which the full faith and credit of the United States is pledged. For purposes of deposit only, the funds of any client may be mingled with the funds of any other clients.

(b) The interest or increment accruing on such funds shall be the property of the clients and shall be used or conserved for the personal use or benefit of the individual client. Such interest shall not accrue to the general welfare of all clients. The department shall establish rules governing reasonable fees for the cost of administering such accounts and for establishing the minimum balance eligible to earn interest.

History.—s. 2, ch. 59-222; s. 1, ch. 65-279; ss. 11, 19, 35, ch. 69-106; s. 1, ch. 70-341; s. 1, ch. 70-439; s. 1, ch. 72-350; s. 25, ch. 73-334; s. 131, ch. 79-190; s. 1, ch. 79-269.

Note.—Former s. 965.08.

402.18 Welfare trust funds created; use of.—

(1) All moneys now held in any auxiliary, canteen, welfare, donated, or similar fund in any state institution under the jurisdiction of the Department of Health and Rehabilitative Services shall be deposited in a welfare trust fund, which fund is hereby created in the State Treasury, or in a place which the department shall designate. The money in the fund of each institution of the department is hereby appropriated for the benefit, education, and general welfare of clients in that institution. The general welfare of clients includes, but is not limited to, the establishment of, maintenance of, employment of personnel for, and the purchase of items for resale at canteens or vending machines maintained at the state institutions and for the establishment of, maintenance of, employment of personnel for, and the operation of canteens, hobby shops, recreational or entertainment facilities, or other like facilities or programs at the institutions.

(2) All moneys now held in any auxiliary, canteen, welfare, donated, or similar fund in any district of the department shall be deposited in a welfare trust fund which is hereby created in the State Treasury, or in a place which the department shall designate. Money in the fund of each district of the department is hereby appropriated for the purpose for which the donor intended. Absent specific intentions of donor, such moneys shall be used for programs for the benefit, education, and general welfare of all clients of the department.

(3) The department shall deposit in a welfare trust fund all net proceeds from the operation of canteens, vending machines, hobby shops, and other such facilities designated as accruing to a specific welfare trust fund, and any moneys which may be assigned to a specific welfare trust fund by clients or others. The moneys of said fund shall constitute a trust held by the department for the benefit and welfare of the clients of the department.

(4) Any contraband found upon, or in the possession of, any client of the department shall be confiscated and liquidated, and the proceeds thereof shall be deposited in a welfare trust fund.

(5) The department may invest in the manner authorized by law for fiduciaries any money in a welfare trust fund which is not necessary for immediate use. The interest earned and other increments derived from such investments shall be deposited in the welfare trust fund.

History.—s. 1, ch. 65-194; ss. 19, 35, ch. 69-106; s. 2, ch. 79-269.

Note.—Former s. 965.081.

402.181 State Institutions Claims Fund.—

(1) There is created a State Institutions Claims Fund, available for the purpose of making restitution for property damages and direct medical expenses for injuries caused by escapees or inmates of state institutions under the Department of Health and Rehabilitative Services or the Department of Corrections. There shall be a separate fund in the State Treasury which shall be the depository of all funds used for this purpose by all institutions under the supervision and control of the Department of Health and Rehabilitative Services and the Department of Corrections.

(2) Claims for restitution may be filed with the Department of Legal Affairs at its office in accordance with regulations prescribed by the department. The department shall have full power and authority to hear, investigate, and determine all questions in respect to such claims and is authorized to pay individual claims up to $1,000. Claims in excess of this

amount shall continue to require legislative approval.

(3) The department shall make or cause to be made such investigations as it considers necessary in respect to such claims. Hearings shall be held in accordance with chapter 120.

History.—s. 1, ch. 72-120; s. 1, ch. 77-117; s. 9, ch. 77-120; s. 10, ch. 77-320; s. 16, ch. 79-3.

402.19 Photographing records; destruction of reports, etc.; effect as evidence.—The Department of Health and Rehabilitative Services may authorize each of the agencies under its supervision and control to photograph, microphotograph, or reproduce on film or prints, such correspondence, documents, records, data, and other information as the department shall determine, and which is not otherwise authorized to be reproduced under chapter 119, whether the same shall be of a temporary or permanent character and whether public, private, or confidential, including that pertaining to patients or inmates of the agencies, and to destroy any of said documents after they have been reproduced. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—s. 1, ch. 65-195; ss. 19, 35, ch. 69-106; s. 264, ch. 77-147.
Note.—Former s. 272.22.

402.20 County contracts authorized for services and facilities in mental health and retardation programs.—The boards of county commissioners are authorized to provide monetary grants and facilities, and to enter into renewable contracts, for services and facilities, for a period not to exceed 2 years, with public and private hospitals, clinics, and laboratories; other state agencies, departments, or divisions; the state colleges and universities; the community colleges; private colleges and universities; counties; municipalities; towns; townships; and any other governmental unit or nonprofit organization which provides needed facilities for the mentally ill or retarded. These services are hereby declared to be for a public and county purpose. The county commissioners may make periodic inspections to assure that the services or facilities provided under this chapter meet the standards of the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 65-529; ss. 19, 35, ch. 69-106; s. 1, ch. 70-290; s. 1, ch. 70-439; s. 70, ch. 72-221; s. 265, ch. 77-147.
Note.—Former s. 965.071.

402.21 Care and assistance of persons suffering from chronic renal diseases; establishment of programs in kidney disease control.—

(1) The Department of Health and Rehabilitative Services shall:

(a) Establish a program for the assistance of persons suffering from chronic renal disease and assist in the development and expansion of programs for the care and treatment of persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques which will have a life-saving effect in the care and treatment of persons suffering from these diseases.

(b) Develop standards for determining eligibility for care and treatment under this program.

(c) Assist in the development of programs for the prevention of chronic renal diseases.

(d) Assist in the establishment of screening programs and early diagnostic facilities.

(e) Make use of available funds and programs of the department to obtain financial assistance for persons qualified for such assistance who are suffering from chronic renal diseases.

(f) Assist in equipping dialysis centers.

(g) Institute and carry on an educational program among physicians, hospitals, county health departments, and the public concerning chronic renal diseases, including the dissemination of information and the conducting of educational programs concerning the prevention of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases.

(h) Contract with existing facilities for the provision of care as outlined.

(2) Nothing in this section shall be construed to commit the state to provide direct financial assistance to patients requiring chronic dialysis therapy.

History.—s. 1, ch. 71-139; s. 266, ch. 77-147.

402.22 Education program for students who reside in residential care facilities operated by the Department of Health and Rehabilitative Services.—

(1) LEGISLATIVE INTENT.—

(a) The Legislature recognizes that the Department of Health and Rehabilitative Services has under its residential care students with critical problems of physical impairment, emotional disturbances, social maladjustments, mental impairment, and learning impairment.

(b) The Legislature recognizes the vital role of education in the rehabilitation of such students. It is the intent of the Legislature that all such students shall benefit from educational services and shall receive such services.

(c) It is the intent of the Legislature that educational services shall be coordinated with appropriate and existing diagnostic and evaluative, social, follow-up, and other therapeutic services of the Department of Health and Rehabilitative Services so that the effect of the total rehabilitation process is maximized.

(d) It is the intent of the Legislature that, as educational programs for students in residential care facilities are implemented by the district school board, educational personnel in the Department of Health and Rehabilitative Services residential care facilities who meet the qualifications for employees of the district school board shall be employed by the district school board.

(2) EDUCATION PLAN.—District school boards shall establish educational programs for all students age 5 through 18 under the residential care of the Department of Health and Rehabilitative Services and may provide for students below age 5 as provided for in s. 232.01(1)(f). Funding of such programs shall be pursuant to s. 236.081.

(3) Notwithstanding the provisions of chapters 393, 394, and 959, the services of the Department of Health and Rehabilitative Services and those of the Department of Education and district school boards shall be mutually supportive and complimentary of each other. The education programs provided by the district school boards shall meet the standards prescribed by the State Board of Education and the district school board. Decisions regarding the design and delivery of Department of Health and Rehabilitative Services treatment or habilitative services shall be made by interdisciplinary teams of professional and paraprofessional staff of which appropriate district school system administrative and instructional personnel shall be invited to be participating members. The requirements for maintenance of confidentiality as prescribed in chapters 39, 393, 394, and 959 shall be applied.

(4) Students age 18 and under who are under the residential care of the Department of Health and Rehabilitative Services beginning with the 1979-1980 fiscal year and who receive an education program shall be calculated as full-time equivalent student membership in the appropriate cost factor as provided for in s. 236.081(1)(c). Residential care facilities of the Department of Health and Rehabilitative Services shall include, but not be limited to, Sunland Centers, state mental health facilities, and youth services programs (residential and day programs). For students in these residential care facilities who receive their education from the district school board during the 1979-1980 fiscal year, full-time equivalent student membership shall be allocated through the Florida Education Finance Program for the district school system. For students in these residential care facilities who receive their education from the Department of Health and Rehabilitative Services during the 1979-1980 fiscal year, full-time equivalent student membership shall appear in the appropriate Department of Health and Rehabilitative Services institutional budget entities as a special category appropriation. During the 1979-1980 fiscal year, the Department of Health and Rehabilitative Services may contract with local school districts for the assumption of the provision of instruction and special education services, in lieu of providing the service. Beginning with the 1980-1981 fiscal year, all students shall receive their education program from the district school system, and funding shall be allocated through the Florida Education Finance Program for the district school system.

(5) Students committed to the Department of Health and Rehabilitative Services and placed in youth services residential and day programs, with the exception of students committed to the Florida School for Boys at Okeechobee, shall be assigned to the educational alternatives or other basic or special programs as appropriate provided by the district school board in the county in which the youth services facility is located. The school board of Okeechobee County shall generate by FTE the funding necessary for the students committed to the Florida School for Boys at Okeechobee to be assigned to and to participate in the educational programs provided by the Indian River Community College and by intergovernmental agreement. Such funds shall be transferred to the Indian River Community College.

(6) Instructional and special education services which are provided to youth services clients in the Department of Health and Rehabilitative Services residential care facilities by local school districts shall not be less than the level of contact hours provided during the 1978-1979 fiscal year. Instructional and special educational services which are provided to mental health and retardation clients in the Department of Health and Rehabilitative Services residential care facilities by local school districts shall not be less than 180 days or 900 hours; however, the 900 hours may be distributed over a 12-month period.

(7) The State Board of Education and the Department of Health and Rehabilitative Services shall have the authority to promulgate rules to be effective during 1979 through 1982 fiscal years, which shall assist in the orderly transfer of the instruction of students from Department of Health and Rehabilitative Services residential care facilities to the district school system or, in the case of the Florida School for Boys at Okeechobee, to the Indian River Community College, and in implementing the specific intent as stated in this act.

History.—ss. 1, 2, ch. 71-350; s. 4, ch. 79-184.

[1]402.301 Legislative intent and declaration of purpose and policy.—It is the legislative intent to protect the health, safety, and well-being of the children of the state. Toward that end, it is the purpose of this act to establish statewide minimum standards for the care and protection of children in child care facilities, to insure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing. It shall be the policy of the state to insure protection of children under care in child care facilities and to encourage and assist in the improvement of child care programs. It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this act shall give any governmental agency jurisdiction or authority to regulate, supervise or in any way be involved in any Sunday School, Sabbath School, religious services, or any nursery service or other program conducted during religious or church services primarily for the convenience of those attending such services.

History.—s. 1, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.302 Definitions.—As used in this act:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the secretary of the Department of Health and Rehabilitative Services.

(3) "Child care" means the care, protection, and supervision of a child for a period of less than 24 hours a day on a regular basis which supplements for the child, in accordance with his individual needs, daily care, enrichment opportunities, and health supervision and for which a payment, fee, or grant is made for care.

(4) "Child care facility" includes any child care center or child care arrangement which provides

child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: public schools and nonpublic schools which are in compliance with the Compulsory School Attendance Law, chapter 232; summer camps having children in full-time residence; summer day camps; and Bible Schools normally conducted during vacation periods.

(5) "Family day care home" means an occupied residence in which day care is regularly provided for no more than five preschool children and elementary school children from more than one unrelated family, including preschool children living in the home and preschool children received for day care who are related to the resident caregiver. Elementary school siblings of the preschool children received for day care may also be cared for outside of school hours provided the total number of children, including the caregiver's own and those related to her, does not exceed 10.

(6) "Operator" means any person ultimately responsible for the overall operation and administration of a child care facility, whether or not he is the owner.

(7) "Local licensing agency" means any agency or individual designated by the county to license child care facilities.

History.—s. 2, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.305 Licensing standards.—The state minimum standards shall be designed to protect the health, sanitation, safety, and well-being of all children under care by ensuring competent personnel, adequate physical surroundings, and healthful food. All standards established under this act shall be in accordance with the appropriate minimum standards used by the state fire marshal for child care facilities. The minimum standards for child care facilities shall include the following areas:

(1) PERSONNEL.—Minimum standards for child care personnel, whether employees or volunteers, which shall include minimum age requirements, periodic health examinations, minimum levels of training in first aid, and ratios of personnel to children.

(2) PHYSICAL FACILITIES.—Minimum standards for building conditions, indoor play space, outdoor play space, napping space, bathroom facilities, food preparation facilities, outdoor equipment, and indoor equipment.

(3) SANITATION AND SAFETY.—Minimum standards for sanitary and safety conditions, first aid treatment, and emergency procedures.

(4) NUTRITIONAL PRACTICES.—Minimum standards for the provision of meals or snacks of a quality and quantity to assure that the nutritional needs of the child are met.

(5) ADMISSIONS AND RECORD KEEPING.—Requirements for preadmission and periodic health examinations, requirements for immunizations, requirements for maintaining emergency information and health records on all children. Any child shall be exempt from medical or physical examination or medical or surgical treatment upon written request of the parent or guardian of such child who objects to the examination and treatment. However, the laws, rules, and regulations relating to contagious or communicable diseases and sanitary matters shall not be violated.

History.—s. 5, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.306 Designation of licensing agency.—

(1) Any county whose licensing standards meet or exceed state minimum standards may:

(a) Designate a local licensing agency to license child care facilities in the county; or

(b) Contract with the department to delegate the administration of state minimum standards in the county to the department.

(2) Child care facilities in any county whose standards do not meet or exceed state minimum standards shall be subject to licensing by the department under state minimum standards.

History.—s. 6, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.307 Approval of licensing agency.—

(1) Within 30 days after the promulgation of state minimum standards, each county shall provide the department with a copy of its standards if they differ from the state minimum standards. At the same time, each county shall provide the department with the administrative procedures it intends to use for the licensing of child care facilities.

(2) The department shall have the authority to determine if local standards meet or exceed state minimum standards. Within 60 days after the county has submitted its standards and procedures, the department, upon being satisfied that standards required by this act have been met, shall approve the local licensing agency.

(3) Approval to issue licenses for the department shall be renewed annually. For renewal, the local licensing agency shall submit to the department a copy of the licensing standards and procedures applied. An onsite review may be made if deemed necessary by the department.

(4) If, following an onsite review, the department finds the local licensing agency is not applying the approved standards, the department shall report the specific violations to the county commission of the involved county which shall investigate the violations and take whatever action necessary to correct them.

(5) The licensing of child care facilities, either by a local licensing agency or the department under the provisions of this act, shall become effective as of July 1, 1975. Those licensing procedures in operation shall continue until that date.

(6) To insure that accurate statistical data are available, each local licensing agency shall report annually to the department the number of child care centers under its jurisdiction, the number of chil-

dren served, the ages of children served, and the number of revocations or denials of licenses.

History.—s. 7, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.308 Issuance of license.—

(1) ANNUAL LICENSING.—After July 1, 1975, every child care facility in the state shall have a license which shall be renewed annually.

(2) STATE ADMINISTRATION OF LICENSING.—In any county in which the department has the authority to issue licenses, the following procedures shall be applied:

(a) Application for a license or for a renewal of a license to operate a child care facility shall be made in the manner and on the forms prescribed by the department.

(b) Prior to the renewal of a license, the department shall reexamine the child care facility, including in that process the examination of the premises and those records of the facility as required under s. 402.305 to determine that minimum standards for licensing continue to be met.

(c) The department shall coordinate all inspections of child care centers. A child care facility is not required to implement a recommendation of one agency that is in conflict with a recommendation of another agency if such conflict arises due to uncoordinated inspections. Any conflict in recommendations shall be resolved by the secretary of the department within 15 days after written notice that such conflict exists.

(d) The department shall issue or renew a license upon being satisfied that all standards required by this act have been met.

(3) LOCAL ADMINISTRATION OF LICENSING.—In any county in which there is a local licensing agency approved by the department, the following procedures shall apply:

(a) Application for a license or for renewal of license to operate a child care facility shall be made in the manner and on the forms prescribed by the local licensing agency.

(b) Prior to the renewal of a license, the agency shall reexamine the child care facility, including in that process the examination of the premises and records of the facility as required in s. 402.305 to determine that minimum standards for licensing continue to be met.

(c) The local agency shall coordinate all inspections of child care facilities. A child care facility is not required to implement a recommendation of one agency that is in conflict with a recommendation of another agency if such conflict arises due to uncoordinated inspections. Any conflict in recommendations shall be resolved by the county commission or its representative within 15 days after written notice that such conflict exists.

(d) The local licensing agency shall issue a license or renew a license upon being satisfied that all standards required by this act have been met.

History.—s. 8, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.309 Provisional license.—

(1) The local licensing agency or the department, whichever is authorized to license child care facilities in a county, may issue a provisional license to applicants for a license or to licensees who are unable to conform to all the standards provided for in this act.

(2) No provisional license may be issued unless the operator makes adequate provisions for the health and safety of the child and unless the local licensing agency or the department finds that a need exists for the services offered by the child care facility.

(3) The provisional license shall in no event be issued for a period in excess of 1 year and shall not be subject to renewal.

(4) The provisional license may be suspended if periodic inspection made by the local licensing agency or the department indicates that insufficient progress has been made toward compliance.

History.—s. 9, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.310 Hearings upon denial or revocation of license.—

(1) When the department has reasonable cause to believe that grounds for the denial or revocation of a license exist, it shall determine the matter in accordance with procedures prescribed in chapter 120. When the local licensing agency has reasonable cause to believe that grounds for the denial or revocation of a license exist, it shall notify the applicant or licensee in writing, stating the grounds upon which the license is being denied or revoked. If the applicant or licensee makes no written request for a hearing to the local licensing agency within 15 days from receipt of such notice, the license shall be deemed denied or revoked.

(2) If a request for a hearing is made to the local licensing agency, a hearing shall be held within 30 days and shall be conducted by an individual designated by the county commission.

(3) An applicant or licensee shall have the right to appeal a decision of the local licensing agency to a representative of the department. Any required hearing shall be held in the county in which the child care program is being operated or is to be established. The hearing shall be conducted in accordance with the provisions of chapter 120.

History.—s. 10, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-117; s. 1, ch. 77-457; s. 19, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.311 Inspection.—A licensed child care facility shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and staff and to those records required in s. 402.305, at reasonable times during regular business hours, to insure compliance with the provisions of this act.

History.—s. 11, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]402.312 License required.—After July 1, 1975, the operation of a child care facility without a license is prohibited. The department or the local licensing agency is empowered to seek an injunction in the circuit court where the facility is located against the continuing operation of a child care facility for the following reasons:

(1) There is any violation of the standards applied under this act which threatens harm to any child in the child care facility.

(2) A licensee has repeatedly violated the standards provided for under this act.

(3) A child care program continues to have children in attendance after the closing date established by the department or the local licensing agency.

History.—s. 12, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.313 Family day care homes.—

(1) Family day care homes may be licensed under this act if they are presently being licensed under an existing county licensing ordinance or if the board of county commissioners passes a resolution that family day care homes be licensed. If not subject to license, family day care homes may report annually to the department the following information: the name and address of the home, the name of the operator, the number of children served, and the availability of emergency care.

(2) This information shall be included in a directory to be published annually by the department to inform the public of available child care facilities.

(3) Family day care home operators may avail themselves of supportive services offered by the department.

History.—s. 13, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.314 Supportive services.—The department shall provide consultation services, technical assistance, and in-service training, when requested and as available, to operators, licensees, and applicants to help improve programs and facilities for child care, and shall work cooperatively with other organizations and agencies concerned with child care.

History.—s. 13, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.315 Funding.—

(1) If the county designates a local agency to be responsible for the licensing of child care centers, the county shall bear the costs involved.

(2) The state will bear the costs of the licensing of child care centers when contracted to do so by a county or when directly responsible for licensing in a county which fails to meet or exceed state minimum standards.

History.—s. 15, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]402.316 Exemptions.—

(1) The provisions of this act shall not apply to a child care facility which is an integral part of church or parochial schools conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization which publishes and requires compliance with its standards for health, safety, and sanitation. However, such facilities shall meet minimum requirements of the applicable local governing body as to health, sanitation, and safety.

(2) Any county or city with state or local child care licensing programs in existence on July 1, 1974 will continue to license the child care facilities as covered by such programs, notwithstanding the provisions of subsection (1), until and unless the licensing agency makes a determination to exempt them.

(3) Any child care facility covered by the exemption provisions of subsection (1), but desiring to be included in this act, is authorized to do so by submitting notification to the department. Once licensed, such facility cannot withdraw from the act and continue to operate.

History.—s. 16, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

402.32 School health services program.—

(1) This section shall be known and may be cited as the "School Health Services Act of 1974."

(2) The Legislature finds that health services conducted as a part of the total school health program should be carried out to appraise, protect, and promote the health of students. School health services supplement, rather than replace, parental responsibility and are designed to encourage parents to devote attention to child health, to discover health problems, and to encourage use of the services of their physician, dentist, and community health agencies.

(3) The following words and phrases shall have the following meanings for the purpose of this section:

(a) "Screening" means presumptive identification of unknown or unrecognized disease or defects by the application of tests that can be given with ease and rapidity to apparently healthy persons.

(b) "Physical examination" means a thorough evaluation of medical status of an individual.

(c) "Emergency health needs" means onsite management and aid for illness or injury pending student return to classroom or release to parent, guardian, designated friend, or designated health care provider.

(4) The duties of the Department of Health and Rehabilitative Services shall be:

(a) To employ, contract for, and supervise health service personnel for each school in the district in accordance with the state plan; however, in matters of coordination of health service programs with other school programs, the principal of each school shall have immediate supervisory authority over the health personnel working in that school.

(b) To carry out health appraisal and screening programs which include periodic review and analy-

sis of health-related records, observation, and screening tests, consistent with sound health practices. Screening shall include vision, hearing, growth and development, nutrition, dental health, mental health, and communicable diseases.

(c) To meet emergency health needs.

(d) When definitive diagnosis or treatment is indicated, to consult with parents or guardians, when appropriate, regarding the need for medical attention by the family physician, dentist, or other specialist, as the case may require.

(e) To follow up on children referred for further diagnosis and treatment.

(f) When indicated by screening, to provide children with physical examinations and to refer children to appropriate medical and dental treatment, in cooperation with the private medical and dental community whenever possible. Parents or guardians of such students shall, within 30 calendar days, report to the appropriate school personnel the action taken to satisfy the cited medical or dental needs.

(g) In cooperation with school personnel, to counsel students and parents in matters regarding health programs and practices.

(h) To maintain records by school on the incidence of health problems, corrective measures taken, and such other information as may be needed to plan and evaluate health programs. Records on individual students shall remain confidential in accordance with law and regulations of the Department of Health and Rehabilitative Services and the State Board of Education.

(i) To aid in the diagnosis and evaluation of children for placement in exceptional child programs and in the reevaluation at periodic intervals of the children placed in such programs.

(j) In cooperation with the Department of Education, to promulgate the rules and regulations necessary for the implementation of this section.

(k) In cooperation with school officials, to provide assistance to school personnel in such areas as health education programs, identification of children with health problems, and working with children with special health problems.

(5) Each district school board, and the Department of Education where applicable, shall have the duty:

(a) To coordinate the educational aspects of the school health services program with the Comprehensive Health Education Act of 1973 and to include health services and health education as part of the school districts' comprehensive educational plan.

(b) To cooperate with the Department of Health and Rehabilitative Services in the provision of health services to children.

(c) To provide physical facilities at each school for the health services program.

(d) To provide inservice health training for school personnel.

(e) To cooperate with public health personnel in counseling students and parents in matters regarding health programs and practices.

(f) To examine each public school child, at the proper age, for scoliosis.

(6) Nonpublic schools may request to participate in the school health services program. Nonpublic schools voluntarily participating in the school health services program shall comply with paragraphs (b)-(e) of subsection (5).

(7) At the beginning of each school year, parents or guardians will be requested to provide their written permission for medical or physical examination, screening, and treatment. Any child shall be exempt from medical or physical examination, screening, and treatment if his parent or guardian does not provide such permission. However, the laws, rules, and regulations relating to contagious or communicable diseases and sanitary matters shall not be violated.

(8) School health services shall be implemented in annual increments so that all children will be served. Expenditures for school health services shall be accounted for by county in accordance with standards established by the Department of Health and Rehabilitative Services or as provided for by law.

(9) In the absence of negligence, no person shall be liable for any injury caused by an act or omission in the administration of school health services.

History.—ss. 1-7, 9, ch. 74-356; s. 1, ch. 77-174; s. 2, ch. 78-245; s. 15, ch. 79-288.

402.33 Department authority to charge fees for services provided.—

(1) It is the intent of the Legislature that whenever practical the Department of Health and Rehabilitative Services shall require:

(a) The client;

(b) Parents, if the client is a minor; or

(c) Spouse of the client

and third party payors to participate in the cost of services or to pay fees for services provided by the department.

(2) The Department of Health and Rehabilitative Services may at its discretion and in accordance with rules and regulations established by the department charge fees for any service provided by the department. Fees will be reasonably related to the cost of providing the service and the client's ability to pay unless:

(a) The fee is set by Florida Statutes.

(b) An adjustment is necessary to assure maximum utilization of federal funds.

(3) Annually, the Department of Health and Rehabilitative Services shall determine or establish the:

(a) Cost of providing services for which charges will be made.

(b) Uniform criteria for determining ability to pay or to participate in the cost of service.

(4) All persons receiving services for which fees have been established pursuant to this act shall be liable for the actual cost of the service provided. The department shall only collect from third-party payors or from clients or parents or spouse of the client fees consistent with the client's, parents', or spouse's ability to pay. Parents of minors receiving services in a program for which fees have been established shall pay fees consistent with their ability to pay unless the service was requested by the minor without parental consent. The department is authorized to require financial information from clients, parents, legal guardians, or other financially responsible per-

sons in order to determine ability to pay in accordance with uniform criteria.

(5) The department shall actively assist clients in securing benefits from third party payors. Eligibility for departmental programs does not reduce otherwise payable obligations of third party payors who shall be billed and liable for the total cost of the service. Revenue received by the department from third party payors to cover cost of services provided shall be deducted from the total cost of providing services to the client. In no event shall a fee charged to a client exceed the difference between the total cost of providing services to the client and the revenue received from third party payors.

(6) Payment of charges shall not be a prerequisite to treatment or care.

(7)(a) Upon recordation with the clerk of the circuit court in the county in which the property is located, unpaid fees shall constitute a lien upon all property, both real and personal, of any client who has received any service for which the department charges fees. Such services shall constitute a claim against the client to be determined by the department. Said liens and claims shall be enforced on behalf of the state by the department. The lien and claim herein created shall be continuing obligations until 3 years after the client's demise, unless earlier satisfied.

(b) Upon the death of a client against whom the department has a claim, a caveat may be filed without cost by the department. In the event that the department effects recovery, the Clerk of the Circuit Court shall be reimbursed the statutory filing fee for caveats.

History.—ss. 1-6, ch. 75-190; s. 1, ch. 76-210; s. 1, ch. 77-174.

402.34 Body corporate.—The department is a body corporate and shall adopt and have a corporate seal. It shall have the power to contract and be contracted with, to sue and be sued in actions in ex contractu but not in torts, and to have and to possess corporate powers for all purposes necessary to administer this chapter. The department shall have the power to accept payment for services rendered pursuant to rules and regulations of the department.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 17, ch. 78-433.

Note.—Former s. 409.055.

402.35 Employees.—All personnel of the [1][Department of Health and Rehabilitative Services] shall be governed by rules and regulations adopted and promulgated by the Department of Administration relative thereto except the director and persons paid on a fee basis. The [2][Department of Health and Rehabilitative Services] may participate with other state departments and agencies in a joint merit system. No federal, state, county, or municipal officer shall be eligible to serve as an employee of the [1][Department of Health and Rehabilitative Services].

History.—s. 1, ch. 69-268; ss. 19, 31, 35, ch. 69-106; s. 1, ch. 70-255; s. 17, ch. 78-433.

[1]**Note.**—Bracketed words substituted by the editors for "division" (of Family Services). See s. 3, ch. 75-48, which abolished the division and assigned its functions to the department.

[2]**Note.**—Bracketed words substituted by the editors for "department."

Note.—Former s. 409.135.

402.36 Controlled substances therapeutic research.—

(1) SHORT TITLE.—The provisions of this section shall be known and may be cited as the "Controlled Substances Therapeutic Research Act."

(2) LEGISLATIVE INTENT; PURPOSE.—The Legislature finds that recent research has shown that the use of cannabis may alleviate the nausea and ill-effects of cancer chemotherapy and may alleviate the ill-effects of glaucoma. The Legislature further finds that there is a need for further research and experimentation with regard to the use of cannabis under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted.

(3) DEFINITIONS.—As used in this section:

(a) "Secretary" means the Secretary of the Department of Health and Rehabilitative Services, or his designee.

(b) "Cannabis" means those substances defined as such in s. 893.02(2), tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols.

(c) "Practitioner" means a physician licensed pursuant to chapter 458 or chapter 459, provided such physician holds a valid federal controlled substance registry number.

(4) CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH PROGRAM.—

(a) There is established within the Department of Health and Rehabilitative Services a controlled substances therapeutic research program. The program shall be administered by the secretary. The department shall adopt rules necessary for the proper administration of this section. In adopting rules, the department shall take into consideration pertinent rules and regulations promulgated by the federal Drug Enforcement Administration, the Food and Drug Administration, and the National Institute on Drug Abuse.

(b) Except as provided in paragraph (5)(d), the controlled substances therapeutic research program shall be limited to cancer chemotherapy patients and glaucoma patients, who are certified to the Patient Qualification Review Board by a practitioner as being involved in a life-threatening or sense-threatening situation and who are not responding to conventional controlled substances or where the conventional controlled substances administered have proven to be effective but where the patient has incurred severe side effects.

(5) PATIENT QUALIFICATION REVIEW BOARD.—

(a) The secretary shall appoint a Patient Qualification Review Board to serve at his pleasure. The board shall be comprised of:

1. A physician licensed pursuant to chapter 458 and certified by the American Board of Ophthalmology;

2. A physician licensed pursuant to chapter 458 and certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;

3. A physician licensed pursuant to chapter 458 and certified by the American Board of Psychiatry; and

4. A physician licensed pursuant to chapter 459 and certified by the American Osteopathic Association Board of Ophthalmology and Otorhinolaryngology or by the American Osteopathic Association Board of Internal Medicine and certified in the subspecialty of medical oncology.

(b) Members of the board may be reimbursed for their attendance at meetings as authorized by s. 112.061.

(c) The Patient Qualification Review Board shall review all applicants for the controlled substances therapeutic research program and their licensed practitioners and certify their participation in the program. The board shall additionally certify practitioners and state-operated licensed pharmacies for participation regarding the distribution of cannabis pursuant to subsection (6).

(d) The Patient Qualification Review Board may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the secretary and the board.

(6) DISTRIBUTION OF CONTROLLED SUBSTANCE.—

(a) The secretary shall apply to contract with the National Institute on Drug Abuse for receipt of cannabis pursuant to regulations promulgated by the National Institute on Drug Abuse, the Food and Drug Administration, and the Drug Enforcement Administration.

(b) The secretary shall cause such analyzed cannabis to be transferred to a certified state-operated pharmacy for distribution to a certified patient upon the written prescription of the certified practitioner pursuant to this section.

(7) REPORT.—The secretary, in conjunction with the Patient Qualification Review Board, shall report his findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the effectiveness of the controlled substances therapeutic research program prior to April 1 of each year.

(8) EXCEPTIONS TO CHAPTER 893.—

(a) The enumeration of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in s. 893.03(1) as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this section.

(b) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in s. 893.03(2) only for the purposes enumerated in this section.

(9) CONFIDENTIALITY OF PATIENT'S IDENTITY.—The identity of any patient certified pursuant to this section for participation in the controlled substances therapeutic research program shall be confidential and shall not be disclosed under any circumstances.

History.—s. 1, ch. 78-413; s. 1, ch. 79-209.

402.37 Medical manpower clearinghouse; grants.—

(1) The Department of Health and Rehabilitative Services shall function as a medical manpower clearinghouse to assist in the placement of health care providers in medically underserved communities, and, in acting as such a clearinghouse, the department shall coordinate its efforts with the Community Hospital Education Council of the Board of Regents in such a manner as to avoid duplication of efforts. The department shall collect, store, classify, and distribute current information pertaining to the medical manpower needs of communities and the availability of medical manpower to serve in such communities. As part of its clearinghouse function, the department shall contract with an outside entity or entities to develop and operate programs to recruit individual health care providers for relocation in medically underserved communities.

(2) A grant program is hereby created through which communities or other entities meeting established criteria may receive funds for the purpose of identifying and assisting needed health care providers to relocate and establish practice in medically underserved communities. Grants shall be made by the Department of Health and Rehabilitative Services. The department shall adopt rules, on or before October 1, 1978, which specify the criteria that communities or other entities must meet to be eligible to receive grants. The rules shall require that funds distributed pursuant to this section shall be matched in an equal amount by the recipient; however, the recipient's matching effort may be in the form of contributions in-kind, including commodities, facilities, and services. The department shall also adopt rules, on or before October 1, 1978, which specify permitted uses of grant moneys received under this section. Such rules shall specify that grant moneys received pursuant to this subsection shall not be used to purchase or construct a clinic or other treatment facilities; provided, however, that a recipient's in-kind matching effort may be in the form of provision of facilities for medical treatment.

(3) The Department of Health and Rehabilitative Services may adopt such rules as are required to carry out the functions assigned to it by this section.

History.—s. 6, ch. 78-331.

CHAPTER 403

ENVIRONMENTAL CONTROL

PART I POLLUTION CONTROL (ss. 403.011-403.4153)

PART II ELECTRICAL POWER PLANT SITING (ss. 403.501-403.517)

PART III INTERSTATE ENVIRONMENTAL CONTROL COMPACT (s. 403.60)

PART IV RESOURCE RECOVERY AND MANAGEMENT (ss. 403.701-403.715)

PART V ENVIRONMENTAL REGULATION (ss. 403.801-403.817)

PART VI DRINKING WATER (ss. 403.850-403.864)

PART VII MISCELLANEOUS (s. 403.90)

PART I

POLLUTION CONTROL

403.011 Short title.—This act shall be known and cited as the "Florida Air and Water Pollution Control Act."

History.—s. 2, ch. 67-436.

403.021 Legislative declaration; public policy.—

(1) The pollution of the air and waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and other aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

(2) It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses, and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

(3) It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(4) It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement and control for the securing and maintenance of appropriate levels of air and water quality.

(5) It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(6) The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation of natural resources, to insure a continued safe environment, to insure purity of air and water, to insure domestic water supplies, to insure protection and preservation of the public health, safety, welfare, and economic well-being, to insure and provide for recreational and wildlife needs as the population increases and the economy expands, and to insure a continuing growth of the economy and industrial development.

(7) The Legislature further finds and declares that:

(a) Compliance with this law will require capital outlays of hundreds of millions of dollars for the installation of machinery, equipment, and facilities for the treatment of industrial wastes which are not productive assets and increased operating expenses to owners without any financial return and should be separately classified for assessment purposes.

(b) Industry should be encouraged to install new machinery, equipment and facilities as technology in environmental matters advances, thereby improving the quality of the air and waters of the state and benefiting the citizens of the state without pecuniary benefit to the owners of industries, and the Legislature should prescribe methods whereby just valuation may be secured to such owners and exemptions from certain excise taxes should be offered with respect to such installations.

(c) Facilities as herein defined should be classified separately from other real and personal property of any manufacturing or processing plant or installation, as such facilities contribute only to general welfare and health and are assets producing no profit return to owners.

(d) In existing manufacturing or processing plants it is more difficult to obtain satisfactory results in treating industrial wastes than in new plants being now planned or constructed and that with respect to existing plants in many instances it will be necessary to demolish and remove substantial portions thereof and replace the same with new and more modern equipment in order to more effectively treat, eliminate or reduce the objectionable characteristics of any industrial wastes and that such replacements should be classified and assessed differently from replacements made in the ordinary course of business.

(8) The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.

History.—s. 3, ch. 67-436; s. 1, ch. 78-98.

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant thereto, the words, phrases or terms, unless the context otherwise indicates, shall have the following meanings:

(1) "Department" is the Department of Environmental Regulation.

(2) "Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere

with the enjoyment of life or property, including outdoor recreation.

(3) "Waters" shall include, but not be limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether man-made or natural.

(4) "Contaminant" is any substance which is harmful to plant, animal or human life.

(5) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(6) "Treatment works" and "disposal systems" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

(7) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(8) "Installation" is any structure, equipment, facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(9) "Plant" is any unit operation, complex, area, or multiple of unit operations that produce, process, or cause to be processed any materials, the processing of which can, or may, cause air or water pollution.

(10) "Source" is any and all points of origin of the item defined in subsection (4), whether privately or publicly owned or operated.

(11) "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

(12) "Effluent limitations" means any restriction established by the department on quantities, rates, or concentrations of chemical, physical, biological, or other constituents which are discharged from sources into waters of the state.

History.—s. 4, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 71-36; s. 2, ch. 71-137; s. 153, ch. 71-377; s. 1, ch. 73-46; s. 112, ch. 73-333; ss. 1, 2, ch. 74-133; s. 1, ch. 77-174; s. 72, ch. 79-65.

[1]403.045 Pollution Control Board.—The head of the Department of Pollution Control is the Pollution Control Board. The board shall be composed of five citizens appointed by the Governor, subject to confirmation by the Senate. The members of the board shall serve at the pleasure of the Governor.

History.—s. 26, ch. 69-106; s. 2, ch. 71-137.
[1]Note.—The Pollution Control Board was impliedly abolished by ss. 8 and 26, ch. 75-22.

403.051 Meetings; hearings and procedure.—(1) The department shall cause a transcript of the proceedings at all meetings to be made.

[1](2) A quorum of the Pollution Control Board shall consist of three members for all hearings and meetings except those held for the purpose of adopting, amending, or repealing a rule, or required by s. 403.121, which shall require a quorum of four, and a majority vote of the entire board shall be required to take action on any matter before the board.

(3)(a) Any department planning, design, construction, modification, or operating standards, criteria, and requirements for treatment works, disposal systems, and sewerage systems for wastes from any source shall be promulgated as a rule or regulation.

(b) The department shall not withhold the issuance of a permit to consider matters not addressed by the permit application or to consider standards, criteria, and requirements not adopted as required by paragraph (a).

History.—s. 6, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-84; s. 2, ch. 71-137; s. 1, ch. 71-138; s. 154, ch. 71-377; s. 1, ch. 72-223; s. 1, ch. 74-308; s. 14, ch. 78-95.
[1]Note.—The board was impliedly abolished by ss. 8 and 26, ch. 75-22.

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it, and for this purpose to:

(1) Approve and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement.

(2) Hire only such employees as may be necessary to effectuate the responsibilities of the department.

(3) Utilize the facilities and personnel of other state agencies, including the Department of Health and Rehabilitative Services, and delegate to any such agency any duties and functions as the department may deem necessary to carry out the purposes of this act.

(4) Secure necessary scientific, technical, research, administrative, and operational services by interagency agreement, contract, or otherwise. All state agencies, upon direction of the department, shall make these services and facilities available.

(5) Accept state appropriations, loans and grants from the Federal Government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes of this act.

(6) Exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.

(7) Adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this act. Any rules or regulations adopted pursuant to this act shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles, effluent limitations, pretreatment requirements, or standards of performance.

(8) Issue such orders as may be necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings.

(9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time

review and modify such program as necessary.

(10) Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state. In order to effect this purpose, a grouping of the waters into classes may be made in accordance with the present and future most beneficial uses. Such classifications may from time to time be altered or modified. However, before any such classification is made, or any modifications made thereto, public hearings shall be held by the department.

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

(12)(a) Cause field studies to be made and samples to be taken out of the air and from the waters of the state periodically and in a logical geographic manner so as to determine the levels of air quality of the air and water quality of the waters of the state.

(b) Determine the source of the pollution whenever a study is made or a sample collected which proves to be below the air or water quality standard set for air or water.

(13) Require persons engaged in operations which may result in pollution, to file reports which may contain information relating to locations, size of outlet, height of outlet, rate and period of emission and composition and concentration of effluent, and such other information as the department shall prescribe to be filed relative to pollution.

(14) Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.

(a) Notwithstanding any other provision of this chapter, the Department of Environmental Regulation may authorize, by rule, the Department of Transportation to perform any activity requiring a permit from the Department of Environmental Regulation covered by this chapter, upon certification by the Department of Transportation that it will meet all requirements imposed by statute, rule, or standard for environmental control and protection as such statute, rule, or standard applies to a governmental program. To this end, the Department of Environmental Regulation may accept such certification of compliance for programs of the Department of Transportation, may conduct investigations for compliance, and, if a violation is found to exist, may take all necessary enforcement action pertaining thereto, including, but not limited to, the revocation of certification. The authorization shall be by rule of the Department of Environmental Regulation, shall be limited to the maintenance, repair, or replacement of existing structures, and shall be conditioned upon compliance by the Department of Transportation with specific guidelines or requirements which are set forth in the formal acceptance and deemed necessary by the Department of Environmental Regulation to assure future compliance with this chapter and applicable department rules. Failure of the Department of Transportation to comply with any provision of the written acceptance shall constitute grounds for its revocation by the Department of Environmental Regulation.

(b) The provisions of chapter 120 shall be accorded any person where substantial interests will be affected by an activity proposed to be conducted by the Department of Transportation pursuant to its certification and the Department of Environmental Regulation's acceptance. If a proceeding is conducted pursuant to s. 120.57, the Department of Environmental Regulation may intervene as a party. Should a hearing officer of the Division of Administrative Hearings of the Department of Administration submit a recommended order pursuant to s. 120.57, the Department of Environmental Regulation shall issue a final department order adopting, rejecting, or modifying the recommended order pursuant to such action.

(15) Consult with any person proposing to construct, install, or otherwise acquire a pollution control device or system, concerning the efficacy of such device or system, or the pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules and regulations of the department, or any other provision of law.

(16) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act.

(17) Encourage local units of government to handle pollution problems within their respective jurisdictions on a cooperative basis, and provide technical and consultative assistance therefor.

(18) Encourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement and control.

(19) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(20) Collect and disseminate information and conduct educational and training programs relating to pollution.

(21) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.

(22) Adopt, modify and repeal rules governing the specifications, construction, and maintenance of industrial reservoirs, dams, and containers which store or retain industrial wastes of a deleterious nature.

(23) Adopt rules and regulations to insure that no detergents are sold in Florida after December 31, 1972, which are reasonably found to have a harmful or deleterious effect on human health or on the environment. Any regulations adopted pursuant to this subsection shall apply statewide. Subsequent to the promulgation of such rules and regulations, no coun-

ty, municipality, or other local political subdivision shall adopt or enforce any local ordinance, special law, or local regulation governing detergents which are less stringent than state law or regulation. Regulations, ordinances, or special acts adopted by a county or municipality governing detergents shall be subject to approval by the department, except that regulations, ordinances, or special acts adopted by any county or municipality with a local pollution control program approved pursuant to s. 403.182 shall be approved as an element of the local pollution control program.

(24)(a) Establish a permit system to provide for spoil site approval, as may be requested and required by local governmental agencies as defined in s. 403.1822(1), or mosquito control districts as defined in s. 388.011(2), to facilitate these agencies in providing spoil sites for the deposit of spoil from maintenance dredging of navigation channels, port harbors, turning basins, and harbor berths, as part of a federal project, when the agency is acting as sponsor of a contemplated dredge and fill operation involving an established navigation channel, harbor, turning basin, or harbor berth. A spoil site approval granted to the agency shall remain in effect up to 10 years from date of approval.

(b) This subsection shall apply only to those maintenance dredging operations initiated after July 1, 1977, where the United States Army Corps of Engineers is the prime dredge and fill agent and the local government entity is acting sponsor for the operation, and shall not require the redesignation of approved spoil sites under such previous operations.

(25) Establish and administer a program for the restoration and preservation of bodies of water within the state. The department shall have the power to acquire lands, to cooperate with other applicable state or local agencies to enhance existing public access to such bodies of water, and to adopt all rules necessary to accomplish this purpose.

(26) Perform any other act necessary to control and prohibit air and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established.

History.—s. 7, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 1, ch. 71-35; s. 2, ch. 71-36; s. 3, ch. 72-39; s. 1, ch. 72-53; s. 113, ch. 73-333; s. 3, ch. 74-133; s. 1, ch. 77-21; s. 137, ch. 77-104; s. 268, ch. 77-147; s. 2, ch. 77-369; s. 14, ch. 78-95; s. 2, ch. 78-437; s. 73, ch. 79-65; s. 1, ch. 79-130; s. 96, ch. 79-164; s. 160, ch. 79-400.

403.0615 Water resources restoration and preservation.—

(1) This section may be cited as the "Water Resources Restoration and Preservation Act."

(2) The Department of Environmental Regulation shall establish a program to assist in the restoration and preservation of bodies of water and to enhance existing public access when deemed necessary for the enhancement of the restoration effort. This program shall be funded from the General Revenue Fund, from funds available from the Pollution Recovery Fund, and from available federal moneys.

(3) The department shall adopt, by rule, criteria for the allocation of restoration and preservation funds. Such criteria shall include, but not be limited to, the following:

(a) The degree of water quality degradation;

(b) The degree to which sources of pollution which have contributed to the need for restoration or preservation have been abated;

(c) The public uses which can be made of the subject waters;

(d) The ecological value of the subject waters in relation to other waters proposed for restoration and preservation;

(e) The implementation by local government of regulatory or management programs to prevent further and subsequent degradation of the subject waters; and

(f) The commitment of local government resources to assist in the proposed restoration and preservation.

(4) There is hereby created the Water Resources Restoration and Preservation Trust Fund for the deposit and disbursement of funds available from the Pollution Recovery Fund and from federal moneys in accordance with the provisions of this act.

(5) The provisions of this act are for the benefit of the public and shall be liberally construed to accomplish the purposes set forth in this act.

History.—ss. 1, 4, 5, ch. 77-369; s. 2, ch. 79-130.

403.062 Pollution control; underground water, lakes, etc.—The department and its agents shall have general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.

History.—s. 2, ch. 29834, 1955; ss. 26, 35, ch. 69-106.
Note.—Former s. 381.43; s. 381.251.

403.081 Performance by other state agencies.—All state agencies, including the Department of Health and Rehabilitative Services, shall be available to the Department of Environmental Regulation to perform, at its direction, the duties required of the Department of Environmental Regulation under this act.

History.—s. 9, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 269, ch. 77-147.

403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste, ocean outfall, inland outfall or disposal well waste treatment.—

(1) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall or disposal well for sanitary sewage disposal which does not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(2) Sanitary sewage disposal treatment plants which discharge effluent through ocean outfalls or disposal wells on July 1, 1970, shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of [1][Environmental Regulation] by January 3, 1974. Failure to conform by said date shall be punishable by a fine of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall, inland outfall, or disposal well for the discharge of industrial waste of any kind which does not provide for secondary waste treatment or such other treatment as is deemed necessary and ordered by the Department of Environmental Regulation.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells on July 1, 1971, shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered by January 1, 1973, by the Department of [1][Environmental Regulation]. Failure to conform by said date shall be punishable as provided in s. 403.161(2).

History.—ss. 1, 2, ch. 70-82; s. 2, ch. 71-137; s. 1, ch. 71-274; s. 270, ch. 77-147; s. 74, ch. 79-65.

[1]**Note.**—Bracketed words substituted by the editors for words "Pollution Control." See s. 8, ch. 75-22, which transferred the Department of Pollution Control to the Department of Environmental Regulation.

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)(a) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any facilities for sanitary sewage disposal which do not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(b) No facilities for sanitary sewage disposal constructed after the effective date of this act shall dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay and Punta Gorda Bay or any bay, bayou, or sound tributary thereto without providing advanced waste treatment approved by the Department of Environmental Regulation.

(c) No facilities for sanitary sewage disposal constructed after June 14, 1978, shall dispose of any wastes by deep well injection without providing for secondary waste treatment and, in addition thereto, advanced waste treatment deemed necessary by the Department of Environmental Regulation to protect adequately the beneficial use of the receiving waters.

(2) Any facilities for sanitary sewage disposal existing on July 1, 1971, shall provide for secondary waste treatment by January 1, 1973, and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of [1][Environmental Regulation]. Failure to conform by said date shall be punishable by a civil penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) This section shall not be construed to prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.

History.—ss. 1-3, ch. 71-259; s. 2, ch. 71-137; s. 1, ch. 72-58; s. 271, ch. 77-147; s. 1, ch. 78-206; s. 75, ch. 79-65.

[1]**Note.**—Bracketed words substituted by the editors for words "Pollution Control." See s. 8, ch. 75-22, which transferred the Department of Pollution Control to the Department of Environmental Regulation.

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(1) No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. In no event shall a permit for a water pollution source be valid for more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this act and the rules and regulations of the department.

(2) The department shall adopt, amend, or repeal rules, regulations, and standards for the issuance, denial, and revocation of permits.

(3) The department shall issue permits on such conditions as are necessary to effect the intent and purposes of this section.

(4) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department, except as provided in s. 403.088, and which will comply with the prohibitions in s. 124.41 of volume 40 of the Code of Federal Regulations.

(5) The department may require an application fee of not more than $20 per application.

(6) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:

(a) Has submitted false or inaccurate information in his application;

(b) Has violated law, department orders, rules, or regulations, or permit conditions;

(c) Has failed to submit operational reports or other information required by department rule or regulation; or

(d) Has refused lawful inspection under s. 403.091.

(7) Violation of this section shall be punishable as provided in this chapter.

History.—s. 1, ch. 71-203; s. 4, ch. 74-133; s. 14, ch. 78-95.

403.0875 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 7, ch. 79-161.

403.088 Water pollution operation permits; temporary permits; conditions.—

(1) No person, without written authorization of the department, shall discharge into waters within

the state any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for them. However, this section shall not be deemed to prohibit the application of pesticides to waters in the state for the control of insects, aquatic weeds, or algae, provided the application is performed pursuant to a program approved by the Department of Health and Rehabilitative Services, in the case of insect control, or the Department of Natural Resources, in the case of aquatic weed or algae control. The Department of Environmental Regulation is directed to enter into interagency agreements to establish the procedures for program approval. Such agreements shall provide for public health, welfare, and safety, as well as environmental factors. Approved programs must provide that only chemicals approved for the particular use by the Federal Environmental Protection Agency or by the Department of Agriculture and Consumer Services may be employed and that they be applied in accordance with registered label instructions, state standards for such application, and the provisions of the Florida Pesticide Law, chapter 487.

(2) Any person discharging treated or untreated waste into waters within the state on a regular, intermittent or continuous basis prior to January 1, 1972, and who intends to continue such discharges shall file a written report of such discharges with the department. The report shall specify the location, nature, volume, and frequency of such discharges. The department may require the person to furnish any additional information reasonably necessary to evaluate the effect of such discharges upon the receiving waters.

(3)(a) Any person intending to discharge wastes into the waters of the state shall make application to the department for an operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.

(b) If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. If the department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest.

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters; and

4. Be valid for the period of time specified therein.

(d) An operation permit may be renewed upon application to the department. No renewal permit shall be issued if the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them.

(4)(a) A person who does not qualify for an operation permit or has been denied an operation permit under paragraph (b) of subsection (3) may apply to the department for a temporary operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department may require. The department may require such person to submit any additional information reasonably necessary for proper evaluation.

(b) The department shall give notice to people resident in the drainage area of the receiving waters for the proposed discharge concerning the period during which they may present objections to the proposed discharge.

(c) After consideration of the application, any additional information furnished, and all written objections submitted, the department shall grant or deny a temporary operation permit. No temporary permit shall be granted by the department unless it affirmatively finds:

1. The proposed discharge does not qualify for an operation permit;

2. The applicant is constructing, installing, or placing into operation, or has submitted plans and reasonable schedules for constructing, installing or placing into operation, an approved pollution abatement facility or alternate waste disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bona fide effort through research and other means to discover and implement such a method;

3. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;

4. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;

5. The denial of a temporary operation permit would work an extreme hardship upon the applicant;

6. The granting of a temporary operation permit will be in the public interest; or

7. The discharge will not be unreasonably destructive to the quality of the receiving waters.

(d) A temporary operation permit issued shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the department as a condition of the permit;

3. Require the permitholder to maintain such monitoring equipment and make and file such records and reports as the department deems necessary to insure compliance with the terms of the per-

mit and to evaluate the effect of the discharge upon the receiving waters;

4. Be valid only for the period of time necessary for the permit holder to place into operation the facility, system, or method contemplated in his application as determined by the department; and

5. Contain other requirements and restrictions which the department deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.

(5) Any facility for sanitary sewage disposal which demonstrates a good faith effort to build or improve its treatment facilities so as to comply with the rules and regulations of the department, and for which the department makes a determination that additional sewer connections shall not be detrimental to the health, safety, and welfare of the citizens of the State of Florida or to the natural environment to such an extent as to require the denial of an exemption under this subsection, may be exempted completely or partially by the department from the prohibition on sewer connections which the State of Florida attempts to impose. Any such facility can operate under the provisions of this act until June 30, 1975. The facilities operating under this exemption shall be subject to the rules and regulations of the department, and said exemption will be subject to reaffirmation or revocation by the department. Evaluation shall focus on:

(a) The efforts made by the facility to take affirmative steps to build, improve, or upgrade its treatment facilities; and

(b) The extent of any environmental damage that is resulting from the operation of the facility and any continued increases in sewer connections to the facility.

An unsatisfactory evaluation shall be reported to the [1]Pollution Control Board, and if the board determines that such affirmative steps have not been taken or that such environmental damage has occurred, then the exemption for that facility shall be terminated by the board.

(6)(a) The provisions of this section shall not be construed to repeal or restrict any other provisions of this chapter, but shall be cumulative thereto.

(b) This section shall not be construed to exempt any permittee from the pollution control requirements of any local air and water pollution control rule, regulation, ordinance, or code, or to authorize or allow any violation thereof.

History.—ss. 2, 3, 5, ch. 71-203; s. 1, ch. 73-360; s. 5, ch. 74-133; s. 2, ch. 76-112; s. 1, ch. 77-174; s. 14, ch. 78-95; s. 2, ch. 78-98; s. 97, ch. 79-164.

[1]**Note.**—The board was impliedly abolished by ss. 8 and 26, ch. 75-22.

403.091 Inspections.—Any duly authorized representative of the department may enter and inspect any property, premises, or place, except a building which is used exclusively for a private residence, on or at which an air or water contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with the law, or rules and regulations of the department. No person shall refuse immediate entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History.—s. 10, ch. 67-436; ss. 26, 35, ch. 69-106.

403.101 Classification and reporting; regulation of operators of water purification and waste-water treatment plants.—

(1) The department, by rule or regulation, may classify air and water contaminant sources, which in its judgment may cause or contribute to air or water pollution, according to levels and types of emissions and other characteristics which relate to air or water pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic, social and recreational factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air or water contaminant sources of any class for which the rules and regulations of the department require reporting shall make reports containing information as may be required concerning location, size, and height of contaminant outlets, processes employed, fuels used and the nature and time period or duration of emissions, and such other information as is relevant to air and water pollution and available or reasonably capable of being assembled.

(3) The department is authorized to establish qualifications for and to examine and certify all water and waste-water treatment plant operators; to issue, deny, revoke, and suspend annual operator certificates pursuant to its rules and chapter 120; and to charge a fee, not in excess of $10, for examination, application processing, and issuance and renewal of certification. Such fee shall be nonrefundable.

(4) No person shall perform the duties of operator of a water or waste-water treatment plant unless he holds a current operator's certificate issued by the department. However, this section shall not apply to public lodging establishments licensed under chapter 509. No owner of a water or waste-water plant shall employ any person to perform the duties of an operator unless such person possesses a valid certificate at the required level of certification.

(5) All funds collected pursuant to this section shall be deposited in the General Revenue Fund.

(6) The department may promulgate rules and minimum standards to effectuate the provisions of this section and to ensure efficient, hygienic water purification and waste-water treatment operations in this state.

(7) For purposes of this section, "operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a water purification plant or a waste-water treatment plant, and shall include the person in charge of a shift or period of operation during any part of the day. An

operator-trainee may be employed as a trainee for no more than 2 years cumulatively.

History.—s. 11, ch. 67-436; ss. 26, 35, ch. 69-106; s. 18, ch. 77-337; s. 161, ch. 79-400.

403.111 Confidential records.—Any information, other than effluent data, relating to secret processes, methods of manufacture or production which may be required, ascertained, or discovered by inspection or investigation, shall not be disclosed in public hearings and shall be kept confidential by any member, officer, or employee of the department. Provided that nothing herein shall be construed to prevent the use of such records in judicial proceedings in connection with the prosecution of violations of this act, when ordered to be produced by appropriate subpoena or by order of the court. No such subpoena or order of the court shall abridge or alter the rights or remedies of persons affected in the protection of trade secrets or secret processes, in the manner provided by law, and such persons affected may take any and all steps available by law to protect such trade secrets or processes.

History.—s. 12, ch. 67-436; ss. 26, 35, ch. 69-106; s. 6, ch. 74-133.

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) It shall not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The board may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the board may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action may be included with the notice. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof.

(d) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law.

History.—s. 13, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-114; s. 1, ch. 70-139; s. 349; ch. 71-136; s. 112, ch. 71-355; s. 1, ch. 72-286; s. 138, ch. 77-104; s. 1, ch. 77-117; s. 14, ch. 78-95.

403.131 Injunctive relief, cumulative remedies.—

(1) The department may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this chapter or any rule, regulation, permit certification, or order; to enjoin any violation specified in s. 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.

(2) All the judicial and administrative remedies in this section and s. 403.121 are independent and cumulative except that the judicial and administrative remedies to recover damages are alternative and mutually exclusive.

History.—s. 14, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-139; s. 1, ch. 70-439; s. 2, ch. 72-286.

403.141 Civil liability; joint and several liability.—

(1) Whoever commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

(2) Whenever two or more persons pollute the air or waters of the state in violation of this chapter or any rule, regulation, or order of the department so that the damage is indivisible, each violator shall be jointly and severally liable for such damage and for the reasonable cost and expenses of the state incurred in tracing the source of discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including the animal, plant, and aquatic life of the state, to their former condition. However, if said damage is

divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his violation.

(3) In assessing damages for fish killed, the value of the fish is to be determined in accordance with a table of values for individual categories of fish which shall be promulgated by the department. At the time the table is adopted, the department shall utilize tables of values established by the Department of Natural Resources and the Game and Fresh Water Fish Commission. The total number of fish killed may be estimated by standard practices used in estimating fish population.

(4) The damage provisions of this section shall not apply to damage resulting from the application of federally approved or state-approved chemicals to the waters in the state for the control of insects, aquatic weeds, or algae, provided the application of such chemicals is done in accordance with a program approved pursuant to s. 403.088(1) and provided said application is not done negligently.

History.—s. 15, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-141; s. 1, ch. 71-204; s. 3, ch. 72-286; s. 7, ch. 74-133; s. 1, ch. 76-112; s. 3, ch. 78-98.

403.151 Compliance with rules or orders of department.—All rules or orders of the department which require action to comply with standards adopted by it, or orders to comply with any provisions of this act, may specify a reasonable time for such compliance.

History.—s. 16, ch. 67-436; ss. 26, 35, ch. 69-106.

403.161 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this chapter, and it shall be prohibited:

(a) To cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter.

(2) Whoever commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) Any person who willfully or negligently commits a violation specified in subsections (1)(a) or (b) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not less than $2,500 or more than $25,000, or punishable by 1 year in jail, or by both for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in subsection (1)(c) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not more than $10,000 or by 6 months in jail, or by both for each offense.

(5) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to insure immediate and continued compliance with this act.

History.—s. 17, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-356; s. 1, ch. 70-439; s. 4, ch. 72-286; s. 8, ch. 74-133; s. 139, ch. 77-104; s. 1, ch. 77-174.

403.165 Use of pollution awards; pollution recovery fund.—

(1) Any moneys recovered by the state in an action against any person who has polluted the air, soil, or water of the state in violation of this chapter shall be used to restore the polluted area which was the subject of suit to its former condition.

(2) There is hereby created a Pollution Recovery Fund which is to be supervised and used by the department to restore polluted areas of the state, as defined by the department, to the condition they were in before pollution occurred. The fund shall consist of all moneys specified in subsection (1). The moneys shall be disbursed first to pay all amounts necessary to restore the respective polluted areas which were the subjects of state actions. Any moneys remaining in the fund shall then be used by the department, as it sees fit, to pay for any work needed to restore areas which required more money than the state was able to obtain by court action or otherwise or to restore areas in which the state brought suit but was unable to recover any moneys from the alleged violators.

History.—s. 5, ch. 72-286.

403.182 Local pollution control programs.—

(1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act. Local pollution control programs in existence on the effective date of this act shall not be ousted of jurisdiction if such local program complies with this act. All local pollution control programs, whether established before or after the effective date of this act, must:

(a) Be approved by the department as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto.

(b) Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder.

(c) Provide for the enforcement of such requirements by appropriate administrative and judicial process.

(d) Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.

(2) The department shall have the exclusive authority and power to require and issue permits; provided, however, that the department may delegate its power and authority to local pollution control organizations if the department finds it necessary or desirable to do so.

(3) If the department finds that the location,

character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air and water quality without an areawide pollution control program, the department may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(4)(a) If the department has reason to believe that a pollution control program in force pursuant to this section is inadequate to prevent and control pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this act, it shall proceed to determine the matter.

(b) If the department determines that such program is inadequate to prevent and control pollution in the municipality or county or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality, county, or municipalities or counties fail to take such necessary corrective action within the time required, the department shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this act. Such pollution control program shall supersede all municipal or county pollution laws, regulations, ordinances and requirements in the affected jurisdiction.

(d) If the department finds that the control of a particular class of contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of contaminant source. Classifications pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the department administers its pollution control program pursuant to subsection (4) of this section may with the approval of the department establish or resume a municipal or county pollution control program which meets the requirements of subsection (1) of this section.

(6) Notwithstanding the existence of any local pollution control program, whether created by a county or municipality or a combination thereof or by a special law, the department shall have jurisdiction to enforce the provisions of this chapter and any rules, regulations, or orders issued pursuant to this chapter throughout the state; however, whenever rules, regulations, or orders of a stricter or more stringent nature have been adopted by a local pollution control program, the department, if it elects to assert its jurisdiction, shall then enforce the stricter rules, regulations, or orders in the jurisdiction where they apply.

(7) It shall be a violation of this chapter to violate, or fail to comply with, a rule, regulation, or order of a stricter or more stringent nature adopted by a local pollution control program, and the same shall be punishable as provided by s. 403.161. If any local program changes any rule, regulation, or order, whether or not of a stricter or more stringent nature, such change shall not apply to any installation or source operating at the time of such change in conformance with a currently valid permit issued by the Department of Environmental Regulation.

(8) Nothing in this act shall prevent any local pollution control program from enforcing its own rules, regulations, or orders. All remedies of the Department of Environmental Regulation under this chapter shall be available, as an alternative to local enforcement provisions, to each local pollution control program to enforce any provision of local law. When the department and a local program institute separate lawsuits against the same party for violation of a state or local pollution law, rule, regulation, or order arising out of the same act, the suits shall be consolidated when possible.

(9) Each local pollution control program shall cooperate with and assist the department in carrying out its powers, duties, and functions.

History.—s. 19, ch. 67-436; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; ss. 1, 2, ch. 73-256; s. 14, ch. 78-95; s. 76, ch. 79-65.

403.1821 Water pollution control and sewage treatment.—Sections 403.1821-403.1833 shall be known and cited as the "Florida Water Pollution Control and Sewage Treatment Plant Grant Act of 1970."

History.—s. 1, ch. 70-251.
cf.—s. 403.1835 Sewage treatment facilities revolving loan program.

403.1822 Same; definitions.—As used in ss. 403.1821-403.1833:

(1) "Local governmental agencies" refers to any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with an eligible project, having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

(2) "Department" refers to the Department of Environmental Regulation.

(3) "Grants," "grant," "state grants," or "state grant" refer to disbursements from the State Water Pollution Control Trust Fund pursuant to s. 403.1825.

History.—s. 2, ch. 70-251; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 113, ch. 71-355; s. 77, ch. 79-65.

403.1823 Department of Environmental Regulation to administer; develop rules and regulations.—The department shall:

(1) Promulgate rules and regulations to carry out the purposes of ss. 403.1821-403.1833.

(2) Administer and control all funds appropriated to or received by the department for the purposes of ss. 403.1821-403.1833.

History.—s. 3, ch. 70-251; s. 1, ch. 70-439.

403.1824 Establish fund.—A trust fund to be known as the State Water Pollution Control Trust Fund is established in the State Treasury to be used for state grants to local governmental agencies for the construction or reconstruction of sewage treat-

ment facilities. All funds received by the department to carry out the purposes of ss. 403.1821-403.1833 shall be deposited in this fund.

History.—s. 4, ch. 70-251; s. 1, ch. 70-439.

403.1825 Grant payments.—Warrants for the payment of grants to local governmental agencies or increments thereof from the Water Pollution Control Trust Fund shall be issued by the State Comptroller upon certification to him by the department that such payments are due and payable under the department's published rules and regulations.

History.—s. 5, ch. 70-251; s. 1, ch. 70-439.

403.1826 Grants, requirements for eligibility.—

(1) Grants shall be made under ss. 403.1821-403.1833 only for projects eligible for federal grants under Public Law 84-660, as amended, or other applicable federal law.

(2) No grant shall be made for any sewage treatment facility unless such facility and the plans and specifications therefor are approved by the department and such facility is constructed in accordance with a time schedule of the department, and subject to such requirements as the department shall impose. If the department requires that the facility be approved by the Federal Water Quality Administration, such grant shall be conditioned upon the local governmental agency complying with all of the requirements of said water pollution control administration.

(3) No grant shall be made until the local governmental agency has agreed to provide that part of the total cost of the facility which is in excess of the applicable state and federal grants.

(4) The grant to each local governmental agency shall not exceed 25 percent of that portion of the project cost that is eligible for a federal grant.

(5) Grants made under ss. 403.1821-403.1833 shall be paid to the local governmental agency in partial payments similar to the time schedule that such payments are provided to the local governmental agency by the Federal Water Quality Administration.

(6) No grant shall be made unless the local governmental agency assures the department of the proper and efficient operation and maintenance of the sewage treatment facility after construction.

(7) No grant shall be made unless the local governmental agency has filed properly executed forms and applications prescribed by the department.

(8) Any local government agency receiving assistance under ss. 403.1821-403.1833 shall keep such records as the department shall prescribe, including records which fully disclose the amount and disposition by the recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with such assistance given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The department and the Auditor General or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under ss. 403.1821-403.1833.

(9) Effective July 1, 1971, a grant shall not be made until the local governmental agency's governing body has adopted and submitted to the department a comprehensive long-range plan for the control of water pollution in the area within its jurisdiction, hereinafter referred to as the official plan. If more than one local governmental agency has authority to provide service for sewage treatment in the same area, the required plan may be submitted jointly by the local governmental agencies concerned or by one local governmental agency with the concurrence of the others. The official plan shall:

(a) Provide for a timely construction of sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or other wastes as defined by this chapter into the waters of the state.

(b) Provide for adequate planning, zoning, population projections, and engineering and economic studies to delineate with all practicable precision those portions of the area which public sewerage systems may reasonably be expected to serve within 10 years and within 20 years, and any areas in which the provision of such services is not reasonably foreseeable.

(c) Be in compliance with the state pollution control plan required by Public Law 84-660, as amended, or other applicable federal law.

(d) Set forth a time schedule and proposed method of financing, construction, and operation of the water pollution control system.

(e) Be reviewed by the official planning agencies having jurisdiction within the local governmental agency, and by the regional planning agency, if any, for consistency with programs of planning for the area and region, which reviews shall be transmitted to the department with the plan.

History.—s. 6, ch. 70-251; s. 1, ch. 70-439.

403.1827 Planning grants.—The department may administer grants to local governmental agencies to assist them in preparing official plans. Such planning grants shall be made from appropriations made by the Legislature and from federal appropriations authorized by Public Law 89-753 or other applicable federal law. However, the state grant shall not exceed 50 percent of the local governmental agencies' contribution.

History.—s. 7, ch. 70-251; s. 1, ch. 70-439.

403.1828 Official plans, approval; technical assistance; cooperation.—

(1) The department may approve the official plan as submitted or, if it finds the plan to be inconsistent with proper area or regional water pollution control, it may return the plan for appropriate modification. When more than one local governmental agency is involved in an official plan and the local governmental agencies are unable to agree upon an official plan which the department will approve, the department shall develop the necessary official plans.

(2) The department may provide technical assistance to local governmental agencies in coordinating official plans.

(3) The department shall cooperate with all appropriate federal, state, interstate, and local governmental agencies and with appropriate private organizations.

History.—s. 8, ch. 70-251; s. 1, ch. 70-439.

403.1829 Funding of projects; priorities.—Eligible projects shall be funded in descending order of their priority as established by the department until the State Water Pollution Control Fund is exhausted. The priority list as established by the Department of Health and Rehabilitative Services as agent of the board for the fiscal year beginning July 1, 1969, is ratified and confirmed. If funds available for the last project so funded are less than the amount of the grant to which the project is entitled, the balance due on such grant shall be paid from receipts of the fund in the next succeeding fiscal year before any other projects are so funded.

History.—s. 9, ch. 70-251; s. 1, ch. 70-439.

403.1830 State advances in anticipation of construction funds.—If federal funds have been approved for a project but are not available to the local governmental agency at the time of its scheduled construction of a sewage treatment facility, the department may advance to such local governmental agency, in addition to the state grant provided for in s. 403.1826, that sum of money which would equal the amount of the federal grant, provided the local governmental agency shall agree that any federal contribution thereafter made for the project shall be forwarded to the state as reimbursement for the funds expended under this section. Prior to advancing the federal share, the department shall require the local governmental agency to agree to do all that is necessary to retain its eligibility to qualify for the federal grant. The local governmental agency shall also agree to pay over to the department any installment of a grant received from the Federal Water Pollution Control Administration on which the state has made an advance under this section.

History.—s. 10, ch. 70-251; s. 1, ch. 70-439.

403.1831 State advances in anticipation of contract plan funds.—If federal funds for contract plans and specifications for the construction of a sewage treatment facility are not available to the local governmental agency at the time of its scheduled planning, the department may advance to such local governmental agency a sum equal to 7 percent of the estimated construction cost, said amount to be used by the local governmental agency for the purpose of preparing contract plans and specifications. Any remaining balance of the 7 percent advanced under this section shall be applied to the cost of construction of the facility. The funds advanced to the local governmental agency under this section shall be considered a part of the total amount of the state grant provided for in s. 403.1826. Prior to advancing funds under this section, the department shall approve an official plan as provided in s. 403.1826(9).

History.—s. 11, ch. 70-251; s. 1, ch. 70-439.

403.1832 Department to accept federal aid.—The department is designated as the administrative agency of the state to apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the federal government relating to the planning, developing, maintaining, and enforcing of the program to provide clean water and pollution abatement of the waters of the state or to any other related purpose which the Congress of the United States has authorized or may authorize. The department is authorized in the name of the state to make such applications, sign such documents, give such assurances, and do such other things as are necessary to obtain such aid from or cooperate with the United States Government or any agency thereof. The department may consent to enter into contracts and agreements and cooperate with any other state agency, local governmental agency, person, or other state when it is necessary to carry out the provisions of ss. 403.1821-403.1833.

History.—s. 12, ch. 70-251; s. 1, ch. 70-439.

403.1833 Appropriations; state water pollution control fund.—There is hereby appropriated to the State Water Pollution Control Trust Fund funds received by the state under the reimbursement provisions of s. 8C of Public Law 84-660, as amended.

History.—s. 13, ch. 70-251.

403.1834 State bonds to finance facilities; exemption from taxation.—

(1) The issuance of state bonds to finance the construction of air and water pollution control and abatement and solid waste disposal facilities, payable primarily from the pledged revenues provided for by s. 14, Art. VII of the State Constitution or from such pledged revenues and the full faith and credit of any county, municipality, district, authority, or any agency thereof, and pledging the full faith and credit of the state as additional security, is authorized, subject and pursuant to the provisions of s. 14, Art. VII of the State Constitution, the provisions of the State Bond Act, ss. 215.57-215.83, as amended, and the provisions of this section.

(2) The State Board of Administration is designated as the state fiscal agency to make the determinations required by s. 14, Art. VII of the State Constitution in connection with the issuance of such bonds.

(3) The amount of the state bonds to be issued shall be determined by the Division of Bond Finance of the Department of General Services. However, the total principal amount issued shall not exceed two hundred million dollars in any state fiscal year.

(4) The facilities to be financed with the proceeds of such state bonds shall be determined and approved by the Department of Environmental Regulation, and may be constructed, acquired, maintained, and operated by any county, municipality, district, or authority, or any agency thereof, or by said department.

(5) The Department of Environmental Regulation and the Division of Bond Finance of the Department of General Services are hereby authorized to enter into lease-purchase agreements between such departments or to enter into lease-purchase agree-

ments or loan agreements between either of such departments and any county, municipality, district, or authority, or any agency thereof, for such periods and under such other terms and conditions as may be mutually agreed upon by the parties thereto in order to carry out the purposes of s. 14, Art. VII of the State Constitution, and this section.

(6) The Department of Environmental Regulation shall have power to fix, establish, and collect fees, rentals, or other charges for the use or benefit of said facilities, or may delegate such power to any county, municipality, district, authority, or any agency thereof under such terms and conditions and for such periods as may be mutually agreed upon.

(7) It is found and declared that said facilities will constitute a public governmental purpose necessary for the health and welfare of all the inhabitants of the state, and none of said facilities or said state bonds or the interest thereon shall ever be subject to taxation by the state or any political subdivision or agency thereof. The exemption granted by this subsection shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—ss. 1-7, ch. 70-270; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 4, ch. 73-256; s. 14, ch. 73-327; s. 78, ch. 79-65.

403.1835 Sewage treatment facilities revolving loan program.—

(1) The purpose of this section is to assist in implementing the legislative declaration of public policy as contained in s. 403.021 by establishing a loan program to accelerate construction of sewage treatment facilities by local governmental agencies.

(2) For the purposes of this section, the following terms, unless the context otherwise indicates, shall have the meanings ascribed them in this subsection:

(a) "Local governmental agencies" means local governmental agencies as defined in s. 403.1822(1).

(b) "Sewage treatment facilities" means all facilities necessary, including land, for the collection, treatment, and disposal of sewage and other water pollutants.

(3) The Department of Environmental Regulation is authorized to make loans to local governmental agencies to assist said agencies in the planning, designing, and preparation of environmental assessment studies for sewage treatment facilities. Loans may be made to local governmental agencies for interim financing for constructing, modifying, upgrading, and acquiring lands for sewage treatment facilities if the department has approved a permanent financing plan for said agencies through participation in the state pollution bonds program pursuant to s. 14, Art. VII, State Constitution, or through the issuance of local bonds, evidences of indebtedness, or other acceptable methods of repayment. Local governmental agencies are authorized to borrow funds made available pursuant to this section and may pledge any revenue available to them to repay any funds borrowed.

(4) The term of loans made pursuant to this section shall not exceed three years. The interest rate on loans shall be the same as that paid on the last bonds sold pursuant to s. 14, Art. VII, State Constitution, or 5 percent, whichever is less, except that the interest rate during the first twelve months of any loan shall be one half of the above determined rate.

(5) The department is authorized to make rules and regulations on or before February 1, 1973, necessary to carry out the purpose of this section and shall include in an annual report complete details of the amount loaned, interest earned, and loans outstanding at the end of each fiscal year.

(6) Each loan agreement made pursuant to this section shall provide for the repayment schedule and interest rate. In the event a local governmental agency becomes delinquent on its loan, the department shall so certify to the Comptroller who shall forward the amount delinquent to the department from any funds due to the local governmental agency under any revenue sharing or tax sharing fund established by the state, except as otherwise provided by the state constitution.

(7) A trust fund to be known as the "Sewage Treatment Loan Fund" is hereby established in the State Treasury to be used as a revolving fund by the department to make loans to local governmental agencies. Any funds therein not needed for loans may be invested pursuant to s. 215.49. All interest earned shall be deposited in the General Revenue Fund, unallocated for appropriation as the Legislature authorizes. The cost of administering this program shall be paid by the department from funds otherwise appropriated to it. All funds available in the sewage treatment loan fund are hereby appropriated to carry out the purpose of this section, and the principal of all loans repaid or investments made shall be deposited into this fund.

(8) On July 1, 1975, the cash balance in the Sewage Treatment Loan Fund shall revert and be transferred to the General Revenue Fund, unallocated. Loan repayments received in the Sewage Treatment Loan Fund after July 1, 1975, shall immediately revert and be transferred to the General Revenue Fund, unallocated.

History.—s. 1, ch. 72-723; s. 79, ch. 79-65.

403.191 Construction in relation to other law.—

(1) It is the purpose of this act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the air and waters of the state. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act, or any act done by virtue thereof, be construed as estopping the state or any municipality, or person affected by air or water pollution, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(2) No civil or criminal remedy for any wrongful action which is a violation of any rule or regulation of the department shall be excluded or impaired by the provisions of this chapter.

(3) This act shall limit and restrict the application of chapter 24952, 1947, Laws of Florida, to any person operating any industrial plant that has located in the State of Florida in reliance thereon and exercised rights and powers granted thereby on and before the effective date of this act; provided such person shall henceforth in the exercise of such rights and powers install and use treatment works or con-

trol measures generally equivalent to those installed and used by other similar industrial plants pursuant to the requirements of the department.

History.—s. 20, ch. 67-436; ss. 26, 35, ch. 69-106.

403.201 Variances.—

(1) Upon application the department in its discretion may grant a variance from the provisions of this act or the rules and regulations adopted pursuant hereto. Variances and renewals thereof may be granted for any one of the following reasons:

(a) There is no practicable means known or available for the adequate control of the pollution involved.

(b) Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship of a kind other than those provided for in paragraphs (a) and (b). Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months except that variances granted pursuant to part II may extend for the life of the permit or certification.

(2) The department shall hold a hearing on each application for a variance.

(3) The department may prescribe such time limits and other conditions to the granting of a variance as it shall deem appropriate.

History.—s. 21, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 74-170; s. 14, ch. 78-95.

403.221 Pending proceedings.—No legal proceedings shall be abated because of any transfers made in this section, but the appropriate party exercising like authority or performing like duties or functions shall be substituted in said proceedings.

History.—s. 23, ch. 67-436.

403.231 Department of Legal Affairs to represent the state.—The Department of Legal Affairs shall represent the state and its agencies as legal advisor in carrying out the provisions of this act.

History.—s. 24, ch. 67-436; ss. 11, 35, ch. 69-106.

403.251 Safety clause.—The Legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health and safety.

History.—s. 27, ch. 67-436.

403.261 Provisions specifying jurisdiction repealed.—All rulemaking jurisdiction over air and water pollution matters held by other agencies within the state on September 1, 1967, is hereby repealed including, but without limitation, such jurisdiction held by the Florida State Board of Health, the Game and Fresh Water Fish Commission, the State Board of Conservation and the several water management districts within the state.

History.—s. 1, ch. 67-436.

403.271 Aquatic plants; permits; penalties.—

(1) No person shall import into the state any aquatic plant or seeds thereof of a species not native to the state without having first obtained a permit from the Department of Natural Resources.

(2) No person shall knowingly transport or transfer aquatic plants, whether indigenous or a species not native to the state, between bodies of water within the state without having first obtained a permit from the Department of Natural Resources.

(3) No person shall place or cause to be placed in the waters of the state or to cultivate or cause to propagate in the waters of the state any aquatic plant without first having obtained a permit from the Department of Natural Resources.

(4) The Department of Natural Resources is authorized to issue such permits only after the following conditions have been met:

(a) The Department of Agriculture and Consumer Services and the Game and Fresh Water Fish Commission issue prior approval of such permit.

(b) An appropriate agency, such as an aquatic vegetation laboratory, issues a memorandum certifying that the importation, transportation, or cultivation of such species poses no danger to the waters, fish, reptiles, or ecology of the state.

(5) The Department of Natural Resources, the Department of Agriculture and Consumer Services, and the Game and Fresh Water Fish Commission shall conduct investigations of such species prior to issuance or denial of a permit for importation, transport, or transfer of such species in the waters of the state. Such investigations and the issuance of such permits shall be subject to the criteria established by the Department of Natural Resources.

(6) The Department of Natural Resources shall publicize the provisions of this section on road signs throughout the state.

(7)(a) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) All law enforcement officers of the state and its agencies with power to make arrests for violations of state law shall enforce the provisions of this section.

History.—s. 1, ch. 69-158; ss. 14, 26, 35, ch. 69-106; s. 4, ch. 70-203; s. 1, ch. 70-439; s. 350, ch. 71-136; s. 2, ch. 71-137; s. 140, ch. 77-104; s. 1, ch. 77-174; s. 23, ch. 78-95.

403.281 Definitions; Weather Modification Law.—As used in this chapter relating to weather modification:

(1) "Department" means the Department of Environmental Regulation.

(2) "Person" includes any public or private corporation.

History.—s. 1, ch. 57-128; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; s. 156, ch. 71-377; s. 80, ch. 79-65.

Note.—Former s. 373.261.

403.291 Purpose of weather modification law.—The purpose of this law is to promote the public safety and welfare by providing for the licensing, regulation and control of interference by artificial means with the natural precipitation of rain, snow,

hail, moisture or water in any form contained in the atmosphere.

History.—s. 2, ch. 57-128.
Note.—Former s. 373.271.

403.301 Artificial weather modification operation; license required.—No person without securing a license from the department, shall cause or attempt to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere, or shall prevent or attempt to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.

History.—s. 3, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.281.

403.311 Application for licensing; fee.—

(1) Any person desiring to do or perform any of the acts specified in s. 403.301 may file with the department an application for a license on a form to be supplied by the department for such purpose setting forth all of the following:

(a) The name and post office address of the applicant.

(b) The education, experience and qualifications of the applicant, or if the applicant is not an individual, the education, experience and qualifications of the persons who will be in control and in charge of the operation of the applicant.

(c) The name and post office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(d) The nature and object of the weather modification operation which the applicant proposes to conduct, including a general description of such operation.

(e) The method and type of equipment and the type and composition of materials that the applicant proposes to use.

(f) Such other pertinent information as the department may require.

(2) Each application shall be accompanied by a filing fee in the sum of $100 and proof of financial responsibility as required by s. 403.321.

History.—s. 4, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.291.

403.321 Proof of financial responsibility.—

(1) No license shall be issued to any person until he has filed with the department proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by him in the amount of $10,000 because of bodily injury to or death of one person resulting from any one incident, and subject to said limit for one person, in the amount of $100,000 because of bodily injury to or death of two or more persons resulting from any one incident, and in the amount of $100,000 because of injury to or destruction of property of others resulting from any one incident.

(2) Proof of financial responsibility may be given by filing with the department a certificate of insurance or a bond in the required amount.

History.—s. 5, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.301.

403.331 Issuance of license; suspension or revocation; renewal.—

(1) The department shall issue a license to each applicant who:

(a) By education, skill and experience appears to be qualified to undertake the weather modification operation proposed in his application.

(b) Files proof of his financial responsibility as required by s. 403.321.

(c) Pays filing fee required in s. 403.311.

(2) Each such license shall entitle the licensee to conduct the operation described in the application for the calendar year for which the license is issued unless the license is sooner revoked or suspended. The conducting of any weather modification operation or the use of any equipment or materials other than those described in the application shall be cause for revocation or suspension of the license.

(3) The license may be renewed annually by payment of a filing fee in the sum of $50.

History.—s. 6, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.311.

403.341 Filing and publication of notice of intention to operate; limitation on area and time.—Prior to undertaking any operation authorized by the license, the licensee shall file with the department and cause to be published a notice of intention. The licensee shall then confine his activities substantially within the time and area limits set forth in the notice of intention.

History.—s. 7, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.321.

403.351 Contents of notice of intention.—The notice of intention shall set forth all of the following:

(1) The name and post office address of the licensee.

(2) The name and post office address of the persons on whose behalf the weather modification operation is to be conducted if other than the licensee.

(3) The nature and object of the weather modification operation which licensee proposes to conduct, including a general description of such operation.

(4) The method and type of equipment and the type and composition of the materials the licensee proposes to use.

(5) The area in which and the approximate time during which the operation will be conducted.

(6) The area which will be affected by the operation as nearly as the same may be determined in advance.

History.—s. 8, ch. 57-128.
Note.—Former s. 373.331.

403.361 Publication of notice of intention.—The licensee shall cause the notice of intention to be published at least once a week for 2 consecutive weeks in a newspaper having general circulation and published within any county wherein the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is locat-

ed in more than one county or is located in a county other than the one in which the operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation and published within each of such counties. In case there is no newspaper published within the appropriate county, publication shall be made in a newspaper having a general circulation within the county.

History.—s. 9, ch. 57-128.
Note.—Former s. 373.341.

403.371 Proof of publication.—Proof of publication shall be filed by the licensee with the department 15 days from the date of the last publication of notice. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

History.—s. 10, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.351.

403.381 Record and reports of operations.—(1) Each licensee shall keep and maintain a record of all operations conducted by him pursuant to his license showing the method employed, the type and composition of materials used, the times and places of operation, the name and post office address of each person participating or assisting in the operation other than licensee and such other information as may be required by the department and shall report the same to the department at such times as it may require.

(2) The records of the department and the reports of all licensees shall be available for public examination.

History.—s. 11, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.361.

403.391 Emergency licenses.—Notwithstanding any provisions of this act to the contrary, the department may grant a license permitting a weather modification operation without compliance by the licensee with the provisions of ss. 403.351-403.371, and without publication of notice of intention as required by s. 403.341 if the operation appears to the department to be necessary or desirable in aid of the extinguishment of fire, dispersal of fog, or other emergency.

History.—s. 12, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.371.

403.401 Suspension or revocation of license.—Any license may be revoked or suspended if the department finds that the licensee has failed or refused to comply with any of the provisions of this act.

History.—s. 13, ch. 57-128; s. 21, ch. 63-512; ss. 26, 35, ch. 69-106; s. 14, ch. 78-95.
Note.—Former s. 373.381.

403.411 Penalty.—Any person conducting a weather modification operation without first having procured a license, or who shall make a false statement in his application for license, or who shall fail to file any report or reports as required by this act, or who shall conduct any weather modification operation after revocation or suspension of his license, or who shall violate any other provision of this act, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and, if a corporation, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each such violation shall be a separate offense.

History.—s. 14, ch. 57-128; s. 351, ch. 71-136.
Note.—Former s. 373.391.

403.412 Environmental Protection Act.—(1) This section shall be known and may be cited as the "Environmental Protection Act of 1971."

(2)(a) The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:

1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;

2. Any person, natural or corporate, governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules or regulations for the protection of the air, water, and other natural resources of the state.

(b) In any suit under paragraph (a), the Department of Legal Affairs may intervene to represent the interests of the state.

(c) As a condition precedent to the institution of an action pursuant to paragraph (a), the complaining party shall first file with the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct complained of a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. Upon receipt of a complaint, the governmental agency or authority shall forthwith transmit, by registered or certified mail, a copy of such complaint to those parties charged with violating the laws, rules, and regulations for the protection of the air, water and other natural resources of the state. The agency receiving such complaint shall have 30 days after the receipt thereof within which to take appropriate action. If such action is not taken within the time prescribed, the complaining party may institute the judicial proceedings authorized in paragraph (a). However, failure to comply with this subsection shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.

(d) In any action instituted pursuant to paragraph (a), the court, in the interest of justice, may add as party defendant any governmental agency or authority charged with the duty of enforcing the applicable laws, rules, and regulations for the protection of the air, water and other natural resources of the state.

(e) No action pursuant to this section may be maintained if the person (natural or corporate) or governmental agency or authority charged with pollution, impairment, or destruction of the air, water, or other natural resources of the state is acting or conducting operations pursuant to currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or

agencies, and is complying with the requirements of said permits or certificates.

(f) In any action instituted pursuant to this section, the prevailing party or parties shall be entitled to costs and attorney fees. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this section, the court may order the plaintiff to post a good and sufficient surety bond or cash.

(3) The court may grant injunctive relief and impose conditions on the defendant which are consistent with and in accordance with law and any rules or regulations adopted by any state or local governmental agency which is charged to protect the air, water, and other natural resources of the state from pollution, impairment, or destruction.

(4) The doctrines of res judicata and collateral estoppel shall apply. The court shall make such orders as necessary to avoid multiplicity of actions.

(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.

(6) Venue of any causes brought under this law shall lie in the county or counties wherein the cause of action is alleged to have occurred.

History.—ss. 1-6, ch. 71-343.

403.413 Florida Litter Law.—

(1) SHORT TITLE.—This section shall be known as and may be cited as the "Florida Litter Law of 1971."

(2) DEFINITIONS.—As used in this section:

(a) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, container, paper, lighted or unlighted cigarette or cigar, or flaming or glowing material.

(b) "Person" means any individual, firm, corporation, or unincorporated association.

(c) "Law enforcement officer" means any officer of the Florida Highway Patrol, county sheriffs' departments, municipal law enforcement departments, law enforcement departments of any other political subdivision, Department of Natural Resources, and Game and Fresh Water Fish Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(3) RESPONSIBILITY OF BOARD OF COUNTY COMMISSIONERS.—The Board of County Commissioners shall determine the training and qualifications of any employee of the county or municipal park or recreation department designated to enforce the provisions of this section if the designated employee is not a regular law enforcement officer.

(4) ACTS PROHIBITED.—It is unlawful for any person to throw, discard, place, or deposit litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor; in any case where any litter is thrown or discarded from a motor vehicle, the operator of the motor vehicle shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, or stream or tidal or coastal water of the state; or

(c) In or on any private property, unless prior consent of the owner has been given and unless said litter will not cause a public nuisance or be in violation of any other state or local law, rule, or regulation.

(5) PENALTIES; ENFORCEMENT.—

(a) Any person who violates the provisions of this section shall be charged as follows:

1. If the violation involves litter of a total weight of less than 5 pounds, then the violator shall be deemed guilty of a noncriminal violation and shall be fined an amount of $25. Violations of this subparagraph shall be triable in the county courts.

2. If the violation involves litter of a total weight of 5 pounds or more, then the violator shall be deemed guilty of a misdemeanor of the second degree and shall be punished as provided in ss. 775.082 and 775.083.

However, imposition of such fine shall not prohibit a judge from imposing civil penalties which would include, but not be limited to, picking up litter or performing other labor commensurate with the offense committed. Said fines shall be assessed and collected pursuant to the procedures in chapter 318. The moneys collected from the assessed fine shall go into the general revenue fund of the county or municipality in which the offense took place to be used for litter control. If such county or municipality has no litter control ordinance, then such funds shall go to the General Revenue Fund of the state.

(b) It shall be the duty of all law enforcement officers, as defined herein, to enforce the provisions of this section.

History.—ss. 1-4A, ch. 71-239; s. 1, ch. 75-266; s. 1, ch. 77-82; s. 1, ch. 78-202.

403.414 Pollution control awards program.—

(1) It is hereby declared to be the intent of the Legislature to encourage the prevention of, and cleaning up of, pollution in the state by recognizing:

(a) Those agencies, municipalities, counties, or other government units and private organizations, institutions, industries, communication media, and residents of the state who aid in restoring and maintaining the chemical, physical, and biological integrity of the state's air and water, or implement procedures for the abatement of excessive and unnecessary noise, above and beyond the minimum standards as presently set by the Department of [1][Environmental Regulation] or any other state agency.

(b) Any communication media, communication media representatives, or individual residents of the state who highlight problems where they exist and work toward seeing the problems solved, or design innovations for the prevention, control, or cleaning up of pollution in the state.

(2) There is hereby created a pollution control awards program to be administered by the Department of Commerce.

(3) Awards under the pollution control awards program may be granted to agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of the state for efforts in preventing or cleaning up pollution as provided by rules and regulations promulgated by the Department of Commerce. Special awards may be granted to those agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of the state who have made an outstanding effort to prevent or clean up pollution as provided by rules and regulations promulgated by the Department of Commerce. All awards and special awards must be approved by the Department of Commerce, but the Department of Environmental Regulation shall have the power to veto any award which, in the opinion of the Department of Environmental Regulation, would be so controversial as to be unadvisable.

(4) Awards or special awards may be presented in the following categories:

(a) Water pollution.

(b) Air pollution.

(c) Noise pollution.

(d) Communication media on pollution problems.

(5) Any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state may submit to the Department of Commerce at any time the name of any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state for consideration for an award or special award. Prior to consideration by the Department of Commerce, nominees shall be required to submit to the department such additional information as the department may require, including, but not limited to, a list of all plant operations and subsidiaries in Florida. The Department of Commerce shall consider such nominations at least twice a year.

(6) The Department of Commerce shall adopt reasonable rules and regulations to carry out the intent and purposes of this act in accordance with chapter 120.

History.—ss. 1-6, ch. 74-60; s. 81, ch. 79-65.

[1]**Note.**—Bracketed words substituted by the editors for the words "Pollution Control." See s. 8, ch. 75-22, which transferred the Department of Pollution Control to the Department of Environmental Regulation.

403.415 Motor vehicle noise.—

(1) SHORT TITLE.—This act shall be known and may be cited as the "Florida Motor Vehicle Noise Prevention and Control Act of 1974."

(2)(a) LEGISLATIVE INTENT.—The intent of the Legislature is to implement the state constitutional mandate of s. 7, Art. II of the State Constitution to improve the quality of life in the state by limiting the noise of new motor vehicles sold in the state and the noise of motor vehicles used on the highways of the state.

(b) It is also the intent of the Legislature to recognize the proposed United States Environmental Protection Act Noise Commission Standards Regulations for medium and heavy duty trucks as being the most comprehensive available and in the best interest of Florida's citizenry and, further, that said regulation shall preempt all state standards not identical to such regulation.

(3) DEFINITIONS.—The following words and phrases when used in this section shall have the meanings respectively assigned to them in this subsection, except where the context otherwise requires:

(a) "dB A" means the composite abbreviation for A-weighted sound level, and the unit of sound level, the decibel.

(b) "Gross combination weight rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(c) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Motor vehicle" means any vehicle which is self-propelled and any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(e) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(f) "Motor-driven cycle" means every motorcycle and every motor scooter with a motor which produces not to exceed 5-brake horsepower, including every bicycle with a motor attached.

(g) "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only A-weighting and fast dynamic response need be provided.

(h) "Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(i) "Department" means the Department of Environmental Regulation.

(4) NEW VEHICLE NOISE LIMITS.—No person shall sell, offer for sale, or lease a new motor vehicle that produces a maximum sound level exceeding the following limit at a distance of 50 feet from the center of the lane of travel under test procedures established under subsection (5):

(a) For motorcycles other than motor-driven cycles:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1974	86 dB A
From January 1, 1975, to December 31, 1980	83 dB A
From January 1, 1981, to December 31, 1982	80 dB A
From January 1, 1983, to December 31, 1984	78 dB A
On or after January 1, 1985	75 dB A

(b) For any motor vehicle with a GVWR over 10,000 pounds and for any multipurpose passenger vehicle, which is defined as a motor vehicle with motive power designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1976	86 dB A
From January 1, 1977, to December 31, 1981	83 dB A
From January 1, 1982, to December 31, 1984	80 dB A
On or after January 1, 1985	75 dB A

(c) For motor-driven cycles and any other motor vehicle not included in paragraph (a) or paragraph (b):

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1974	84 dB A
From January 1, 1975, to December 31, 1984	80 dB A
On or after January 1, 1985	75 dB A

(5) TEST PROCEDURES.—The test procedures for determining compliance with this section shall be established by regulation of the Department of Environmental Regulation and in cooperation with the Department of Highway Safety and Motor Vehicles in substantial conformance with applicable standards and recommended practices established by the Society of Automotive Engineers, Inc., or its successor bodies, and the American National Standards Institute, Inc., or its successor bodies, for the measurement of motor vehicle sound levels. Regulations establishing these test procedures shall be promulgated no later than December 1, 1974.

(6) CERTIFICATION.—The manufacturer, distributor, importer, or designated agent thereof shall file a written certificate with the department stating that the specific makes and models of motor vehicles described thereon comply with the provisions of this section. No new motor vehicle shall be sold, offered for sale, or leased unless such certificate has been filed.

(7) NOTIFICATION OF CERTIFICATION.—The department shall notify the Department of Highway Safety and Motor Vehicles of all makes and models of motor vehicles for which valid certificates of compliance with the provisions of this section are filed.

(8) REPLACEMENT EQUIPMENT.—

(a) No person shall sell or offer for sale for use as a part of the equipment of a motor vehicle any exhaust muffler, intake muffler, or other noise abatement device which, when installed, will permit the vehicle to be operated in a manner that the emitted sound level of the vehicle is increased above that emitted by the vehicle as originally manufactured and determined by the test procedures for new motor vehicle sound levels established under this section.

(b) The manufacturer, distributor, or importer, or designated agent thereof, shall file a written certificate with the department that his products sold within this state comply with the requirements of this section for their intended applications.

(9) OPERATING VEHICLE NOISE MEASUREMENTS.—The department shall establish, with the cooperation of the Department of Highway Safety and Motor Vehicles, measurement procedures for determining compliance of operating vehicles with the noise limits of s. 316.293(2). The department shall advise the Department of Highway Safety and Motor Vehicles on technical aspects of motor vehicle noise enforcement regulations, assist in the training of enforcement officers, and administer a sound-level meter loan program for local enforcement agencies.

(10) ENACTMENT OF LOCAL ORDINANCES LIMITED.—The provisions of this section shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this section unless expressly authorized. However, this subsection shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this section in the local court.

History.—ss. 1-3, ch. 74-110; ss. 1, 2, ch. 75-59; s. 1, ch. 76-289; s. 1, ch. 78-280; s. 82, ch. 79-65; s. 98, ch. 79-164.

403.4151 Exempt motor vehicles.—The provisions of this act shall not apply to any motor vehicle which is not required to be licensed under the provisions of chapter 320.

History.—s. 7, ch. 74-110.

403.4153 Federal preemption.—On and after the date of promulgation of noise emission standards by the administrator of the United States Environmental Protection Agency for a class of new motor vehicles as described in paragraphs 403.415(4)(a), (b), or (c), the state sound level limits in effect at that time for that class of vehicles shall be maintained until the federal standards become effective.

History.—s. 2, ch. 76-289.

PART II

ELECTRICAL POWER PLANT SITING

403.501 Short title.—Sections 403.501-403.517 shall be known and may be cited as the "Florida Electrical Power Plant Siting Act."

History.—s. 1, ch. 73-33; s. 1, ch. 76-76.

403.502 Legislative intent.—The legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The legislature finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To provide abundant, low-cost electrical energy.

History.—s. 1, ch. 73-33.

403.503 Definitions.—

(1) "Applicant" means any electric utility which makes application for an electric power plant site certification pursuant to the provisions of this act.

(2) "Application" means the documents required by the department to be filed to initiate a certification proceeding.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(5) "Site" means any proposed location wherein an electrical power plant, or an electrical power plant alteration or addition resulting in an increase in generating capacity, will be located, including offshore sites within state jurisdiction.

(6) "Certification" means the written order of the board approving an application in whole or with such modifications or conditions as the board may deem appropriate.

(7) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, and shall include associated facilities and those directly associated transmission lines required to connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect, except that this term does not include any power plant or steam generating plant of less than 50 megawatts in capacity.

(8) "Department" means the Department of Environmental Regulation.

(9) "Board" means the Governor and cabinet.

(10) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a regional or local governmental entity.

(11) "State comprehensive plan" means that plan prepared in accordance with the provisions of part I of chapter 23.

(12) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(13) "Designated hearing officer" means the hearing officer assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this part.

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 79-76.

403.504 Department of Environmental Regulation; powers and duties enumerated.—The Department of Environmental Regulation shall have the following powers and duties in relation to this act:

(1) To adopt, promulgate, or amend reasonable rules to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location and operation of electrical power plants.

(2) To prescribe the form, content, and necessary supporting documentation and studies for electric power plant site certification applications.

(3) To receive applications for electrical power plant site certifications and to determine the completeness and sufficiency thereof.

(4) To make, or contract for, studies of electrical power plant site certification applications.

(5) To administer the processing of applications for electric power plant site certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To notify all affected agencies of the filing of an application within 15 days of receiving the complete application.

(7) To require an application fee not to exceed $50,000. The application fee shall be paid to the department upon the filing of each application for site certification. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in generating capacity proposed by the application. A minimum fee of $5,000 shall be required for each application. All reasonable expenses and costs of the proceeding incurred by the department, the Division of Administrative Hearings, the Public Service Commission, and the Department of Community Affairs, including those which are associated with the cost of publication of public notices, the preparation and conduct of the hearings, the recording and transcription of the proceedings, and the studies required by this act, shall be paid from the application fee. Any sums remaining after the payment of authorized costs shall be refunded to the applicant within 90 days of the issuance or denial of certification or withdrawal of the application. The applicant shall be provided with an itemized accounting of the expenditures.

(8) To prepare a written analysis which shall be filed with the designated hearing officer and served on all parties no later than 8 months after the complete application is filed with the department, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the department's rules.

(b) The report from the Public Service Commission as required by s. 403.507.

(c) The report of the Department of Community Affairs as required by s. 403.507.

(d) The studies conducted pursuant to s. 403.507.

(e) The comments received by the department from any other agency.

(f) The recommendation of the department as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed.

(9) To provide adequate public notice of the filing of the application and of the proceedings conducted pursuant to this part.

(10) To prescribe the means for monitoring the effects arising from the construction and operation of electrical power plants to assure continued compliance with terms of the certification.

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 77-174; s. 132, ch. 79-190.

403.506 Applicability and certification.—

(1) The provisions of this chapter shall apply to any electrical power plant as defined herein, except that the provisions of the Power Plant Siting Act shall not apply to any power plant or steam generating plant of less than 50 megawatts in capacity. No construction of any new electrical power plant or expansion in steam generating capacity of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

History.—s. 1, ch. 73-33; s. 3, ch. 76-76; s. 2, ch. 79-76.

403.5065 Appointment of hearing officer; determination of completeness.—

(1) Within 7 days of receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate a hearing officer to conduct the hearings required by this act. The division director shall designate a hearing officer within 7 days of receipt of the request from the department. In designating a hearing officer for this purpose, the division director shall, whenever practicable, assign a hearing officer who has had prior experience or training in electric power plant site certification proceedings. Upon being advised that a hearing officer has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated hearing officer, who shall docket the application.

(2) Within 10 days of receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application. If the department declares the application to be incomplete, then, within 15 days of the receipt by the department of the application, the applicant shall file with the Division of Administrative Hearings and with the department a statement agreeing with the statement of the department and withdrawing the application or contesting the statement of the department. If the application is not withdrawn, the hearing officer shall schedule a hearing on the statement of completeness. Said hearing shall be scheduled as expeditiously as possible, but no later than 30

days after the receipt of the application by the department. The designated hearing officer shall make his decision within 10 days of the hearing. If the designated hearing officer determines that the application was not complete as filed, then the applicant shall withdraw the application. If the hearing officer determines that the application was complete at the time it was filed, then the times provided in this act shall run from the date of the filing of such application.

History.—s. 4, ch. 76-76; s. 1, ch. 77-174.

403.507 Reports and studies.—

(1) It shall be the duty of the department to provide copies of the application as filed to the Department of Community Affairs and the Public Service Commission within 15 days of its receipt by the department.

(a) Within 5 months of receipt of a copy of the complete application, the Department of Community Affairs shall present a report as to the compatibility of the proposed electrical power plant with the state comprehensive plan to the department. The [1]division shall submit a preliminary report within 60 days of receipt of a copy of the complete application.

(b) The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report may include the comments of the commission with respect to any matters within its jurisdiction. It shall submit its report to the department within 5 months of receipt of a copy of the complete application. The commission shall submit a preliminary report within 60 days of receipt of a copy of the complete application. The applicant, at its cost, shall furnish such information, studies, and data as the department, [1]division, or Public Service Commission may direct.

(2) It shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following:

(a) Cooling system requirements.
(b) Construction and operational safeguards.
(c) Proximity to transportation systems.
(d) Soil and foundation conditions.
(e) Impact on suitable present and projected water supplies for this and other competing uses.
(f) Impact on surrounding land uses.
(g) Accessibility to transmission corridors.
(h) Environmental impacts.

(3) The department shall initiate the activities required by this section no later than 30 days after the complete application is filed. The department shall keep the applicant informed as to the progress of the studies and any issues raised thereby.

(4) The studies required by subsection (2) shall be completed no later than 7 months after the complete application is filed with the department.

History.—s. 1, ch. 73-33; s. 5, ch. 76-76; s. 133, ch. 79-190.

[1]Note.—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to the 10-year plant siting review and local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

403.508 Proceedings, parties, participants.—

(1) The designated hearing officer shall conduct a land use hearing in the county of the proposed site within 90 days of receipt of a complete application for electrical power plant site certification by the department. The place of such hearing shall be as close as possible to the proposed site. The department shall arrange for publication of notice of the land use hearing and of the deadline for filing of notice of intent to be a party at least 45 days before the date set for the land use hearing.

(2) The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. The designated hearing officer's recommended order shall be issued within 30 days of completion of the hearing and shall be reviewed by the board within 45 days of receipt of the recommended order by the board. If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site unless certification is subsequently denied. If it is determined by the board that the proposed site does not conform, it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to the board, which may, if it determines after notice and hearing that it is in the public interest to authorize a nonconforming use of the land as a site for an electrical power plant, authorize a variance to the existing land use plan and zoning ordinances. In the event a variance is denied, no further action may be taken on the complete application by the department until the proposed site conforms to existing land use plans or zoning ordinances.

(3) A certification hearing shall be held by the designated hearing officer no later than 10 months after the complete application is filed with the department. At the conclusion of the certification hearing, the designated hearing officer shall, after consideration of all evidence of record, submit to the board a recommended order no later than 12 months after receipt of the complete application by the department.

(4)(a) Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The water management district, as defined in chapter 373, in whose jurisdiction the proposed electrical power plant is to be located.
5. The department.

(b) Upon the filing with the department of a notice of intent to be a party at least 15 days prior to the date set for the land use hearing, the following shall also be parties to the proceeding:

1. Any county or municipality in whose jurisdiction the proposed electrical power plant is to be located.
2. Any state agency not listed in paragraph (a) as

to matters within its jurisdiction.

3. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed electrical power plant is to be located.

(c) Notwithstanding paragraph (4)(d), failure of an agency described in subparagraphs (4)(b)1. or (4)(b)2. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(d) Other parties may include any person, including those persons enumerated in paragraph (4)(b) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated hearing officer and upon such conditions as he may prescribe any time prior to 15 days before the commencement of the certification hearing.

(e) Any agency whose properties or works are being affected pursuant to s. 403.509(2) shall be made a party upon the request of the department or the applicant.

(5) When appropriate, any person may be given an opportunity to present oral or written communications to the designated hearing officer. If the designated hearing officer proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(6) The designated hearing officer shall have all powers and duties granted to hearing officers by chapters 120 and 403 and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness of an application for certification.

History.—s. 1, ch. 73-33; s. 6, ch. 76-76; s. 1, ch. 77-174; s. 134, ch. 79-190.

403.509 Final disposition of application.—

(1) Within 60 days of receipt of the designated hearing officer's recommended order, the board shall act upon the application by written order, approving in whole, approving with such modification as the board shall deem appropriate, or denying the issuance of a certificate and stating the reasons for issuance or denial. If the certificate is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and site and to direct any such agency to execute, within 30 days of the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(3) The issuance or denial of the certification by the board shall be the final administrative action required as to that application.

History.—s. 1, ch. 73-33; s. 7, ch. 76-76; s. 141, ch. 77-104.

403.5095 Alteration of time limits.—Any time limitation in this part may be altered by the designated hearing officer upon stipulation between the department and the applicant or for good cause shown by any party.

History.—s. 8, ch. 76-76.

403.510 Superseded laws, regulations, and certification power.—

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction which is now in effect under any law or ordinance of this state or any political subdivision or municipality, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the regulation and certification of electrical power plant sites and electrical power plants as defined in this act.

(3) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop permitting process.

History.—s. 1, ch. 73-33; s. 9, ch. 76-76.

403.511 Effect of certification.—

(1) Subject to the conditions set forth therein, any certification signed by the Governor shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except as otherwise provided in subsection (4).

(2) The certification shall authorize the electric utility named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification. Except as provided in subsection (4), the certification agreement may include conditions which constitute variances from nonprocedural standards or regulations of the department or any other standards or regulations of any other agency which were expressly considered during the proceeding and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapters 161, 253, 290, 298, 370, 373, 380, 381, 387, the Florida Transportation Code, or 33 USC 1341.

(4) This part shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this part in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with local building codes, standards, and regulations.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the

department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

History.—s. 1, ch. 73-33; s. 2, ch. 74-170; s. 10, ch. 76-76; s. 1, ch. 77-174; s. 83, ch. 79-65.

403.5111 County and municipal authority unaffected by chapter 75-22, Laws of Florida.—Except as provided in ss. 403.510 and 403.511, nothing in chapter 75-22, Laws of Florida, shall be construed to have altered the authority of county and municipal governments as provided by law.

History.—s. 22, ch. 75-22.

403.512 Revocation or suspension of certification.—Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this chapter or regulations or orders issued hereunder.

History.—s. 1, ch. 73-33; s. 11, ch. 76-76.

403.513 Review.—Proceedings under this part shall be subject to judicial review as provided in chapter 120.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76.

403.514 Enforcement of compliance.—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this part shall constitute a violation of chapter 403.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76.

403.515 Availability of information.—The department shall make available for public inspection and copying during regular office hours, at the expense of any person requesting copies, any information filed or submitted pursuant to this act.

History.—s. 1, ch. 73-33.

403.516 Amendment or modification of certification.—A certification may be amended or modified after issuance in any one of the following ways:

(1) The board may delegate to the department the authority to amend or modify specific conditions in the certification.

(2) The parties to the certification proceeding may amend or modify the terms and conditions of the certification by mutual written agreement. Upon execution of the agreement by the parties, the provisions of s. 120.57 shall apply to the proceedings for approval or denial of the agreement by the board.

(3) If the parties to the certification proceeding are unable to reach a mutual written agreement on amendment or modification of the terms and conditions of the certification, a petition for modification setting forth:

(a) The proposed amendment or modification,

(b) The factual reasons asserted for the amendment or modification, and

(c) The anticipated effects of the proposed modification on the applicant, the public, and the environment

shall be filed with the Division of Administrative Hearings. The provisions of s. 120.57 shall apply to the proceedings for approval or denial of the petition by the board.

(4) As required by s. 403.511(5).

History.—s. 13, ch. 76-76.

403.517 Supplemental applications for sites certified for ultimate site capacity.—

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this part. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated hearing officer.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness of supplemental applications by the designated hearing officer.

4. Public notice of the filing of the supplemental applications.

5. Time limits for prompt processing of supplemental applications.

6. Final disposition by the board within 7 months of the filing of a complete supplemental application.

(b) The time limits shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this part, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered by the designated hearing officer upon stipulation between the department and the applicant or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120

in considering and processing such supplemental applications. The department may charge a supplemental application fee not to exceed $25,000 to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application incurred by the department, the Division of Administrative Hearings, the Public Service Commission, and the [1]Division of State Planning. Any unused portion of the fee shall be refunded pursuant to subsection 403.504(7).

(2) Supplemental applications shall be reviewed in accordance with the criteria and considerations of s. 403.507.

(3) The land use hearing requirements of subsections 403.508(1) and (2) shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

(4) For the purposes of this part, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

History.—s. 14, ch. 76-76.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to the 10-year plant siting review and local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

PART III

INTERSTATE ENVIRONMENTAL CONTROL COMPACT

403.60 Environmental Control Compact; execution authorized.—The Governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of the United States, and the Legislature hereby signifies in advance its approval and ratification of such compact:

MEMBER JURISDICTION.—The environmental compact is entered into with all jurisdictions legally joining therein and enacted into law in the following form:

INTERSTATE ENVIRONMENTAL COMPACT

ARTICLE I

FINDINGS, PURPOSES AND RESERVATIONS OF POWERS.—

A. Findings.—Signatory states hereby find and declare:

1. The environment of every state is affected with local, state, regional and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, is a public purpose of the respective signatories.

2. Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

3. The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

B. Purposes.—The purposes of the signatories in enacting this compact are:

1. To assist and participate in the national environment protection programs as set forth in federal legislation; to promote intergovernmental cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

2. To preserve and utilize the functions, powers and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

C. Powers of the United States.—

1. Nothing contained in this compact shall impair, affect or extend the constitutional authority of the United States.

2. The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its consent.

D. Powers of the states.—Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected except as expressly provided in a supplementary agreement under Article IV.

ARTICLE II

SHORT TITLE, DEFINITIONS, PURPOSES AND LIMITATIONS.—

A. Short title.—This compact shall be known and may be cited as the "Interstate Environmental Compact."

B. Definitions.—For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

1. "State" shall mean any one of the fifty states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

2. "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

3. "Government" shall mean the governments of the United States and the signatory states.

4. "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

5. "Signator" shall mean any state which enters

into this compact and is a party thereto.

ARTICLE III

INTERGOVERNMENTAL COOPERATION.—

Agreements with the federal government and other agencies.—Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

ARTICLE IV

SUPPLEMENTARY AGREEMENTS, JURISDICTION AND ENFORCEMENT.—

A. Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under Paragraph F. and Paragraph H. of this Article.

B. Recognition of existing nonenvironmental intergovernmental arrangements.—The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

C. Recognition of existing intergovernmental agreements directed to environmental objectives.—All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

D. Modification of existing commissions and compacts.—Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the federal government or states party thereto.

E. Recognition of future multistate commissions and interstate compacts.—Nothing in this compact shall be construed to prevent signatories from entering into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

F. Supplementary agreements.—Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities or duties under this compact of signatories participating therein as embodied in this compact.

G. Execution of supplementary agreements and effective date.—The Governor is authorized to enter into supplementary agreements for the state and his official signature shall render the agreement immediately binding upon the state; provided that:

1. The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify or condition the agreement of that state.

2. Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

H. Special supplementary agreements.—Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under Paragraph F., Article IV, upon the condition that such nonsignatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

I. Jurisdiction of signatories reserved.—Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

J. Complimentary legislation by signatories.—Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this Article.

K. Legal rights of signatories.—Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

ARTICLE V

CONSTRUCTION, AMENDMENT AND EFFECTIVE DATE.—

A. Construction.—It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

B. Severability.—The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this compact, or such an agreement is declared to be contrary to the constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any agreement and the applicability thereof to any participating

jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

C. Amendments.—Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

D. Effective date.—This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

E. Withdrawal from the compact.—A state may withdraw from this compact by authority of an act of its legislature one year after it notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

History.—s. 1, ch. 71-79.

PART IV

RESOURCE RECOVERY AND MANAGEMENT

403.701 Short title.—Sections 403.701-403.713 shall be known and may be cited as the "Florida Resource Recovery and Management Act."

History.—s. 1, ch. 74-342.

403.702 Legislative findings; public purpose.—

(1) In order to enhance the beauty and quality of our environment, conserve and recycle our natural resources, prevent the spread of disease and creation of nuisances, protect the public health, safety, and welfare, and provide a coordinated statewide resource recovery and management program, the Legislature finds that:

(a) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.

(b) Problems of solid-waste management have become a matter statewide in scope and necessitate state action to assist local government in improving methods and processes to promote more efficient methods of solid-waste collection and disposal.

(c) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase of the mass of material discarded by the purchasers of such products, thereby necessitating a statewide approach which will avoid varied and uncoordinated solutions by local governments around the state.

(d) The economic and population growth of our state and the improvements in the standard of living enjoyed by our population have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.

(e) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources, and, therefore, maximum resource recovery from solid waste and maximum recycling and reuse of such resources must be considered goals of the state.

(2) It is declared to be the purpose of this act to:

(a) Plan for and regulate the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public safety, health, and welfare; enhance the environment for the people of the state; and recover resources which have the potential for further usefulness.

(b) Establish and maintain a cooperative state program of planning and technical assistance for resource recovery and management.

(c) Provide the authority, and require counties and municipalities, to adequately plan and provide efficient, environmentally acceptable resource recovery and management.

(d) Require review of the design, and issue permits for the operation, of resource recovery and management facilities.

(e) Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.

History.—s. 1, ch. 74-342.

403.703 Definitions.—As used in this act:

(1) "Department" means the Department of Environmental Regulation or any successor agency performing a like function.

(2) "County or municipality," or any like term, shall include political subdivisions engaged in resource recovery and management.

(3) "Person" means any and all persons, natural or artificial, including any individual, firm, or asso-

ciation; any municipal or private corporation organized or existing under the laws of Florida or any other state; any county of this state; and any governmental agency of this state or the Federal Government.

(4) "Recycling" means the reuse of solid waste in manufacturing, agriculture, power production, or other processes.

(5) "Resource management" means the process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way, according to an orderly, purposeful, and planned program.

(6) "Resource recovery" means the process by which materials, excluding those under control of the Atomic Energy Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or other purposes, including use as an energy source.

(7) "Resource recovery and management facility" means any solid waste disposal area, volume reduction plant, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.

(8) "Resource recovery equipment" means equipment or machinery exclusively and integrally used in the actual process of recovering material or energy resources from solid waste.

(9) "Solid waste" means garbage, rubbish, refuse, and other discarded solid or semisolid materials resulting from domestic, industrial, commercial, agricultural, and governmental operations, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants.

(10) "Volume reduction plant" includes, but is not limited to, incinerators, pulverizers, compactors, shredding and baling plants, transfer stations, composting plants, and other plants which accept and process solid waste for recycling or disposal.

(11) "Yard trash" means vegetative matter resulting from landscaping maintenance and land-clearing operations.

(12) "Trash landfills" means combinations of yard trash and construction and demolition debris along with paper, cardboard, cloth, glass, white goods, street sweepings, vehicle tires, and other like matter.

(13) "Construction and demolition debris" means material generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, or asphalt roofing material.

(14) "Class I solid waste disposal area" means a disposal facility which receives an average of 20 tons or more per day, if scales are available, or 50 cubic yards or more per day of solid waste, as measured in place after covering, and which receives an initial cover daily.

(15) "Class II solid waste disposal area" means a disposal facility which receives an average of less than 50 cubic yards per day of solid waste, as measured in place after covering, and which receives an initial cover at least once every 4 days.

(16) "Initial cover" means a 6-inch layer of compacted earth used to enclose a volume of solid waste prior to intermediate or final cover.

(17) "Monitoring well" means a strategically located well from which water samples are drawn for water quality analysis.

History.—s. 1, ch. 74-342; s. 2, ch. 78-329; s. 1, ch. 78-387; s. 84, ch. 79-65.

403.704 Powers and duties of the department.—The department shall have responsibility for the implementation and enforcement of the provisions of this act. In addition to other powers and duties, the department shall:

(1) Adopt by rule for the state a resource recovery and management program, as defined in s. 403.705, by July 1, 1976. In developing the state resource recovery and management program, the department shall hold public hearings around the state in accordance with chapter 120, and shall give notice of such public hearings to all local governments and regional planning agencies.

(2) Provide technical assistance to counties, municipalities, and other persons, and cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this act.

(3) Promote the planning and application of recycling and resource recovery systems which preserve and enhance the quality of the air, water, and other natural resources of the state.

(4) Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act, as amended by Pub. L. No. 91-512, or as subsequently amended.

(5) Utilize private industry through contractual arrangements for implementation of some or all of the requirements of the state resource recovery and management program and for such other activities as may be considered necessary, desirable, or convenient.

(6) Encourage recycling and resource recovery as an energy source.

(7) Assist in and encourage, as much as possible, the development within the state of industries and commercial enterprises which are based upon resource recovery, recycling, and reuse of solid waste.

(8) Charge reasonable fees for any services it performs pursuant to this act, provided user fees shall apply uniformly within each municipality or county to all users who are provided with resource recovery and management services.

(9) Acquire, at its discretion, personal or real property or any interest therein by gift, lease, or purchase for the purpose of providing sites for resource recovery and management facilities.

(10) Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate, at its discretion, such resource recovery and management facilities as are called for by the state resource recovery and management program.

(11) Receive funds or revenues from the sale of products, materials, fuels, or energy in any form derived from processing of solid waste by state-owned or operated facilities, which funds or revenues shall be deposited in the General Revenue Fund.

(12) Determine by rule the facilities, equipment, personnel, and number of monitoring wells to be

provided at each Class I solid waste disposal area.

(13) Encourage, but not require, as part of a Class II solid waste disposal area, a potable water supply, an employee shelter, handwashing and toilet facilities, equipment washout facilities, electric service for operations and repairs, equipment shelter for maintenance and storage of parts, equipment and tools, scales for weighing solid waste received at the disposal area, a trained equipment operator in full-time attendance during operating hours, and communication facilities for use in emergencies. The department may require an attendant at a Class II solid waste disposal area during the hours of operation if the department affirmatively demonstrates that such a requirement is necessary to prevent unlawful fires, unauthorized dumping, or littering of nearby property.

(14) Require a Class II solid waste disposal area to have at least one monitoring well which shall be placed adjacent to the site in the direction of groundwater flow unless otherwise exempted by the department. The department may require additional monitoring wells not farther than 1 mile from the site if it is affirmatively demonstrated by the department that a significant change in the initial quality of the water has occurred in the downstream monitoring well which adversely affects the beneficial uses of the water. These wells may be public or private water supply wells if they are suitable for use in determining background water quality levels.

(15) Promulgate rules for solid waste disposal areas limited exclusively to yard trash, for solid waste disposal areas limited exclusively to construction and demolition debris, and for solid waste disposal areas limited exclusively to trash. Such rules shall take into account the reduced environmental threat caused by the segregated disposal of these solid wastes. Reduced requirements for engineering, location, covering, monitoring wells, or forced draft burning may be allowed for such solid waste disposal areas, providing the requirements will not allow a threat to the public health or environment to exist and providing the requirements are consistent with all other state or local laws, ordinances, rules, regulations, or orders.

History.—s. 1, ch. 74-342; s. 1, ch. 75-54; s. 2, ch. 78-387.

403.705 State resource recovery and management program.—

(1) The state resource recovery and management program shall provide guidelines for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state; encourage coordinated local activity within a common geographical area; and investigate the present status of solid-waste management in the state with positive proposals for local action to correct deficiencies in present resource recovery and management processes.

(2) The program shall be developed by the department and adopted by rule by July 1, 1976. The department shall consult with and obtain the approval of the Resource Recovery Council, established pursuant to s. 403.710, prior to adoption by rule of the program.

(3) The state resource recovery and management program shall encourage cooperative efforts by counties and municipalities in common geographic areas and shall, to the maximum extent possible, include provision for the continuation of existing regional resource recovery, recycling, and management facilities and programs. In order to encourage such cooperative efforts, the state program shall provide for a pilot resource recovery and management program, as recommended by the Resource Recovery Council and approved by the Legislature according to s. 403.711.

History.—s. 1, ch. 74-342; s. 2, ch. 75-54.

403.706 Local resource recovery and management programs.—

(1) Within 3 years after the department adopts the state resource recovery and management program, there shall be established, by special act of the Legislature or interlocal agreement between counties, between municipalities, or between municipalities and counties, in those areas designated under the rule adopted pursuant to s. 403.705, a local resource recovery and management program which shall be approved by the department and implement the provisions of the state program by adequately providing for the receiving in bulk, storage, separation, processing, recovery, recycling, or disposal of solid waste generated or existing within the boundaries of the county or incorporated limits of the municipality or in the area served thereby.

(2)(a) Each local resource recovery and management program established pursuant to this section shall include an implementation schedule which provides a timetable indicating when the total program, as well as its component parts, will be carried out. The implementation schedules shall:

1. Be mutually agreed upon by the local governments participating in the development of the program plan and the department.
2. Expedite and accomplish, within reason and practicality, the provisions of the program plan.
3. Be adhered to by each local program.
4. Be monitored by the department to assure compliance.
5. Be modified only upon approval by the department of a request of a local program, showing sufficient evidence and justification for a modification.

(b) It is the policy of the state that a county and its municipalities may jointly determine, through an interlocal agreement pursuant to s. 163.01 or by requesting the passage of special legislation, which local governmental agency shall administer the local resource recovery and management program. If, on December 1, 1978, no interlocal agreement has been effectuated and no special act has become law, the board of county commissioners shall administer and be responsible for the local resource recovery program, except sludge from a waste treatment plant or pollution control facility, for the entire county.

(c) Each local resource recovery and management program shall be reviewed at least once in every 3 years. Each county and its municipalities shall be responsible for updating their local program in a manner consistent with the rules adopted by the department.

(d) The department shall review, at least once in every 3 years, those counties or municipalities not required to plan for resource recovery under the pro-

visions of subsection (4) to determine if sufficient solid waste is generated to make it economically practical to plan for, and engage in, resource recovery and management programs.

(3) Nothing in this act shall be construed to prevent the governing body of any county or municipality from providing by ordinance or regulation for resource recovery and management requirements which are stricter or more extensive than those imposed by the state resource recovery and management program and rules, regulations, and orders issued thereunder.

(4) Nothing in this act or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any resource recovery program until the governing body of such county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this act or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste within its boundaries or generated within its boundaries so long as any such disposal facility has been approved by the department unless the municipality is included within a resource recovery program created by interlocal agreement or special or local act. If, on December 1, 1978, bonds had been issued to finance a resource recovery or management program in reliance on state law granting to said county the responsibility for the resource recovery or management program, nothing herein shall permit any governmental agency to withdraw from said program if said agency's participation is necessary for the financial feasibility of the project, so long as said bonds are outstanding.

(5) The time limit set out in subsection (1) shall be extended by the department upon application to the department by the local unit of government involved and on due cause shown that good faith efforts to meet the requirements of this act have been and are being made.

(6) Nothing in this chapter or in any rule adopted by any state agency hereunder shall require any person to subscribe to any private solid waste collection service.

History.—s. 1, ch. 74-342; s. 142, ch. 77-104; s. 1, ch. 77-466; s. 3, ch. 78-329; s. 1, ch. 79-118.

403.707 Permits.—

(1) After January 1, 1975, no resource recovery and management facility or site shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department.

(2) No permit under this section shall be required for the following activities, provided no public nuisance or any condition adversely affecting the public health is created, and provided the activity does not violate other state or local laws, ordinances, rules, regulations or orders:

(a) Disposal by persons of solid waste resulting from their own activities on their own property.

(b) Normal farming operations.

(c) Solid waste disposal areas limited to the disposal of construction and demolition debris.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits and temporary operation permits, shall be construed to include the control of resource recovery and management facilities. However, a temporary operation permit shall not be issued for more than a 3-year period.

History.—s. 1, ch. 74-342; s. 3, ch. 78-387.

403.7072 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 8, ch. 79-161.

403.7075 Submission of plans for certain solid waste disposal areas; conditions.—All plans and applications for a permit to construct and operate a solid waste disposal area as provided in s. 403.707 may be prepared and submitted by any person acting as a public officer employed by a county or a municipality when said public officer states therein that the construction of the solid waste disposal area is estimated to cost less than $10,000. Any law to the contrary notwithstanding, the construction cost of a solid waste disposal area, for the purposes of this section, shall not include land acquisition cost or the cost of equipment used to construct and maintain same.

History.—s. 4, ch. 78-387.

403.708 Prohibition; penalty.—

(1) No person shall:

(a) Place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the department and consistent with applicable approved programs of counties or municipalities. However, nothing in this act shall be construed to prohibit the disposal of solid waste without a permit as provided in s. 403.707(2).

(b) Burn solid waste except in a manner prescribed by the department and consistent with applicable approved programs of counties or municipalities.

(c) Construct, alter, modify, or operate a resource recovery and management facility or site without first having obtained a valid permit from the department as provided in s. 403.707.

(2) The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974.

(3) Violations of the state resource recovery and management program or rules, regulations, permits, or orders issued thereunder by the department, and violations of approved local programs of counties or municipalities, or rules, regulations, or orders issued thereunder, shall be punishable by a civil penalty as provided in s. 403.141.

(4) The department or any county or municipality may also seek to enjoin the violation of, or enforce

compliance with, this act or any program adopted hereunder as provided in s. 403.131.

History.—s. 1, ch. 74-342.

403.709 Resource recovery and management grant fund.—

(1) The department may assist counties and municipalities in complying with this act by providing grants to pay a portion of the cost, in no case to exceed 50 percent of the total planning and project costs, for planning and implementing local resource recovery and management programs as required by s. 403.706. Implementation costs may include the cost of acquiring equipment, but not land, in accordance with an approved local program.

(2) Such grants are to be based on a formula of $5,000 per county or municipality plus 25 cents per capita for each user of resource recovery and management services being provided by a county or municipality. To the extent funds are available, the department shall allocate such funds to counties and municipalities in accordance with the formula provided in this subsection.

(3) Prior to the adoption by the department of the state resource recovery and management program, and to the extent funds are available, grants may be made by the department to counties and municipalities according to the formula in subsection (2) to pay a portion of the cost, in no case to exceed 50 percent of the total cost for operation and implementation, of local resource recovery and management programs existing on July 1, 1974.

History.—s. 1, ch. 74-342.

[1]403.710 Resource Recovery Council.—

(1) There is created a Resource Recovery Council to consist of 13 members. The Governor shall appoint nine members and shall include among the members appointed by him one representative from each of the following: Municipalities, counties, environmental interests, the academic community, agricultural interests, business interests, resource recovery interests, professional engineering interests, and any other profession or occupation which may be affected by the provisions of this act. The President of the Senate shall appoint two members from the Senate, and the Speaker of the House shall appoint two members from the House of Representatives. Members of the council shall select a chairman and shall serve without compensation, but shall be reimbursed for all necessary expenditures in the performance of their duties.

(2) Not more than 30 days after the appointment of the council, the chairman shall call a meeting at which time the council shall establish procedures for the conduct of its business. The council shall meet not less than once in each quarter of each year, and other meetings may be called when necessary by the chairman at any time.

(3) The council shall study all facets of resource recovery and management, including laws and programs in other states, and make such recommendations for new legislation or amendments to existing legislation as it deems necessary to insure that resources, including solid waste, in Florida are collected, disposed of, and managed in a manner consistent with environmental and economic concerns, and are also recovered and recycled to the greatest extent practicable for continued use and for use as a source of energy which is vital to the preservation of the state's untouched natural resources.

(4) As part of its work, the council shall approve the proposed state resource recovery and management program prior to adoption by the department and make recommendations for changes in the proposed program prior to adoption. The department shall cooperate fully with the council. In addition, the council shall review local implementation programs, for only those areas required to plan for resource recovery, as they are submitted to the department according to s. 403.706 and make whatever recommendations and findings it deems necessary. The council shall specifically recommend to the department those counties, municipalities, or regions which will generate sufficient solid waste to make it economically practical to plan for, and which therefore should be required to engage to the extent economically feasible in, recycling or resource recovery programs.

(5) In order to encourage and promote resource recovery and recycling, the council shall recommend to the 1975 regular session of the legislature, in its interim report, an appropriate site or sites and funding requirements for a state resource recovery and management pilot project as described in s. 403.711.

(6) The council shall also consult with local governments, regional planning agencies, and relevant state agencies and obtain the views of the public, including the views of businesses and professions concerned with resource recovery and management, and may contract with consultants for appropriate studies.

(7) The council shall prepare and submit to the Governor and Legislature interim reports on March 1, 1975, and March 1, 1976, and shall submit a comprehensive report and recommendations by January 1, 1977. The comprehensive report shall contain an analysis of state and local resource recovery and management programs and of the state pilot project as well as any other matters the council chooses to include.

(8) The council shall employ an executive director and may employ such other staff and consultants as needed to carry out its functions.

(9) On September 30, 1979, the council shall be abolished, its records and property shall be transferred to the Department of Environmental Regulation, all personnel positions of the council shall be abolished, and all unexpended balances of appropriations, allocations, or other funds of the council shall revert to the General Revenue Fund.

History.—s. 1, ch. 74-342; s. 3, ch. 75-54; ss. 2, 3, ch. 77-466.

[1]Note.—Repealed by s. 3, ch. 77-466, effective October 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

403.711 Pilot project or program.—

(1) The Resource Recovery Council shall recommend in its interim report to the 1976 regular session of the Legislature an appropriate project or program and required funding.

(2) The project or program shall have as its primary purpose the coordination and advancement of existing technology in the field of resource recovery, management, and recycling and shall, whenever

practicable, promote and encourage the production of energy from solid waste.

(3) Upon approval of a project or program and funding by the Legislature, the department shall include the project or program in the state resource recovery and management program and may exercise any of the powers provided in s. 403.704 in implementing the project or program.

History.—s. 1, ch. 74-342; s. 4, ch. 75-54.

403.712 Revenue bonds.—

(1) Revenue bonds payable from funds which result from the revenues derived from the operation of such solid waste recycling facilities and from any revenues which may be pledged under s. 14, Art. VII, State Const. and s. 403.1834, including, without limiting the generality of the foregoing, any legally available revenues derived from public or private sources, may be issued by the Division of Bond Finance of the Department of General Services on behalf of the state or any county or municipality in the manner provided by the State Bond Act, ss. 215.57 et seq., except as otherwise provided herein, and the Revenue Bond Act of 1953, as amended, part I, chapter 159. Such bonds shall be issued only to finance the cost of construction, maintenance, or operation of resource recovery and management facilities, which cost may include the acquisition of real property and easements therein for such purposes.

(2) Upon a determination by the Division of Bond Finance of the Department of General Services that a public competitive sale is not feasible or that it would not be desirable to award such revenue bonds solely on the basis of the lowest net interest cost bid, the Division of Bond Finance may negotiate the sale of any such revenue bonds after the receipt of one or more proposals, taking into consideration the lowest total cost and such other factors as may be deemed appropriate.

History.—s. 1, ch. 74-342; s. 5, ch. 75-54.

403.713 Transport of solid waste.—

(1) Nothing in this act shall be interpreted as limiting the free flow of solid waste across municipal or county boundaries in accordance with the rules and regulations issued pursuant to this act.

(2) No municipality or county of this state shall take any action to prevent such free flow of solid waste provided the transport or disposition of the solid waste is in accord with the provisions of this act.

History.—s. 1, ch. 74-342.

403.714 Duties of Department of General Services.—It shall be the duty of the Department of General Services to:

(1) Establish a program, in cooperation with the Department of Environmental Regulation, for the collection of all wastepaper materials in state offices throughout the state, which program, in addition to requiring participation by the established executive departments, shall provide for participation by the offices of the legislative and judicial branches of state government as well.

(2) Provide a program to recycle all wastepaper materials collected in accordance with the provisions of this section whenever practicable.

(3) Evaluate the amount of wastepaper material recycled by the state and make all necessary modifications to said recycling program to insure that all wastepaper materials are effectively and practicably recycled.

History.—s. 2, ch. 74-342; s. 85, ch. 79-65.

403.715 Certification of resource recovery equipment.—For purposes of implementing the tax exemption provided by s. 212.08(7)(p), the department shall establish a system for the examination and certification of resource recovery equipment. Application for certification of equipment shall be submitted to the department on forms prescribed by it which include such pertinent information as the department may require. Within 30 days of receipt of an application by the department, a representative of the department shall inspect the equipment. Within 30 days of such inspection, the department shall issue a written decision granting or denying certification.

History.—s. 4, ch. 78-329.

PART V

ENVIRONMENTAL REGULATION

403.801 Short title.—Chapter 75-22, Laws of Florida, shall be known and may be cited as the "Florida Environmental Reorganization Act of 1975."

History.—s. 1, ch. 75-22.

403.802 Declaration of policy.—Reasserting the policy of the Governmental Reorganization Act of 1969, as stated in s. 20.02, that structural reorganization should be a continuing process, and recognizing that 6 years have passed since the 1969 reorganization, it is the intent of the Legislature to promote the efficient, effective, and economical operation of certain environmental agencies by centralizing authority over, and pinpointing responsibility for the management of, the environment by authorizing the delegation of substantial decision-making authority

to the district level and by consolidating compatible administrative, planning, permitting, enforcement, and operational activities. Further, it is the intent of this act to promote proper administration of Florida's landmark environmental laws.

History.—s. 2, ch. 75-22.

403.803 Definitions.—When used in this act the term, phrase, or word:

(1) "Commission" means the Environmental Regulation Commission.

(2) "Department" means the Department of Environmental Regulation.

(3) "Environmental district center" means the facilities and personnel which are centralized in each district for the purposes of carrying out the provisions of this act.

(4) "District" or "environmental district" means one of the geographical areas, the boundaries of which are established pursuant to this act.

(5) "Manager" means the head of an environmental district who shall supervise all environmental functions of the department within such environmental district.

(6) "Secretary" means the Secretary of the Department of Environmental Regulation.

(7) "Subdistrict" means a geographical area, the boundaries of which may be established as a part of a district.

(8) "Channel" is a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(9) "Canal" is a manmade trench, the bottom of which is normally covered by water with the upper edges of its sides normally above water.

(10) "Drainage ditch" or "irrigation ditch" is a manmade trench dug for the purpose of draining water from the land or for transporting water for use on the land and is not built for navigational purposes.

(11) "Swale" is a manmade trench which only contains contiguous areas of standing or flowing water following the occurrence of rainfall or flooding.

(12) "Standard" means any rule of the Department of Environmental Regulation relating to air and water quality, noise, and solid-waste management. The term "standard" does not include rules of the department which relate exclusively to the internal management of the department, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters.

History.—s. 3, ch. 75-22.

403.804 Environmental Regulation Commission; powers and duties.—

(1) The commission shall exercise the exclusive standard-setting authority of the department, except as provided in subsection (2) and ss. 20.261(7)-(10), 373.026(7), and 373.073(4). The commission shall also act as an adjudicatory body for final actions taken by the department, except for those appeals and decisions authorized in ss. 20.261(12) and 253.76.

(2) The commission shall direct the department to have a study conducted of the economic and environmental impact which sets forth the benefits and costs to the public of any proposed standard that would be stricter or more stringent than one which has been set by federal agencies pursuant to federal law or regulation. The commission shall also direct the department to prepare such a study on any standard existing on July 1, 1975, which sets a stricter or more stringent standard than one which has been set by federal agencies pursuant to federal law or regulation. All such studies shall be submitted to the Governor and cabinet no later than March 1, 1976. Such studies as are provided for in this paragraph shall be submitted to the commission, who shall initially adopt the standards. Final action shall be by the Governor and cabinet, who shall accept, reject, modify, or remand for further proceedings the standard within 60 days from the submission. Such review shall be appellate in nature. Hearings shall be in accordance with the provisions of chapter 120.

(3) The commission shall have final state approval on applications for and disbursements of federal grants.

History.—s. 6, ch. 75-22.
cf.—s. 20.261 Department of Environmental Regulation.

403.805 Secretary; powers and duties.—In addition to those powers and duties of heads of departments set forth in chapter 20, the secretary shall employ legal counsel to represent the department in matters affecting the department. Except for appeals on permits specifically assigned by this act to the Governor and cabinet, and unless otherwise prohibited by law, the secretary may delegate the authority assigned to the department by this act to the district managers; however, for projects qualifying as developments of regional impact pursuant to chapter 380, F.S., and chapter 22F-2, Florida Administrative Code, the secretary and the Tallahassee office shall perform all the duties relating to the granting, modification, or denial of permits under chapters 253 and 403, subject to ss. 20.261(12), 253.76, and 403.804.

History.—s. 6, ch. 75-22.
cf.—s. 20.261 Department of Environmental Regulation.

403.806 Division of Administrative Services; powers and duties.—The Division of Administrative Services shall perform duties including, but not limited to, personnel, fiscal, purchasing, education, and information.

History.—s. 6, ch. 75-22.
cf.—s. 20.261 Department of Environmental Regulation.

403.807 Division of Environmental Programs; powers and duties.—The Division of Environmental Programs shall perform duties including, but not limited to, administration, coordination, and supervision of programs relating to planning, grants, air quality, water quality and quantity, noise, and solid-waste management.

History.—s. 6, ch. 75-22.
cf.—s. 20.261 Department of Environmental Regulation.

403.808 Division of Environmental Permitting; powers and duties.—The Division of Environmental Permitting shall perform duties including, but not limited to, the following:

(1) Processing of applications for powerplant site

certifications pursuant to part II.

(2) Processing of those other classifications of permits, licenses, and certificates which the secretary may designate.

(3) Establishing uniform procedures and forms for the orderly determination of decisions relating to permits, licenses, certificates, and exemptions.

(4) Providing the necessary technical and legal support to carry out enforcement functions of the department.

(5) Supervising and directing all district operations.

History.—s. 6, ch. 75-22.

cf.—s. 20.261 Department of Environmental Regulation.

403.809 Environmental districts; establishment; managers; functions.—

(1) The secretary shall establish environmental districts. The environmental districts shall be collocated with the water management districts to the maximum extent practicable. The secretary shall have the authority to adjust the environmental district boundaries to best serve the purposes of this act. The secretary may establish subdistricts with one branch office in each, for the purpose of making services more accessible to the citizens of each district.

(2) There shall be a manager for each environmental district who shall be appointed by, and serve at the pleasure of, the secretary. The manager shall maintain his office in the environmental district center, which shall be collocated with the office of a water management district to the maximum extent practicable.

(3)(a) Under the supervision of the Division of Environmental Permitting, all field services and inspections required in support of the decisions of the department relating to the issuance of permits, licenses, certificates, or exemptions shall be accomplished at the environmental district center level to the maximum extent practicable.

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center, except for those applications specifically assigned to the Division of Environmental Permitting and those applications assigned by interagency agreement as provided in this act.

History.—ss. 4, 6, ch. 75-22.

403.812 Delegation of functions to Water Management Districts.—When the secretary determines that a water management district has the financial and technical capability to carry out water quality and other functions of the department, those powers, duties, and functions, or parts thereof, may be contracted or delegated to such water management district. This may include, but shall not be limited to, planning, regulation, and permitting of point sources and nonpoint sources of pollution and other field services. Any powers, duties, and functions so delegated shall be carried out in accordance with the rules, regulations, and standards of the department and shall follow the uniform procedures and forms established by the Division of Environmental Permitting. Nothing contained in this act shall be construed to adversely affect or divest any water management district of the power to levy ad valorem taxes.

History.—s. 6, ch. 75-22.

403.813 Permits issued at district centers; exceptions.—

(1) The secretary is authorized to adopt procedural rules providing for a short form application for, and issuance at the district center of, permits for certain activities. These activities shall include the following and any others established by rule:

(a) Projects not exceeding 4,000 cubic yards of material placed in or removed from the navigable waters of the state;

(b) Dockage or marina facilities not exceeding 20,000 square feet of submerged lands;

(c) New seawalls or similar structures not exceeding 300 linear feet of shoreline;

(d) The installation of buoys, signs, fences, ski ramps, and fish attractors installed by the Florida Game and Fresh Water Fish Commission;

(e) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state carrying water, electricity, communication cables, oil, and gas, except as exempted by paragraph (m) or paragraph (n) of subsection (2); and

(f) The performance, for 10 years from the issuance of the original permit, of maintenance dredging of permitted navigation channels, port harbors, turning basins, and harbor berths. The Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material. However, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Land Acquisition Trust Fund.

(2) No permit under this chapter, chapter 373, or chapter 253, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, Laws of Florida, 1949, shall be required for activities associated with the following types of projects; however, nothing in this subsection shall relieve an applicant from any requirement to obtain permission to use or occupy lands owned by any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, with support structures which are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation of mooring pilings and dolphins associated with private docking facilities and the installation of private docks of 500 square feet or less of over-water surface area, constructed on pilings so as not to involve filling or substantially impede the flow or create a navigational hazard.

(c) The installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state; however, the material removed shall be placed on a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state. The Department of Natural Resources, as administrator for the Board of Trustees of the Internal Improvement Trust Fund, may fix and recover from the permittee an appropriate amount for state-owned material removed.

(d) The replacement or repair of existing docks, except that no fill material is to be used and provided that the replacement or repaired dock is in the same location and of the same configuration and dimensions as the dock being replaced or repaired.

(e) The restoration of seawalls at their previous location or upland of, or within 1 foot waterward of, their previous locations.

(f) The performance of maintenance dredging of existing manmade canals, channels, and intake and discharge structures where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed prior to April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Land Acquisition Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health and Rehabilitative Services, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair of existing pipes for the purpose of discharging storm water runoff.

(i) The construction of private docks and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided that the devices are marked pursuant to s. 371.521.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class 1 and Class 2 waters and aquatic preserves, provided that no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in waters of the state where such construction is between and adjoins at both ends existing seawalls, follows a continuous and uniform seawall construction line with the existing seawalls, is no more than 150 feet in length, and does not violate existing water quality standards, impede navigation, or affect flood control. However, this shall not affect the permitting requirements of chapter 161.

History.—s. 7, ch. 75-22; s. 143, ch. 77-104; s. 4, ch. 78-98; s. 1, ch. 78-146; s. 86, ch. 79-65.

403.8135 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation,

failure to provide such information cannot be grounds to deny a permit.

History.—s. 9, ch. 79-161.

403.817 Legislative intent; determination of the natural landward extent of waters for regulatory purposes.—

(1) It is recognized that the levels of the waters of the state naturally rise and fall, depending upon tides and other hydrological, meteorological, and geological circumstances and features. The natural rise and fall of the waters is essential to good water quality, but often makes it difficult to determine the natural landward extent of the waters. Therefore, it is the intent of the Legislature that the Department of Environmental Regulation establish a method of making such determinations, based upon ecological factors which represent these fluctuations in water levels.

(2) In order to accomplish the legislative intent expressed in subsection (1), the department is authorized to establish by rule, pursuant to chapter 120, the method for determining the landward extent of the waters of the state for regulatory purposes. Such extent shall be defined by species of plants or soils which are characteristic of those areas subject to regular and periodic inundation by the waters of the state. The application of plant indicators to any areas shall be by dominant species. However, no landowner shall suffer any property loss or gain because of vegetation changes due to mosquito control activities conducted upon his property, provided these activities are or have been undertaken as part of a governmental mosquito control program. To the extent that certain lands have come within department jurisdiction pursuant to this section or chapter 253 solely due to insect control activities, these lands shall not be subject to permitting requirements for the discharge of dredge or fill material.

(3) Amendments adopted after April 5, 1977, to the rules of the department adopted before April 5, 1977, relating to dredging and filling and which involve additions or deletions of the vegetation or soil indices or the addition or deletion of exemptions shall be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such rule amendments shall become effective only upon approval by act of the Legislature.

(4) To the extent that any plant or soil indicators are enacted into law by the Legislature for the purpose of defining the landward extent of the waters of the state for regulatory purposes, the plant or soil indicators adopted by the department regarding areas covered by legislation shall be consistent with said legislation.

(5) The landward extent of waters as determined by the rules authorized by this section shall be for regulatory purposes only and shall have no significance with respect to sovereign ownership.

History.—ss. 1, 2, ch. 77-170; s. 5, ch. 78-98.

PART VI

DRINKING WATER

403.850 Short title.—This act may be cited as the "Florida Safe Drinking Water Act."

History.—s. 1, ch. 77-337.

403.851 Declaration of policy; intent.—It is the policy of the state that the citizens of Florida shall be assured of the availability of safe drinking water. Recognizing that this policy encompasses both environmental and public health aspects, it is the intent of the Legislature to provide a water supply program operated jointly by the Department of Environmental Regulation, in a lead-agency role of primary responsibility for the program, and by the Department of Health and Rehabilitative Services and its units, including county health departments, in a supportive role with specific duties and responsibilities of its own. Without any relinquishment of Florida's sovereign powers and responsibilities to provide for the public health, public safety, and public welfare of the people of Florida, the Legislature intends:

(1) To give effect to Pub. L. No. 93-523 promulgated under the commerce clause of the United States Constitution, to the extent that interstate commerce is directly affected.

(2) To encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies.

(3) To provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.

History.—s. 2, ch. 77-337; s. 162, ch. 79-400.

403.852 Definitions.—As used in ss. 403.850-403.864:

(1) "Department" means the Department of Environmental Regulation, which is charged with the primary responsibility for the administration and

implementation of the Florida Safe Drinking Water Act.

(2) "Public water system" means a community or noncommunity system for the provision to the public of piped water for human consumption, provided that such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. The term includes:

(a) Any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.

(3) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(4) "Noncommunity water system" means a public water system for provision to the public of piped water for human consumption, that serves at least 25 individuals daily at least 60 days out of the year, but that is not a community water system.

(5) "Person" means an individual, public or private corporation, company, association, partnership, municipality, agency of the state, district, federal agency, or any other legal entity, or its legal representative, agent, or assigns.

(6) "Municipality" means a city, town, or other public body created by or pursuant to state law or an Indian tribal organization authorized by law.

(7) "Federal agency" means any department, agency, or instrumentality of the United States Government.

(8) "Supplier of water" means any person who owns or operates a public water system.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(10) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(11) "Federal act" means the Safe Drinking Water Act, Public Law 93-523.

(12) "Primary drinking water regulation" means a rule which:

(a) Applies to public water systems;

(b) Specifies contaminants which, in the judgment of the department, after consultation with the Department of Health and Rehabilitative Services, may have an adverse effect on the health of the public;

(c) Specifies for each such contaminant either:

1. A maximum contaminant level if, in the judgment of the department, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

2. Each treatment technique known to the department which leads to a reduction in the level of the contaminant sufficient to satisfy the requirements of s. 403.853 if, in the judgment of the department, it is not economically or technologically feasible to ascertain the level of such contaminant; and

(d) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to assure compliance with such levels and to ensure proper operation and maintenance of the system, and which contains requirements as to:

1. The minimum quality of water which may be taken into the system; and

2. Siting for new facilities for public water systems.

(13) "Secondary drinking water regulation" means a rule which:

(a) Applies to public water systems; and

(b) Specifies the maximum contaminant levels which, in the judgment of the department after public hearings, are requisite to protect the public welfare. Such regulation may apply to any contaminant in drinking water:

1. Which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

2. Which may otherwise adversely affect the public welfare.

Such regulations may vary according to geographic and other circumstances.

(14) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator pursuant to the federal act.

(15) "National secondary drinking water regulations" means secondary drinking water regulations promulgated by the administrator pursuant to the federal act.

(16) "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

History.—s. 3, ch. 77-337.

403.853 Drinking water standards.—

(1) The department shall adopt and enforce:

(a)1. State primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time; and

2. State secondary drinking water regulations patterned after the national secondary drinking water regulations.

(b) Primary and secondary drinking water regulations for noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time.

(2) Subject to the exceptions authorized pursuant to s. 403.854, state primary drinking water regulations shall apply to each public water system in the state, except that such regulations shall not apply to any public water system which meets all of the following criteria; namely, that the system:

(a) Consists of distribution and storage facilities

only and does not have any collection or treatment facilities;

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(3) The department shall adopt and implement adequate rules specifying procedures for the enforcement of state primary and secondary drinking water regulations, including monitoring and inspection procedures, that comply with regulations established by the administrator pursuant to the federal act.

(4) The department shall keep such records and make such reports, with respect to its activities under subsections (1) and (3), as may be required by regulations established by the administrator pursuant to the federal act. Such records and reports shall be available for public inspection.

(5) No state primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to the contamination of drinking water.

(6) Upon request of the owner or operator of a noncommunity water system serving businesses, other than restaurants or other public food service establishments, and using groundwater as a source of supply, the department, or a local county health unit designated by the department, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to department criteria, the department shall reduce the requirements of said owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis. Any revised monitoring and reporting schedule approved by the department under this subsection shall apply until such time as a violation of applicable state or federal primary drinking water standards is determined by the system owner or operator, by the department, or by an agency designated by the department, after a random or routine sanitary survey. Certified operators shall not be required for noncommunity water systems of the type and size covered by this subsection. Any reports required of such system shall be limited to the minimum as required by federal law. When not contrary to the provisions of federal law, the department may, upon request and by rule, waive additional provisions of state drinking water regulations for such systems.

History.—s. 4, ch. 77-337; s. 1, ch. 79-358.

403.8535 Citation of rule.—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 10, ch. 79-161.

403.854 Variances and exemptions.—

(1) The department may authorize variances or exemptions from the regulations issued pursuant to s. 403.853 under conditions and in such manner as it deems necessary and desirable, provided that such variances or exemptions are authorized under such conditions and in such manner as are no less stringent than the conditions under which and the manner in which variances and exemptions may be granted under the federal act.

(2)(a) The department shall exempt public water systems from any requirements respecting a maximum contaminant level or any treatment technique requirement, or both, when:

1. Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;

2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and

3. The granting of the exemption will not result in an unreasonable risk to health.

(b) Proposed additions to existing treatment plants not under contract for construction on July 1, 1977, shall not be automatically exempt.

(3)(a) When the department receives an application for exemption, it shall act upon such application within a time period under s. 1416 (g) of Public Law 93-523 or the Florida Administrative Procedure Act, whichever is earlier.

(b) The department shall prescribe a compliance schedule for the exempted system and shall notify the Environmental Protection Agency Administrator personally by certified mail pursuant to Public Law 93-523, s. 1416 (b) and (c).

History.—s. 5, ch. 77-337.

403.855 Imminent hazards.—The department, upon receipt of information that a contaminant which is present in, or is likely to enter, a public water system may present an imminent and substantial danger to the public health, may take such actions as it may deem necessary in order to protect the public health. Actions which the department may take include, but are not limited to:

(1) Adopting emergency rules pursuant to s. 120.54(9).

(2) Issuing such corrective orders as may be necessary to protect the health of persons who are or may be users of such systems, including travelers. An order issued by the department under this section shall become effective upon service of such order on the alleged violator, notwithstanding the provisions of s. 403.860(3).

(3) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

History.—s. 6, ch. 77-337; s. 163, ch. 79-400.

403.856 Plan for emergency provision of water.—The department shall adopt an adequate plan, after consultation with the Department of Health and Rehabilitative Services, for the provision of safe drinking water under emergency circumstances. When, in the judgment of the department, emergency circumstances exist in the state with respect to a

need for safe drinking water, it may issue such rule or order as it may deem necessary in order to provide such water where it would not otherwise be available.

History.—s. 7, ch. 77-337.

403.857 Notification of users and regulatory agencies.—Whenever a public water supply system:

(1) Is not in compliance with the state primary and secondary drinking water regulations;

(2) Fails to perform monitoring required by rules or regulations adopted by the department;

(3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;

(4) Is subject to an exemption; or

(5) Fails to comply with the requirements prescribed by a variance or exemption,

the owner or operator of the system shall, as soon as practicable, notify the local public health departments, the department, and the communications media serving the area served by the system of that fact and of the extent, nature, and possible health effects of such fact. Such notice shall also be given by the owner or operator of the system by publication in a newspaper of general circulation, as determined by the department, within the area served by such water system at least once every 3 months as long as the violation, variance, or exemption continues. Such notice shall also be given with the water bills of the system as long as the violation, variance, or exemption continues, as follows: if the water bills of a public water system are issued at least as often as once every 3 months, such notice shall be included in at least one water bill of the system for each customer every 3 months; if the system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system for each customer. However, the provisions of this section notwithstanding, the department may prescribe by rule reasonable alternative notice requirements.

History.—s. 8, ch. 77-337.

403.858 Inspections.—Any duly authorized representative of the department or of the Department of Health and Rehabilitative Services may enter, take water samples from, and inspect any property, premises, or place, except a building which is used exclusively for a private residence, on or at which a public water system is located or is being constructed or installed, at any reasonable time, for the purpose of ascertaining the state of compliance with the law or with rules or orders of the department.

History.—s. 9, ch. 77-337.

403.859 Prohibited acts.—The following acts and the causing thereof are prohibited and are violations of this act:

(1) Failure by a supplier of water to comply with the requirements of s. 403.857 or dissemination by such supplier of any false or misleading information with respect to notices required pursuant to s. 403.857 or with respect to remedial actions being undertaken to achieve compliance with state primary and secondary drinking water regulations.

(2) Failure by a supplier of water to comply with regulations adopted pursuant to s. 403.853, with any rule adopted by the department pursuant to this act, or with conditions for variances or exemptions authorized under s. 403.854.

(3) Failure by any person to comply with any order issued by the department pursuant to this act.

(4) Failure by a supplier of water to allow any duly authorized representative of the department or of the Department of Health and Rehabilitative Services to conduct inspections pursuant to s. 403.858.

(5) Submission by any person of any false statement or representation in any application, record, report, plan, or other document filed, or required to be filed by this act or rules adopted by the department pursuant to its lawful authority.

(6) Failure by a supplier of water to comply with any approved plans and specifications or condition to the approval of plans and specifications issued by the department pursuant to this act.

History.—s. 10, ch. 77-337; s. 164, ch. 79-400.

403.860 Penalties and remedies.—

(1) A fine, not to exceed $5,000 for each day in which a violation occurs, may be imposed by a court of competent jurisdiction on any person who violates s. 403.859 (1), (2), (4), (5), or (6).

(2) A fine, not to exceed $5,000 for each day in which such violation occurs or failure to comply continues, may be imposed by a court of competent jurisdiction upon any person who violates, or fails or refuses to comply with, any order issued by the department pursuant to this act.

(3) The department may initiate an administrative proceeding to establish liability and require corrective action. Such proceeding shall be instituted by the department's serving a written notice of violation upon the alleged violator by certified mail. The notice shall specify the provision of law or rule of the department alleged to have been violated and the facts alleged to constitute a violation thereof. An order for corrective action may be included with the notice. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof. A department order, entered after a hearing pursuant to chapter 120 or a waiver thereof, shall be final and constitute a final adjudication of the matters alleged. Such order may require, in addition to corrective action, that the violator pay the state for its reasonable costs and expenses incurred in investigating the violation and prosecuting the administrative proceeding.

(4) The department may institute a civil action in any court of appropriate jurisdiction for injunctive relief to prevent violation of any order, rule, or regulation issued pursuant to this act, in addition to any other remedies provided under this section.

History.—s. 11, ch. 77-337.

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(1) Administer and enforce the provisions of this

act and all rules and orders adopted, issued, or made effective hereunder.

(2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other local, state, federal, or interstate agencies; municipalities; political subdivisions; educational institutions; or other organizations or persons.

(3) Receive financial and technical assistance from the Federal Government and other public or private agencies.

(4) Participate in related programs conducted by federal agencies, other states, interstate agencies, or other public or private agencies or organizations.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of, and accounting for, funds appropriated or otherwise provided for the purpose of carrying out provisions of this act.

(6) Delegate those responsibilities and duties deemed appropriate for the purpose of administering requirements of this act.

(7) Require an application fee of not more than $20 for department review and approval of public water system plans and specifications.

(8) Adopt, modify, and repeal such rules as are necessary or appropriate to carry out its functions under this act.

(9) Require department or county health department review and approval of complete plans and specifications prior to the installation, operation, alteration, or extension of any public water system.

(10) Establish and maintain laboratories for radiological, microbiological, and chemical analyses of water samples from public water systems, if the department determines that an additional laboratory capability beyond that provided by the Department of Health and Rehabilitative Services is necessary.

(11) Plan, develop, and coordinate program activities for the management and implementation of the state primary and secondary drinking water regulations, including taking sanitary surveys.

(12) Collect and disseminate information and conduct educational and training programs relating to drinking water and public water systems.

(13) Conduct data management activities to maintain essential records needed for administration of the public water system supervision program and for submission to the administrator, including the maintenance of an inventory for all public water systems.

(14) Establish and collect fees for conducting state laboratory analyses as may be necessary, to be collected and used by either the department or the Department of Health and Rehabilitative Services in conducting its public water supply laboratory functions.

(15) Require suppliers of water to collect samples of water as required by state primary drinking water regulations, to submit such samples to an appropriate laboratory for analysis, and to keep sampling records as required under the federal act and make such records available to the department upon request.

(16) Require suppliers of water to submit periodic operating reports and testing data which the department determines are reasonably necessary to ascertain the adequacy of water supply systems.

(17) Issue such orders as may be necessary to effectuate the intent and purposes of this act.

(18) Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(19) Encourage public involvement and participation in the planning and implementation of the state public water system supervisory plans.

History.—s. 12, ch. 77-337; s. 165, ch. 79-400.

403.862 Department of Health and Rehabilitative Services; public water supply duties and responsibilities; coordinated budget requests with Department of Environmental Regulation.—

(1) Recognizing that supervision and control of units of the Department of Health and Rehabilitative Services is retained by the secretary of that agency, and that public health aspects of the state public water supply program require joint participation in the program by the Department of Health and Rehabilitative Services and its units and the department, the Department of Health and Rehabilitative Services shall:

(a) Establish and maintain laboratories for the conducting of radiological, microbiological, and chemical analyses of water samples from public water systems, which are submitted to such laboratories for analysis. Copies of the reports of such analyses and quarterly summary reports shall be submitted to the appropriate department district or subdistrict office.

(b) Require each county health department to:

1. Collect such water samples for analysis as may be required by the terms of this act, from public water systems within its jurisdiction. The duty to collect such samples may be shared with the appropriate department district or subdistrict office and shall be coordinated by field personnel involved.

2. Submit the collected water samples to the appropriate laboratory for analysis.

3. Maintain reports of analyses for its own records.

4. Conduct complaint investigation of public water systems to determine compliance with federal, state, and local standards and permit compliance.

5. Notify the appropriate department district or subdistrict office of potential violations of federal, state, and local standards and permit conditions by public water systems and assist the department in enforcement actions with respect to such violations to the maximum extent practicable.

6. Review and evaluate laboratory analyses of water samples from private water systems.

(c) Require those county health departments designated by the Department of Health and Rehabilitative Services and approved by the department as having qualified sanitary engineering staffs, in addition to the duties prescribed in paragraph (1)(b), to:

1. Review and evaluate each application for the construction, modification, or expansion of a public water system to determine compliance with federal, state, and local requirements. Upon completion of such review and evaluation, the application shall be

forwarded to the appropriate department district or subdistrict office for final action.

2. Review, evaluate, and approve or disapprove applications for the expansion of distribution systems. Written notification of action taken on such applications shall be forwarded to the appropriate department district or subdistrict office.

3. Maintain inventory, operational, and bacteriological records and carry out monitoring, surveillance, and sanitary surveys of public water systems to ensure compliance with federal, state, and local regulations.

4. Participate in educational and training programs relating to drinking water and public water systems.

(d) Require those county health departments designated by the Department of Health and Rehabilitative Services as having the capability of performing bacteriological analyses, in addition to the duties prescribed in paragraph (1)(b), to:

1. Perform bacteriological analyses of water samples submitted for analysis.

2. Submit copies of the reports of such analyses to the appropriate department district or subdistrict office.

(e) Make available to the central and branch laboratories funds sufficient, to the maximum extent possible, to carry out the public water supply functions and responsibilities required of such laboratories as provided in this section.

(f) Have general supervision and control over all private water systems and all public water systems not covered or included in this act.

(g) Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(h) Upon request, consult with and advise any county or municipal authority as to water supply activities.

(2) Funds appropriated to support activities of county health departments of the Department of Health and Rehabilitative Services pursuant to this act shall be deposited to the County Health Department Trust Fund and used exclusively for the purposes of this act.

(3) The Department of Health and Rehabilitative Services and the department shall coordinate their respective budget requests for the fiscal year 1978-1979 and for subsequent fiscal years to ensure that sufficient funding is provided to the Department of Health and Rehabilitative Services in order that it may carry out its public water supply functions and responsibilities as provided in this section. In the event the Department of Health and Rehabilitative Services lacks sufficient funds in any fiscal year to the extent that it is unable adequately to carry out its public water supply duties, an interagency agreement may be entered into between the two departments in order to remedy administratively, either through the transfer of funds or of services, the lack of sufficient public water supply funds within the Department of Health and Rehabilitative Services.

(4) If the department determines that a county health department or other unit of the Department of Health and Rehabilitative Services is not performing its public water supply responsibilities satisfactorily, the secretary of the department shall certify such determination in writing to the Secretary of Health and Rehabilitative Services. The Secretary of Health and Rehabilitative Services shall evaluate the determination of the department and shall inform the secretary of the department of his evaluation. Upon concurrence, the Secretary of Health and Rehabilitative Services shall take immediate corrective action.

(5) Nothing in this section shall serve to negate the powers, duties, and responsibilities of the Secretary of Health and Rehabilitative Services relating to the protection of the public from the spread of communicable disease, epidemics, and plagues.

History.—s. 13, ch. 77-337; s. 166, ch. 79-400.

403.863 State public water supply laboratory certification program.—

(1) Within 120 days of the effective date of this act, the department and the Department of Health and Rehabilitative Services shall jointly develop a state program, and the Department of Health and Rehabilitative Services shall adopt rules for the evaluation and certification of all laboratories in the state, other than the principal state laboratory, which perform or make application to perform analyses pursuant to the Florida Safe Drinking Water Act. Such joint development shall be funded in part through the use of a portion of the State Public Water Systems Supervision Program grants received by the department from the Federal Government in order to implement the federal act.

(2) The Department of Health and Rehabilitative Services shall have the responsibility for the operation and implementation of the state laboratory certification program, except that, upon completion of the evaluation and review of the laboratory certification application, the evaluation shall be forwarded, along with recommendations, to the department for review and comment, prior to final approval or disapproval.

(3) Any federal grant funds received by the department for the operation and implementation of the state laboratory certification program shall be transferred to the Department of Health and Rehabilitative Services by interagency agreement between the two departments. Such agreement shall require the Department of Health and Rehabilitative Services to provide the department with a quarterly accounting of the funds transferred.

(4) Within 60 days of the effective date of the rules adopted pursuant to this section, no laboratory in the state, except the principal state laboratory, shall perform analyses pursuant to the Florida Safe Drinking Water Act without having applied for and received certification under the state certification program to perform such analyses.

(5) For the purposes of this section, the term "principal state laboratory" means the central laboratory of the Department of Health and Rehabilitative Services.

(6) For the purposes of this section, the term "certification" means regulatory recognition given to a laboratory that performs analyses pursuant to

the Florida Safe Drinking Water Act, that it meets minimum analytical performance standards.

History.—s. 14, ch. 77-337; s. 167, ch. 79-400.

403.864 Public water supply accounting program.—

(1) It is the intent of the Legislature to require a yearly accounting of funds, overhead, personnel, and property used by the department and the Department of Health and Rehabilitative Services and its units, including each of the county health departments, in conducting their respective responsibilities for the state public water supply program. Such accounting shall be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives by the department and the Department of Health and Rehabilitative Services no later than February 1 of each year. The first accounting shall be due by February 1, 1979, and shall cover the state fiscal year 1978-1979.

(2) In furtherance of this intent, the Department of Health and Rehabilitative Services, the department, and the Auditor General shall jointly develop an accounting program for use by the department and the Department of Health and Rehabilitative Services and its units, including the county health departments, to determine the funds, overhead, personnel, and property used by each of the departments in conducting its respective public water supply functions and responsibilities for each fiscal year. The accounting program shall provide information sufficient to satisfy state auditing and federal grant and aid reporting requirements and shall include provisions requiring the Department of Health and Rehabilitative Services to:

(a) Segregate, from an accounting standpoint, funds distributed to county health departments for public water supply functions from other county health department trust funds.

(b) Segregate, from an accounting standpoint, funds distributed to the central and branch laboratories of the Department of Health and Rehabilitative Services for public water supply functions from other laboratory funds.

(c) Require each county health department, the central and each branch laboratory of the Department of Health and Rehabilitative Services, and any other entity of the Department of Health and Rehabilitative Services involved in and carrying out public water supply functions to account to the Department of Health and Rehabilitative Services on a semiannual basis for the funds received, from whatever source, and used for public water supply functions.

(d) Require each county health department, the central and each branch laboratory of the Department of Health and Rehabilitative Services, and any other entity of the Department of Health and Rehabilitative Services involved in carrying out public water supply functions either wholly or partially with funds, either federal or state, received from the department through an interagency agreement or other means to account to the department on a semiannual basis for such funds received and used for public water supply functions.

History.—s. 15, ch. 77-337; s. 100, ch. 79-164.

PART VII

MISCELLANEOUS

403.90 Judicial review relating to permits and licenses.—

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

History.—ss. 1-6, ch. 78-85.

Note.—Also published at ss. 161.212, 253.763, 373.617, and 380.085.

CHAPTER 405

MEDICAL INFORMATION AVAILABLE FOR RESEARCH

405.01 Release of medical information to certain study groups; exemption from liability.—Any person, hospital, sanatorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to research groups, governmental health agencies, medical associations and societies, and any in-hospital medical staff committee, to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

History.—s. 1, ch. 65-533.

405.02 Limitation on publication of released information.—The research groups, governmental health agencies, organized medical associations and societies or any in-hospital medical staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication.

History.—s. 2, ch. 65-533.

405.03 Confidentiality of identity of person studied.—In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

History.—s. 3, ch. 65-533.

CHAPTER 406

MEDICAL EXAMINERS

406.01 Short title.—This chapter shall be known as the "Medical Examiners Act."

History.—s. 1, ch. 70-232.

[1]406.02 Medical Examiners Commission; membership; terms; duties.—

(1) There is created the Medical Examiners Commission within the Department of Health and Rehabilitative Services. The commission shall consist of six persons appointed or selected as follows:

(a) The Department of Health and Rehabilitative Services shall appoint:

1. Two members who are physicians licensed pursuant to chapter 458 or chapter 459 and who are actively engaged in the practice of pathology;

2. One member who is a funeral director licensed pursuant to chapter 470; and

3. One member who is a State Attorney;

(b) One member shall be the executive director of the Department of Law Enforcement or his designated representative; and,

(c) One member shall be the Attorney General or his designated representative.

(2) The term of office of the physicians appointed to the commission shall be 4 years commencing July 1, 1970, except that of the physician members first appointed, one shall be appointed for a term of 4 years and one for a term of 3 years. The term of office of the State Attorney shall be 4 years unless he leaves that office sooner, in which case his appointment will terminate. The term of office of the funeral director shall be 4 years. Appointments to fill vacancies shall be for the unexpired term.

(3) Members of the commission shall not receive any compensation for their services, but shall be reimbursed for travel and expenses incurred in the performance of their duties as provided in s. 112.061.

(4) The Medical Examiners Commission shall:

(a) Submit annual reports to the Governor and Legislature correlating and setting forth the activities and findings of the several district medical examiners appointed pursuant to this act. A copy of said report shall also be provided to each board of county commissioners.

(b) Initiate cooperative policies with any agency of the state or political subdivision thereof.

History.—s. 2, ch. 70-232; s. 1, ch. 70-439; s. 1, ch. 72-392; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 15, ch. 79-8.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]406.03 Organization and meetings of commission.—The commission shall annually select a chairman from among its own membership and shall meet at least four times each year and on the call of the chairman.

History.—s. 3, ch. 70-232; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]406.04 Rules and regulations.—The commission shall promulgate rules and regulations, pursuant to chapter 120, necessary to effectuate this chapter and to insure minimum and uniform standards of excellence, performance of duties, and maintenance of records so as to provide useful and adequate information to the state in regard to causative factors of those deaths investigated.

History.—s. 3, ch. 70-232; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]406.05 Medical examiner districts.—The Medical Examiners Commission shall establish medical examiner districts within the state, taking into consideration population, judicial circuits of the state, geographical size of the area of coverage, availability of trained personnel, death rate by both natural and unnatural causes, and similar related factors. No county may be divided in the creation of a district. However, this limitation shall not prohibit cooperative arrangements among the several districts.

History.—s. 3, ch. 70-232; s. 2, ch. 72-392; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

406.06 District medical examiners; associates.—

(1)(a) A district medical examiner shall be appointed by the Governor for each medical examiner district from nominees who are practicing physicians in pathology, submitted to the Governor by the Medical Examiners Commission.

(b) Physician members of the Medical Examiners Commission shall be eligible to serve as district medical examiners.

(c) A district medical examiner may be removed for cause by the Governor.

(2) The district medical examiner may appoint as many physicians as associate medical examiners as may be necessary to provide service at all times and all places within the district. Associate medical examiners shall serve at the pleasure of the district medical examiner.

(3) District medical examiners and associate medical examiners may engage in the private practice of medicine or surgery insofar as such private

practice does not interfere with their duties as prescribed herein.

History.—ss. 4, 5, ch. 70-232; s. 3, ch. 72-392.

406.07 Compensation of district and associate medical examiners.—District medical examiners and associate medical examiners shall be entitled to compensation and such reasonable salary and fees as are established by the boards of county commissioners in the respective districts.

History.—s. 5, ch. 70-232.

406.08 Payment of salaries and expenses.—

(1) Fees, salaries, and expenses may be paid from the general funds or any other funds under the control of the board of county commissioners.

(2) In the event that an examination or autopsy is performed by the district medical examiner or his associate upon a body when the death occurred outside of his district, the governmental body requesting the examination or autopsy shall pay the fee for such services.

(3) When a body is transported to the district medical examiner or his associate, transportation costs, if any, shall be borne by the county in which the death occurred. Nothing within this chapter shall preclude payment for services to the district medical examiner by the state, either in part or on a matching basis.

History.—s. 5, ch. 70-232; s. 144, ch. 77-104.

406.09 Expert witness fees.—District medical examiners or associate medical examiners shall be entitled to expert witness fees as provided in s. 90.231 when giving expert testimony in the trial of a civil action or at a coroner's inquest.

History.—s. 5, ch. 70-232.

406.10 Autopsy facilities.—Autopsy and laboratory facilities utilized by the district medical examiner or his associates may be provided on a permanent or contractual basis by the counties within the district.

History.—s. 5, ch. 70-232.

406.11 Examinations, investigations, and autopsies.—

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall make or have performed such examinations, investigations, and autopsies as he shall deem necessary or as shall be requested by the state attorney:

(a) When any person dies in the state:

1. Of criminal violence.
2. By accident.
3. By suicide.
4. Suddenly, when in apparent good health.
5. Unattended by a practicing physician or other recognized practitioner.
6. In any prison or penal institution.
7. In police custody.
8. In any suspicious or unusual circumstance.
9. By criminal abortion.
10. By poison.
11. By disease constituting a threat to public health.
12. By disease, injury, or toxic agent resulting from employment.

(b) When a dead body is brought into the state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2) The district medical examiner shall have the authority in any case coming under any of the above categories to perform, or have performed, whatever autopsies or laboratory examinations he deems necessary in the public interest.

History.—s. 6, ch. 70-232; s. 26, ch. 73-334; s. 1, ch. 77-174.

406.12 Duty to report; prohibited acts.—It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in s. 406.11 to report such death and circumstances forthwith to the district medical examiner. Any person who knowingly fails or refuses to report such death and circumstances, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 70-232; s. 353, ch. 71-136.

406.13 Examiner's report; maintenance of records.—Upon receipt of such notification pursuant to s. 406.12, the district medical examiner or his associate shall examine or otherwise take charge of the dead body. When the cause of death has been established within reasonable medical certainty by the district medical examiner or his associate, he shall so report or make available to the state attorney, in writing, his determination as to the cause of said death. Duplicate copies of records and the detailed findings of autopsy and laboratory investigations shall be maintained by the district medical examiner. Any evidence or specimen coming into the possession of said medical examiner in connection with any investigation or autopsy may be retained by him or be delivered to one of the law enforcement officers assigned to the investigation of the death.

History.—ss. 7, 8, ch. 70-232; s. 26, ch. 73-334.

406.14 Duty of law enforcement officers.—Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death shall be made available to the medical examiner. It is the duty of the law enforcement officer assigned to and investigating the death to immediately establish and maintain liaison with the medical examiner during the investigation into the cause of death.

History.—s. 8, ch. 70-232.

406.15 Designation of substitute in absence of official examiner.—In the absence of the district medical examiner or associate medical examiner, the state attorney of the county may appoint a competent physician to act in their stead.

History.—s. 9, ch. 70-232; s. 26, ch. 73-334.

406.16 Professional liability insurance.—The district medical examiners and associate medical examiners shall obtain professional liability insurance in an amount to be determined by the board of county commissioners of the county or counties served. The fees for such insurance shall be paid from funds appropriated by the board of county commissioners of such county or counties. No county shall be liable for any acts of a medical examiner not within the scope of his official duties.

History.—s. 10, ch. 70-232.

406.17 Application and construction of chapter.—This chapter supersedes all parts of statutes, general law, and special acts, with which it may be in conflict. Anything herein contained shall not be construed to repeal or amend s. 925.09 or to affect the right of prosecutors to investigate and determine causes of death which, in their opinion, may have been criminally caused. In home rule counties which have established medical examiners under provisions of a home rule charter or code or ordinance enacted pursuant to the charter, said medical examiner shall also serve as the district medical examiner who would otherwise be appointed under this chapter.

History.—s. 11, ch. 70-232.

TITLE XXIX

SOCIAL WELFARE

CHAPTER 409

SOCIAL AND ECONOMIC ASSISTANCE

409.016 Definitions.—As used in this chapter:

(1) "Department," unless otherwise specified, means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the secretary of the Department of Health and Rehabilitative Services.

(3) "Social and economic services," within the meaning of this chapter, means the providing of financial assistance as well as preventive and rehabil-

itative social services for children, adults, and families.

History.—s. 1, ch. 70-255; s. 2, ch. 78-433.

409.026 General functions of the department.—

(1) The department shall conduct, supervise, and administer all social and economic services within the state which are or will be carried on by the use of federal or state funds or funds from any other source and receive and distribute food stamps and commodities donated by the United States or any agency thereof. The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each such applicant or recipient is a resident of this state and is a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities to the end that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department shall investigate, study the causes of the dependence of indigents, encourage them to support themselves whenever possible, and provide supportive services to enable them to make and carry out plans for their permanent rehabilitation to the end that they may cease to be a charge upon the community whenever possible.

(4) The department is authorized to conduct or participate in work, training, or other rehabilitative programs and to participate in the cost of such programs administered by other public or private agencies.

(5) The department shall administer all social and economic services in compliance with Title VI of the Civil Rights Act in such manner that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in any assistance, care, services, or other benefits or be otherwise subjected to discrimination.

(6) The department may:

(a) Accept such duties with respect to social and economic services as may be delegated to it by any agency of the Federal Government or any state, county, or municipal government;

(b) Act as agent of, or contract with, the Federal Government, state government, or any county or municipal government in the conduct and administration of social and economic services activities in securing the benefits of any public assistance that is available from the Federal Government or any of its agencies and in the disbursement of funds received from the Federal Government, state government, or any county or municipal government for social and economic services purposes within the state; and

(c) Accept from any person or organization all offers of personal services or other aid or assistance.

(7) Nothing in this chapter shall be construed to limit, abrogate, or abridge the powers and duties of any other state agency.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 4, ch. 72-48; s. 3, ch. 78-433.

Note.—Former s. 409.045.

409.031 State agency for administering social service funds.—The department is designated as the state agency responsible for the administration of social service funds under Title XX of the Social Security Act.

History.—s. 1, ch. 78-433.

409.085 Appropriation to the department and transfer of surplus funds.—Whenever any appropriation made to the department for any program authorized by this chapter shall be insufficient fully to provide assistance to all persons lawfully entitled thereto and there exists a surplus in the appropriation for any other social and economic programs above the amount required to provide for all persons lawfully entitled thereto, the Executive Office of the Governor shall determine the amount of such surplus and shall, on application by the Department of Health and Rehabilitative Services, transfer so much of such surplus to said insufficient appropriation as it may find necessary. Any funds thus transferred shall be retransferred by the Executive Office of the Governor if subsequent events should disclose need for additional money in the appropriation from which the transfer was made. Funds which are so transferred are appropriated to the department to be used for the program for which the transfer was made and shall be disbursed and expended in the same manner as if originally appropriated for such purpose. This section shall be liberally construed to the end that the social and economic programs of the department may be fully maintained.

History.—s. 1, ch. 69-268; ss. 19, 31, 35, ch. 69-106; s. 1, ch. 70-255; s. 4, ch. 78-433; s. 135, ch. 79-190.

[1]409.145 Care of children.—

(1) The department shall conduct, supervise, and administer a program for dependent children and their families. The services of the department are to be directed toward the following goals:

(a) The prevention of separation of children from their families.

(b) The reunification of families who have had children placed in foster homes or institutions.

(c) The permanent placement of children who cannot be reunited with their families or when reunification would not be in the best interest of the child.

(d) The protection of dependent children or children alleged to be dependent, including provision of emergency and long-term alternate living arrangements.

(2) The following dependent children shall be subject to the protection, care, guidance, and supervision of the department or any duly licensed public or private agency:

(a) Any child who has been temporarily or permanently taken from the custody of his parents, custodians, or guardians in accordance with those provisions in chapter 39 that relate to dependent children.

(b) Any child who is in need of the protective

supervision of the department as determined by intake or by the court in accordance with those provisions of chapter 39 that relate to dependent children.

(c) Any child who is voluntarily placed, with the written consent of his parents or guardians, in the department's foster care program or the foster care program of a licensed private agency.

(3) The circuit courts exercising juvenile jurisdiction in the various counties of this state shall cooperate with the department and its employees in carrying out the purposes and intent of this chapter.

(4) The department is authorized to accept permanent commitment of children by order of a court of competent jurisdiction for the single purpose of adoption placement of said children. The department is authorized to provide the necessary services to place these permanently committed children for adoption.

(5) Any funds appropriated by counties for child welfare services may be matched by state and federal funds, such funds to be utilized by the department for the benefit of children in said counties.

(6) Whenever any child is placed under the protection, care, and guidance of the department or a duly licensed public or private agency, or as soon thereafter as is practicable, the department or agency, as the case may be, shall endeavor to obtain such information concerning the family medical history of the child and the natural parents as is available or readily obtainable. Such information shall be kept on file by the department or agency for possible future use as provided in ss. 63.082 and 63.162 or as may be otherwise provided by law.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 273, ch. 77-147; s. 1, ch. 77-457; s. 4, ch. 78-190; s. 5, ch. 78-433; s. 101, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]409.165 Alternate care for children.—

(1) Within funds appropriated, the department shall establish and supervise a program of emergency shelters, foster homes, group homes, and other appropriate facilities to provide shelter and care for dependent children who must be placed away from their families. The department, in accordance with established goals, shall contract for the provision of such shelter and care by counties, municipalities, nonprofit corporations, and other entities capable of providing needed services if services so provided are available and meet the following criteria:

(a) Are more cost-effective than those provided by the department; and

(b) Unless otherwise provided by law, such providers of shelter and care are licensed by the department.

(2) The department may cooperate with all child service institutions or agencies within the state which meet the rules for proper care and supervision prescribed by the department for the well-being of children.

(3) With the written consent of parents, custodians, or guardians, or in accordance with those provisions in chapter 39 that relate to dependent children, the department, under rules properly adopted, may place a child with a relative; a person who is considering the adoption of a child in the manner provided for by law; when limited to temporary emergency situations, a responsible adult approved by the court; or a person, institution, society, or association licensed by the department in accordance with s. 409.175, under such conditions as shall be determined to be for the best interests or the welfare of the child. Any child placed in an institution or in a family home by the department or its agency may be removed by like authority and such disposition made as shall be for the best interest of the child, including the transfer to another institution, another home, or the home of the child.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 3, ch. 76-168; s. 275, ch. 77-147; s. 1, ch. 77-457; s. 6, ch. 78-433; s. 102, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

409.166 Special needs children; subsidized adoption program.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to protect and promote every child's right to the security and stability of a permanent family home. The Legislature intends to make available to prospective adoptive parents financial aid which will enable them to adopt a child in foster care who, because of his special needs, has proven difficult to place in an adoptive home. In providing subsidies for children with special needs in foster homes, it is the intent of the Legislature to reduce state expenditures for long-term foster care.

(2) DEFINITIONS.—As used in this section:

(a) "Special needs child" means a child whose permanent custody has been awarded to the department or to a licensed child-placing agency and

1. Who has established significant emotional ties with his or her foster parents; or

2. Is not likely to be adopted because he or she is:

a. Six years of age or older;

b. Mentally retarded;

c. Physically or emotionally handicapped;

d. Of black or racially mixed parentage; or

e. A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption.

(b) "Department" means the Department of Health and Rehabilitative Services.

(c) "Subsidy" means special services or money payments.

(3) ADMINISTRATION OF PROGRAM.—

(a) The department shall establish and administer an adoption program for the special needs child to be carried out by the department or by contract with a licensed child-placing agency. The program shall attempt to increase the number of persons seeking to adopt the special needs child and the number of adoption placements and shall extend subsidies and services, when needed, to the adopting parents of a special needs child.

(b) Authorization for subsidized adoption placement is to be granted only when all other resources available to place the child in question have been thoroughly explored and when it can be clearly established that this is the most acceptable plan for providing permanent placement for the child. Adoption subsidy will not be used as a substitute for adoptive parent recruitment or as an inducement to adopt a child who might be placed through nonsubsi-

dized means. It shall be the policy of the department that no child shall be denied adoption when subsidy would make adoption possible. The best interest of the child shall be the deciding factor in all instances. Nothing contained herein shall prohibit foster parents from applying to adopt a special needs child placed in their care.

(c) The department shall keep the necessary records to evaluate the program's effectiveness in encouraging and promoting the adoption of the special needs child and shall make annual reports to the Legislature by January 1 of each year regarding the cost and benefits of the program.

(4) ELIGIBILITY FOR SERVICES.—

(a) The department may pay either one or both of the following subsidies to the adopting parents:

1. For support and maintenance of a special needs child until the 18th birthday of such child, a monthly payment in an amount not more than the maximum monthly amount paid for foster care for the child if the adoption placement had not taken place.

2. For medical, surgical, hospital, and related services needed as a result of a physical or mental condition of the child which existed before the adoption, a subsidy which may be initiated at any time but shall terminate on or before the child's 18th birthday.

(b) As a condition for continuation of the subsidy, the adoptive parents shall file a sworn statement with the department at least once each year to include any social or financial conditions which may have changed.

(c) A child who is handicapped at the time of adoption shall be eligible for services of the children's medical services program if the child was eligible for such services prior to the adoption.

(5) WAIVER OF ADOPTION FEES.—The adoption fees shall be waived for all adoptive parents who participate in the program.

(6) The department shall promulgate all necessary rules to implement the provisions of this section.

History.—ss. 1-6, ch. 76-203; s. 1, ch. 77-174; s. 1, ch. 77-293; s. 1, ch. 78-362.

409.168 Children in foster care; department report and court review of status.—

(1) The Legislature finds that 7 out of 10 children placed in foster care do not return to their biological families after the first year and that permanent homes could be found for many of these children if their status were reviewed periodically and they were found eligible for adoption. It is the intent of the Legislature, therefore, to help ensure a permanent home for children in foster care by requiring a periodic review and report on their status.

(2) As used in this section:

(a) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(b) "Child" means a person under the age of 18 years whose legal custody has been awarded to the department or a licensed child-placing agency by order of a court or who has been committed temporarily to the care of the department by a parent, guardian, or relative within the second degree.

(c) "Court" means the Circuit Court.

(d) "Department" means the Department of Health and Rehabilitative Services.

(e) "Licensed child-placing agency" means any child welfare agency that the department determines to be qualified to place minors for adoption pursuant to s. 63.202.

(3)(a) In each case in which the custody of a child has been awarded to the department or a licensed child-placing agency and such child has remained in foster care for a continuous period of 6 months, the department or licensed child-placing agency shall petition the court in the county where the child resides to review the status of the child. The department shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish the court with a written report including its recommendations. The court shall then review the status of the child and may hold a hearing to determine if the child should be continued in foster care or returned to a parent, guardian, or relative, or if proceedings should be instituted to terminate parental rights and legally free such child for adoption.

(b) The court may dispense with the attendance of the child at the hearing or may, with the consent of the parties, dispense with the hearing and make a determination based upon the report of the department and any affidavits submitted to the court.

(4) Notice of the hearing and a copy of the petition including a statement of the dispositional alternatives of the court shall be served upon:

(a) The department or licensed child-placing agency charged with the supervision of care, custody, or guardianship of such child, if such authorized agency is not the petitioner.

(b) The foster parent or parents in whose home the child resides.

(c) The parent, guardian, or relative who transferred the care and custody of such child to the department.

(d) Such other persons as the court may in its discretion direct.

(5) The court may issue a protective order in assistance, or as a condition, of any other order made under this act. The protective order may set forth reasonable conditions of behavior to be observed for a specified time by a person or agency who is before the court and may require any such person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

(6) The court shall have continuing jurisdiction in proceedings under this section, and, in the case of a child who is continued in foster care, shall review the status of the child whenever it deems necessary or desirable, but at least annually.

History.—ss. 1-6, ch. 76-258; s. 1, ch. 77-174.

[1]409.175 Licenses.—

(1) The department may, by rule, set minimum standards for the care of dependent children away from their own homes, and for dependent children in the care of child-placing agencies, and shall prescribe, amend, or alter such rules as may be necessary for the care and supervision of such children.

(2) No person other than a relative, a person who

is considering the adoption of a child in the manner provided for by law, or, when limited to temporary emergency situations, a responsible adult approved by the court and no institution, society, or association, may receive a dependent child for boarding or custody unless such person, society, association, or institution shall first have procured a license from the department empowering or authorizing such person, association, institution, or society to care for, receive, or board a child or children.

(3) Application for license shall be made on blanks provided by the department. The application may be approved by the department only after inspection of health and sanitary conditions. A copy of the license so issued, which shall be provided by the department without charge, shall be on the approved form established by the department and shall be kept readily available by the licensee. Such license shall be valid for not more than 1 year after the date of issue, but may be renewed or extended as provided for by the rules of the department.

(4) Any such license may be revoked by order of the department for violation of the regulations of the department governing the activities of the licensee.

(5) If such order of revocation is not complied with within a reasonable time, or if any person, society, association, or institution shall receive a dependent child for boarding or custody without first having procured a license from the department or without the approval of the department as herein provided, then, after a reasonable notice, the department shall apply to a circuit court having jurisdiction over the person, society, association, or institution, and such circuit court shall hear and determine the case and grant such relief, mandatory or injunctive, as the case may require.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 3, ch. 76-168; s. 276, ch. 77-147; s. 1, ch. 77-457; s. 7, ch. 78-433.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

409.185 Determination of eligibility for and amount of financial assistance; exclusions; report required.—

(1) The department shall provide financial assistance to needy persons who:

(a) Do not have sufficient income or other resources, as determined by the department, to provide reasonable subsistence compatible with decency and health.

(b) Have not made, within the 2 years immediately prior to the receipt of assistance or during receipt of assistance, an assignment, transfer, sale, or gift of property, cash, or any other assets for the purpose of rendering or keeping themselves eligible for assistance under this chapter. The department shall investigate every application for financial assistance on which the applicant has indicated that an assignment, transfer, or sale of property, cash, or any other assets has been made, or whenever the department has reason to believe that such assignment, transfer, or sale has been made, within 2 years immediately prior to the date of application for the purpose of rendering or keeping himself eligible for assistance under this chapter.

(c) Meet the requirements of this chapter and the rules of the department.

(2) The department shall redetermine eligibility at least semiannually for those receiving aid to families with dependent children.

(3) The department shall determine the amount to be paid each month to recipients, taking into account all facts and circumstances surrounding said recipients, including income and resources. In the determination of eligibility for financial assistance, the department shall disregard income and resources in accordance with federal law and shall:

(a) Exclude homestead property in which the applicant or recipient resides.

(b) Exclude a specified amount of life insurance held by an applicant or recipient, as determined by the department.

(c) Exclude produce from a garden or livestock grown and used exclusively for the support of the applicant or recipient and his family residing with him.

(d) Establish the resource limit and any other resources which shall be excluded in the eligibility determination.

(4)(a) At the time the department submits its biennial budget to the Governor, as provided by s. 216.023(1), it shall submit a report to the Governor on the current and projected dollar value of the standard of need with respect to payments for aid to families with dependent children. The standard of need is the full money value required to provide basic and special needs recognized by the state as essential for applicants and recipients.

(b) The report shall also include:

1. Data and forecasts on changes in the U.S. Consumer Price Index produced by the Department of Labor Statistics for the period from the effective date of the last standard-of-need determination through the upcoming biennium.

2. A calculation indicating the value of the current payments as a percent of the current and projected dollar value of the standard of need for each year of the biennium.

(c) The report shall be provided to the chairman of the health and rehabilitative services committee of each house of the Legislature, the chairman of the appropriations committee of each house, and the chairman of the appropriations subcommittee of each house that has jurisdiction over the budget of the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 277, ch. 77-147; s. 8, ch. 78-433; s. 1, ch. 79-173.

409.211 Mandatory supplementation.— Monthly mandatory supplementation payments, in such amount as determined by the department, shall be paid to any person who:

(1) Received assistance under provisions of s. 409.205, s. 409.215, or s. 409.225, relating to old age assistance, aid to the blind, or aid to the permanently and totally disabled, in December 1973.

(2) Would, due to the conversion to the Federal Supplemental Security Income Program, suffer a reduction in income.

(3) Continues to be eligible for the mandatory

supplementation payment in accordance with Title XVI of the Social Security Act.

History.—s. 9, ch. 78-433.

409.212 Optional supplementation.—There may be monthly optional supplementation payments, made in such amount as determined by the department, to any person who:

(1) Meets all the program eligibility criteria for an adult congregate living facility or for adult foster care, family placement, or other specialized living arrangement; and

(2) Is receiving a Supplemental Security Income check or is determined to be eligible for optional supplementation by the department.

History.—s. 10, ch. 78-433.

409.235 Aid to families with dependent children.—

(1) It is the intent of the Legislature to furnish financial assistance and rehabilitative and other services to dependent children and to their families who are of a degree of relationship as specified by the department.

(2) Monthly assistance, in such amount as determined by the department, shall be paid to any child under the age of 18 and, to the extent moneys are appropriated therefor, may be paid to any child under the age of 21 and regularly in school who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent and who is eligible under s. 409.185.

(3) If aid to families with dependent children is claimed or applied for on the ground of physical or mental incapacity of a parent liable for the support of the dependent child, such aid shall not be granted unless the parent liable for the support of the child is deemed to be incapacitated in accordance with rules set forth by the department. Aid to the dependent child shall be discontinued if the department determines that the parent liable for support of the child is able to provide such support.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 26, ch. 73-334; s. 279, ch. 77-147; ss. 11, 19, ch. 78-433.

409.245 Dependent children; action for support.—No application to the Department of Health and Rehabilitative Services for any aid to dependent children which is within its power to grant shall be approved unless such applicant shall have instituted in the proper court, and in good faith prosecutes, a civil action for support from persons liable for the support of applicant's dependent child as the case may be, whenever such cause of action exists. The department shall assist applicants in bringing proceedings to enforce support by such persons who may be liable for the support under the laws of this state. Court costs may be provided for all indigent applicants where necessary and provided by s. 57.081. Such assistance shall be by consultation and arrangements with legal aid societies and bureaus established by local bar associations, if there be such legal aid societies able and willing to act; otherwise, the state attorney of the circuit in which such county is located shall institute and prosecute such action. Assistance shall be granted persons otherwise eligible pending the institution and during the prosecution of such action, but payments may be terminated whenever in the opinion of the department the action is not being prosecuted in good faith through the fault of the recipient of public assistance or the fault of the person receiving assistance on behalf of dependent children.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 280, ch. 77-147.

409.255 Aid to families with dependent children; father unemployed.—

(1) When a father who provides the major support of the child from his earnings is unemployed, the family shall be eligible for assistance provided the parent:

(a) Is registered with the State Employment Service and actively seeking work.

(b) Has not refused, without good and sufficient cause, to accept a bona fide offer of employment which he can perform, whether offered by the State Employment Service or by an employer.

(c) Takes advantage of the adult education and vocational education facilities when retraining or additional training are required to obtain full employment.

(d) Is not receiving workers' compensation payments in an amount which meets the needs of the family.

(e) Is eligible under s. 409.185.

(2) The department, the Department of Labor and Employment Security, and the Department of Education are authorized to provide administrative agreements and safeguards to guarantee the integrity of this program and to assure the best use of available community services to return these families to a condition of self-support.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 14, ch. 79-7; s. 73, ch. 79-40.

409.2551 Legislative intent.—Common law and statutory procedures governing the remedies for enforcement of support for financially dependent children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained

from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.

History.—s. 1, ch. 76-220.

409.2554 Definitions.—As used in this act:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Dependent child" means any person under the age of 18, or under the age of 21 and still in school, who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent.

(3) "Court" means the Circuit Court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(5) "Responsible parent" means the natural or adoptive parent of a dependent child, which parent does not have legal custody of such child.

(6) "Public assistance" means moneys paid to any person included in s. 409.235, relating to aid to families with dependent children.

(7) "Program attorney" means an attorney employed by, or under contract with, the department to provide legal representation for the department in a proceeding related to determination of paternity or child support enforcement brought pursuant to this act.

History.—s. 2, ch. 76-220.

409.2557 State agency for administering child support enforcement program.—The department is designated as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 U.S.C. 1302.

History.—s. 3, ch. 76-220.

409.2561 Public assistance payments debt to department; assignment of rights; subrogation.—

(1) Any payment of public assistance money made to, or for the benefit of, any dependent child creates a debt due and owing to the department by the responsible parent in an amount equal to the amount of public assistance so paid, except that if there has been a prior court order or final judgment of dissolution of marriage, the debt is limited to the amount provided by such court order or decree. If there is no prior court order, the court shall establish the liability of the responsible parent, if any, for repayment of public assistance moneys paid. Priority shall be given to establishing continuing reasonable support for the dependent child. The department may petition the appropriate court for modification of a court order on the same grounds as either party to the cause and shall have the right to settle and compromise actions brought pursuant to this act.

(2) In determining the amount to be paid by the responsible parent, the court shall consider the recommendation, if any, of the department, which recommendation shall be based on the income, earning capacity, resources, and needs of the responsible parent and the needs of the dependent child for whom support is sought.

(3) By accepting public assistance for, or on behalf of, a dependent child, the recipient is deemed to have made an assignment to the department of any right, title, and interest in any child support obligation owed to or for said child up to the amount of public assistance money paid for, or on behalf of, the dependent child. The recipient is also deemed to have appointed the department as his attorney in fact to act in his name, place, and stead to perform specific acts relating to child support, including but not limited to:

(a) Endorsing any draft, check, money order, or other negotiable instrument representing child support payments which are received on behalf of the dependent child as reimbursement for the public assistance moneys previously or currently paid.

(b) Compromising claims.

(c) Pursuing civil and criminal enforcement of support obligations.

(d) Executing verified complaints for the purpose of instituting an action for the determination of paternity of a child born, or to be born, out of wedlock.

(4) The department shall be subrogated to the right of the dependent child or person having the care, custody, and control of the child to prosecute or maintain any support action or action to determine paternity or execute any legal, equitable, or administrative remedy existing under the laws of the state to obtain reimbursement of public assistance paid, being paid, or to be paid.

(5) No debt under this section shall be incurred by any person who is the recipient of public assistance moneys for the benefit of a dependent child or who is incapacitated and financially unable to pay as determined by the department.

History.—s. 4, ch. 76-220; s. 1, ch. 77-174.

409.2564 Actions for support.—

(1) In each case in which regular child support payments are not being made to the department as provided herein, the department shall institute, within 30 days after determination of the responsible parent's reasonable ability to pay, an action for support against any person liable for the support of the child. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the debtor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under the provisions of chapter 88, the Uniform Reciprocal Enforcement of Support Law, and chapter 39, relating to dependent children, may govern actions instituted under the provisions of this act, except that actions for support under chapter 39 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under the provisions of subsection (1) shall stipulate that the child support payments be made periodically to the department. When feasible, such payments may be made through the court depository. Upon receipt of a payment made by the responsible parent pursuant to any order of the court, the clerk of the court shall

transmit the payment to the department. Upon request, the clerk of the court shall furnish to the department a certified statement of all payments made by the defendant.

(3) The department shall notify the program attorney if public assistance for the benefit of the dependent child is discontinued for any reason or if the responsible parent has failed to provide the required periodic support for 2 consecutive months, or when the responsible parent is in arrears 60 days or more, in order that the program attorney may institute appropriate action.

(4) Whenever the department has undertaken an action for enforcement of support, the department may enter into an agreement with the responsible parent for the entry of a judgment determining paternity, if applicable, and for periodic child support payments based on the responsible parent's reasonable ability to pay. Prior to entering into this agreement, the responsible parent shall be informed that a judgment will be entered based on the agreement. The clerk of the court shall file the agreement without the payment of any fees or charges, and the court, upon entry of the judgment, shall forward a copy of the judgment to the parties to the action. In making a determination of the responsible parent's reasonable ability to pay, the following criteria shall be considered:

(a) All earnings, income, and resources of the responsible parent.

(b) The ability of the responsible parent to earn.

(c) The reasonable necessities of the responsible parent.

(d) The needs of the dependent child for whom support is sought.

History.—s. 5, ch. 76-220.

409.2567 Services to individuals not otherwise eligible.—All child support collection and paternity determination services provided by the department shall be made available to any individual not otherwise eligible for such services, upon proper application filed with the department. The department shall recover to the extent possible any costs incurred in the collection of child support under this section.

History.—s. 6, ch. 76-220; s. 1, ch. 77-174; s. 13, ch. 78-433.

409.2571 Court and witness fees; bond.—

(1) The department or an authorized agent thereof shall be entitled to the necessary services of the clerk, sheriff, and court reporter in any proceedings under this act, including contempt proceedings, and no fees for such court, clerk, or sheriff services shall be charged against the department. No bond shall be required of the department for any action taken pursuant to this act, except by order of the court. Nothing herein shall prevent the court depository from charging and collecting fees for services rendered. Nothing herein shall prevent the court from charging a defendant for action taken pursuant to this act for all costs and fees incurred in the proceedings.

(2) No witness fees shall be paid to any party to a petition or complaint or to any parent or legal custodian of a dependent child described in a petition or complaint filed pursuant to this act.

History.—s. 7, ch. 76-220; s. 1, ch. 77-174.

409.2574 Assignment of earnings to be honored; effect.—

(1) Any person, public body, or department of the state employing a person owing a child support debt shall honor, according to its terms, an assignment of earnings executed by the responsible parent and presented by the department as a plan to satisfy or retire a child support debt. This requirement to honor the assignment of earnings, and the assignment of earnings itself, shall be applicable whether the earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the department. Payment of moneys pursuant to an assignment of earnings presented by the department shall serve as full acquittance of the employer's obligation under any contract of employment, and the state warrants and represents that it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The department shall be released from liability for improper receipt of moneys under an assignment of earnings, upon return of any moneys so received. Any person who fails to honor a duly executed assignment of earnings is liable to the department in an amount equal to 100 percent of the amount of the assignment of earnings, plus costs, interest, and reasonable attorney fees.

(2) Any such assignment of earnings shall be in addition to, and not in lieu of, any and all existing civil or criminal remedies to enforce child support obligations.

(3) No employer shall discharge an employee as a direct or indirect result of any action brought pursuant to this section.

History.—s. 8, ch. 76-220.

409.2577 Parent locator service.—The department shall establish a parent locator service to assist in locating parents who have deserted their children and other persons liable for support of dependent children. The department shall use all sources of information available, including the Federal Parent Locator Service, and may request, and shall receive, information from the records of any state board, commission, or department or officer or agency thereof, and the same are authorized to provide such information as is necessary for this purpose. Only information directly bearing on the identity and whereabouts of a person owing, or asserted to be owing, an obligation of support for a dependent child shall be requested and used by the department pursuant to the authority conferred by this act. The department may make such information available only to public officials and agencies of this state, political subdivisions of this state, and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents, for the purpose of enforcing their liability for support.

History.—s. 9, ch. 76-220; s. 1, ch. 77-174.

409.2581 Use of clearing accounts and revolving funds.—To facilitate the cash flow and administration of child support enforcement under this act, the department may use clearing accounts and revolving funds.

History.—s. 10, ch. 76-220.

409.2584 Interest on debts due; waiver.—The department may collect interest of 6 percent per annum on any child support debt due and owing to the department; however, the department is not required to maintain interest balance due accounts, and said interest may be waived by the department if the waiver would facilitate the collection of the debt.

History.—s. 11, ch. 76-220.

409.2587 Uncollectible child support debts.—Any child support debt due the department from a responsible parent, for which the department finds there is no available, practical, or lawful means by which the debt may be collected may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset; however, the department may, at any time, write off the debt as uncollectible, subject to audit by the Auditor General.

History.—s. 12, ch. 76-220.

409.2591 Unidentifiable moneys held in special account.—All moneys collected in fees, costs, attorney fees, interest payments, or other funds received by the department which are unidentifiable as to the specific child support account against which they should be credited shall be held in a special fund. Such moneys, if still unidentified 90 days after receipt, shall revert to general revenue funds unallocated.

History.—s. 13, ch. 76-220.

409.2594 Report to the Legislature.—The department shall report to the Legislature no later than March 15 of each year as to:

(1) The number of parents located.

(2) The amount of money generated through the collection of child support of dependent children.

(3) The cost of program management and administration.

(4) Such other information as the department determines may be useful to the Legislature in evaluating the program by which the department collects child support money for dependent children.

History.—s. 14, ch. 76-220.

409.2597 Retention of actions.—All actions pending under the authority of those statutes repealed by this act shall not abate but shall continue pursuant to the provisions of this act.

History.—s. 16, ch. 76-220.

409.266 Medical assistance.—

(1) The department is designated as the state agency responsible for the administration of Medicaid funds under Title XIX of the Social Security Act and, to the extent moneys are appropriated, is authorized to provide payment for medical services to any person who:

(a) Is determined by the department to be categorically eligible for Medicaid.

(b) Has not sufficient income resources or assets, as determined by the department, to provide needed medical care without utilizing his resources required to meet his basic needs for shelter, food, clothing, and personal expenses. Interest on savings accounts of $1,000 or less held in the name of a Medicaid recipient shall not be considered income to be applied toward the monthly cost of institutional care.

(2) The department is hereby authorized to:

(a) Enter into such agreements with appropriate agents, other state agencies, or any agency of the Federal Government and accept such duties in respect to social welfare or public aid as may be necessary or needed to implement the provisions of Title XIX of the Social Security Act pertaining to medical assistance.

(b) Contract with health maintenance organizations, certified pursuant to part II, chapter 641, for the provision of medical services to eligible persons.

(c) Contract for demonstration projects with county health departments to provide a comprehensive range of health care services on a prepaid per capita or prepaid aggregate fixed-sum basis to persons determined to be eligible for Medicaid services. A county health department may provide such prepaid services either directly or through arrangements with other providers. Prepaid health care services provided by the demonstration projects shall be exempt from the provisions of part II, chapter 641. The number of demonstration projects authorized by this paragraph shall not exceed three prior to July 1, 1980. On or before March 1, 1980, and every 2 years thereafter, the department shall submit to the Legislature an evaluation of the results of the program authorized under this paragraph. Said evaluation shall include both programmatic and economic analyses of this program.

(3)(a) Third-party coverage for medical services shall be primary coverage and shall be exhausted before any payment authorized under this section shall be made on the behalf of any person eligible for services under this section.

(b) A public assistance applicant or recipient shall inform the department of any rights he has to third-party payments for medical services. The department shall automatically be subrogated to any such rights the recipient has to third-party payments and shall recover to the fullest extent possible the amount of all medical assistance payments made on the behalf of the recipient. Recovery of such payments shall be collected directly from:

1. Any third party liable to make a medical benefit payment to the provider of the recipient's medical services or to the recipient under the terms of any contract, settlement, or award; or

2. The recipient, if he has received third-party payment for medical services provided to him.

(c) In recovering any payments in accordance with this subsection, the department is authorized to make appropriate settlements.

(d) The department shall promulgate rules to implement the provisions of this subsection.

(4) In addition to the federally required Medicaid services, the department shall make available to eli-

gible recipients the care and services of:

(a) A nurse midwife in accordance with Title XIX of the Social Security Act, 42 U.S.C. ss. 1396-1396j. For the purposes of this subsection, the term "nurse midwife" means an advanced registered nurse practitioner who is a certified nurse midwife pursuant to the provisions of chapter 464.

(b) A nurse practitioner in accordance with Title XIX of the Social Security Act, 42 U.S.C. ss. 1396-1396j. Funding for such services shall be drawn equally from funds appropriated to all service categories of the program. For the purposes of this subsection, the term "nurse practitioner" means an advanced registered nurse practitioner certified pursuant to the provisions of chapter 464.

(5) The following services may also be provided in addition to the federally required Medicaid services, provided that the department promulgates and enforces rules requiring appropriate program monitoring or prior authorization and review of services, coinsurance, bulk purchasing where fiscally beneficial, written certification from providers that services were rendered, and other procedures necessary to prevent fraud and abuse in the utilization of these services:

(a) Those services of a licensed dentist which services are required for the dispensing of dentures.

(b) Dentures made by or under the direction of a licensed dentist.

(c) The services of a licensed physician who specializes in diseases of the eye or of a licensed optometrist which services are required for the prescribing of eyeglasses.

(d) Eyeglasses and the repair of eyeglasses prescribed by a licensed physician who specializes in diseases of the eye or by a licensed optometrist; however, only one pair of eyeglasses may be issued to any Medicaid recipient during a 2-year period, unless an exception to this limitation is made by the department, on a case-by-case basis, in accordance with the provisions of the rules required under this subsection.

(e) The services of a licensed otolaryngologist, otologist, or audiologist upon the referral of a physician which services are required to determine hearing aid candidacy; however, if, in the opinion of the department, the services of such professionals are unavailable, the department may authorize a physician to determine hearing aid candidacy.

(f) Hearing aids and the dispensing, service, and repair of hearing aids provided by a person licensed to fit and sell hearing aids, provided that dispensing, services, and repair of hearing aids shall be purchased based on bids let by the department at the district, subdistrict, or service network level; however, no hearing aid shall be made available to a Medicaid recipient under this section unless the candidacy for a hearing aid has been determined by an otolaryngologist, an otologist, an audiologist upon the referral of a physician, or a physician as provided in this subsection, and only one hearing aid may be issued to any Medicaid recipient during a 3-year period, unless an exception to this limitation is made by the department, on a case-by-case basis, in accordance with the provisions of the rules required under this subsection.

The department shall periodically review expenditures for these services, and if expenditure trends indicate a higher rate of utilization than can be funded by the current appropriation for these services, the secretary is authorized, after providing 2 weeks' notice to participating providers and eligible recipients, to either temporarily or permanently terminate reimbursement for these services. All providers and recipients of these services shall be subject to the penalty provisions of s. 409.325 regarding Medicaid fraud. Except as provided in this subsection, the department shall not require copayment or coinsurance on Medicaid services without legislative authorization.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 281, ch. 77-147; s. 1, ch. 77-326; s. 1, ch. 78-294; ss. 3-5, ch. 78-331; s. 14, ch. 78-433; s. 1, ch. 79-232; s. 1, ch. 79-382.

409.267 County contributions to medical assistance program.—

(1) Although the state is responsible for the full portion of the state's share of the matching funds required in the medical assistance program for the needy under the Social Security Act, as amended, which state's share is as shown in this section, the state, in order to acquire a certain portion of these funds, shall charge the counties for certain items of care and service as hereafter provided.

(2)(a) Each county shall participate in the following items of care and service:

1. Payments for inpatient hospitalization in excess of 12 days.

2. Payments for nursing home or intermediate facility care in excess of $170 per month.

(b) County participation shall be 35 percent of the total cost of providing the items listed in paragraph (a), except that after April 30, 1974, payments for items in subparagraph (a)2. shall not exceed $55 per month per person.

(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients, regardless of where in the state the care or service is rendered, in those items of care and service in which the counties participate. Each county shall pay into the General Revenue Fund unallocated its pro rata share of the total county participation based upon statements rendered by the Department of Health and Rehabilitative Services. The Department of Banking and Finance shall withhold from the cigarette tax receipts or any other funds to be distributed to the counties the individual county share which has not been remitted within 30 days after billing.

(4) In any county where there is located a special taxing district or authority which will benefit from the medical assistance programs contemplated by this section, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such authority or district shall furnish its share to the board of county commissioners in time for the board to comply with the requirements of subsection (3). Appeals of the

aforesaid proration by the board of county commissioners shall be made to the Department of Banking and Finance, which shall then set the proportionate share of each party.

History.—s. 1, ch. 72-225; s. 1, ch. 75-29; s. 282, ch. 77-147.

409.2671 Local agency contributions to medical assistance program for outpatient hospital services.—

(1) It is the intent of the Legislature to establish a pilot project to determine the feasibility of increasing outpatient hospital services through local agency contributions. It is also the intent of the Legislature that the pilot project will not require any additional general revenue funds. Nothing in this act is to be construed to increase or expand eligibility for Medicaid.

(2) As used in this section:

(a) "Department" means the Department of Health and Rehabilitative Services.

(b) "Local agency" means a county, city, municipality, or hospital district.

(c) "Local agency contribution" means the total amount of funds that the local agency shall provide to the Department of Health and Rehabilitative Services toward the funding of the pilot project.

(d) "Pilot project" means the program to be administered by the Department of Health and Rehabilitative Services to test the feasibility of increasing hospital outpatient service benefits through local agency contributions during the period of July 1, 1978, through June 30, 1980.

(3) The Department of Health and Rehabilitative Services shall conduct a pilot project to determine the feasibility of increasing hospital outpatient service benefits to eligible Medicaid recipients through local agency contributions. On April 1, 1980, the department shall submit an evaluation report to the Speaker of the House of Representatives and the President of the Senate summarizing the progress of the project. The report shall include the information and data necessary for an accurate analysis of the costs to the local agencies and benefits associated with the establishment of the project and the benefit levels for hospital outpatient services and a recommendation as to continued utilization of local agency funds.

(4) The administration of this project shall be located within the Medicaid Section of the Department of Health and Rehabilitative Services.

(5) Each Medicaid recipient shall be eligible to receive a maximum of $500 in hospital outpatient benefits. The first $100 shall be paid from general revenue and federal trust funds. The next $400 shall be paid from local agency and federal trust funds. The local agency shall provide 50 percent of the amount expended for each patient between $100 and $500. However, a local agency may, at its option, participate at a greater percentage.

(6) Mandatory local agency participation shall be limited to the total cost of the local agency's expenditures during its latest complete fiscal year ending prior to January 1, 1979, for hospital outpatient services to eligible Medicaid recipients. However, a local agency may, at its option, participate in excess of such limitation.

(7)(a) Each local agency shall set aside sufficient funds to cover its obligation under subsections (5) and (6) and shall pay to the department its prorata share of the expenditures under this pilot project based upon billing statements rendered by the Department of Health and Rehabilitative Services. The Department of Banking and Finance shall withhold from the cigarette tax receipts or any other local funds to be distributed to local agencies the individual local agency's share which has not been submitted within 30 days after billing. The Department of Banking and Finance shall remit the withheld receipts or other funds to the Department of Health and Rehabilitative Services to provide for that local agency's required contribution for the cost of hospital outpatient services.

(b) A trust fund to be known as the "Local Agency Trust Fund" shall be established for the department from which expenditures will be made. In order to assure the availability of funds to pay bills as received, it will be necessary for the local agencies to advance money to the department. Within 10 days of the beginning of the department's fiscal year, the local agency shall pay to the department one-sixth of the department's estimate of the expenditures to be made during the year. Each month thereafter, the local agency will reimburse the department for the preceding month's expenditures for services rendered during this pilot project.

(c) On or before June 1, 1979, each local agency shall certify to the department its actual or best estimate of expenditures for its latest complete fiscal year ending prior to January 1, 1979, utilized for outpatient services for eligible Medicaid recipients. This certification of actual or estimated expenditures shall be the amount for which the local agency will be required to participate.

(d) The additional funds provided by the difference between the regular state matching and the local agency's contribution (50 percent) shall be used by the department to:

1. Pay bills incurred by eligible recipients in hospitals located in other states.

2. Provide for the incremental costs to the department for the administration of the project, including staff, data processing, bill collection, postage, printing, and other related costs.

(e) Any balance remaining in the trust fund after December 31, 1980, shall be remitted to the local agencies on a prorata basis of the total local agency contribution for the project period.

(8) The Executive Office of the Governor shall periodically review expenditures for hospital outpatient services, and, if expenditure trends indicate a higher rate of utilization than that which can be funded by available local agency funds, the department shall immediately reduce the $500 maximum payment to a lesser maximum payment or increase the percentage of participation in subsection (5), or both.

(9) The secretary of the department shall have the authority, if it is found that funds are not available to carry out the intent of this law, to discontinue the pilot project.

History.—ss. 1, 2, ch. 78-440; s. 136, ch. 79-190; s. 1, ch. 79-257.

409.268 Nursing home care under the medical assistance program.—

(1) Any nursing home entering into a contract to provide services to indigent patients under the provisions of s. 409.266 shall:

(a) Annually, forward to the department a true and accurate statement of its cost of providing care. The statement shall be prepared and signed by a certified public accountant who is fully independent of the nursing home management and operations and who does not have, or intend to acquire, any direct financial interest or material interest in the ownership or operation of the nursing home.

(b) Fully comply with all contracts and state and federal rules and standards promulgated under the medical assistance program.

(2) The department shall audit the records of any nursing home which it has reason to believe may not be in full compliance with the provisions of this section.

History.—s. 12, ch. 76-201; s. 14, ch. 77-401.

409.275 State agency for administering federal food stamp program.—

(1) The department shall, not later than December 31, 1970, place into operation in each of the several counties of the state a food stamp program as authorized by the Congress of the United States. The department is designated as the state agency responsible for the administration and operation of such programs. A commodity distribution program may be continued in a county until it has been approved by the United States Department of Agriculture for a food stamp program.

(2) The department shall provide for such instruction and counseling as will best assure that the recipients are able to provide a nutritionally adequate diet through the increased purchasing power received. This program shall be administered and operated in such a way that the distribution of food stamps shall be in locations reasonably accessible to those areas in which persons eligible for the benefit of this program are likely to be concentrated.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-201; s. 1, ch. 70-255; ss. 1, 2, ch. 72-298.

409.285 Opportunity for hearing and appeal.—

(1) If an application for public assistance is not acted upon within a reasonable time after the filing of the application, or is denied in whole or in part, or if an assistance payment is modified or canceled, the applicant or recipient may appeal the decision to the Department of Health and Rehabilitative Services in the manner and form prescribed by the department.

(2) The hearing authority may be the Secretary of Health and Rehabilitative Services, a panel of department officials, or a hearing officer appointed for that purpose. The hearing authority is responsible for a final administrative decision in the name of the department on all issues that have been the subject of a hearing. With regard to the department, the decision of the hearing authority is final and binding. The department is responsible for seeing that the decision is carried out promptly.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 283, ch. 77-147; s. 1, ch. 77-174; s. 19, ch. 78-95.

409.295 Court appointed guardian unnecessary.—It is unnecessary for any incompetent person entitled to public assistance payments, as provided by this chapter, to have a court appointed guardian in order to receive such payments if said incompetent person is living in the household with an adult member of his family or there is a responsible person who will act in his behalf.

History.—s. 1, ch. 69-268; s. 1, ch. 70-255.

409.315 Public assistance; payment on death.—

(1) Upon the death of any person receiving public assistance through the Department of Health and Rehabilitative Services, all public assistance accrued to such person from the date of last payment to date of death shall be paid to the person who shall have been designated by him on a form prescribed by the department and filed with the department during the lifetime of the person making such designation. In the event no designation is made, or the person so designated is no longer living or cannot be found, then payment shall be made to such person as may be designated by the circuit judge of the county where the public assistance recipient resided. Designation by the circuit judge may be made on a form provided by the department or by letter or memorandum to the Comptroller. No filing or recording of the designation shall be required, and the circuit judge shall receive no compensation for such service. If a warrant has not been issued and forwarded prior to notice by the department of the recipient's death, upon notice thereof, the department shall promptly requisition the Comptroller to issue a warrant in the amount of the accrued assistance payable to the person designated to receive it and shall attach to the requisition the original designation of the deceased recipient, or if none, the designation made by the circuit judge, as well as a notice of death. The Comptroller shall issue a warrant in the amount payable.

(2) If a warrant has been issued and not cashed by the recipient payee prior to his death, such warrant shall be promptly returned to the department, together with notice of the death of the recipient. The original warrant shall be endorsed on the back by an authorized employee of the department. The endorsement shall be on a form prescribed by the department and approved by the Comptroller which shall contain the name of the deceased recipient, a statement of his death, and the date thereof and state that it is payable to the order of the designated beneficiary, without recourse. The form shall be signed by the authorized employee or employees of the department, and thereupon such warrant shall be payable to the designated beneficiary as fully and completely as if made payable to him when issued. The department shall furnish to the Comptroller each month a list of such deceased recipients, the designated beneficiaries or persons to whom such warrants are endorsed, and a description of such warrants as herein provided. The department shall cause all persons receiving public assistance to make

the designations as soon as conveniently may be, and shall preserve such designations in a safe place for use.

History.—s. 1, ch. 69-268; ss. 12, 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 26, ch. 73-334; s. 284, ch. 77-147.

409.325 Fraud.—

(1) Any person who knowingly:

(a) Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive aid or benefits under any state or federally funded assistance program, or

(b) Fails to disclose a change in circumstances in order to obtain or continue to receive under any such program aid or benefits to which he is not entitled or in an amount larger than that to which he is entitled,

or who knowingly aids and abets another person in the commission of any such act is guilty of a crime and shall be punished as provided in subsection (5).

(2) Any person who knowingly:

(a) Uses, transfers, acquires, traffics, alters, forges, or possesses, or

(b) Attempts to use, transfer, acquire, traffic, alter, forge, or possess, or

(c) Aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of,

a food stamp, a food stamp identification card, an authorization for the purchase of food stamps, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law is guilty of a crime and shall be punished as provided in subsection (5). For the purposes of this section, the value of an authorization to purchase food stamps shall be the difference between the coupon allotment and the amount paid by the recipient for that allotment.

(3) Any person having duties in the administration of a state or federally funded assistance program who:

(a) Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of, a food stamp, an authorization for food stamps, a food stamp identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or assistance from any other state or federally funded program with which he has been entrusted or of which he has gained possession by virtue of his position, or who knowingly fails to disclose any such fraudulent activity, or

(b) Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food stamps,

is guilty of a crime and shall be punished as provided in subsection (5).

(4) Any person who:

(a) Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of benefits under any state or federally funded assistance program for services which were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or knowingly bills the recipient of benefits under such a program, or his family, for an amount in excess of that provided for by law or regulation, or

(b) Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources, or

(c) In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment as provided herein,

is guilty of a crime and shall be punished as provided in subsection (5).

(5)(a) If the value of the assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of $200 in any 12 consecutive months, such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the value of the assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of $200 or more in any 12 consecutive months, such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

(6) Any person providing service for which compensation is paid under any state or federally funded assistance program who solicits, requests, or receives, either actually or constructively, any payment or contribution through a payment, assessment, gift, devise, bequest or other means, whether directly or indirectly, from either a recipient of assistance from such assistance program or from the family of such a recipient shall notify the Department of Health and Rehabilitative Services, on a form provided by the department, of the amount of such payment or contribution and of such other information as specified by the department, within 10 days after the receipt of such payment or contribution or, if said payment or contribution is to become effective at some time in the future, within 10 days of the consummation of the agreement to make such payment or contribution. Failure to notify the department within the time prescribed is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Repayment of assistance or services wrongfully obtained shall not constitute a defense to, or ground for dismissal of, criminal charges brought under this section.

(8) The introduction into evidence of a paid state warrant made to the order of the defendant shall be prima facie evidence that the defendant did receive assistance from the state.

(9) All records relating to investigations of public assistance fraud in the custody of the Department of Health and Rehabilitative Services are business records within the meaning of s. 92.36.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 354, ch. 71-136; s. 1, ch. 76-20.

409.335 Recovery of payments made due to mistake or fraud.—Whenever it becomes apparent that any person has received any benefits under this chapter to which he is not entitled, either through simple mistake or fraud, the department shall take

all necessary steps to recover the overpayment, unless it is determined that extreme hardship would result if repayment were forced at that time. The department shall establish a policy and cost-effective rules to be used in the recovery of such overpayments.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 285, ch. 77-147; s. 15, ch. 78-433.

409.345 Public assistance payments to constitute debt of recipient.—

(1) CLAIMS.—The acceptance of public assistance shall create a debt of the person accepting assistance, which debt shall be enforceable only after the death of the recipient. The debt thereby created shall be enforceable only by claim filed against the estate of the recipient after his death or by suit to set aside a fraudulent conveyance, as defined in subsection (3). After the death of the recipient and within the time prescribed by law, the department may file a claim against the estate of the recipient for the total amount of public assistance paid to or for the benefit of such recipient, reimbursement for which has not been made. Claims so filed shall take priority as class seven claims as provided by s. 733.707(1)(g).

(2) DISCHARGE OF DEBT.—The debt created by this section shall be discharged 1 year after the death of the debtor unless the department shall have instituted probate proceedings as a creditor or filed a timely claim against the estate of the debtor or instituted a suit to set aside a fraudulent conveyance as defined in subsection (3).

(3) FRAUDULENT CONVEYANCE.—Any person who shall transfer or encumber his property for an inadequate consideration with the intent of defeating or hindering the claim of the department for reimbursement shall be deemed to have made a fraudulent conveyance, and such transfer or encumbrance shall be void and of no effect as against the claim of the department if the department institutes a suit to set aside the conveyance within 1 year after the death of the debtor. A transfer or encumbrance for an inadequate consideration made within 6 months immediately preceding the death of the transferor shall be presumed to have been made with the intent of defeating or hindering the claim of the department. Nothing contained in this section shall be construed to make void any conveyance or encumbrance which shall be made upon and for good consideration and bona fide, as to any person or persons or bodies, politic or corporate, anything in this section to the contrary notwithstanding.

(4) ENFORCEMENT AGAINST HOMESTEAD PROHIBITED.—The claim herein created shall not in any manner be enforceable against a homestead of realty or personalty as defined and provided for in s. 4, Art. X of the State Constitution or against household furnishings and furniture.

(5) AUTHORITY TO COMPROMISE AND SETTLE.—The department shall have authority:

(a) To enter the appearance of the state in any proceeding affecting the property on which the state has a claim;

(b) To institute probate proceedings as a creditor of deceased persons and, either in the course of or in the absence of and apart from any action or proceeding, enter into any stipulation, compromise, settlement, or other agreement in respect to such claim affecting such property as may seem wise;

(c) To execute and deliver any such stipulation, modification, quitclaim, release, partial release, discharge, extension, agreement, satisfaction, partial satisfaction, or subordination, or other contract, stipulation, or agreement which the interest of the parties or the circumstances of the case may make advisable; and

(d) To discharge the differences between the claim and any compromise settlement.

(6) NOTICE.—The department shall notify all persons receiving or applying for public assistance that all public assistance grants paid shall constitute a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but the failure to give such notice shall not affect the validity of the claim.

(7) ACCEPTANCE OF OFFERS TO REPAY.—Any person who desires to repay all or part of the amount paid under the public assistance programs may do so in accordance with a procedure to be adopted by the department. Such rules shall provide for the immediate sale of any real property or the state's equity in any real property so acquired in the manner which will be most expedient and advantageous to the state.

(8) DISPOSITION OF FUNDS RECOVERED.—All funds collected under the provisions of this section shall be deposited with the Department of Banking and Finance and a report of such deposit made to the Department of Health and Rehabilitative Services. After payment of costs the sums so collected shall be credited to the Department of Health and Rehabilitative Services and used by it.

(9) RULES.—The department is authorized to make such rules as may be necessary for the proper administration of this section.

(10) PUBLIC ASSISTANCE.—For the purposes of this section, the term "public assistance" shall include all money payments made to or on behalf of a recipient, including, but not limited to, assistance received under ss. 409.235, 409.255, and 409.266 and mandatory and optional supplement payments under the Social Security Act.

History.—s. 1, ch. 69-268; ss. 12, 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 1, ch. 70-439; s. 145, ch. 77-104; s. 16, ch. 78-433; s. 103, ch. 79-164; s. 2, ch. 79-382.

409.352 Licensing requirements for physicians, osteopaths, and chiropractors employed by the department.—

(1) The licensing requirements in chapters 458, 459, and 460 to the contrary notwithstanding, persons employed as physicians, osteopathic physicians, or chiropractic physicians in a state institution, except those under the control of the Department of Corrections on June 28, 1977, may be exempted from licensure in accordance with the following provisions:

(a) No more than 10 percent of such persons shall be exempted from licensure during their continued employment in a state institution. Those persons who shall be so exempted shall be selected by the Secretary of the Department of Health and Rehabilitative Services. In making his selection, the secretary shall submit his recommendations to the appro-

priate licensing board for a determination by the board, without written examination, of whether or not the person recommended meets the professional standards required of such person in the performance of his duties or functions. The criteria to be used by the respective board in making its determination shall include, but not be limited to, the person's professional educational background, formal specialty training, and professional experience within the 10 years immediately preceding employment by the state institution.

(b) Those persons not exempted pursuant to paragraph (a) shall not be required to obtain a license from the applicable licensing board in accordance with the provisions of chapter 458, chapter 459, or chapter 460 prior to October 1, 1980, as a prerequisite to their continued employment as a physician, osteopathic physician, or chiropractic physician in a state institution.

(2) No person subject to the provisions of this section shall, by virtue of his continued employment in accordance with such provisions, be in violation of the unauthorized practice provisions of chapter 458, chapter 459, or chapter 460 during such period of employment.

History.—s. 3, ch. 79-302.

409.355 Public assistance rolls open.—

(1) The lists of names of all persons who have received public assistance payments and the amounts of such payments are a matter of public record. They are available for inspection, subject to the limitations specified in subsection (2), at the local offices in the counties wherein the recipients of such payments reside.

(2)(a) It is unlawful for any person, for himself, or for any other person, body, association, firm, corporation, group, or agency, to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in or acquiesce in, the use of, any of the lists or parts of such lists of names of public assistance recipients herein required to be filed for commercial or political purposes of any nature.

(b) Any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-268; s. 1, ch. 70-255; s. 355, ch. 71-136; s. 114, ch. 71-355.

409.365 Reports.—

(1) Beginning immediately, each county shall establish and maintain adequate and accurate records, including a system of internal accounts, for all county public assistance programs, and the department in cooperation with the auditor general shall render assistance as requested in the development of such records and accounts. Thereafter, each county shall file with the department in a prescribed manner an annual or periodic report as required by the department.

(2) The department shall, on or before September 30 of each year, make a report to the governor. The report shall contain a complete accounting of all funds received and disbursed during the preceding fiscal year.

(3) The department shall also make such reports, on such forms and containing such information as the federal government and its agencies and instrumentalities may from time to time require, and shall comply with any provisions said agencies may from time to time find necessary to insure the correctness and verification of such reports.

History.—s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 8, ch. 69-82; s. 1, ch. 70-255.

409.401 Interstate Compact on the Placement of Children.—The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any

child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state,

territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 74-317.

409.402 Financial responsibility for child.—Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of state laws fixing responsibility for the support of children also may be invoked.

History.—s. 2, ch. 74-317.

409.403 Definitions; Interstate Compact on the Placement of Children.—

(1) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Health and Rehabilitative Services, and said department shall receive and act with reference to notices required by said Article III.

(2) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the Department of Health and Rehabilitative Services.

(3) As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History.—ss. 3, 4, 8, ch. 74-317; s. 288, ch. 77-147.

409.404 Agreements between party state officers and agencies.—

(1) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children, s. 409.401. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the secretary of Health and Rehabilitative Services in the case of the state.

(2) Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under the provisions of chapters 63 and 409 shall be deemed to be met if performed pursuant to an agreement entered into by appropriate agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children, s. 409.401.

History.—ss. 5, 6, ch. 74-317.

409.405 Court placement of delinquent children.—Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children, s. 409.401, and shall retain jurisdiction as provided in Article V thereof.

History.—s. 7, ch. 74-317.

409.501 Short title.—Sections 409.501-409.505 shall be known and may be cited as the "Florida Financial Assistance for Community Services Act of 1974."

History.—s. 1, ch. 74-166.

409.502 Legislative intent.—

(1) The Legislature finds and declares that great numbers of Florida citizens are denied adequate opportunities to become self-sufficient because local communities, given the scope and magnitude of community problems, do not possess the ability to generate enough revenue to carry out effective programs designed to develop human resources. The Legislature also recognizes local governments as vital partners in the effort to help all citizens achieve self-fulfillment and that local government must be capable of meeting the needs of its community.

(2) It is the purpose of ss. 409.501-409.505 to facilitate and assist local governing authorities in the development, establishment, and administration of community service programs to meet the unmet needs of their citizens in essential and necessary human resource development programs and activities.

History.—s. 1, ch. 74-166.

409.503 Definitions.—As used in ss. 409.501-409.505, except where the context clearly indicates a different meaning:

(1) "Department" means the Department of Community Affairs.

(2) "Local governing authority" means the governing body of a county or municipality.

(3) "Private corporation not for profit" means any Florida corporation in compliance with part I of chapter 617.

(4) "Program for community services" means a program developed and approved by a local governing authority, either independently or in combination with other local governing authorities or a private corporation not for profit, to provide community services in the area of human resource development with respect to programs which serve individuals who are either recipients or potential recipients of public assistance.

History.—s. 1, ch. 74-166; s. 1, ch. 78-384.

409.504 Community Service Trust Fund; creation and distribution.—

(1) The Community Service Trust Fund is hereby created. All revenue designated for deposit in such fund shall be deposited by the appropriate agency. Any funds deposited therein not needed for distribution may be invested pursuant to s. 215.49, with the interest earned to be deposited in the trust fund.

(2) On or before August 1 of each year, a local governing authority, either independently or in combination with other local governing authorities, the governing bodies of federally recognized Indian tribes, or a private corporation not for profit whose program plan has been approved by a local governing authority, may apply to the department for financial assistance to implement any program of community services for the fiscal year beginning on October 1 and ending the following September 30. The department is authorized to issue special instructions and make such rules as are necessary to carry out the intent of ss. 409.501-409.505.

(3) Funds distributed pursuant to ss. 409.501-409.505 for any program shall be matched by an equal amount of funds contributed by the applicant. One-half of the applicant's contribution must be cash. Trust funds shall be distributed in equal quarterly payments in advance.

(4)(a) Distribution shall be based on population. The amount available for distribution within each county shall be determined by dividing the total amount estimated to be available by the total population and multiplying the per capita figure derived therefrom by the total population of the county.

(b) If the applications from any county, whether submitted by one or more local governing authorities or by private corporations not for profit, exceed the amount available for distribution within that county, the department shall empanel a committee from that county consisting of one representative from each applying unit and adjust the total amount applied for to the total amount available based upon the recommendations of the committee. The department shall establish a voting formula and procedures for the committee.

(c) If funds remain available after all applications have been processed, the department may invite local units to apply for special assistance for demonstration and research programs.

History.—s. 1, ch. 74-166; s. 2, ch. 78-384; s. 1, ch. 79-62.

409.505 Accountability for funds; penalty for misuse.—

(1) The applicants, or combination thereof, shall be responsible for setting up proper budgeting, accounting, and other fiscal management procedures.

(2) The department shall make an annual report to the governor and legislature on or before January 1 of each year on financial assistance for community services programs, including priorities and goals established by local governments, a description of funded programs, and the amount of funds distributed.

(3) An elector of any unit receiving funds hereunder may file a petition, including a statement of facts, with the department alleging misuse of funds pursuant to ss. 409.501-409.505. Upon determining that the petition is not frivolous and has merit, the department shall conduct a local hearing in order to determine if the allegation is true and if disqualification and repayment is warranted.

(4) Any local governing authority using funds provided hereunder for any program or purpose other than that authorized herein shall repay such amount plus a 10 percent penalty and shall be deemed to have waived the privilege of receiving funds under ss. 409.501-409.505 for the year or years in question.

History.—s. 1, ch. 74-166.

409.506 Programs for which fund use authorized.—Any funds appropriated to the Department of Community Affairs to establish the Community Trust Fund are to be used to fund presently established, or to be established, local human services programs, including programs which serve senior citizens, youth, the unemployed, the medically indigent, expectant mothers, infants, children needing day care, the handicapped, and other needy persons, and for necessary costs of administering this program, as set forth in ss. 409.501-409.506 and current general and special laws pertaining to such expenditures. In the event that federal funds are forthcoming and to the extent that they are available for the same purpose, they shall be used instead of or to replace general revenue appropriations. However, not more than 15 percent of the total stated matching dollars may be used for administrative salaries or other administrative costs.

History.—s. 2, ch. 74-166; s. 2, ch. 79-62.

409.60 Emergency disaster relief.—

(1) The department shall, by October 1, 1978, adopt rules for the administration of emergency disaster assistance programs delegated to the department either by executive order in accordance with the Disaster Relief Act of 1974 or pursuant to the Food Stamp Act of 1977.

(2) In promulgating the rules required in this section, the department shall give particular consideration to the prevention of fraud in emergency assistance programs. Such rules shall, at a minimum, provide for:

(a) Verification of an applicant's identity and address.

(b) Determination of an applicant's need for assistance and verification of an applicant's need in accordance with appropriate federal law and regulations.

(c) The timely and adequate dissemination of accurate certification information to local disaster assistance offices.

(3) In administering emergency food stamp and assistance programs, the department shall cooperate fully with the United States Government and with other departments, instrumentalities, and agencies of this state.

History.—s. 12, ch. 78-433.

409.601 Legislative intent.—The Legislature recognizes that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such abuse are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of spouse abuse centers for the victims of spouse abuse and to provide a place where the parties involved may be separated until they can be properly assisted.

History.—s. 1, ch. 78-281.

409.602 Definitions.—As used in this act:

(1) "Spouse abuse" means any assault, battery, or other physical abuse by a person upon his or her spouse.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Spouse abuse center" means a facility which provides services to victims of spouse abuse and which has been certified by the department to receive state funds.

(4) "Spouse" means a person to whom another person is married.

(5) "Victim" means any individual suffering assault, battery, or other physical abuse inflicted by his or her spouse, and any dependent of such individual, including a child.

History.—s. 2, ch. 78-281; s. 2, ch. 79-402.

409.603 Duties and functions of the department.—

(1) It shall be the duty of the department:

(a) To establish health, safety and minimum program requirement standards for certifying spouse abuse centers to receive state funds.

(b) To receive applications for state funding of spouse abuse centers.

(c) To approve or reject each application within 60 days of receipt of the application.

(d) To distribute funds to a certified center within 45 days after approval.

(e) To evaluate annually each spouse abuse center for compliance with the minimum standards. The department shall have the right to enter and inspect the premises of spouse abuse centers at any reasonable hour in order to effectively evaluate the state of compliance of such centers with the provisions of this section and rules in force pursuant thereto.

(2) The department shall prescribe by rule the procedures by which subsection (1) shall be implemented. Without using designated center funds, the department may:

(a) Formulate and conduct a research and evaluation program on spouse abuse and cooperate with and assist and participate in programs of other properly qualified agencies, including any agency of the Federal Government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention, care, treatment, and rehabilitation of persons engaged in or subject to spouse abuse.

(b) Serve as a clearinghouse for information relating to spouse abuse.

(c) Carry on educational programs on spouse abuse for the benefit of the general public, persons engaged in or subject to spouse abuse, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to spouse abuse.

(d) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent spouse abuse and to treat persons engaged in or subject to spouse abuse.

History.—s. 3, ch. 78-281; s. 3, ch. 79-402.

409.604 Report to the Legislature.—On or before January 1 of each year the Department of Health and Rehabilitative Services shall furnish to the President of the Senate and the Speaker of the House of Representatives a report on the status of spouse abuse in Florida, which shall include, but not be limited to, the following:

(1) Incidence of spouse abuse in this state.

(2) Identification of the areas of the state where spouse abuse is of significant proportions, indicating the number of cases officially reported as well as an assessment of the degree of unreported cases of spouse abuse.

(3) Identification and description of the types of programs in the state that assist victims of spouse abuse or persons abusing spouses, including information on funding for the programs.

(4) The number of persons treated by or assisted by local spouse abuse programs receiving funding through the department.

(5) A statement on the effectiveness of such programs in preventing future spouse abuse.

(6) An inventory and evaluation of existing prevention programs.

(7) A listing of potential prevention efforts identified by the department; the estimated annual cost of providing such prevention services, both for a single client and for the anticipated target population as a whole; identification of potential funding sources; and the projected benefits of providing such services.

History.—s. 4, ch. 78-281.

409.605 Spouse abuse centers.—

(1) In order to be certified and funded under this act, each center shall:

(a) Provide a facility which will serve as a center to receive and house persons who are spouse abuse victims;

(b) Receive the periodic written endorsement of local law enforcement agencies; and

(c) Receive 25 percent of its funding from one or

more local, municipal, or county sources, public or private. Contributions in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

(d) Provide minimum services which shall include, but not be limited to, information and referral services, counseling services, temporary emergency shelter for more than 24 hours, and educational services for community awareness relative to the incidence of spouse abuse, the prevention of such abuse, and the care, treatment, and rehabilitation for persons engaged in or subject to spouse abuse.

(2) Spouse abuse centers may be established throughout the state as private, local, state, or federal funds are available. Any local agency or organization may apply to participate in certification and state funding.

(3) The spouse abuse centers shall establish procedures pursuant to which persons subject to spouse abuse may seek services from these centers on a voluntary basis.

(4) Each spouse abuse center shall have a board composed of at least three citizens, one of whom shall be a member of a local, municipal, or county law enforcement agency.

(5) No individual center shall receive an amount over $50,000 from the department annually.

History.—s. 5, ch. 78-281; s. 4, ch. 79-402.

409.606 Information confidential.—Information received by the department or by authorized persons employed by or volunteering services to a center, through files, reports, inspection, or otherwise, shall be deemed confidential information and shall not be disclosed publicly in such a manner as to identify individuals or facilities. This information is exempt from the provisions of s. 119.07.

History.—s. 6, ch. 78-281; s. 5, ch. 79-402.

409.607 Referral to centers.—Where centers are available, any law enforcement officer who investigates an alleged incident of spouse abuse may advise the person subject to the abuse of the availability of a spouse abuse center from which he or she may receive services.

History.—s. 7, ch. 78-281; s. 6, ch. 79-402.

CHAPTER 410

AGING AND ADULT SERVICES

410.011 Administration of federal aging programs.—The Department of Health and Rehabilitative Services shall be the designated state agency to handle all programs of the Federal Government relating to the aging, by virtue of funds appropriated through the Older Americans Act of 1965 and subsequent amendments, requiring actions within the state which are not the specific responsibility of another state agency under the provisions of federal or state law. Authority is hereby conferred on the department to accept and use any funds in accordance with established state budgetary procedures which might become available pursuant to the purposes set out herein.

History.—s. 1, ch. 70-255; s. 115, ch. 71-355; s. 286, ch. 77-147; s. 18, ch. 78-433.

Note.—Former s. 409.360.

410.016 Elderly population; department responsibilities.—

(1) LEGISLATIVE INTENT.—The elderly population of this state plays a major role in the growth and dynamic processes of the state, and therefore it is a policy of this state to advise, assist, and protect the elderly citizens of this state to the fullest extent possible.

(2) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES.—The department shall:

(a) Coordinate plans, policies, and activities of governmental and nongovernmental agencies with regard to the aged.

(b) Create public awareness and understanding of the needs and potentials of older persons.

(c) Encourage state and local agencies, universities, and other appropriate agencies to conduct needed research in the field of aging. When such research cannot be done by established state agencies, it shall be carried out by the department.

(d) Appraise the availability, adequacy, and accessibility of all services and facilities for older persons within the state.

(e) Study policies affecting older persons of all state and county departments and agencies responsible for providing services for older persons, including, but not limited to, the agencies with primary responsibility for public health, social welfare, education, housing, employment, recreation, and retirement, and report the results and recommendations based on such study to the Governor and the Legislature. The executive heads of all such departments and agencies shall cooperate with the department in providing information as the department deems necessary for the effective discharge of its duties under this section. However, no provision of law with respect to confidentiality of information shall be violated.

(f) Stimulate, guide, and provide technical assistance in the organization of local or regional committees on aging and in the planning and conduct of services, activities, and projects.

(g) Stimulate training for workers in services to the aged.

(h) Promote the development of services to assist middle-aged and older persons to develop skills, attitudes, and interests to prepare themselves for their later years.

(i) Maintain contacts with local, state, and federal officials and agencies concerned with planning for middle-aged and older persons.

(j) Cooperate with national groups on aging and arrange for participation by representatives of the state in White House conferences and other national conferences from time to time.

(k) Promulgate rules and regulations for the implementation of this section.

(l) Recommend legislative and administrative action on behalf of the aged; review legislation pertaining to older persons and appropriations made for services in their behalf in such fields as health, social welfare, education, employment, and recreation; consider and present revisions and additions needed and submit an annual report with recommendations to the Governor and to the Legislature regarding such legislation.

(m) Engage in such other administrative activities as may be deemed necessary for the elderly population of this state.

History.—s. 1, ch. 72-180; s. 287, ch. 77-147; s. 18, ch. 78-433.

Note.—Former s. 409.362.

410.021 Short title.—Sections 410.021-410.027 shall be known, and may be cited, as "The Community Care for the Elderly Act."

History.—s. 1, ch. 73-343; s. 1, ch. 76-51; s. 18, ch. 78-433; s. 104, ch. 79-164.
Note.—Former s. 409.3621.

410.022 Legislative intent.—The purpose of this act is to find acceptable and cost-effective ways to assist functionally impaired and other elderly persons to continue to live dignified and reasonably independent lives in their own homes or in the homes of relatives or caretakers through the development, expansion, reorganization, and coordination of various community-based service programs. The Legislature intends that the home-delivered service program, the multi-service senior center program, or the family placement program be established in at least three districts, on a trial basis, in order that such programs may be demonstrated, studied, and evaluated. This shall be done to determine the feasibility of such programs as a means of satisfying the needs of Florida's elderly population with respect to community-delivered services while conserving scarce state resources. In addition, an evaluation shall be made of the cost-effectiveness of such programs, as well as the ability of such programs to diminish:

(1) The rate of inappropriate entry and placement of functionally impaired elderly persons in institutions; and

(2) The utilization of noninstitutional services and facilities.

History.—s. 2, ch. 73-343; s. 1, ch. 76-51; s. 146, ch. 77-104; s. 18, ch. 78-433.
Note.—Former s. 409.3622.

410.023 Definitions.—For the purposes of this act, the following words and phrases shall have the following meanings:

(1) "Elderly person" means any person who is 60 years of age or older.

(2) "Functionally impaired person" means any person who is unable to perform the normal tasks of daily living. More specifically, a functionally impaired person is any person who is housebound and living in the community who requires help from others in order to cope with the normal demands of daily living.

(3) "Health maintenance service" means that routine health service necessary to help a confined elderly person maintain an appropriate level of personal health. This service shall be provided by qualified health service personnel who are acting within the scope of their professional or occupational licenses.

(4) "Homemaking and chore service" means that routine household service necessary to help a functionally impaired elderly person meet the normal demands of daily living. This service may include light housekeeping and laundering, meal preparation, personal and food shopping, check cashing and bill paying, friendly visiting, minor household repairs, and yard chores.

(5) "Mobile meal service" means the provision of hot or cold nourishing meals delivered on a regular schedule to a functionally impaired elderly person. This service shall include a system for determining nutritional needs of participants.

(6) "Counseling service" means the provision of information and advice by persons of professional or paraprofessional competence to enable an elderly client to make decisions on such personal matters as income, health, housing, transportation, and family, personal, and social relationships.

(7) "Client" means any person enrolled and participating in a community-care program who is receiving one or more of the available services.

(8) "Department" means the Department of Health and Rehabilitative Services.

(9) "Multi-service senior center program" means a program with strong outreach capabilities which provides elderly persons with medical, social, supportive, and rehabilitative services in a centralized and comprehensive manner.

(10) "District" means a service district of the department.

(11) "Local governmental unit" means a county, a district school board, a municipality, or a metropolitan or consolidated government.

(12) "Relative" means an individual who is 18 years of age or more and is connected by affinity or consanguinity to the client as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(13) "Caretaker" means a relative of the client, a person unrelated to the client, or the client himself, who provides a client with the type and level of care intended by this act.

(14) "Family placement program" means an alternative to institutional placement in which a caretaker provides a home for an elderly person and assists him to the extent necessary for him to participate in normal activities and meet the demands of daily living.

History.—s. 3, ch. 73-343; s. 1, ch. 76-51; s. 1, ch. 77-174; s. 18, ch. 78-433.
Note.—Former s. 409.3623.

410.024 Community care for the elderly programs; powers and duties of the department.—

(1) The department shall conduct, or cause to be conducted, a combination demonstration project and evaluation study to determine the desirability of establishing a home-delivered service program, a multi-service senior center program, or a family placement program throughout the state. In carrying out the project, the department shall establish, or cause to be established, programs in at least three districts.

(2) All existing community resources available to the elderly client shall be utilized to support program objectives. Additional services may be incorporated into a program as appropriate and to the extent that resources are available. The department is authorized to accept gifts and grants in order to carry out a program.

(3) The use of volunteers shall be maximized to provide a range of personal services for the client. The department shall assure appropriate coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under a program.

(4) The department may contract for the provi-

sion of any portion or all of the services required by a program. Such purchase of service contracts shall be utilized whenever the requirements of subsection 20.19(13) exist.

(5) Entities contracting with the department to conduct demonstration projects under this act shall provide a minimum of 25 percent of the funding necessary for the support of project operations. Contributions in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part or all of this required local funding.

(6) When possible, services shall be obtained under:

(a) The Florida Comprehensive Annual Services Program Plan under Title XX of the Social Security Act;

(b) The Florida Plan for Medical Assistance under Title XIX of the Social Security Act;

(c) The State Plan on Aging under Titles III and VII of the Older Americans Act, or

(d) The Florida Financial Assistance for Community Services Act of 1974.

(7) If the department determines that it is necessary to help pay for services received from community care programs, a client shall contribute an amount of money or service of a specified value. The amount of money or service to be contributed shall be fixed according to a rate schedule established by the department or entity developing the program. This rate schedule shall consider expenses and resources of the client and overall ability of the client to pay for the services.

(8) The department shall submit on January 1 of each year an evaluation report to the Speaker of the House of Representatives and to the President of the Senate summarizing the progress of the project. The report shall include the information and data necessary for an accurate analysis of the costs and benefits associated with the establishment and operation of the programs that were established.

History.—s. 4, ch. 73-343; s. 1, ch. 76-51; s. 1, ch. 77-174; s. 18, ch. 78-433.
Note.—Former s. 409.3624.

410.025 Home-delivered service program.—A home-delivered service program, for the purposes of this act, shall include the following basic services:

(1) Health maintenance service;
(2) Homemaking and chore service; and
(3) Mobile meal service.

Additional services, such as transportation service, legal service, counseling service, and telephone reassurance service may be incorporated into the program as appropriate and to the extent that resources are available. Services may be furnished by public agencies or private organizations, but in each district the total program of services shall be coordinated by means of a single, centralized management unit which is established, staffed, and equipped for such purpose.

History.—s. 2, ch. 76-51; s. 18, ch. 78-433.
Note.—Former s. 409.3628.

410.026 Multi-service senior center program.—

(1) A multi-service senior center program, primarily geared to enable an elderly person to live independently outside of an institution by providing a coordinated program of services, shall include:

(a) Health maintenance service.
(b) Homemaking and chore service.
(c) Mobile meal service.
(d) Counseling service.
(e) Telephone reassurance service.
(f) Information and referral service.

Additional services, such as transportation service, legal service, and employment service, may be incorporated into the program as appropriate and to the extent that resources are available.

(2) When feasible, such services shall be available on an emergency basis, 24 hours a day.

(3) When feasible, a multi-service senior center shall be centrally located and easily accessible to public transportation. Provision may be made for transporting persons to the center. A center shall be designed to provide ease of access and use, considering the infirmities of frail and handicapped elderly persons.

(4) Services may be furnished by public agencies or private organizations, but the total program of providing service within, and outside of, the center shall be coordinated by means of a single, centralized management unit which operates within the center and is established, staffed, and equipped for such purpose.

(5) As part of a multi-service senior center program, nursing home or hospital day care for the elderly services may be offered for mentally or physically impaired or frail individuals who are 60 years of age or older and who have a regular place of domicile or who do not require 24-hour-a-day care in a hospital, nursing home, or other health care institution, but who may, in the absence of day care for the elderly services, require admission to an acute or long-term health care facility.

(a) Each day care for the elderly service established pursuant to this subsection shall:

1. Provide a protective physical environment for elderly persons.

2. Make available to all day care participants at least one meal on each day of operation.

3. Provide facilities to enable day care participants to obtain needed rest while attending the program and provide social activities designed to stimulate interest and rekindle motivation.

4. Provide socialization in large and small groups.

(b) Participants in day care for the elderly services in a hospital as licensed under chapter 395 or nursing home as licensed under part I of chapter 400 shall not be counted as part of the hospital's or nursing home's general patient population in determining requirements for licensure.

History.—ss. 2, 3, ch. 76-51; s. 18, ch. 78-433.
Note.—Former s. 409.3629.

410.027 Family placement program.—

(1) When it is determined by the department to be more cost-effective and in the best interest of an elderly person to maintain such person in the home of a caretaker in order to avoid unnecessary institutionalization, such elderly person may enroll in the

family placement program.

(2) The caretaker of a person enrolled in the family placement program shall be reimbursed according to a rate schedule set by the department.

(3) While participation in the family placement program will provide the elderly person with adequate assistance to meet the normal demands of daily living, clients may also be enrolled in a home-delivered service program or a multi-service senior center program.

History.—s. 2, ch. 76-51; s. 18, ch. 78-433.
Note.—Former s. 409.3630.

410.031 Legislative intent.—It is the intent of the Legislature to encourage the provision of care for the elderly in family-type living arrangements in private homes as an alternative to institutional or nursing home care for such persons. The provisions of ss. 410.031-410.036 are intended to be supplemental to the provisions of chapter 400, relating to the licensing and regulation of nursing homes and adult congregate living facilities, and shall not operate to exempt any person who is otherwise subject to regulation under the provisions of said chapter.

History.—s. 13, ch. 77-336; s. 18, ch. 78-433; s. 105, ch. 79-164.
Note.—Former s. 409.3644.

410.032 Definitions.—As used in ss. 410.031-410.036:

(1) "Elderly person" means any person 65 years of age or over who is currently a resident of this state and has resided in this state for no less than 1 year.

(2) "Home care for the elderly" means a full-time family-type living arrangement, in a private home, under which a person or group of persons provides, on a nonprofit basis, basic services of maintenance and supervision, and any necessary specialized services as may be needed, for three or fewer elderly relatives or nonrelatives.

(3) "Department" means the Department of Health and Rehabilitative Services.

History.—s. 14, ch. 77-336; s. 18, ch. 78-433; s. 106, ch. 79-164.
Note.—Former s. 409.3645.

410.033 Home care for the elderly; rules.—The department shall by rule establish minimum standards and procedures for the provision of home care for the elderly, and for the approval of persons wishing to provide such care. Any person who is approved by the department to provide such care for an elderly person shall be eligible for the subsidy payments described in s. 410.035.

History.—s. 15, ch. 77-336; s. 18, ch. 78-433; s. 107, ch. 79-164.
Note.—Former s. 409.3646.

410.034 Department determination of unfitness to provide home care; judicial review.—In accordance with the provisions of s. 400.402, a person caring for an adult who is related to such person by blood or marriage shall not be subject to the provisions of the Adult Congregate Living Facilities Act. If, however, the home care to be provided by such person under this act is found by the department to be unfit, the person wishing to provide home care shall be notified by the department of such unfitness, and the person shall not be eligible for subsidy payments under ss. 410.031-410.036. A person wishing to provide care under ss. 410.031-410.036, but whose home has been found unfit by the department, may petition the circuit court having jurisdiction over the home found unfit, and the court shall resolve the question of fitness.

History.—s. 16, ch. 77-336; s. 18, ch. 78-433; s. 168, ch. 79-400.
Note.—Former s. 409.3647.

410.035 Subsidy payments.—

(1) The department shall establish by rule by January 1, 1978, a schedule of subsidy payments to be made to persons providing home care for certain eligible elderly persons. Payments shall be no less than 10 percent of the prevailing rate paid by the department for the lowest level of nursing home care under s. 409.266, and no greater than 45 percent of said amount. Payments shall be based on the financial status of the person receiving care. Payments shall include, but not be limited to:

(a) A support and maintenance element, to include costs of housing, food, clothing, and incidentals.

(b) Payments for medical, pharmaceutical, and dental services essential to maintain the health of the elderly person and not covered by medicare, medicaid, or any form of insurance.

(c) When necessary, special supplements to provide for any service and specialized care required to maintain the health and well-being of the elderly person.

(2) The department shall develop a plan for the implementation of a program of uniform subsidy payments to persons providing home care for the elderly.

History.—ss. 17, 19, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3648.

410.036 Eligibility for services.—Criteria for determining eligibility for this program shall be the same as criteria used to determine eligibility for assistance under Title XVI of the Social Security Act, as the same exists on July 1, 1977, or shall be the same as financial criteria used to determine eligibility for nursing home care under s. 409.266.

History.—s. 18, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3649.

410.10 Short title.—Sections 410.10-410.11 shall be known and may be cited as the "Adult Protective Services Act."

History.—s. 1, ch. 77-336; s. 18, ch. 78-433; s. 108, ch. 79-164.
Note.—Former s. 409.3631.

410.101 Legislative intent.—The Legislature recognizes that there are many adults in this state who, because of the infirmities of aging, are in need of protective services. Such services should allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse, and maltreatment. It is the intent of the Legislature to provide for the detection and correction of exploitation, neglect, abuse, and maltreatment, and to establish a program of protective and supportive services for all adults in need of them. In doing so, the Legislature intends to place the least possible restriction on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, exploitation, and maltreatment. Nothing in this act shall be con-

strued to mean a person is abused, neglected, or in need of emergency or protective services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall anything in this act be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person.

History.—s. 2, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3632.

410.102 Definitions.—As used in ss. 410.10-410.11:

(1) "Infirmities of aging" means organic brain damage, advanced age, or other physical, mental, or emotional disfunctioning in connection therewith, to the extent that the person is substantially impaired in his ability adequately to provide for his own care or protection.

(2) "Protective services" means those services the objective of which is to protect individuals suffering from the infirmities of aging. Such protective services shall include, but shall not be limited to, evaluation of the need for services, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his property are at issue, protective services shall include seeking the appointment of a guardian for the person or seeking protective placement.

(3) "Abuse" or "maltreatment" means treatment under which an individual suffering from the infirmities of aging is deprived, or allowed to be deprived, of food, clothing, shelter or medical treatment essential to his well-being, or is permitted to live in an environment, when such deprivation or environment causes, or is likely to cause, the adult's physical or emotional health to be significantly impaired.

(4) "Exploitation" means an unjust or improper use of another person for one's own profit or advantage.

(5) "Department" means the Department of Health and Rehabilitative Services.

(6) "Emergency services" means the court ordered removal of an individual suffering from the infirmities of aging from his present surroundings. Emergency services may be received involuntarily if the person entitled to the services will incur a substantial risk of life-threatening physical harm or deterioration if the services are not provided. Such emergency services may not be provided by the department for more than 48 hours.

(7) "Neglect" means to omit, forbear, or fail to exercise a degree of care and caution that a prudent person would deem essential to insure the well-being of an individual suffering from the infirmities of aging and, by such omission, forbearance, or failure, significantly impair or jeopardize the physical or emotional health of the individual suffering from the infirmities of aging.

History.—s. 3, ch. 77-336; s. 18, ch. 78-433; s. 109, ch. 79-164.
Note.—Former s. 409.3633.

410.103 Protective services.—

(1) CONDITIONS FOR PROVIDING SERVICES.—The department shall provide protective services in response to complaints concerning, and requests for assistance from or on behalf of, individuals suffering from the infirmities of aging. The department shall provide such services under any of the following conditions:

(a) The person demonstrates a need for, and requests, such services.

(b) An interested person requests such services on behalf of a person in need of services.

(c) The department determines a person is in need of such services.

(d) A court orders such services.

(2) VOLUNTARY SERVICES.—An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian, or provided in accordance with s. 410.104.

History.—s. 4, ch. 77-336; s. 18, ch. 78-433; s. 110, ch. 79-164.
Note.—Former s. 409.3634.

410.104 Emergency services.—

(1) Upon probable cause to believe that an individual suffering from the infirmities of aging is being abused, maltreated, or neglected, a representative of the department, accompanied by a law enforcement officer, may enter a premises, after obtaining a court order and announcing their authority and purpose. Forcible entry shall be attained only after a court order has been obtained, unless there is probable cause to believe that the delay incident to obtaining such an order would cause an individual suffering from the infirmities of aging to incur a substantial risk of life-threatening physical harm.

(2) When, from the personal observation of a representative of the department and a law enforcement officer, it appears probable that an individual suffering from the infirmities of aging is likely to incur a substantial risk of life-threatening physical harm or deterioration if not immediately removed from the premises, the department's representative may, when authorized by court order, take into custody and transport, or make arrangements for the transportation of, the individual to an appropriate medical or protective services facility.

(3) When action is taken under this section, a preliminary hearing shall be held within 48 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause for grounds for protective placement.

(4) Upon a finding of probable cause, the court may order temporary placement for up to 4 days, pending the hearing for a need for continuing services.

(5) When emergency services are rendered, a report of the exact circumstances, including the time, place, date, factual basis for the need for such services, and the exact services rendered, shall be made and forwarded as provided for in s. 827.09.

History.—s. 5, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3635.

410.105 Confidentiality.—Any records of the department or other agency pertaining to a person who is protected under ss. 410.10-410.11 or for whom application has ever been made for such protection are not open to public inspection. Information contained in such records may not be disclosed publicly in such a manner as to identify individuals, but the records shall be available, on application and for cause, to persons approved by the court.

History.—s. 6, ch. 77-336; s. 18, ch. 78-433; s. 169, ch. 79-400.
Note.—Former s. 409.3636.

410.106 Reports of abuse.—Any person, including, but not limited to, any social worker, physician, psychologist, nurse, teacher, or employee of a private or public facility serving adults, who has a reason to believe an individual suffering from the infirmities of aging has been subjected to abuse, maltreatment, or exploitation shall report, or cause reports to be made, to the department in accordance with s. 827.09.

History.—s. 7, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3637.

410.107 Rules to be promulgated.—The Department of Health and Rehabilitative Services shall set forth by rule, if it deems necessary, the procedures by which protective services, emergency services, and temporary protective placement, as provided in ss. 410.10-410.11, shall be implemented.

History.—s. 8, ch. 77-336; s. 18, ch. 78-433; s. 170, ch. 79-400.
Note.—Former s. 409.3638.

410.108 Cooperation with law enforcement and other agencies.—

(1) All state, county, and municipal law enforcement agencies shall cooperate with the department and its employees in carrying out the provisions of ss. 410.10-410.11.

(2) Any funds appropriated by counties for home health care or boarding home, foster home, or nursing home services may be matched by state and federal funds; such funds shall be utilized by the Department of Health and Rehabilitative Services for the benefit of individuals suffering from the infirmities of aging in said counties.

(3) The Department of Health and Rehabilitative Services may purchase services from any public or private institution or agency within the state which meets the standards and rules for the proper care and supervision of abused adults prescribed by the department.

History.—s. 9, ch. 77-336; s. 18, ch. 78-433; s. 171, ch. 79-400.
Note.—Former s. 409.3639.

410.109 Immunity.—Anyone participating in the making of a report or performing duties under ss. 410.10-410.11 or participating in a judicial proceeding resulting therefrom shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed. Further, no resident or employee of a facility serving disabled persons shall be subjected to reprisal or discharge because of his actions in reporting abuse pursuant to the requirements of this section.

History.—s. 11, ch. 77-336; s. 18, ch. 78-433; s. 172, ch. 79-400.
Note.—Former s. 409.3641.

410.11 Penalties.—

(1) Any person who knowingly or willfully abuses, neglects, exploits, or maltreats an individual suffering from the infirmities of aging and, in so doing, causes great bodily harm, permanent disfigurement, or permanent disability to such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who knowingly or willfully abuses, neglects, exploits, or maltreats an individual suffering from the infirmities of aging and, in so doing, causes minor injury, temporary disfigurement, or temporary disability to such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 12, ch. 77-336; s. 18, ch. 78-433.
Note.—Former s. 409.3642.

410.30 Displaced homemakers; multi-service programs for.—

(1) INTENT.—It is the intent of the Legislature to require the Department of Health and Rehabilitative Services to establish and implement multipurpose service programs to provide necessary training, counseling, and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life.

(2) DEFINITIONS.—For the purposes of this act:

(a) "Displaced homemaker" means an individual who:

1. Is 35 years of age or older;
2. Has worked in the home, providing unpaid household services for family members;
3. Is not gainfully employed;
4. Has had, or would have, difficulty in securing employment; and
5. Has been dependent on the income of another family member but is no longer supported by such income, or has been dependent on Federal assistance.

(b) "Department" means the Department of Health and Rehabilitative Services.

(3) DEPARTMENT POWERS AND DUTIES.—

(a) The department shall establish, or contract for the establishment of, programs for displaced homemakers which shall include:

1. Job counseling, by professionals and peers, specifically designed for a person entering the job market after a number of years as a homemaker.
2. Job training and placement services, including:

a. Training programs for available jobs in the public and private sectors, taking into account the skills and job experiences of a homemaker and developed by working with public and private employers.

b. Assistance in locating available employment for displaced homemakers, some of whom could be employed in existing job training and placement programs.

c. Utilization of the services of the state employment service, which shall cooperate with the department in locating employment opportunities.

3. A well-person health clinic serving the needs of older women and staffed to the greatest extent possible by displaced homemakers.
4. Financial management services providing information and assistance with respect to insurance,

including, but not limited to, life, health, home, and automobile insurance, and taxes, estate and probate problems, mortgages, loans, and other related financial matters.

5. Educational services, including high school equivalency degree and such other courses as the department determines would be of interest and benefit to displaced homemakers.

6. Outreach and information services with respect to Federal employment, education, health, and unemployment assistance programs which the department determines would be of interest and benefit to displaced homemakers.

7. Research for the creation of new jobs making maximum use of talents from housework experience. Such jobs may include, but shall not be limited to, lay advocacy, home health technician and health care counseling, marital dissolution counselor, widow-to-widow counselor, aging programs specialist, craft exchange coordinator, money management specialist, and widower-to-widower counselor.

(b) The department may enter into contracts with, and make grants to, public and nonprofit private entities for purposes of establishing multipurpose service programs under this act.

(c) The department shall consult and cooperate with the Commissioner of Education, the U.S. Commissioner of the Social Security Administration, the Aging and Adult Services Program Office, and such other persons in the executive branch of the state government as the department considers appropriate to facilitate the coordination of multipurpose service programs established under this act with existing programs of a similar nature.

(d) Supervisory, technical, and administrative positions relating to programs established under this act shall, to the maximum extent practicable, be filled by displaced homemakers.

(e) The department shall:

1. Through coordination with the Commissioner of Education, conduct a study to determine the feasibility of, and appropriate procedures for, allowing displaced homemakers to participate in:

a. Programs established under the Comprehensive Employment and Training Act of 1973 (29 U.S.C. ss. 801 et seq.).

b. Work incentive programs established under s. 432(b)(1) of the Social Security Act.

c. Related Federal and state employment, education, and health assistance programs.

2. Through coordination with the Commissioner of Education, conduct a study to determine the feasibility of, and appropriate procedures for, allowing displaced homemakers to participate in programs established or benefits provided under:

a. The Federal-State Expanded Unemployment Compensation Act of 1970, Pub. L. No. 91-373, 87 Stat. 708.

b. Title II of the Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. No. 93-567, 88 Stat. 1850.

c. The Emergency Unemployment Compensation Act of 1974, Pub. L. No. 93-572, 88 Stat. 1869.

d. Related Federal and state unemployment assistance programs.

(f) The department may, in carrying out the provisions of this act, accept, use, and dispose of contributions of money, services, and property.

(g) The department may apply for, and accept, any funds, grants, gifts, or services made available to it by any agency or department of the Federal Government, or any private agency or individual, which funds shall be used to carry out the total program of this act.

History.—ss. 1-8, 10, ch. 76-271; s. 18, ch. 78-433.
Note.—Former s. 409.511.

410.301 Displaced homemaker programs; discrimination prohibited.—No person in this state shall, on the basis of sex, age, race, color, religion, or national origin, be excluded from participating in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this act.

History.—s. 9, ch. 76-271; s. 18, ch. 78-433.
Note.—Former s. 409.514.

CHAPTER 413

VOCATIONAL REHABILITATION

PART I BLIND SERVICES PROGRAM (ss. 413.011-413.091)

PART II GENERAL VOCATIONAL REHABILITATION PROGRAMS (ss. 413.20-413.504)

PART III REHABILITATION PROGRAMS—GENERAL (ss. 413.601-413.605)

PART I

BLIND SERVICES PROGRAM

[1]413.011 Division of Blind Services, internal organizational structure; Advisory Council for the Blind.—

(1) The internal organizational structure of the Division of Blind Services shall be designed for the purpose of insuring the greatest possible efficiency and effectiveness of services to the blind and to be consistent with chapter 20. The Division of Blind Services shall plan, supervise, and carry out the following activities:

(a) Recommend personnel as may be necessary to carry out the purposes of this section.

(b) Cause to be compiled and maintained a complete register of the blind in the state, which shall describe the condition, cause of blindness, and capacity for education and industrial training, with such other facts as may seem to the division to be of value.

(c) Inquire into the cause of blindness, inaugurate preventive measures, and provide for the examination and treatment of the blind, or those threatened with blindness, for the benefit of such persons, and shall pay therefor, including necessary incidental expenses.

(d) Aid the blind in finding employment, teach them trades and occupations within their capacities, assist them in disposing of products made by them in home industries, assist them in obtaining funds for establishing enterprises where federal funds reimburse the state, and do such things as will contribute to the efficiency of self-support of the blind.

(e) Establish one or more training schools and workshops for the employment of suitable blind persons; make expenditures of funds for such purposes; receive moneys from sales of commodities involved in such activities and from such funds make payments of wages, repairs, insurance premiums and replacements of equipment. All of the activities provided for in this section may be carried on in cooperation with private workshops for the blind, except that all tools and equipment furnished by the division shall remain the property of the state.

(f) Provide special services and benefits for the blind for developing their social life through community activities and recreational facilities.

(g) Undertake such other activities as may ameliorate the condition of blind citizens of this state.

(h) Cooperate with other agencies, public or private, especially the Division of the Blind and Physically Handicapped of the Library of Congress and the Division of Library Services of the Department of State, to provide library service to the blind and other handicapped persons as defined in federal law and regulations in carrying out any or all of the provisions of this law.

(i) Recommend contracts and agreements with federal, state, county, municipal and private corporations, and individuals.

(j) Receive moneys or properties by gift or bequest from any person, firm, corporation, or organization for any of the purposes herein set out, but

without authority to bind the state to any expenditure or policy except such as may be specifically authorized by law. All such moneys or properties so received by gift or bequest as herein authorized may be disbursed and expended by the division upon its own warrant for any of the purposes herein set forth, and such moneys or properties shall not constitute or be considered a part of any legislative appropriation made by the state for the purpose of carrying out the provisions of this law.

(k) Prepare and make available to the blind, in braille and on electronic recording equipment, Florida Statutes chapters 20, 120, 121, and 413, in their entirety.

(2) There is hereby created in the Department of Education the Advisory Council for the Blind. The council shall be advisory to the Director of the Division of Blind Services and shall consist of five members appointed by the Commissioner of Education and approved by the State Board of Education. At least one person shall be, by preference, a blind person. Appointment shall be for terms of 4 years, except that the initial appointments shall be as follows: Two members for 4 years; one member for 3 years; one member for 2 years; and one member for 1 year. No person or persons in the employ of the state shall be eligible for membership on the council. Each member of the council shall have been a citizen and elector of this state for not less than 5 years immediately preceding the date of his appointment. Members shall receive no compensation for their services, but shall be reimbursed for traveling expenses as provided in s. 112.061 and for fees for the issuance of their commissions.

History.—s. 1, ch. 20714, 1941; s. 1, ch. 21779, 1943; ss. 20, 34, ch. 26937, 1951; s. 1, ch. 61-210; s. 19, ch. 63-400; s. 1, ch. 67-463; ss. 10, 19, 35, ch. 69-106; s. 116, ch. 71-355; s. 157, ch. 71-377; s. 2, ch. 77-259; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.26.

cf.—s. 17.26 Cancellation of state warrants.

413.012 Confidential records disclosure prohibited; exemptions.—

(1) All records furnished to the Division of Blind Services in connection with state or local vocational rehabilitation programs and containing information as to personal facts given or made available to the state or local vocational rehabilitation agency or its representatives or employees in the course of the administration of the program, including lists of names and addresses and records of agency evaluation, shall be held to be confidential.

(2) It is unlawful for any person to disclose, authorize the disclosure, solicit, receive, or make use of any list of names and addresses or any record containing any information set forth in subsection (1) and maintained in the division. The prohibition provided for in this subsection shall not apply to the use of such information for purposes directly connected with the administration of the vocational rehabilitation program or with the monthly dispatch to the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles of the name in full, place and date of birth, sex, social security number, and resident address of individuals with central visual acuity 20/200 or less in the better eye with correcting glasses, or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees.

(3) Any person who violates a provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-507; ss. 19, 35, ch. 69-106; s. 1, ch. 71-41; s. 356, ch. 71-136; s. 289, ch. 77-147; s. 3, ch. 77-259; s. 173, ch. 79-400.

413.013 Destruction of records.—The Division of Blind Services may authorize the destruction of any correspondence, documents, or other records when the subject matter involved has been closed or terminated and their preservation is not required by federal or state law, rule, or regulation. No such material shall be destroyed unless specific authority is given by the division and unless said records have been in the possession of the division 5 or more years prior to their destruction.

History.—s. 1, ch. 65-508; ss. 19, 35, ch. 69-106; s. 290, ch. 77-147; s. 4, ch. 77-259; s. 174, ch. 79-400.

413.021 Products and services by blind persons; sale, exhibition regulated.—

(1) When appearing in the Florida Statutes "blind person" shall mean an individual having central visual acuity 20/200 or less in the better eye with correcting glasses, or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees.

(2) For the purposes of the Florida Statutes no representation shall be made that a product or service is "blind-made" unless the manufacturer employs blind persons to an extent constituting not less than 75 percent of the total hours worked by personnel engaged in the direct labor of production of manufactured blind-made products, or services. Direct labor production shall mean all work required for the preparation, processing and packing but not including supervision, administration, inspection and shipping, or the production of the materials from which the finished product is manufactured.

(3) No person or organization shall sell, distribute, or exhibit any product or service which purports or is advertised to be "blind-made," unless the Division of Blind Services shall certify that such product or service complies with the provisions of subsection (2).

(4) Any person, including the officers, owners, or members of any corporation or organization that violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1-4, ch. 28029, 1953; s. 2, ch. 61-210; ss. 19, 35, ch. 69-106; s. 357, ch. 71-136; s. 291, ch. 77-147; s. 5, ch. 77-259.

Note.—Former ss. 413.09, 409.261.

413.031 Products, purchase by state agencies and institutions.—

(1) DEFINITIONS.—When used in this section:

(a) "Accredited nonprofit workshop" means a Florida workshop which has been certified by either the Division of Blind Services, for workshops concerned with blind persons, or the Department of Health and Rehabilitative Services, when other

handicapped persons are concerned, and such "workshop" means a place where any article is manufactured or handwork is carried on and which is operated for the primary purpose of providing employment to severely handicapped individuals, including the blind, who cannot be readily absorbed in the competitive labor market.

(b) "Handicapped" means an individual so severely disabled physically, or mentally, as to be unable to enter private industry on a competitive basis, but who can be made employable through an accredited nonprofit-making agency for the handicapped, and which individual is over the age of 16 years.

(2) State institutions and agencies shall, where possible, purchase brooms, mops, rugs, rubber mats and other supplies (other than the products of prison labor) from sheltered Florida workshops operated by accredited nonprofit corporations, provided that such goods and supplies are of standard quality and price.

(3) When convenience or emergency requires it, the Department of Health and Rehabilitative Services may upon request of the purchasing officer of any institution or agency relieve him from the obligation of this section.

(4) No state agency or institution shall purchase products or supplies purporting to be made by physically-handicapped persons in workshops not certified under the provisions of this section.

(5) Any purchasing officer who violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 29663, 1955; s. 2, ch. 61-210; ss. 19, 35, ch. 69-106; s. 358, ch. 71-136; s. 6, ch. 77-259; s. 9, ch. 79-12; s. 175, ch. 79-400.
Note.—Former s. 409.262.

[1]413.032 Purpose.—The purpose of this act is to further the policy of the state to encourage and assist blind and other severely handicapped individuals to achieve maximum personal independence through useful, productive, and gainful employment by assuring an expanded and constant market for their products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization.

History.—s. 1, ch. 74-236; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]413.033 Definitions.—As used in ss. 413.032-413.038:

(1) "Blind" means an individual having central visual acuity of 20/200 or less in the better eye with correcting glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees.

(2) "Other severely handicapped" and "severely handicapped individuals" mean an individual or class of individuals under a physical or mental disability other than blindness, which, according to criteria established by the council created in s. 413.034, after consultation with appropriate entities of the state and taking into account the views of nongovernment entities representing the handicapped, constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.

(3) "Qualified nonprofit agency for the blind" means an agency:

(a) Organized under the laws of the United States or of this state, operated in the interest of blind individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor of the United States;

(c) Which, in the production of commodities and the provision of services, whether or not the commodities or services are procured under ss. 413.032-413.038, during the fiscal year employs blind individuals for not less than 75 percent of the man-hours of direct labor required for the production or provision of the commodities or services; and

(d) Which meets the criteria for determining nonprofit status under the provisions of s. 196.195 and is registered and in good standing as a charitable organization with the Department of State under the provisions of part I of chapter 496.

(4) "Qualified nonprofit agency for other severely handicapped" means an agency:

(a) Organized under the laws of the United States or of this state, operated in the interest of severely handicapped individuals who are not blind, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor of the United States;

(c) Which, in the production of commodities and in the provision of services, whether or not the commodities or services are procured under ss. 413.032-413.038, during the fiscal year employs blind or other severely handicapped individuals for not less than 75 percent of the man-hours of direct labor required for the production or provision of the commodities or services; and

(d) Which meets the criteria for determining nonprofit status under the provisions of s. 196.195, and is registered and in good standing as a charitable organization with the Department of State under the provisions of part I of chapter 496.

(5) "Direct labor" includes all work required for preparation, processing, and packing, but not supervision, administration, inspection, and shipping.

(6) "Agency" includes any political subdivision of the state having its own purchasing agency, such as a county, municipality, school district, or other public body, that is supported in whole or in part by funds appropriated by the legislature.

History.—s. 2, ch. 74-236; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]413.034 Council established; membership.—

(1) There is created within the Department of General Services a council to be known as the Council for the Purchase of Products and Services of the Blind or Other Severely Handicapped, to be com-

posed of the Executive Director of the Department of General Services; the Secretary of the Department of Health and Rehabilitative Services; the Director of the Division of Blind Services of the Department of Education; the Director of Prison Industries of the Department of Offender Rehabilitation; and three members to be appointed by the Governor, which three members shall be an executive director of a nonprofit agency for the blind, an executive director of a nonprofit agency for other severely handicapped, and a representative of private enterprise. The appointive members shall serve as follows: Two members shall serve for terms of 4 years, and one member shall serve for a term of 2 years; thereafter, all appointive members shall serve for terms of 4 years.

(2) The members of the council shall elect one of their members to serve as chairman. Any member may designate a representative of his agency or department to represent him at any meeting of the council.

(3) Members of the council shall not be entitled to compensation for their services as members, but shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 3, ch. 74-236; s. 1, ch. 76-264; s. 7, ch. 77-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]413.035 Duties and powers of the council.—(1) It shall be the duty of the council to determine the market price of all products and services offered for sale to the various agencies of the state by any qualified nonprofit agency for the blind or other severely handicapped. The price shall recover for the nonprofit agency the cost of raw materials, labor, overhead, and delivery cost, but without profit, and shall be revised from time to time in accordance with changing cost factors. The council shall make such rules and regulations regarding specifications, time of delivery, assignment of products and services to be supplied by nonprofit agencies for the blind or by agencies for the other severely handicapped, with priority for assignment of products to agencies for the blind, authorization of a central nonprofit agency to facilitate the allocation of orders among qualified nonprofit agencies for the blind, authorization of a central nonprofit agency to facilitate the allocation of orders among qualified nonprofit agencies for other severely handicapped, and other relevant matters of procedure as shall be necessary to carry out the purposes of this act. The council shall authorize the purchase of products and services elsewhere when requisitions cannot reasonably be complied with through the nonprofit agencies for the blind and other severely handicapped.

(2) The council shall establish and publish a list of products and services provided by any qualified nonprofit agency for the blind and any nonprofit agency for the other severely handicapped, which the council determines are suitable for procurement by agencies of the state pursuant to this act. This procurement list and revision thereof shall be distributed to all purchasing officers of the state and its political subdivisions.

History.—s. 4, ch. 74-236; s. 1, ch. 77-174; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]413.036 Procurement of services by state agencies; authority of council.—If any agency intends to procure any product or service on the procurement list, that agency shall, in accordance with rules and regulations of the council, procure such product or service at the price established by the council from a qualified nonprofit agency for the blind or for the other severely handicapped if the product or service is available within a reasonable delivery time. This act shall not apply in any case in which products or services are available for procurement from any agency of the state and procurement therefrom is required under the provision of any law currently in effect.

History.—s. 5, ch. 74-236; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]413.037 Cooperation with council required; duties of state agencies.—(1) In furtherance of the purposes of this act and in order to contribute to the economy of state government, it is the intent of the Legislature that there be close cooperation between the council and any agency of the state from which procurement of products or services is required under the provision of any law currently in effect. The council and any such agency of the state are authorized to enter into such contractual agreements, cooperative working relationships, or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this act and any other law requiring procurement of products or services from any agency of the state.

(2) The council may secure directly from any agency of the state information necessary to enable it to carry out this act. Upon request of the chairman of the council, the head of the agency shall furnish such information to the council.

(3) Space shall be set aside in the state capitol for the purpose of exhibiting products produced by clients of rehabilitation-oriented agencies of the state.

History.—ss. 6, 8, ch. 74-236; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

413.041 Eligible blind persons; placement in vending facilities in public places.—For the purpose of assisting blind persons to become self-supporting, the Division of Blind Services is hereby authorized to carry on activities to promote the employment of eligible blind persons, including the licensing and establishment of such persons as operators of vending facilities on public property. The said division may cooperate with any agency of the Federal Government in the furtherance of the provisions of the Act of Congress entitled "An Act to authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind and for other purposes," Pub. L. No. 732, 74th Congress, and the said division may cooperate in the furtherance of the provisions of any other act of Congress providing for the rehabilitation of the blind that may now be in effect or may hereafter be enacted by Congress.

History.—s. 1, ch. 22681, 1945; ss. 21, 34, ch. 26937, 1951; s. 2, ch. 61-210; ss. 19, 35, ch. 69-106; s. 292, ch. 77-147; s. 8, ch. 77-259.
Note.—Former s. 409.271.

413.051 Eligible blind persons; operation of vending stands.—

(1) This section shall be known as the Little Randolph Sheppard Act.

(2) As used in this section:

(a) "Blind licensee" means any blind person trained and licensed by the Division of Blind Services of the Department of Education to operate a vending stand.

(b) "Vending stand" means any manually operated cafeteria, snack bar, cart service, shelter, counter, or other manually operated facility for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, [1]or other such articles or services.

(c) "State agency" means any agency of the state.

(d) "State property" means any building or land owned, leased, or otherwise controlled by the state, but does not include any building or land under the control of the Board of Regents or a community college district board of trustees.

(e) "Property custodian" or "person in charge" means any employee, agent, or person who is in control of or responsible for the maintenance, operation, and protection of any state property.

(3) Blind licensees shall be given the first opportunity to participate in the operation of vending stands on all state properties acquired after July 1, 1979, when such facilities are operated under the supervision of the Division of Blind Services of the Department of Education.

(4) The Division of Blind Services shall be responsible for a periodic survey of all state properties and, where feasible, shall establish vending facilities to be operated by blind licensees.

(5) All property custodians and duly authorized agents or employees of the state shall cooperate with the division in its survey of state properties and shall make available adequate space, electrical wiring, plumbing, and ventilation necessary to the installation of a vending facility on any state property designated as suitable by the division.

(6) The division shall be notified by property custodians or persons in charge at least 180 days prior to the initiation of any new construction, expansion, leasing, or acquisition of property occupied or to be occupied by a state agency.

(7) No person or persons shall be offered or granted any concession by any property custodian or person in charge to operate a vending stand on any state property acquired after July 1, 1979, unless the division is notified of that proposed concession.

(8) Income from new vending machines or replacement of existing machines installed on state property after July 1, 1979, shall accrue to the blind licensee who operates a vending facility on the same property or, if none, to the division. The division shall be responsible for the servicing and maintenance of all vending machines.

(9) It is the legislative intent that this section shall not apply or operate, in any way or any manner, to divest any person or organization presently operating a vending stand on state, county, or municipal property from continuing to do so; however, the property custodian or person in charge shall notify the Division of Blind Services at least 180 days prior to the expiration whether such vending facility location is suitable for operation by a blind licensee.

(10) All the preceding provisions are permissive regarding all political subdivisions of the state.

History.—s. 2, ch. 22681, 1945; s. 1, ch. 25141, 1949; ss. 22, 34, ch. 26937, 1951; s. 10, ch. 27991, 1953; s. 2, ch. 61-210; ss. 1, 2, ch. 65-227; ss. 19, 35, ch. 69-106; s. 293, ch. 77-147; s. 9, ch. 77-259; s. 1, ch. 79-370; s. 176, ch. 79-400.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

Note.—Former s. 409.272.

[1]**413.061 Solicitation of funds; prohibition; exceptions.**—The solicitation of funds or anything of value, by any means, including the sale of merchandise or any form of entertainment, for the use and benefit of blind persons is prohibited unless prior approval for such solicitation is obtained as prescribed in ss. 413.061-413.068; provided, these sections shall not apply to civic clubs of international affiliation, one of the main objects of which is the conservation of vision and service to the blind.

History.—s. 1, ch. 29989, 1955; s. 2, ch. 61-210; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.281.

[1]**413.062 Application for permit.**—Any person, agency, or organization desiring to solicit funds or anything of value for the benefit of blind persons shall file a written application with the Division of Blind Services. The application shall set forth the time, place, and type of the proposed solicitation; proposed use of the receipts from said solicitation; names and addresses of persons who will be responsible for the proper custody and disposition of receipts; and any other information the division may determine to be necessary.

History.—s. 1, ch. 29989, 1955; s. 2, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 294, ch. 77-147; s. 10, ch. 77-259; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.282.

[1]**413.063 Permit.**—The Division of Blind Services shall make a thorough investigation of the applicant and of the facts alleged in his application. If the applicant is found to be responsible and the purposes and method of the proposed solicitation are determined to be in the best interests of blind persons and public welfare, the Division of Blind Services shall issue to the applicant a written permit authorizing him to conduct the proposed solicitation. Such permit shall be limited to a period of 1 year. It shall set forth the specified method, purpose, and organization of the solicitation which is approved and shall list the names of persons responsible for its conduct.

History.—s. 1, ch. 29989, 1955; s. 2, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 295, ch. 77-147; s. 11, ch. 77-259; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.283.

[1]**413.064 Rules and regulations.**—The State Board of Education shall adopt all necessary rules and regulations pertaining to the conduct of solicitations for the benefit of blind persons and shall determine the amount of compensation and expense money which may be retained by any person or organiza-

tion from the proceeds of any solicitation within the meaning of ss. 413.061-413.068.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 296, ch. 77-147; s. 12, ch. 77-259; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.284.

[1]413.065 Notice of approval.—Every person who holds a permit under the provisions of ss. 413.061-413.068 shall cause to appear upon every ticket, advertisement, subscription, form, placard, article, or other bit of property used in direct connection with the promotion of such solicitation, and shall post in a conspicuous place near the entrance to any building or structure where any entertainment or sale is held hereunder, a statement that such solicitation activity has been approved by the Division of Blind Services.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 297, ch. 77-147; s. 13, ch. 77-259; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]413.066 Revocation of permit.—Any failure on the part of any person or organization holding a permit under the provisions of ss. 413.061-413.068 to comply with the law or with all rules and regulations promulgated by the Division of Blind Services as authorized by s. 413.064 shall constitute grounds for a revocation of said permit by the Division of Blind Services.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 298, ch. 77-147; s. 14, ch. 77-259; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.286.

[1]413.067 Penalty.—Any person who violates the provisions of ss. 413.061-413.068 or any rule or regulation promulgated by the Division of Blind Services pursuant to the authority hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 19, 35, ch. 69-106; s. 359, ch. 71-136; s. 3, ch. 76-168; s. 299, ch. 77-147; s. 15, ch. 77-259; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.287.

[1]413.068 Legislative intent.—It is the intent of the Legislature that the securing of a permit from the Division of Blind Services shall be a condition precedent to the solicitation of funds for the benefit of the blind in this state, except as otherwise provided in ss. 413.061-413.068, and said sections shall supersede the provisions of any county or city law regulating the solicitation of such funds which do not require such a permit.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 300, ch. 77-147; s. 16, ch. 77-259; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 409.288.

413.069 Exemptions.—Nothing contained in ss. 413.061-413.068 shall interfere with the activities of the National Federation of the Blind of Florida, the Florida Council of the Blind, the Blinded Veterans Association of Florida, or the Lions Clubs of Florida, provided that such organizations file an annual report with the Department of State showing total receipts and disbursements by subject.

History.—s. 1, ch. 29989, 1955; s. 3, ch. 61-210; ss. 10, 35, ch. 69-106; s. 147, ch. 77-104; s. 17, ch. 77-259; s. 177, ch. 79-400.

Note.—Former s. 409.289.

413.07 Traffic regulations to assist blind persons.—

(1) It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

(2) Whenever a pedestrian is crossing, or attempting to cross, a public street or highway, guided by a dog guide or carrying in a raised or extended position a cane or walking stick which is white in color or white tipped with red, the driver of every vehicle approaching the intersection or place where such pedestrian is attempting to cross shall bring his vehicle to a full stop before arriving at such intersection or place of crossing and, before proceeding, shall take such precautions as may be necessary to avoid injuring such pedestrian.

(3) Nothing contained in this section shall be construed to deprive any totally or partially blind or otherwise incapacitated person not carrying such a cane or walking stick, or not being guided by a dog, of the rights and privileges conferred by law upon pedestrians crossing streets or highways; nor shall the failure of such totally or partially blind or otherwise incapacitated person to carry a cane or walking stick, or to be guided by a dog guide, upon the streets, highways, or sidewalks of this state be held to constitute, or be evidence of, contributory negligence.

(4) Any person who violates any provision of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1-4, ch. 25269, 1949; s. 10, ch. 26484, 1951; s. 360, ch. 71-136; s. 18, ch. 77-259.

413.08 Equal accommodations for deaf, blind, and visually handicapped; unlawful to prohibit or interfere with; dog guide allowed to accompany.—

(1)(a) The deaf, blind, and visually handicapped are entitled to full and equal accommodations, advantages, facilities, and privileges on all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation and at hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(b) Every deaf person and totally or partially blind person shall have the right to be accompanied by a dog guide, especially trained for the purpose, in any of the places listed in paragraph (a) without being required to pay an extra charge for the dog guide; however, he shall be liable for any damage done to the premises or facilities by such dog.

(2) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies, or interferes with, admittance to, or enjoyment of, the

public facilities enumerated in subsection (1) or otherwise interferes with the rights of a deaf or totally or partially blind person under this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is the policy of this state that the deaf, blind, visually handicapped, and otherwise physically disabled shall be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and no employer shall refuse employment to the deaf, blind, the visually handicapped, or the otherwise physically disabled on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(4) Deaf persons, blind persons, and visually handicapped persons shall be entitled to rent, lease, or purchase, as other members of the general public, all housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(a) "Housing accommodations" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) Nothing in this section shall require any person renting, leasing, or otherwise providing real property for compensation to modify his property in any way or provide a higher degree of care for a deaf person, blind person, or visually handicapped person than for a person who is not so handicapped.

(c) Every deaf person or totally or partially blind person who has a dog guide, or who obtains a dog guide, shall be entitled to full and equal access to all housing accommodations provided for in this section, and he shall not be required to pay extra compensation for such dog guide. However, he shall be liable for any damage done to the premises by such dog guide.

(5) Any employer covered under subsection (3) who discriminates against the deaf, blind, visually handicapped, or otherwise physically disabled in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (4) who discriminates against the deaf, blind, visually handicapped, or otherwise physically disabled is guilty of a misdemeanor of the second degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 25268, 1949; s. 1, ch. 61-217; s. 361, ch. 71-136; s. 1, ch. 71-276; s. 1, ch. 73-110; s. 1, ch. 74-286; s. 1, ch. 77-174; s. 19, ch. 77-259; s. 178, ch. 79-400.

413.091 Identification cards.—

(1) The Division of Blind Services of the Department of Education is hereby empowered to issue identification cards to persons known to be blind or partially sighted, upon the written request of such individual.

(2) The individual shall submit proof of blindness as specified by the division.

(3) The division will be responsible for design and content of the identification card and shall develop and promulgate rules, regulations, and procedures relating to the eligibility and application for, and issuance and control of, these identification cards.

History.—ss. 1-3, ch. 71-265; s. 301, ch. 77-147; s. 20, ch. 77-259.

PART II

GENERAL VOCATIONAL REHABILITATION PROGRAMS

413.20 Definitions.—In ss. 413.20-413.44:

(1) "Department" means the Department of Health and Rehabilitative Services;

(2) "Employment handicap" means a physical or mental condition which constitutes, contributes to,

or if not corrected will probably result in an impairment of occupational performance;

(3) "Disabled individual" means any person who has a substantial employment handicap;

(4) "Vocational rehabilitation" and "vocational rehabilitation services" mean any service, provided directly or through public or private instrumentalities, found by the department to be necessary to compensate a disabled individual or group of individuals for an employment handicap and to enable such individual or group of individuals to engage in an occupation, including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, placement equipment and materials, maintenance, and training books and materials;

(5) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time, including, but not limited to, medical, psychiatric, dental, and surgical treatment, nursing service, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances;

(7) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ;

(8) "Occupational licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(9) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(10) "Regulations" means regulations made by the department and promulgated in the manner prescribed by law;

(11) "State plan" means the state plan approved by the Federal Government to qualify for federal funds under the Vocational Rehabilitation Act;

(12) "Act" or "Federal Act" means the Federal Vocational Rehabilitation Act as amended (29 U.S.C. ch. 4).

History.—s. 2, ch. 25364, 1949; s. 13, ch. 65-239; ss. 15, 19, 35, ch. 69-106; ss. 1, 2, ch. 69-344; s. 158, ch. 71-377; s. 302, ch. 77-147; s. 111, ch. 79-164.
Note.—Former s. 229.26; s. 229.0100.

413.22 Department; regulations.—The Department of Health and Rehabilitative Services shall prepare regulations governing personnel standards; the protection of records and confidential information; the manner and form of filing applications; eligibility, and investigation and determination thereof, for vocational rehabilitation services; procedures for fair hearings; and such other regulations as it finds necessary to carry out the purposes of this part.

History.—s. 4, ch. 25364, 1949; s. 13, ch. 65-239; s. 2, ch. 67-438; s. 159, ch. 71-377; s. 304, ch. 77-147.
Note.—Former s. 229.28; s. 229.0102.

413.23 Administration.—The Department of Health and Rehabilitative Services shall provide vocational rehabilitation services to disabled individuals determined to be eligible therefor and, in carrying out the purposes of ss. 413.20-413.44, the department is authorized, among other things:

(1) To cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of ss. 413.20-413.44, such programs, facilities, and services as may be necessary or desirable;

(2) To enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;

(3) To conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

History.—s. 5, ch. 25364, 1949; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 117, ch. 71-355; s. 305, ch. 77-147; s. 112, ch. 79-164.
Note.—Former s. 229.29; s. 229.0103.

413.24 Cooperation with Federal Government.—The Department of Health and Rehabilitative Services shall cooperate, pursuant to agreements, with the Federal Government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration not in conflict with the laws of Florida as are found by the Federal Government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History.—s. 6, ch. 25364, 1949; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 306, ch. 77-147.
Note.—Former s. 229.30; s. 229.0104.

413.25 State accepts provisions of Vocational Rehabilitation Act.—The consent of the state is given to the provisions and requirements of the Act of Congress approved by the President June 2, 1920, amended June 5, 1924, entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," and any acts supplementary thereto or amendatory thereof, usually referred to as the Federal Vocational Rehabilitation Act.

History.—s. 1021, ch. 19355, 1939; CGL 1940 Supp. 892(340); s. 24, ch. 29764, 1955; s. 13, ch. 65-239; s. 3, ch. 69-344.
Note.—Former s. 236.21; s. 229.301; s. 229.0105.

413.26 Cooperative agreements with other governmental agencies relative to joint use of services and facilities.—

(1) The Department of Health and Rehabilitative Services is authorized to enter into cooperative agreements with any state agency or institution, county, county agency or institution, municipality, or municipal agency or institution having legal responsibility for the care of the disabled for the pur-

pose of enabling the department and the cooperating governing bodies, agencies and institutions to utilize jointly their services and facilities to enlarge and improve the opportunities for disabled individuals to achieve self-support or self-care.

(2) For this section to be valid an agreement must be entered into mutually by the governing bodies, agencies, or institutions involved and must be approved by the administrative officers or by the boards governing the counties, municipalities, agencies, or institutions. The agreements shall provide only for those services by each political subdivision, agency or institution which the political subdivision, agency or institution is authorized by law to provide; provided that any political subdivision, agency or institution shall be permitted to withdraw and terminate its part of an agreement at the end of any fiscal year by giving the other political subdivision, agency or institution involved 30 days' notice.

(3) In order to effectuate the provisions of this section, the Executive Office of the Governor is authorized and empowered within its discretion when it finds it to be in the public interest to permit two or more agencies, institutions, or county or city governments, pursuant to their mutual, unanimous request, to pool portions of their funds or to transfer portions of their funds to the account of the department in order to carry out plans for rehabilitation which are lawful and which give promise of better achieving the rehabilitation of disabled persons than would result through the separate efforts of the participants in the agreement. Funds pooled or transferred under this act may be made available for expenditures for rehabilitation by the agency designated in the agreement to disburse such funds. Funds expended pursuant to agreements authorized under this act may be utilized for the purpose of matching funds available under the terms of federal laws pertaining to the rehabilitation of handicapped persons.

(4) A copy of each agreement made pursuant to this act shall be filed with the Department of State within a period of 30 days following the consummation of such agreement.

History.—ss. 1-4, ch. 63-246; s. 13, ch. 65-239; ss. 2, 3, ch. 67-371; ss. 10, 19, 31, 35, ch. 69-106; s. 4, ch. 69-344; s. 307, ch. 77-147; s. 137, ch. 79-190.
Note.—Former s. 229.302; s. 229.0106.

413.27 Cooperative agreements with Florida School for the Deaf and Blind.—

(1) The Department of Health and Rehabilitative Services is authorized to enter into cooperative agreements with the board of trustees of the Florida School for the Deaf and Blind for the purpose of enabling said agencies to utilize jointly their services and facilities to enlarge and improve the opportunities for the deaf and blind individuals to achieve self-support or self-care.

(2)(a) For such an agreement to be valid, it must be entered into mutually by such agencies and must be approved by the administrative officers or by the boards governing same. The agreement may provide for those services which each agency or institution is authorized by law to furnish; provided that such agreement may establish a vocational rehabilitation facility for the deaf at the Florida School for the Deaf and Blind which facility may accept as clients any deaf adult otherwise qualified for admission. Either agency may withdraw and terminate its part of such agreement at the end of any fiscal year by giving the other agency involved 30 days' notice.

(b) The board of trustees of the Florida School for the Deaf and Blind is authorized to use funds now in its budget for matching those of the department, in furtherance of such agreement. Said school may employ such additional personnel as may be necessary to implement such agreement.

(3) In order to effectuate the provisions of this section, the Executive Office of the Governor shall, upon the conclusion of any such agreement, pool portions of the funds of said agencies as indicated in such agreement. Funds pooled or transferred under this section may be made available for expenditures for rehabilitation by the agency designated in the agreement to disburse such funds and may be used to compensate additional personnel employed under subsection (2)(b). Funds expended pursuant to any agreement authorized under this section may be utilized for the purpose of matching funds available under the terms of federal laws pertaining to the rehabilitation of the deaf.

(4) A copy of any such agreement, when and if concluded pursuant hereto, shall be filed with the Department of State within a period of 30 days following the consummation of such agreement.

History.—ss. 1-4, ch. 63-389; s. 13, ch. 65-239; ss. 2, 3, ch. 67-371; ss. 10, 15, 19, 31, 35, ch. 69-106; s. 308, ch. 77-147; s. 138, ch. 79-190.
Note.—Former s. 229.303; s. 229.0107.

413.28 Appropriations of federal funds.—In the event federal funds are available to the state for vocational rehabilitation purposes, the Department of Health and Rehabilitative Services is authorized to comply with such requirements as may be necessary to obtain said federal funds in the most advantageous proportions possible insofar as this may be done without violating other provisions of the state law and Constitution. Any federal funds received as reimbursement of state expenditures for a prior year shall be added to the state appropriation for the fiscal year during which such funds are reimbursed and the same shall be made available for expenditure and so expended as to entitle the department to receive any federal matching funds which may be available for vocational rehabilitation pursuant to such expenditures.

History.—s. 7, ch. 25364, 1949; s. 25, ch. 29764, 1955; s. 13, ch. 65-239; ss. 2, 3, ch. 67-371; ss. 19, 31, 35, ch. 69-106; s. 160, ch. 71-377; s. 1, ch. 73-305; s. 309, ch. 77-147.
Note.—Former s. 229.31; s. 229.0108.

413.29 Gifts.—The Department of Health and Rehabilitative Services is hereby authorized and empowered to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of ss. 413.20-413.44. Gifts made under such conditions as in the judgment of the department are proper and consistent with the provisions of ss. 413.20-413.44 and the laws of the United States and the laws of Florida may be so accepted and shall be held, invested, reinvested, and used in accordance with the condition of the gift.

History.—s. 8, ch. 25364, 1949; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 310, ch. 77-147; s. 113, ch. 79-164.
Note.—Former s. 229.32; s. 229.0109.

413.30 Eligibility for vocational rehabilitation.—

(1) Vocational rehabilitation services may be provided to any disabled individual:

(a) Whose vocational rehabilitation, the Department of Health and Rehabilitative Services determines after full investigation, can be satisfactorily achieved; or

(b) Who is eligible therefor under the terms of an agreement with another state or with the Federal Government.

(2) Eligibility when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(a) A physical or mental disability is present;

(b) A substantial handicap to employment exists; and

(c) Vocational rehabilitation services may reasonably be expected to render the individual fit to engage in a gainful occupation.

History.—s. 9, ch. 25364, 1959; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 5, ch. 69-344; s. 311, ch. 77-147.
Note.—Former s. 229.33; s. 229.0110.

413.31 Benefits not assignable.—The right of a disabled individual to any of the benefits under ss. 413.20-413.44 shall not be transferable or assignable at law or in equity, and any benefits, including money, goods, or chattels received hereunder shall be exempt from all state, county, and municipal taxes and from sale under the process of any court, except for obligations contracted for the purchase of such property.

History.—s. 10, ch. 25364, 1949; s. 13, ch. 65-239; s. 114, ch. 79-164.
Note.—Former s. 229.34; 229.0111.

413.32 Retention of title to and disposal of equipment.—

(1) The Department of Health and Rehabilitative Services is authorized to retain title to any property, tools, instruments, training supplies, equipment or other items of value acquired for use of handicapped persons or employed personnel in the operation of the vocational rehabilitation program, and to repossess and transfer same for the use of other handicapped persons or employees.

(2) The department is authorized to offer for sale any surplus items acquired in the operation of the program when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage. When any such surplus equipment is sold or exchanged a receipt for same shall be taken from the purchaser showing the consideration given for such equipment and forwarded to the treasurer, and any funds received by the department pursuant to any such transactions shall be deposited in the State Treasury in the appropriate federal or state rehabilitation funds and shall be available for expenditure for any purpose consistent with ss. 413.20-413.44.

History.—s. 11, ch. 25364, 1949; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 312, ch. 77-147; s. 115, ch. 79-164.
Note.—Former s. 229.35; s. 229.0112.

413.34 Misuse of vocational rehabilitation lists and records.—It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any violation of this provision is hereby declared to be a misdemeanor and shall be punishable accordingly.

History.—s. 13, ch. 25364, 1949; s. 13, ch. 65-239.
Note.—Former s. 229.37; s. 229.0114.

413.35 Limitation on political activity.—No officer or employee engaged in the administration of the vocational rehabilitation program shall use his official authority or influence to permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose. No such officer or employee, excluding elective officials and constitutional officers, shall take any active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinion as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. Any officer or employee violating this provision shall be subject to discharge or suspension. No such officer or employee engaged in the administration of the vocational rehabilitation program, except elective officials and constitutional officers, shall be appointed or promoted as a reward for loyalty and effort in a political campaign or other political activity, nor shall any such officer or employee be demoted or discharged because of political affiliation or lack of same except as a disciplinary measure in instances of violation of the prohibitions against political activity. Any violation of this section is declared to be a misdemeanor and punishable accordingly.

History.—s. 14, ch. 25364, 1949; s. 13, ch. 65-239.
Note.—Former s. 229.38; s. 229.0115.
cf.—s. 104.31 Political activities of state officers and employees.

413.36 Duties of other agencies and officials regarding ss. 413.20-413.44.—It shall be the duty of all officials in charge of state or county agencies whose official duties enable them to know the needs of disabled individuals for vocational rehabilitation to report to the Department of Health and Rehabilitative Services the names of such individuals who come to their attention and who appear to be eligible and feasible for vocational rehabilitation services provided under ss. 413.20-413.44. Such officials shall cooperate with the department in carrying out the purpose of ss. 413.20-413.44 insofar as their duties and facilities permit, but the department may not delegate any of its duties and responsibilities under ss. 413.20-413.44 to any other agency or individual except with respect to disabled individuals for each of whom a vocational rehabilitation plan has been approved by the department or by a member of its

staff to whom it has delegated authority to approve individual vocational rehabilitation plans. However, nothing in ss. 413.20-413.44 shall be so construed as to prevent other agencies from rendering services to disabled individuals not designed especially for the purpose of vocationally rehabilitating such individuals or services to which disabled individuals might be entitled without regard to their disabilities.

History.—s. 15, ch. 25364, 1949; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 314, ch. 77-147; s. 116, ch. 79-164.
Note.—Former s. 229.39; s. 229.0116.

413.37 Self-care program for handicapped; legislative findings.—It is hereby found by the Legislature of the state that many seriously disabled persons are institutionalized or require the services of an attendant and that studies and demonstrations have shown that many such persons, although not apparently feasible for vocational rehabilitation services based on a plan designed to prepare for employment in a designated vocation as now required for eligibility for vocational rehabilitation services nevertheless could be substantially assisted toward achieving ability for self-care by the services the Department of Health and Rehabilitative Services could render to them and that such persons might be made able to dispense with or greatly reduce the need for services of an attendant or for institutional care, thereby relieving such individuals from being a burden on others and helping to restore and maintain their independence and self-respect; and such persons, after achieving the ability to care for themselves, may later through further rehabilitation services be rendered able to perform remunerated work thereby making them less dependent on others for financial support. The Legislature further finds that the department which serves approximately 20,000 disabled individuals annually, is specially qualified and equipped by over 30 years of rehabilitation experience and by the nature of its comprehensive program of disability evaluation, studies of individual capacity for employment, and vocational rehabilitation services leading to the employment of handicapped persons to administer such a program and that it is in the best interest of the state that such a program be established as a means of providing necessary services to individuals, thereby reducing and discouraging dependency and encouraging individual effort for self-support.

History.—s. 1, ch. 59-385; s. 13, ch. 65-239; s. 315, ch. 77-147.
Note.—Former s. 229.411; s. 229.0121.

413.38 Definitions.—

(1) "Severely handicapped person" is defined to mean a person of employable age with a physical or mental disability so handicapping as to require that he be institutionalized or have the services of an attendant in order to provide himself with his daily living requirements.

(2) "Evaluation services for rehabilitation purposes" means comprehensive, individual case studies including diagnosis, psychological and physical tests of capacity for training and rehabilitation, and such other procedures and observations necessary to determine the nature and extent of a handicap, its effect on employability and ability for self-care, the attitude of the individual toward his handicap and especially his desire to overcome the handicap through training and rehabilitation procedures, the prognosis for improvement and the practical procedures and training necessary to achieve the ability of self-care and for eventual employment.

(3) "Self-care rehabilitation services" means such diagnostic, psychological, medical, surgical, physical restoration, guidance, training and related services including equipment and prosthetic appliances and training in their use needed to enable a severely handicapped person to dispense with or largely dispense with the need for institutional care or for the services of an attendant and to achieve, insofar as practicable, the ability for independent living.

(4) "Severely handicapped person eligible for self-care rehabilitation services" means such person whose rehabilitation for self-care purposes the Department of Health and Rehabilitative Services finds to be feasible under the provisions of this law.

History.—s. 2, ch. 59-385; s. 13, ch. 65-239; s. 316, ch. 77-147.
Note.—Former s. 229.42; s. 229.0122.

413.39 Administration; self-care program.—The Department of Health and Rehabilitative Services is hereby authorized, in addition to its other duties and responsibilities, to administer a program of self-care rehabilitation services for severely handicapped persons who appear to be feasible for such services.

History.—s. 3, ch. 59-385; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 317, ch. 77-147.
Note.—Former s. 229.43; s. 229.0123.

413.40 Powers of department; self-care program.—The Department of Health and Rehabilitative Services in carrying out a program of providing self-care rehabilitation services to severely handicapped persons shall be authorized to:

(1) Employ necessary personnel;

(2) Employ consultants;

(3) Provide diagnostic, medical, and psychological and other evaluation services;

(4) Provide training necessary for rehabilitation;

(5) Provide for persons found to require financial assistance with respect thereto maintenance while undergoing rehabilitation, transportation incident to necessary rehabilitation services, physical restoration services, prosthetic appliances and other equipment determined to be necessary for rehabilitation.

(6) Provide rehabilitation facilities necessary for the rehabilitation of the handicapped or contract with such facilities for necessary services. The department shall not, however, assume responsibility for permanent custodial care of any individual and shall provide rehabilitation services only for a period long enough to accomplish the rehabilitation objective or to determine that rehabilitation is not feasible through the services which can be made available to the individual being served.

History.—s. 4, ch. 59-385; s. 13, ch. 65-239; s. 318, ch. 77-147.
Note.—Former s. 229.44; s. 229.0124.

413.41 Cooperation by department with state agencies.—The Department of Health and Rehabilitative Services is hereby authorized to cooperate with other agencies of the state government or with any nonprofit, charitable corporations or founda-

tions concerned with the problems of the disabled. The department may provide disability evaluation, work capacity appraisal and appraisal of vocational rehabilitation potential of handicapped individuals for other public agencies pursuant to agreements made at the request of such agencies. The department may charge the agencies contracting for these services the actual cost thereof.

History.—s. 5, ch. 59-385; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 319, ch. 77-147.

Note.—Former s. 229.45; s. 229.0125.

413.42 Cooperation with federal agencies.—The Department of Health and Rehabilitative Services is hereby authorized to cooperate with any agency of the Federal Government charged with the responsibility for administering laws relating to rehabilitation of handicapped individuals or the evaluation of the capacity of handicapped persons for employment, or for preparation for employment or for self-care. The department shall further be authorized to accept and disburse any funds appropriated by Congress and made available to the state for the purpose of rehabilitating disabled individuals or the evaluation of disabled individuals for rehabilitation or for gainful activity, or for any other purpose related to the lawful vocational rehabilitation program function of the department, and the department is authorized to take such action as may be necessary to execute the purposes of any such federal grants.

History.—s. 6, ch. 59-385; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 320, ch. 77-147.

Note.—Former s. 229.46; s. 229.0126.

413.43 Utilization of state and federal funds.—The Department of Health and Rehabilitative Services is authorized to utilize for purposes of this law and for matching any federal funds which may be available for similar rehabilitation purposes any funds appropriated or allotted to the department. The department is authorized to accept such gifts and refunds as may be made unconditionally or as are not burdened with conditions inconsistent with the purposes of the rehabilitation program.

History.—s. 8, ch. 59-385; s. 13, ch. 65-239; ss. 19, 35, ch. 69-106; s. 321, ch. 77-147.

Note.—Former s. 229.47; s. 229.0127.

413.44 State Treasury depository.—The State Treasury shall be the depository of all funds appropriated by the state Legislature or received as federal grants or received as gifts from private individuals for the purposes of this program. Such funds shall be kept in a separate account distinct from all other state funds. Funds received by grant or gift, other than state appropriations, shall not lapse or be converted to the general fund at the end of any appropriations period.

History.—s. 9, ch. 59-385; s. 13, ch. 65-239.

Note.—Former s. 229.48; s. 229.0128.

413.46 Legislative intent.—It is the intent of the Legislature to insure the referral of severely disabled persons to the Department of Health and Rehabilitative Services by appropriate individuals or public and private agencies in order that all severely disabled persons might obtain the appropriate rehabilitative services rendered by the department and other state agencies.

History.—s. 1, ch. 74-254; s. 148, ch. 77-104.

413.47 Definitions.—As used in ss. 413.46-413.49:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Severe disability" means:

(a) Any spinal cord disease or injury resulting in permanent and total disability.

(b) Amputations of extremities that require prosthesis.

(c) Visual acuity of 20/200 or worse in the better eye with the best correction.

(d) A peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees.

(e) A serious visual limitation in any infant sufficient to warrant special assistance to parents in matters of child-rearing and development.

History.—s. 2, ch. 74-254.

413.48 Establishment and maintenance of a central registry.—The department shall establish and maintain a central registry of severely disabled persons.

(1) Every public and private health and social agency and attending physician shall report to the department within 7 days after identification of any severely disabled person; however, the consent of the individual shall be obtained prior to making this report, except that every spinal cord disease or injury resulting in permanent or total disability shall be reported to the department immediately upon identification.

(2) The report shall contain the name, age, residence, and type of disability of the individual and such additional information as may be deemed necessary by the department.

History.—s. 3, ch. 74-254; s. 1, ch. 75-168.

413.49 Duties and responsibilities of the department.—

(1) Within 15 days of the report and identification of a severely disabled person, the department shall notify the most immediate family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The department shall refer severely disabled persons to appropriate divisions of the department and other state agencies to assure that rehabilitative services, if desired, are obtained by the severely disabled person.

(3) All other agencies of the state shall cooperate with the department to insure that appropriate rehabilitative services are available.

History.—s. 4, ch. 74-254.

413.50 Purpose.—The purpose of ss. 413.50-413.504 is:

(1) To provide extended employment in rehabilitation workshop facilities for developmentally disabled persons who are over 16 years of age and are, as a result of their disability, unable to enter the competitive labor market.

(2) To encourage the development, improvement,

and expansion of rehabilitation workshop facilities for developmentally disabled persons.

History.—s. 1, ch. 74-341.

413.501 Definitions; ss. 413.50-413.504.—When used in ss. 413.50-413.504, unless the context clearly requires otherwise:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Rehabilitation workshop facility" means a place operated by a nonprofit voluntary agency engaged in the manufacture or production of products which provides gainful rehabilitation to severely handicapped persons until such persons can become employed and provides gainful work to developmentally disabled persons unable to be employed.

(3) "Extended employee" means one who has been employed in a rehabilitation workshop facility in excess of 24 months. This period shall include all developmental services involving, but not limited to, evaluation, personal and work-adjustment training, and subsequent facility employment.

(4) "Extended employment" means meaningful remunerative activity for at least 20 hours per week resulting in earnings of at least $5 per week.

(5) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, or epilepsy, which disability can reasonably be expected to continue indefinitely and constitutes a substantial handicap to an individual.

(6) "Costs" means operating expenditures of the extended employment portion of the rehabilitation workshop facility less operating income generated by such extended employment activities.

(a) Expenditures approvable in arriving at costs may include, but are not limited to, the cost of:

1. Staff salaries and benefits attributable to extended employment work operations.

2. Rent, either on a ratio of extended employees to total facility client population or on a basis of space used, whichever is higher, or, if the building is owned by the facility, the equivalent of rent, including taxes, interest on mortgage, building maintenance and repair, depreciation of building, etc.

3. Utilities.

4. Equipment, on a depreciation basis.

5. Insurance.

6. Operation and maintenance.

7. The purchase, operation, and maintenance of vehicles used primarily for transporting the developmentally disabled to and from the facility and for transporting subcontract work and supplies.

8. Such indirect items as administration, including supervision of staff, bookkeeping, accounting, and secretarial and clerical services.

9. Other necessary expenditures approved and authorized in advance by the department.

(b) The following expenditures shall not be approvable:

1. Purchase of land.

2. New construction.

3. Acquisition, renovation, alteration, or expansion of existing buildings.

4. Mortgage amortization.

5. Any subsidy in addition to earned wages which is paid to an employee by a facility.

History.—s. 2, ch. 74-341; s. 323, ch. 77-147.

413.502 Department authorized to contract with rehabilitation workshop facility.—

(1) Whenever it appears to the satisfaction of the Department of Health and Rehabilitative Services that a developmentally disabled person over the age of 16 years can reasonably be expected to benefit from, or if his best interests reasonably require, extended employment in a rehabilitation workshop facility operated by an approved nonprofit organization, the department is authorized to contract with the organization for the furnishing of extended employment to the developmentally disabled person.

(2) The department shall maintain a register of nonprofit organizations operating rehabilitation workshop facilities which, after inspection of the facilities for extended employment provided by them, the department deems qualified to meet the needs of such developmentally disabled persons. The inspections shall also determine the eligibility of such organizations to receive the funds hereinbefore specified.

History.—s. 3, ch. 74-341; s. 324, ch. 77-147.

413.503 Eligibility and standards of service.—

(1) Persons eligible for support as extended employees are those persons having a developmental disability who are over 16 years of age and are, as a result of their disability, unable to enter the competitive labor market.

(2) The determination of developmental disability shall be made by the Department of Health and Rehabilitative Services upon the basis of psychological or medical records on file in the rehabilitation workshop facility that provide suitable and adequate evidence of:

(a) Mental retardation.

(b) Cerebral palsy.

(c) Epilepsy.

(d) Any combination of these disabilities.

The psychological or medical records which determine the condition of developmental disability shall not be more than 2 years old at the time of application by the facility for the support of such person. The department may require reexamination of a person by the facility in order to revalidate developmental disability.

(3) Those persons for whom subsidies are requested by a facility shall receive appropriate rehabilitation or habilitation services such as evaluation, personal and work adjustment training, or other services in order to assist the department in making a determination of the suitability of placement of such persons in extended employment within the facility. The facility shall be responsible for providing adequate information relating to the decision that an appropriate evaluation has been made of the validity of the "extended employee" designation.

(4) Periodic evaluations on at least a semiannual basis shall be conducted by the facility to determine if an extended employee's potential has been increased to the point where outside employment is

possible. Professional evaluation services shall be regularly available either from the staff of the facility or on regular schedule from a rehabilitation facility which provides these professional services.

(5) Adequate job-placement services shall be made available by the facility for those extended employees deemed to have attained the potential for competitive employment.

(6) Any person in the facility whose productivity is at or above the level of the statutory minimum wage shall be excluded from support in this program unless there are modifying factors making competitive employment difficult.

(7) The maximum number of developmentally disabled persons in extended employment in any one rehabilitation workshop facility for whom the facility may receive support shall not exceed the maximum number of work stations available at any one full-time shift in the facility. For purposes of this subsection, "full-time" means a minimum of 5 hours of work daily. However, exceptions may be made on an individual basis, and consideration shall be given to medical reports rendered.

History.—s. 4, ch. 74-341; s. 325, ch. 77-147.

413.504 Department to promulgate rules and regulations.—The department is authorized to promulgate such reasonable rules and regulations as it may deem necessary or proper to carry out the provisions of this act. Administration of this act shall be consistent with the state plan for the Federal Developmental Disabilities Services and Facilities Construction Act as developed and implemented by the Department of Health and Rehabilitative Services.

History.—s. 5, ch. 74-341; s. 326, ch. 77-147.

PART III

REHABILITATION PROGRAMS—GENERAL

413.601 Legislative intent.—It is the intent of the Legislature to provide for the development of a coordinated rehabilitation program for those persons severely disabled by spinal cord injuries. Further, it is intended that permanent paralysis be prevented whenever possible through early identification of spinal cord injuries, skilled emergency evaluation procedures, and proper medical and rehabilitative treatment. The goal of this program shall be to enable individuals severely disabled by spinal cord injury to resume the activities of daily living and reintegrate with the community with as much dignity and independence as possible. For those persons who cannot achieve complete independence, supportive services and economic assistance are needed in order for them to live as normally as possible.

History.—s. 15, ch. 76-201.

413.602 Definitions.—As used in this act:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the secretary of the Department of Health and Rehabilitative Services.

(3) "Emergency medical evacuation system" means a transportation system which provides timely skilled emergency care and movement of persons believed to have suffered spinal cord injuries.

(4) "Intensive trauma care center" means a facility which provides diagnosis and intensive treatment of persons with spinal cord injuries aimed at preventing paralysis.

(5) "Rehabilitation center" means a facility which provides intermediate care and stresses rehabilitation for persons with spinal cord injuries.

(6) "Halfway house" means a facility which provides a temporary, structured residential environment for those individuals with spinal cord injuries in a training or educational program, in order to prepare such individuals to live independently.

History.—s. 16, ch. 76-201.

413.603 Establishment of a plan for a system of treatment for persons with spinal cord injuries.—The department shall develop a plan for the establishment of a multilevel treatment program for persons with spinal cord injuries and present the plan to the secretary for review by March 1, 1977. The plan shall contain at least the following components:

(1) Establishment of an emergency medical evacuation system which shall include the operation and implementation of an emergency transport system in order that persons with spinal cord injuries can be transported to an intensive trauma care center on a timely basis.

(2) Establishment of intensive trauma care centers which will provide as a minimum:

(a) The administration of preventive treatment to persons with spinal cord injuries to prevent paralysis, save lives, and stabilize the person's medical condition so that he can be transferred as soon as possible to a rehabilitation center for further rehabilitation.

(b) The appropriate number of centers to be developed according to need. Each facility shall consist of a special medical unit with appropriate professional personnel and expertise.

(3) Establishment of rehabilitation centers to provide rehabilitation services for persons transferred from the intensive trauma care center and for other persons with spinal cord injuries requiring rehabilitation services. Such centers shall be located according to need and shall be equipped with the appropriate staff component to meet the specialized rehabilitation needs of persons with spinal cord injuries.

(4) Establishment of an appropriate number of halfway houses for individuals who need attendant care, who are in adjustment periods, who require a structured environment, or who are in retraining or educational programs. All residents shall use the

halfway house as a temporary measure and not as a permanent home or domicile.

(5) Residents of any of the above-cited facilities shall pay a monthly fee based on ability to pay.

History.—s. 17, ch. 76-201.

413.604 Nursing home residents, age 55 and under; annual survey.—The department shall conduct an annual survey of nursing homes in the state to determine the number of individuals 55 years of age and under who reside in such homes due to a spinal cord injury. All individuals identified in such a survey shall be evaluated as to their rehabilitation potential, and any individual who may benefit from rehabilitation shall be given an opportunity to participate in an appropriate rehabilitation program for which he may be eligible.

History.—s. 18, ch. 76-201.

413.605 Advisory council on spinal cord injuries.—

(1) There is created within the department an advisory council on spinal cord injuries composed of five appropriate professionals, with expertise in areas related to the care and rehabilitation of individuals with spinal cord injuries, and six individuals with spinal cord injuries.

(2) Members of the council shall be appointed by the secretary and shall serve for terms of 4 years, except that five members of the first appointed council shall serve for 2 years.

(3) The council shall meet at least four times annually, and members shall be entitled to per diem and travel expenses in accordance with the provisions of s. 112.061.

(4) The council shall provide advice and expertise to the department in the preparation, implementation, and periodic review of the coordinated rehabilitation program as set forth in this act.

History.—s. 19, ch. 76-201.

CHAPTER 414

POOR MOTHERS WITH DEPENDENT CHILDREN

414.01 County aid for poor mothers.—The county commissioners of the several counties of the state may provide in the annual budget of the General Revenue Fund an appropriation sufficient to meet the purposes of this law for the support of women of insufficient income, who have dependent upon them for food, raiment, and education, orphans, or half-orphan children under 16 years of age, including any woman whose husband is dead or is an inmate of some state institution, or whose marriage is dissolved, or whose husband has been prosecuted for desertion or nonsupport and has been adjudicated by the court where prosecuted to be wholly unable to support his wife and children, or whose husband is permanently incapacitated for work by reason of any mental or physical infirmity, and any woman who is the mother of a child if her own support and the support of the child depend wholly or partially upon her labor, shall be entitled to the assistance as provided for in this chapter for the support of herself and for her child.

History.—s. 1, ch. 13759, 1929; CGL 1936 Supp. 3727(1); s. 1, ch. 73-300.

414.02 Allowance authorized.—The allowance for the aid of such women shall not exceed $25 a month when she has but one child under 16 years of age. If she has more than one child under the age of 16 years it shall not exceed $25 for the first child, and $8 a month for each of the other children.

History.—s. 2, ch. 13759, 1929; CGL 1936 Supp. 3727(2).

414.03 Condition of allowance.—The county commissioners of their respective counties may levy a tax of not more than 1 mill on all taxable property of their respective counties for the purpose of supplying funds to carry this chapter into effect, and provide means for the same, provided the condition of allowance of said allotment shall be made by the county commissioners after due investigation of each case by and through such agency as the board of county commissioners shall deem advisable, and only upon the following conditions:

(1) The child for whose benefit the allowance is made, must be living with the mother of such child, or other relative within the second degree, or guardian approved by the proper authorities.

(2) The mother must, in the judgment of the county commissioners of such county, which body shall finally pass upon all applications for aid under this chapter, be a proper person morally, physically and mentally fitted for the bringing up of the child, and shall be in actual need of the aid provided by this chapter.

(3) Said allowance shall, in the judgment of the county commissioners, be necessary to save the child from neglect.

(4) No person shall receive the benefit of this chapter who shall not have been a resident of the state for at least 2 years and a resident of the county in which the allowance is given, for at least 1 year next before the making of the application for aid in such county.

History.—s. 3, ch. 13759, 1929; CGL 1936 Supp. 3727(3).

414.04 When allowances shall cease.—Whenever any child shall reach the age of 16 years, or the mother shall remarry, the allowance to the mother or the children shall cease; provided, however, that if it is made to appear to the board of county commissioners, after an investigation, that there exists some special reason that it is for the best interest of any child, as well as for society, to continue said allowance for a longer period of time, such allowance may be continued for such time as the justice of the case may demand. In all cases, however, when the mother remarries all allowances shall cease.

History.—s. 4, ch. 13759, 1929; CGL 1936 Supp. 3727(4).

414.05 Female relative.—The provisions of this chapter shall also be extended for the benefit of orphan children who are dependent on some female relative unable to support them, or to any children under guardianship who are dependents or paupers and have no means of support.

History.—s. 5, ch. 13759, 1929; CGL 1936 Supp. 3727(5).

414.06 How carried into effect.—In order to carry the provisions of this chapter into effect, the board of county commissioners shall have direct supervision of the investigation of all cases and they may, in their discretion, use all county agencies for purposes of such investigation, and shall have the assistance of the Department of Health and Rehabilitative Services and the Department of Education, in investigating all persons entitled to the provisions of this chapter in the gathering of data and the history, and making a report on each case, and to this end the necessary blanks will be provided, and the department shall provide uniform blanks to be printed and paid for by the counties to be used in gathering and recording the history of each case.

History.—s. 6, ch. 13759, 1929; CGL 1936 Supp. 3727(6); ss. 15, 19, 35, ch. 69-106; s. 327, ch. 77-147.

414.07 History of each case.—The history of each case, when investigated by the agency or agencies used by the board of county commissioners, shall be made up in duplicate, the original to be filed with the board of county commissioners of the county,

and one copy to be forwarded to and filed with the Department of Health and Rehabilitative Services.

History.—s. 7, ch. 13759, 1929; CGL 1936 Supp. 3727(7); ss. 19, 35, ch. 69-106; s. 328, ch. 77-147.

414.08 How families are to be investigated.—The board of county commissioners of each county shall require the persons or agencies used for making the required investigation, to carefully and speedily investigate the condition of any and all poor mothers' children, orphan and half-orphan children, whose needs may be brought to their attention, and after having gathered the history of each case and recorded such history upon the blanks as hereinbefore required to be provided, to immediately place such report of such case before the board of county commissioners of such county for immediate action, and the said board of county commissioners shall examine such report and immediately take up such application and grant or reject such application, as the board of county commissioners in their judgment shall find the applicant entitled by this chapter.

History.—s. 8, ch. 13759, 1929; CGL 1936 Supp. 3727(8).

414.09 Other persons may be appointed to carry law into effect.—In making the investigations of cases, as required by this chapter, the board of county commissioners shall use, so far as possible, some employee of the county trained in such work, who shall not receive any additional compensation therefor, or in the absence of such employee the board of county commissioners shall appoint three capable women, residents of such county, who will be willing to accept such appointment and serve without compensation, to investigate and report such case or cases as may be submitted to them of poor mothers, orphans and half-orphan children entitled to the provisions of this chapter, and such persons so appointed shall individually or collectively make their investigation of the case submitted to them as provided for in s. 414.08.

History.—s. 9, ch. 13759, 1929; CGL 1936 Supp. 3727(9).

414.10 Where child may reside.—The child to whom the allowance is made under this chapter must be living with the mother, or other female guardian of such child, unless special privilege of separation is authorized by the board of county commissioners, such separation to be granted where advantageous for the sake of the child's education or general welfare.

History.—s. 10, ch. 13759, 1929; CGL 1936 Supp. 3727(10).

414.11 Required attendance at school.—All children receiving aid under the provisions of this chapter, if of school age and physically and mentally qualified, shall be required to attend the schools of the county during the whole term or terms of such schools, and upon failure of such children to attend schools for the whole term or terms thereof, the aid herein provided for such mothers and children shall cease without notice. No aid shall be paid for those of school age except upon the monthly certificate of the principal or head of the school or schools attended by such children that they have regularly attended the schools during the month in question or have been duly excused by him.

History.—s. 12, ch. 13759, 1929; CGL 1936 Supp. 3727(12).

414.12 County commissioners may designate county welfare board to carry law into effect.—In those counties having county welfare boards, the board of county commissioners may designate such welfare board, and it shall be the duty of such board, to make the investigation of all cases, and to pass upon all applications for aid; to pay the benefits authorized by this chapter; and the board of county commissioners is authorized, from the appropriation and tax levy authorized by this chapter, to disburse same to such welfare board for administration.

History.—s. 1, ch. 22716, 1945.

CHAPTER 416

DETENTION HOMES AND SCHOOLS FOR DELINQUENT CHILDREN

416.01 County commissioners authorized to establish; who may be placed in detention homes.—In all counties of this state the board of county commissioners may provide and maintain at public expense a detention room, or house of detention, separated or removed from any common jail or lockup, to be in charge of a matron or other person of good moral character, wherein all the delinquent children within the provisions of chapter 39, shall, when necessary, be detained. In all counties maintaining detention homes, no children guilty of minor offenses shall be committed to the Department of Health and Rehabilitative Services except it be deemed necessary after a trial term in said detention home. Such terms shall never be longer than 1 year. Children under 12 years of age shall not be committed to the department from any county unless after probation care it is found necessary.

History.—s. 1, ch. 6841, 1915; RGS 2344; CGL 3740; ss. 19, 35, ch. 69-106; s. 329, ch. 77-147.

416.02 Counties maintaining no detention home.—In all counties having a population of less than 10,000 and which do not unite with a city or other county or counties, as hereinafter provided, the children detained under this chapter may be transferred to some county maintaining a detention home and their maintenance shall be paid for from the general funds of the county in which the commitment is made; and commitment to the Department of Health and Rehabilitative Services by said last-named counties shall only be made when necessary as above set out.

History.—s. 1, ch. 6841, 1915; RGS 2345; CGL 3741; ss. 19, 35, ch. 69-106; s. 330, ch. 77-147.

416.03 Circuit Judge may parole.—The Circuit Judge exercising juvenile jurisdiction in any county maintaining a detention home may parole on good behavior any children committed to the detention home and return them to their homes on parole to a probation officer whether they be from his own or some other county. But he shall first give notice to, and confer with, the judge who made the commitment.

History.—s. 1, ch. 6841, 1915; RGS 2346; CGL 3742; s. 26, ch. 73-334.
cf.—Ch. 39 Proceedings relating to juveniles.

416.04 Literary and industrial training.—In any county which has a city of 10,000 population or over, as given by the last United States Census, a regular literary and industrial school training at the public expense shall be provided for by the board of county commissioners for the benefit of children who are detained in its detention home. In counties having no city of 10,000 or over and which do not unite with a city or other county or counties as hereinafter provided, the children committed shall be transferred as soon as possible after commitment to some county maintaining a literary and industrial school training in its detention home, and their maintenance shall be provided for from the general funds of the county in which the commitment is made.

History.—s. 2, ch. 6841, 1915; RGS 2347; CGL 3743.

416.05 Certain counties may unite in maintaining homes; board of trustees; provisos.—

(1) A county having a population of less than 10,000, or a population of 10,000 or over, but having no city of 10,000, according to the last United States Census, may unite with one, two, or three adjacent counties, or unite with a city within that county, in maintaining a detention home and industrial school.

(2) When the board of county commissioners and the city council, or the boards of county commissioners of the two, three, or four adjacent counties shall agree to unite, the legislative bodies of the several counties or of the city and county so uniting, shall elect a board of trustees for the joint detention home and school, to consist of five or seven members who shall be chosen from the membership of the boards of the counties so uniting, or from the membership of the board of the county and of the city council so uniting in the approximate proportion to the census, children between 6 and 17 years of age in the territories uniting.

(3) The members so appointed shall serve for the remainder of the term of office for which they were elected on their respective boards of commissioners or council, and when vacancies occur on said board of trustees of joint detention homes, they shall be filled by the board or council making the original appointment.

(4) All powers and duties by any section of this chapter conferred or imposed upon the boards of county commissioners are hereby conferred upon these boards of trustees for the support of a joint detention home; provided, however, that in estimating the expense for maintenance of a joint detention home, the amount of money needed for the payment of teachers' salaries and for the furnishing of school supplies, shall be included in the estimate of expenses; and provided further, that the estimate shall be transmitted to the boards of county commissioners, or to the boards of commissioners and the city council, of territory so uniting.

History.—s. 3, ch. 6841, 1915; RGS 2348; CGL 3744.

416.06 County commissioners authorized to acquire land for home; increase millage of taxation; superintendent; other employees.—The board of county commissioners of every county may accept as a gift, or may purchase, the land necessary for said detention home, and may increase the millage of taxation for the purpose of establishing and maintaining same. A detention home shall not be deemed to be, nor treated as a penal institution, but a home. The board of county commissioners must also provide for a suitable superintendent or matron, or both, to have charge of such detention home, and for such other employees as may be needed in the efficient management of such detention home and provide for the payment out of the general funds of the county for suitable salaries for such superintendent and matron and other employees as may be necessary; and the superintendent and matron and other needed employees shall be appointed by said board on the nomination of the county board of visitors hereinafter provided, and the approval of the Circuit Judge exercising juvenile jurisdiction. The superintendent, matron, and other needed employees shall be appointed on merit and may at any time be removed by the county board of visitors in its discretion, with the approval of the Circuit Judge, after charges have been duly preferred and hearings given.

History.—s. 4, ch. 6841, 1915; RGS 2349; CGL 3745; s. 9, ch. 65-420; s. 26, ch. 73-334.

416.07 County board of visitors; term of office.—The Circuit Court in and for each county of the state shall, by an order entered in the minutes of the court, appoint seven discreet citizens of good moral character, without regard to politics, three or more of whom shall be women, to be known as the county board of visitors, and shall fill all vacancies occurring in such committee. The court shall immediately notify each person appointed on said committee, and thereupon said persons shall appear before the Circuit Judge and qualify by taking oath, which shall be entered in said court record, to faithfully perform the duties of a member of said county board of visitors. The members of such visiting committee shall hold office for 4 years and until their successors are appointed and qualify, except that of those first appointed, one shall hold office for 1 year, two for 2 years, two for 3 years, and two for 4 years; the terms for which the respective members shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any visiting committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of 4 years; when any vacancy occurs for any other reason, the appointee shall hold office for the unexpired term of his predecessor.

History.—s. 5, ch. 6841, 1915; RGS 2350; CGL 3746; s. 26, ch. 73-334.

416.08 Duties of board of visitors; compensation.—

(1) The county board of visitors shall visit, without previous notice, not less than four times a year, all persons, institutions, societies, and associations, except state institutions receiving children under this chapter. Said visits shall be made by not less than two members of the board who shall go together, or shall make a joint report. Said board of visitors shall report to the Circuit Court from time to time the condition of children received by, or in the charge of, such persons, associations, or institutions and shall make an annual report in writing to the Circuit Judge and, on request, to the board of county commissioners, in such form as the court may prescribe, on the qualifications and management of such persons, associations, and institutions, and in such report may make such suggestions or comments as to them may seem fit. Such report shall be filed in the office of the Circuit Court prior to November 1.

(2) Such persons, associations or institutions shall make reports to said visiting board showing their condition, management and competency to adequately care for such children as may be committed to them, and such other facts as said board may require.

(3) The court shall in no case commit a child to any person, association or institution whose standing, conduct, or care of children is not satisfactory to the court.

(4) Said board of visitors shall also have the control and management of the internal affairs of any detention home or school established by the board of commissioners of their county, and the board of county commissioners shall provide for the proper equipment of the home and for the payment of such employees as may be needed in the efficient management of such detention home.

(5) Said committee shall serve without compensation, but shall be reimbursed for traveling expenses as provided in s. 112.061 by the board of county commissioners upon a written order for the amount of such expenses endorsed by the Circuit Judge.

History.—s. 5, ch. 6841, 1915; RGS 2351; CGL 3747; s. 19, ch. 63-400; s. 26, ch. 73-334.

CHAPTER 418

RECREATION

PART I PLAYGROUNDS AND RECREATION CENTERS (ss. 418.01-418.12)

PART II RECREATION DISTRICTS (ss. 418.20-418.26)

PART I

PLAYGROUNDS AND RECREATION CENTERS

418.01 Scope of chapter; definition.—This chapter shall apply to all cities, towns and counties of the state. The term "such municipality or county" as used in this chapter refers to and means any city, town or county of the state.

History.—s. 1, ch. 10100, 1925; CGL 3728.

418.02 Recreation centers; use and acquisition of land; equipment and maintenance.—The governing body of any such municipality or county may dedicate and set apart for use as playgrounds and recreation centers and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county and not dedicated or devoted to another or inconsistent public use; and such municipality or county, may, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the corporate limits of such municipality or county, for playgrounds, recreation centers and other recreational purposes and when the governing body of the municipality or county so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may, on its own initiative, provide for their conduct, equipment, and maintenance according to provisions of this chapter, by making an appropriation from the general municipal or county funds.

History.—s. 2, ch. 10100, 1925; CGL 3729.

418.03 Supervision.—The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers and other recreational activities and facilities in the school board, park board, or other existing body or in a playground and recreation board as the governing body may determine. Any board so designated shall have the power to maintain and equip playgrounds, recreation centers and the buildings thereon, and it may, for the purpose of carrying out the provisions of this chapter, employ play leaders, playground directors, supervisors, recreation superintendents or such other officers or employees as they deem proper.

History.—s. 3, ch. 10100, 1925; CGL 3730.

418.04 Playground and recreation board.—If the governing body of any such municipality or county shall determine that the power to provide, establish, conduct and maintain a recreation system as aforesaid shall be exercised by a playground and recreation board, such governing body shall, by resolution or ordinance, establish in such municipality or county a playground and recreation board which shall possess all the powers and be subject to all the responsibilities of local authorities under this chapter. Such board, when established, shall consist of five persons serving without pay, to be appointed by the mayor or presiding officer of such municipality or county. The term of office shall be for 5 years, or until their successors are appointed and qualified, except that the members of such board first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. Immediately after their appointment, they shall meet and organize by electing one of their members president and such other officers as may be necessary; vacancies in such boards occurring otherwise than by expiration of term shall be filled by the mayor or presiding officer of the governing body only for the unexpired term.

History.—s. 4, ch. 10100, 1925; CGL 3731.

418.05 Cooperation with other units and boards.—Any two or more municipalities or counties may jointly provide, establish, maintain and conduct a recreation system and acquire property for and establish and maintain playgrounds, recreation centers and other recreational facilities and activities. Any school board may join with any municipality in conducting and maintaining a recreation system.

History.—s. 5, ch. 10100, 1925; CGL 3732.

418.06 Gifts, grants, devises and bequests.—(1) A playground and recreation board or other authority in which is vested the power to provide, establish, maintain and conduct such supervised rec-

reation system may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for playgrounds or recreation purposes, but if the acceptance thereof for such purposes will subject such municipality or county to additional expense for improvement, maintenance or renewal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of such municipality or county.

(2) Money received for such purpose, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of such municipality or county to the account of the playground and recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out by such body in the same manner as money appropriated for recreation purposes.

History.—s. 6, ch. 10100, 1925; CGL 3733.

418.07 Issuance of bonds.—The governing body of such municipality or county may, pursuant to law and in conformity with the constitution of this state, provide that the bonds of such municipality or county may be issued in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for playgrounds, recreation centers and other recreational purposes and for the equipment thereof.

History.—s. 7, ch. 10100, 1925; CGL 3734.

418.08 Petition for referendum.—Whenever a petition signed by at least 5 percent of the qualified and registered electors in such municipality or county shall be filed with the governing body of such municipality or county, requesting the governing body of such municipality or county to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax for the conduct and maintenance thereof of not more than 1 mill on each dollar of assessed valuation of all taxable property within the corporate limits or boundaries of such municipality or county, the governing body of such municipality or county shall cause the question of the establishment, maintenance and conduct of such supervised recreation system to be submitted to the qualified electors who are freeholders, to be voted upon at the next general or special election of such municipality or county; provided, however, that such question shall not be voted upon at the next general or special election unless such petition shall have been filed at least 30 days prior to the date of such election.

History.—s. 8, ch. 10100, 1925; CGL 3735; s. 1, ch. 63-489.

418.09 Resolution or ordinance providing for recreation system.—Upon the adoption of such proposition by a majority of those voting on it at an election, the governing body of such municipality or county shall, by appropriate resolution or ordinance, provide for the establishment, maintenance and conduct of such supervised recreation system as they may deem advisable and practicable to provide and maintain out of the tax money thus voted. The said governing body may designate, by appropriate resolution or ordinance, the board or commission to be vested with the powers, duties and obligations necessary for the establishment, maintenance and conduct of such recreation system as provided for in this chapter.

History.—s. 9, ch. 10100, 1925; CGL 3736.

418.10 Tax levy.—The governing body of such municipality or county adopting the provisions of this chapter at an election and until revoked at an election by a majority of the qualified voters who are freeholders, shall thereafter annually levy and collect a tax of not less than the minimum nor more than the maximum amount set out in the said petition for such election, which tax shall be designated as the "playground and recreation tax" and shall be levied and collected in like manner as the general tax of such municipality or county.

History.—s. 10, ch. 10100, 1925; CGL 3737.

418.11 Payment of expenses and custody of funds.—The cost and expense of the establishment, maintenance and conduct of a supervised recreation system of playgrounds, recreation centers and other recreational facilities and activities shall be paid out of taxes or money received for this purpose, and the playground and recreation board or commission, or other authority in which is vested the power to provide, establish, conduct and maintain a supervised recreation system and facilities as aforesaid, shall have exclusive control of all moneys collected or donated to the credit of the playground and recreation fund.

History.—s. 11, ch. 10100, 1925; CGL 3738.

418.12 Duties and functions of Division of Recreation and Parks.—Among its functions, the Division of Recreation and Parks of the Department of Natural Resources shall:

(1) Study and appraise the recreation needs of the state and assemble and disseminate information relative to recreation;

(2) Provide consultation assistance to the Department of Community Affairs and to local governing units as to the promotion, organization, and administration of local recreation systems and as to the planning and design of local recreation areas and facilities;

(3) Assist in recruiting, training, and placing recreation personnel;

(4) Sponsor and promote recreation institutes, workshops, seminars, and conferences throughout the state;

(5) Cooperate with state and federal agencies, private organizations, and commercial and industrial interests in the promotion of a state recreation program; and

(6) Coordinate recreation functions and facilities of flood control and water management districts.

History.—s. 25, ch. 69-106.

PART II

RECREATION DISTRICTS

418.20 Creation of recreation districts authorized.—Each municipality and county in the state is authorized to create one or more recreation districts comprising the whole of or any part of the territory of said municipality and by counties only in the unincorporated areas of each county. Each such district shall be established by ordinance approved by a vote of the electors in the district in accordance with s. 165.041. Such ordinance, as it may from time to time be amended by the governing body of said municipality or county and approved by a vote of the electors in the district, shall constitute the charter of the recreation district. The electors residing in a proposed district may petition the governing body of the city or county to create a recreation district. If a majority of electors has signed the petition, no referendum shall be required to create the district.

History.—s. 1, ch. 78-237.

418.21 Governing body.—

(1) The governing body of a recreation district shall be determined by the municipality or county which created the district and shall be either:

(a) A five-member board of supervisors elected from the residents of the district, or

(b) The governing body of the municipality or county which created the district.

(2) If the governing body is a board of supervisors, the ordinance creating the district shall specify the date of the election and shall provide that each property owner or resident in the district shall have the right to vote. The ordinance may also provide for the staggering of terms of the supervisors. Members of the board of supervisors shall serve without compensation.

(3) If the governing body is the governing body of the municipality or county which created the district, that body may appoint a district advisory board to advise it on all matters relating to the district. Members of the advisory board shall serve without compensation.

History.—s. 4, ch. 78-237; s. 1, ch. 79-258.

418.22 Powers of recreation districts.—The charter of a recreation district may grant to the recreation district the following powers and all further or additional powers as the governing body of the municipality or county establishing said district may deem necessary or useful in order to exercise the powers for which provision is hereinafter made. The powers which may be granted by such charter include the following:

(1) To sue and be sued and to have a corporate seal.

(2) To contract and be contracted with.

(3) To acquire, purchase, construct, improve, and equip recreational facilities of all types, including real and personal property, within the boundaries of said district; such acquisition may be by purchase, lease, gift, or exercise of the power of eminent domain.

(4) To issue bonds, secured by ad valorem taxes or by pledge of both such taxes and other revenues of the district, if approved at a referendum held in said district, and to levy and collect ad valorem taxes, without limitation or with such limitation as may be imposed by charter, on all real property subject to city taxation within said district in order to pay the principal of and interest on said bonds as the same respectively fall due or to accumulate a sinking fund for the payment of principal and interest. The referendum required by this section may be held on the same day as any other referendum related to the district; provided that said bonds shall bear interest at a rate pursuant to s. 215.685 and be sold at public sale. In the event an offer of an issue of bonds at public sale produces no bid, or in the event all bids received are rejected, the district is authorized to negotiate for the sale of such bonds under such rates and terms as are acceptable; provided that no such bonds shall be sold or delivered on terms less favorable than the terms contained in any bids rejected at the public sale thereof or the terms contained in the notice of public sale if no bids were received at such public sale.

(5) To operate and maintain recreational facilities or to enter into arrangements with others for such operation and maintenance pursuant to contract, lease, or otherwise.

(6) To establish, charge, and collect fees for admission to or use of recreational facilities and to apply such fees to the operation, maintenance, improvement, enlargement, or acquisition of recreational facilities or to the payment of bonds or revenue bonds of the district.

(7) To issue revenue bonds payable solely from the revenues to be derived from recreational facilities owned or operated by such district if approved at a referendum held in said district; provided that said bonds shall bear interest at a rate pursuant to s. 215.685 and be sold at public sale. In the event an offer of an issue of bonds at public sale produces no bid, or in the event all bids received are rejected, the district is authorized to negotiate for the sale of such bonds under such rates and terms as are acceptable; provided that no such bonds shall be so sold or delivered on terms less favorable than the terms contained in any bids rejected at the public sale thereof or the terms contained in the notice of public sale if no bids were received at such public sale.

(8) To adopt and enforce rules for the use of the recreational facilities owned or operated by the district.

(9) To employ all personnel deemed necessary for the operation and maintenance of the facilities of the district.

History.—s. 2, ch. 78-237.

418.23 Limitation on power of districts.—The charter of any recreation district may contain such limitations and restrictions on any of the powers named in s. 418.22 as the governing body of the municipality or county may from time to time determine, but no such restriction shall result in impairing the ability of a district to carry out any contract

made by such district prior to the adoption of such restriction.

History.—s. 3, ch. 78-237.

418.24 Filing of ordinance.—Any ordinance creating or amending the charter of a recreation district, upon being finally adopted, shall be filed in the minutes of the governing body of the municipality or county, and certified copies thereof shall be filed with the county clerk of the county in which said district is located and with the property appraiser of said county. The charter of a recreation district may contain findings by the governing body of the municipality or county:

(1) That the creation of such district is the best alternative available for delivering recreational service.

(2) That such district is amenable to separate special district government.

(3) That all of the territory in the district will be benefited by proposed improvements to be made by said district.

If such charter contains any one or more such findings, each such finding may be reviewed by a court only as part of any review of the ordinance making such finding.

History.—s. 6, ch. 78-237.

418.25 Actions by aggrieved parties.—Any person feeling aggrieved by the adoption of an ordinance granting or amending the charter of a recreation district may bring, within the period hereinafter prescribed, an appropriate action in the circuit court of the state for that county in which the municipality is located for declaratory or injunctive relief on the grounds that the adoption of said ordinance or any part thereof was arbitrary, capricious, confiscatory, or violative of constitutional guarantees. Such action may be brought at any time during a period beginning immediately upon the adoption of said ordinance and ending no later than the earlier to occur of:

(1) One year from the date of adoption of said ordinance; or

(2) The date of judicial validation of the first bonds, tax bonds, or revenue bonds of said district to be authorized and validated after the adoption of the ordinance under chapter 75.

After the expiration of said period, no one shall have any right or cause of action to challenge such ordinance or the existence of any recreation district created thereby, whether such challenge be brought under this law or under any other law.

History.—s. 7, ch. 78-237.

418.26 Assessment records.—The assessment records for the municipality or county in which a recreation district is located shall be the official assessment records for any recreation district created pursuant to this act. The official charged with keeping said assessment records shall, at the request of the governing body of any recreation district, provide an assessment roll for any such district showing the assessed valuation of taxable property in said district. Unless otherwise provided by the charter of a recreation district, the official who collects taxes in the municipality or county shall be the tax collector of said district. Taxes of any such district shall be payable at the same time as, and shall be secured by a lien on taxable property the same as, municipal or county taxes. Enforcement of any such tax lien shall be in the same manner and by the same officials as enforcement of liens for municipal or county taxes.

History.—s. 5, ch. 78-237.

CHAPTER 420

FLORIDA HOUSING ACT

PART I GENERAL PROVISIONS (ss. 420.001-420.011)

PART II HOUSING DEVELOPMENT CORPORATION OF FLORIDA (ss. 420.101-420.171)

PART III HOUSING LAND ACQUISITION AND SITE DEVELOPMENT (ss. 420.20-420.211)

PART IV FARMWORKER HOUSING ASSISTANCE (ss. 420.40-420.413)

PART V NEIGHBORHOOD HOUSING REHABILITATION PROGRAMS (ss. 420.421-420.429)

PART I

GENERAL PROVISIONS

420.001 Short title.—This chapter shall be known, and may be cited as, the "Florida Housing Act of 1972."

History.—s. 1, ch. 72-172.

420.005 Requirements for Governor's reports.—

(1)(a) Not later than February 1, 1973, the Governor shall make a report to the Legislature setting forth a plan, to be carried out over a period of 12 years (June 30, 1973, to June 30, 1985), for the elimination of all substandard housing and the realization of the goal referred to in this chapter. Such plan shall:

1. Indicate the number of new or rehabilitated housing units which it is anticipated will have to be provided, with or without federal and state government assistance, during each fiscal year of the 12-year period in order to achieve the objectives of the plan, showing the number of such units which it is anticipated will have to be provided under each of the various federal and state programs designed to assist in the provision of housing.

2. Indicate the reduction in the number of occupied substandard housing units which it is anticipated will have to occur during each fiscal year of the 12-year period in order to achieve the objectives of the plan.

3. Provide an estimate of the cost of carrying out the plan for each of the various federal and state programs and for each fiscal year during the 12-year period.

4. Make recommendations with respect to the legislative and administrative actions necessary or desirable to achieve the objectives of the plan.

5. Provide such other pertinent data, estimates, and recommendations as the Governor deems advisable.

(b) Such report shall, in addition, contain a projection of the residential mortgage market needs and prospects during the coming year, including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds, particularly for low and moderate income families, during such year, together with such recommendations as may be deemed appropriate for encouraging the availability of such funds.

(2) On November 15, 1973, and on each succeeding year through 1986, the Governor shall submit to the Legislature a report which shall:

(a) Compare the results achieved during the preceding fiscal year for the completion of new or rehabilitated housing units and the reduction in occupied substandard housing with the objectives established for such year under the plan.

(b) If the comparison provided under paragraph (a) shows a failure to achieve the objectives set for such year, indicate:

1. The reasons for such failure;

2. The steps being taken to achieve the objectives of the plan during each of the remaining fiscal years of the 12-year period; and

3. Any necessary revision in the objectives established under the plan for each such year.

(c) Project residential mortgage market needs and prospects for the coming calendar year including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds, particularly for low and moderate income families, during such period, in order to achieve the objectives of the plan.

(d) Make recommendations with respect to any additional legislative or administrative action which is necessary or desirable to achieve the objectives of the plan.

(e) Provide such other pertinent data, estimates, and recommendations as the Governor deems advisable.

[1](3) To advise and assist in the development of the statistics, analyses, and recommendations required by this section, the Governor shall appoint an advisory committee consisting of housing experts, participants in the various phases of the housing process, and such other members as are deemed appropriate to the purposes of this section.

History.—s. 1, ch. 72-172; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

420.011 Definitions.—As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(1) "Consumer housing cooperative" means a corporation incorporated pursuant to the provisions of the Florida General Corporation Law.

(2) "Limited dividend housing corporation" means a limited dividend housing corporation incorporated or qualified pursuant to the provisions of the State Housing Law.

(3) "Limited dividend housing association" means a limited dividend housing association, including general or limited partnerships, joint ventures, or trusts organized or qualified pursuant to the laws of this state.

(4) "Nonprofit housing corporation" means a nonprofit housing corporation incorporated pursuant to the provisions of Florida law relating to corporations not for profit.

(5) "Lending institution" means a mortgage lender, including any bank or trust company, savings bank, national banking association, state or federal savings and loan association, or building and loan association maintaining an office in this state or any insurance company authorized to transact business in this state or a corporation composed of such institutions.

(6) "Financial institution" means any banking corporation or trust company, savings and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(7) "Corporation," as used in part II, means the Florida Housing Development Corporation created pursuant to part II.

(8) "Stockholder" means any financial institution authorized to do business within this state which shall undertake to lend money to the corporation created pursuant to part II, upon its call, and in accordance with the provisions of this chapter.

(9) "Board of directors" means the board of directors of the corporation created pursuant to part II of this chapter.

(10) "Secured loan" means a loan secured by a mortgage or a security interest in a project.

(11) "Project" means a specific work or improvement, including land, buildings, improvements, real and personal property, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved with the financial assistance of the agency, including the construction of low and moderate income housing facilities and facilities incident or appurtenant thereto, such as streets, sewers, utilities, parks, site preparation, landscaping, and such other administrative, community, and recreational facilities as the agency determines to be necessary, convenient, or desirable appurtenances.

(12) "Development costs" means the costs which have been approved by the agency as appropriate expenditures, including but not limited to:

(a) Legal, organizational, marketing, and administrative expenses;

(b) Payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work;

(c) Expenses for surveys as to need and market analyses;

(d) Necessary application and other fees to federal and other government agencies; and

(e) Such other expenses as the agency may deem appropriate to effectuate the purposes of this chapter.

(13) "Surplus," as used in this chapter, shall not be deemed to include any increase in net worth of any limited dividend housing corporation or limited dividend housing association organized in accordance with the provisions of law by amortization or similar payments, or by reason of the sale or disposition of any assets of a limited dividend housing corporation or limited dividend housing association, to the extent such surplus can be attributed to any increase in market value of any real property or tangible personal property accruing during the period the assets were owned and held by the limited dividend housing corporation or limited dividend housing association.

(14) "Low income or moderate income persons" means families and persons who cannot afford, as defined by federal law, to pay the amounts at which private enterprise is providing a substantial supply of decent, safe, and sanitary housing and fall within income limitations set by the agency in its rules.

(15) "Real property" means lands, structures, franchises, and interests in land, including lands under water and riparian rights, space and air rights, and any and all other interests and rights usually included within said term. Real property shall also mean and include any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

(16) "State" means the State of Florida.

History.—s. 1, ch. 72-172; s. 1, ch. 76-249; s. 4, ch. 76-249; s. 1, ch. 77-174.

PART II

HOUSING DEVELOPMENT CORPORATION OF FLORIDA

ida; tax privileges and fiscal year.

420.101 Housing Development Corporation of Florida; creation, membership and purposes.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create a housing development corporation under the provisions of this part for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(a) The name of the corporation, which shall include the words "Housing Development Corporation of Florida."

(b) The location of the principal office of the corporation. The corporation may have offices in such other places within the state as may be fixed by the board of directors.

(c) The purposes for which the corporation is founded, which shall be:

1. To mobilize capital;

2. To finance new or rehabilitated housing for persons of low or moderate income in the state;

3. To find new methods of providing subsidies for housing;

4. To encourage and assist, through loans, including loans at below market interest rates, investments, or other business transactions, in the elimination of substandard housing in this state;

5. To rehabilitate and assist existing housing, and so to stimulate and assist in the expansion of all kinds of housing activity which will tend to promote the development of new or rehabilitated housing and improve the standard of living of the low and moderate income citizens of this state;

6. To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of housing developments in this state; and

7. To provide financing for the construction of all kinds of housing activity in this state for low and moderate income citizens.

(d) The names and post-office addresses of the members of the first board of directors. The board of directors shall be elected by and from the stockholders of the corporation and consist of 21 members. However, five of such members shall consist of the following persons, who shall be nonvoting members: the secretary of the Department of Community Affairs or his designee; the head of the Department of Banking and Finance or his designee; the head of the Department of Insurance or his designee; one state senator appointed by the President of the Senate; and one representative appointed by the Speaker of the House of Representatives.

(e) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, stockholders, or any class of the stockholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.

(f) The amount of the authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business; if there is more than one class of stock, a description of the different classes; and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business, which shall not be less than $100,000. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(2) The articles of incorporation shall be in writing, subscribed by not less than nine natural persons competent to contract, acknowledged by each of the subscribers before an officer authorized to take acknowledgments, and filed with the Department of State for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(3) The articles of incorporation shall recite that the corporation is organized under the provisions of this chapter. The Department of State shall not approve articles of incorporation for a corporation organized under this part until a total of at least 15 national banks, federal savings and loan associations, state banks, savings banks, industrial savings banks, domestic building and loan associations, insurance companies authorized to do business within this state, or any combination thereof have agreed in writing to become stockholders of said corporation. Said written agreement shall be filed with the Department of State with the articles of incorporation, and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the Department of State.

(4) Whenever the articles of incorporation shall have been filed in the Department of State and approved by it and all filing fees and taxes prescribed by chapter 607 have been paid, the subscribers and their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.

History.—s. 1, ch. 72-172; s. 4, ch. 79-9; s. 8, ch. 79-176.

420.111 Housing Development Corporation of Florida; additional powers.—In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by chapter 607, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint, and employ officers, agents and employees and to make contracts and incur liabilities for any of the purposes of the corporation, except that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association, or trust, or in any other manner.

(2) To borrow money from its stockholders, other

financial institutions, and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of debentures, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder approval.

(3) To make loans to any person, firm, corporation, joint-stock company, association, or trust and to regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith, provided subsidies may be in the form of below market interest rates or such other assistance as determined by the board with the concurrence of the applicable regulatory agencies governing the several stockholder industries.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) For the purposes of foreclosure, to acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing new housing or rehabilitation thereof; for the purposes of disposing of such real estate to others for the construction of housing or rehabilitation thereof; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of such housing, provided, however that nothing herein contained shall authorize the acquisition, construction, reconstruction, or operation of any public lodging establishment as defined in chapter 509.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association, or trust, and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (4), (5), or (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with, and avail itself of the facilities of, the United States Department of Housing and Urban Development, the State Department of Community Affairs, and any other similar local, state, or Federal Government agency; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state on the promotion, assistance and development of the housing and economic welfare of such communities or of this state or any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this part.

History.—s. 1, ch. 72-172; s. 5, ch. 79-9; s. 9, ch. 79-176.

420.112 Authorization for certain relationships.—Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All persons, including all domestic corporations organized for the purpose of carrying on business within this state, and further including without implied limitation public utility companies and foreign corporations licensed to do business within this state, all financial institutions as defined herein, and all trusts, are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by the corporation, all without the approval of any regulatory authority of the state except as otherwise provided in this part.

(2) All financial institutions are authorized to become stockholders of the corporation and to make loans to the corporation as provided herein.

(3) Each financial institution which becomes a stockholder of the corporation is hereby authorized, as an owner of capital stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as provided herein.

(4) The amount of capital stock of the corporation which any stockholder is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such stockholder may otherwise be authorized to acquire.

History.—s. 1, ch. 72-172.

420.123 Stockholders; loan requirement.—

(1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member stockholder of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(a) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(b) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed 20 times the amount then paid in on the outstanding capital stock of the corporation.

(c) The total amount outstanding on loans to the

corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

1. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned.

2. The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership or, in the case of an insurance company, its last annual statement to the Department of Insurance: 5 percent of the capital and surplus of commercial banks and trust companies; 5 percent of the total outstanding loans made by savings and loan associations and building and loan associations; 5 percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; 5 percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-fifth of 1 percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(2) Subject to subsection (1)(c)1., each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(3) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate determined by the board of directors.

History.—s. 1, ch. 72-172; s. 10, ch. 79-176.

420.124 Stockholders; powers.—The stockholders of the corporation shall have the following powers of the corporation:

(1) To make, amend, and repeal bylaws.

(2) To amend the charter as provided in s. 420.131.

(3) To dissolve the corporation as provided in s. 420.161.

(4) To do all things necessary or desirable to secure aid, assistance, loans, and other financing from any financial institution and from any similar government agency.

(5) To exercise such other of the powers of the corporation consistent with this chapter as may be conferred on the stockholders by the bylaws. As to all matters requiring action by the stockholders of the corporation, said stockholders shall vote separately thereon, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled. Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him.

History.—s. 1, ch. 72-172.

420.131 Articles of incorporation; method of amending.—

(1) The articles of incorporation may be amended by the vote of the stockholders of the corporation, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled. However, no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which eliminates or curtails the right of the Department of Banking and Finance to examine the corporation or the obligation of the corporation to make reports as provided in s. 420.141(2) shall be made.

(2) Within 30 days after any meeting at which an amendment to the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors setting forth such amendment and due adoption thereof shall be submitted to the Department of State, which shall examine them and if it finds that they conform to the requirements of this part, shall so certify and endorse its approval thereon.

(3) The articles of amendment shall be filed in the office of the Department of State, and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

History.—s. 1, ch. 72-172.

420.141 Housing Development Corporation of Florida; deposits and examination.—

(1) The corporation shall not deposit any of its funds in any financial institution unless such institution has been designated as a depository by the vote of the majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

(2) The corporation shall be examined at least once annually by the Department of Banking and Finance and shall make reports of its condition not less than annually to said department, and more frequently upon call of the department, which in turn shall make copies of such reports available to the Department of Insurance and the governor; and the corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance and the Department of State. The Department of Banking and Finance shall exercise the same power and authority over the corporation organized pursuant to this part as is now exercised over banks and trust companies by the provisions of the Florida Banking Code, when such banking code is not in conflict with this chapter.

History.—s. 1, ch. 72-172.

420.151 Housing Development Corporation of Florida; first meeting.—

(1) The first meeting of the corporation shall be called by a notice signed by three or more of the

incorporators stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least 5 days before the day appointed for the meeting. The first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business.

History.—s. 1, ch. 72-172.

420.161 Housing Development Corporation of Florida; period of existence; method of dissolution.—

(1) The period of duration of the corporation shall be perpetual, subject, however, to the right of the stockholders and the members to dissolve the corporation as provided in subsection (2).

(2) The corporation may, upon the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled, dissolve said corporation as provided by chapter 607, insofar as chapter 607 is not in conflict with the provisions of this act. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.—s. 1, ch. 72-172; s. 149, ch. 77-104.

420.171 Housing Development Corporation of Florida; tax privileges and fiscal year.—

(1) Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, and trust companies by the general laws of the state are granted to the corporation organized pursuant to this chapter.

(2) The corporation organized under this chapter shall adopt the calendar year as its fiscal year.

History.—s. 1, ch. 72-172.

PART III

HOUSING LAND ACQUISITION AND SITE DEVELOPMENT

420.20 Short title.—This part shall be known as the "Florida Housing Land Acquisition and Site Development Act of 1979."

History.—s. 1, ch. 74-168; s. 1, ch. 79-176.

420.201 Finding and declaration of necessity.—It is hereby declared that:

(1) It is the policy of this state to realize, through cooperation with the private sector and federal and local governments, as soon as feasible, the goal of decent, safe, and sanitary housing and a suitable living environment for all citizens of Florida at a price they can afford.

(2) There exists within this state a serious shortage of safe and sanitary residential housing at prices or rentals which persons and families of low and moderate income can afford. This shortage has contributed, and will contribute, to the creation and persistence of substandard living conditions which are detrimental to the health, welfare, and prosperity of the residents of this state.

(3) The solution to Florida's housing problem lies in sustained, measured efforts. The problem transcends the capability of a single jurisdiction or entity, public or private, to achieve a solution.

(4) Proportionately, the largest housing problem found in the state is in the rural areas. A rural home is more likely to be overcrowded, to lack plumbing, to be older, and to be valued less than an urban house.

(5) To the extent that the lack of suitable, affordable, improved building sites for housing continues to exist, the problem of delivery of housing in the state is further compounded.

(6) Assistance in the provision of safe and sanitary dwelling accommodations, as well as the acquisition and development of land for the creation of a suitable living environment for persons and families of low or moderate income, are exclusively public purposes and uses for which public moneys may be borrowed, expended, advanced, or loaned. Such activities serve a public purpose in improving or otherwise benefiting the people of this state.

(7) The necessity of enacting the provisions hereinafter set forth is in the public interest and is so declared as a matter of express legislative determination.

History.—s. 2, ch. 74-168; s. 2, ch. 79-176.

420.202 Definitions.—For the purpose of this part, the following terms, unless the context indicates otherwise, shall have the meaning ascribed to them in this section:

(1) "Department" means the Department of Community Affairs.

(2) "Eligible borrower," "eligible loan applicant," or "loan recipient" means a county commission; a municipal council, or commission or agency thereof; a housing authority as provided by chapter 421; or the governing body of a federally recognized tribe of Indians, including, but not limited to, those enumerated in chapter 285.

(3) "Eligible sponsor" or "eligible developer" means any person, firm, corporation, municipality, or federal, state, or local agency eligible to sponsor or develop housing for persons of low or moderate income under any housing program of the federal, state, or local governments.

(4) "Fund" means the Revolving Land Acquisition and Site Development Trust Fund.

(5) "Persons of low or moderate income" means persons or families who lack the amount of income which is necessary, as determined by federal law, to enable them, without financial assistance, to live, without overcrowding, in decent, safe, and sanitary dwellings.

(6) "Secretary" means the Secretary of Community Affairs.

History.—s. 3, ch. 74-168; ss. 3, 12, ch. 79-176.

420.203 Revolving Land Acquisition and Site Development Trust Fund established.—There is established in the State Treasury a separate revolving trust fund to be called "the Revolving Land Acquisition and Site Development Trust Fund." There shall be deposited into the fund all moneys appropriated by the Legislature or moneys received from any other source for the purpose of this part and all proceeds derived from the use of such moneys; however, interest earned on loans made from the fund as well as income earned by the fund invested pursuant to s. 215.49 shall revert to the Revolving Land Acquisition and Site Development Trust Fund and shall be used by the department to cover administrative and personnel costs incurred in implementing the provisions of this part. Any interest earned on loans or income from the invested fund not required for the administration or implementation of this part shall revert to the Revolving Land Acquisition and Site Development Trust Fund.

History.—ss. 4, 5, ch. 74-168; s. 4, ch. 79-176.

420.204 Loans authorized; purposes.—

(1) The secretary is authorized to make loans to eligible borrowers for the acquisition and development of suitable sites for housing for persons of low or moderate income in areas of the state when he determines that:

(a) A need for such housing exists as demonstrated by an approved feasibility letter from the appropriate agency.

(b) Federal, state, or local assistance funds are available or are likely to be available to aid in the construction, maintenance, or support of low or moderate income housing on such sites if developed.

(c) Funding for land acquisition and site development is not readily available in the area from private sources.

(2) Loan recipients shall use moneys borrowed from the fund to purchase or contract to purchase from any person, firm, corporation, municipality, county, or federal or state agency real property and provide for such improvements to the real property that the loan recipient and the secretary determine are reasonably necessary for development of housing and housing-related facilities for persons of low or moderate income. The secretary may authorize a loan for the site upon which the housing is to be situated and sites designated for other uses that are deemed to be necessary to such housing, as defined by the rules and regulations.

(3) Such real property or any portion thereof purchased and developed under this part shall be made available to an eligible developer or sponsor for the purpose of construction of housing for persons of low or moderate income, or directly to a qualified low or moderate income family, at such price and upon such terms as are consistent with the loan agreement. The loan recipient shall, by public notice through publication in a newspaper having a general circulation in the community at least 30 days prior to the execution of any contract for the sale of such real property, invite proposals from, and make available all pertinent information to, eligible developers or any persons interested in undertaking to develop housing on such real property or any portion thereof. The loan recipient shall consider all such development proposals and other relevant factors, including, but not limited to, financial and legal factors and the construction and development capability of the persons making such proposals to carry them out. Such real property or any portion may be disposed of by the loan recipient, and in turn by the eligible developer, at a price not to exceed the actual prorated land costs, development costs, accrued taxes, and interest.

History.—s. 6, ch. 74-168; s. 1, ch. 77-174; s. 5, ch. 79-176.
cf.—s. 420.211 Expiration of lending authority.

420.205 Terms of loan agreements.—

(1) In addition to any terms or conditions which the secretary may require, each loan agreement shall include:

(a) Provision for interest, which shall be set at 3 percent per annum.

(b) Provision for a schedule for the repayment of principal and interest upon terms not to exceed 3 years. However, the secretary, upon review after the expiration of no less than 18 months of the original term, is authorized to extend the terms of a loan for an additional period not to exceed 2 years.

(c) Provisions for reasonable security for the loan to insure the repayment of the principal and any interest accrued within the term specified. Reasonable security shall be a promissory note secured by:

1. A mortgage from the eligible borrower on the property to be improved or to be purchased and improved from the proceeds of the loan.

2. Other forms of collateral acceptable to the secretary.

(d) Provisions to insure that the land acquired shall be utilized for the development of housing and related services for persons of low or moderate income.

(e) Provisions to insure, to the extent possible, that any accrued savings in cost due to the availability of these funds shall be passed on to persons of low or moderate income in the form of lower prices or rents for dwellings constructed on such land.

(f) Provision that no land acquired through assistance under this part shall be disposed of or alienated in any way except for the provision of housing for persons of low and moderate income in a manner that in no way violates Title VIII of the 1968 Civil Rights Act, which specifically prohibits discrimination based on race, color, religion, or national origin

in the sale of vacant land to be used for residential purposes.

(2) No single loan made under this section shall exceed the lesser of:

(a) The development and acquisition costs, as determined by rule of the secretary; or

(b) Four hundred thousand dollars,

unless it is determined by the secretary that any excess amount will be recovered through assured refunds before the maturity of the loan from sources such as the United States Housing and Urban Development Block Grant, Farmers Home Administration loan programs, or utility companies and be used for pertinent facilities financed with the loan.

History.—s. 7, ch. 74-168; s. 1, ch. 77-174; s. 6, ch. 79-176.
cf.—s. 420.211 Expiration of lending authority.

420.206 Rules and regulations; annual report.—The secretary is authorized to promulgate rules and regulations, on or before February 1, 1975, necessary to establish terms and conditions that will insure that the purposes of this part are carried out and the state's interests are adequately protected. The secretary shall submit to the Governor by June 30 an annual report with complete details of the amount loaned, interest earned, loan recipients, persons housed, and the balances on all loans outstanding at the end of each fiscal year.

History.—s. 8, ch. 74-168.
cf.—s. 420.211 Expiration of lending authority.

420.207 Default by borrower; power of the secretary.—In the event of default on a loan, the secretary is empowered on behalf of the state to foreclose on any mortgage or security interest or commence any legal action to protect the interest of the state and recover the amount of the unpaid principal, accrued interest, and fees on behalf of the fund.

History.—s. 9, ch. 74-168; s. 11, ch. 79-176.
cf.—s. 420.211 Expiration of lending authority.

420.208 Failure or inability of the eligible borrower to cause housing to be developed on land purchased; recourse.—The secretary is authorized to take appropriate legal action to transfer title of the land to the state when:

(1) A loan recipient does not cause the land to be developed for housing for persons and families of low or moderate income within 3 years from the execution of the loan agreement, unless the secretary has extended the term of the loan.

(2) It is jointly determined by the secretary and the loan recipient that, because of a change in the characteristics of the parcel acquired or because of a change in federal, state, or local programs, it is impossible for the land to be developed for housing for persons of low or moderate income.

All land so acquired shall be administered by the secretary in accordance with s. 420.209.

History.—s. 10, ch. 74-168.
cf.—s. 420.211 Expiration of lending authority.

420.209 Disposition of property accruing to the state.—When, because of the effects of this part, title to lands is acquired by the state to be administered by the secretary, the following provisions shall apply:

(1) Subject to the approval of the Board of Trustees of the Internal Improvement Trust Fund, and pursuant to rules and regulations promulgated by the secretary and approved by such trustees, the secretary is empowered to make land so acquired available to eligible sponsors for the provision of housing for persons of low or moderate income, and, in such cases, the conveyance and reconveyance procedures for state lands as provided in chapters 253 and 270 shall not apply.

(2) When the secretary determines that it is not possible for the land to be developed for housing for persons of low or moderate income, the land shall be sold in accordance with the conveyance and reconveyance procedures for state lands as provided in chapters 253 and 270, with all net proceeds to be deposited to the fund.

History.—s. 11, ch. 74-168.

420.210 Lands; subject to taxation.—Lands purchased under this part shall not be exempted from ad valorem taxation while title is held by the loan recipient. Such taxes shall accrue and be capitalized as part of the total development costs.

History.—s. 12, ch. 74-168.

420.211 Expiration of lending authority.—The lending authority granted to the secretary under this part shall expire June 30, 1985. All unencumbered and repaid funds after this date shall revert and be transferred to the General Revenue Fund of the state, unallocated. Loan repayments received in the fund after June 30, 1985, shall revert and be transferred to the General Revenue Fund, unallocated, as they are received.

History.—s. 14, ch. 74-168; s. 7, ch. 79-176.

PART IV

FARMWORKER HOUSING ASSISTANCE

[1]**420.40 Short title.**—This part shall be known as the "Farmworker Housing Assistance Act."

History.—ss. 1, 5, ch. 79-220.
[1]Note.—Expires July 1, 1984.

[1]420.401 Finding and declaration of necessity.—In addition to the findings and declarations in ss. 420.201, 421.02, 422.02, 423.01, and 424.02, which are hereby reaffirmed, it is hereby found and declared by the Legislature that:

(1) There continues to exist a serious shortage of safe, decent, and sanitary dwelling accommodations for farmworkers in many parts of the state.

(2) Existing private, local, state, and federal resources have not been adequate to remedy this shortage.

(3) The provision of farmworker housing assistance grants is necessary to make full and complete utilization of currently available resources for farmworker housing.

(4) The provision of farmworker housing assistance grants to local public bodies and nonprofit organizations for farmworker housing centers is exclusively for essential public and governmental purposes for which public money may be spent, and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of express legislative determination.

History.—ss. 1, 5, ch. 79-220.
[1]Note.—Expires July 1, 1984.

[1]420.402 Purpose.—The purpose of this part is:

(1) To provide for financial and technical assistance to public bodies and nonprofit groups who will provide for the sponsorship of farmworker housing, financed by agencies of the Federal Government, in areas of the state where the need for such housing clearly exists.

(2) To develop and enhance maximum flexibility in the use of federal assistance and funds in the provision of housing for this segment of Florida's population.

(3) To provide this state and its local governments a greater ability to define the housing needs, set priorities, and design housing centers for its citizens that respond directly to local farmworker housing conditions.

(4) To create a Farmworker Housing Assistance Trust Fund to be used by nonprofit and public bodies that sponsor farmworker housing.

History.—ss. 1, 5, ch. 79-220.
[1]Note.—Expires July 1, 1984.

[1]420.403 Definitions.—For the purpose of this part, unless the context indicates otherwise:

(1) "Application" means a written request for a farmworker housing assistance grant to sponsor farmworker housing.

(2) "Farmworker housing assistance grant" means grant assistance by the state, from funds appropriated by this part, to local public bodies or nonprofit organizations which seek to sponsor farmworker housing centers, such funds to be expended only for the purposes authorized in s. 420.405.

(3) "Local public body" means any local or regional housing agency identified by a local governing body as its agent to deal with the provision of housing for low and moderate income persons within its jurisdiction and includes, without limitation, a housing authority created pursuant to chapter 421 and a unit of local government.

(4) "Nonprofit organization" means any group incorporated under chapter 617 to provide housing and other services on a not-for-profit basis, and which is acceptable to federal and state lending agencies as a sponsor of farmworker housing.

(5) [2]"Department" means the Department of Community Affairs.

(6) "Fund" means the Farmworker Housing Assistance Trust Fund.

(7) [2]"Secretary" means the Secretary of Community Affairs.

(8) "Sponsor" means a local public body or nonprofit organization which makes application for a farmworker housing assistance grant.

(9) "Farmworker housing" includes dwelling units, structures, and facilities that are deemed necessary to such housing.

(10) "Farmworker" shall be commensurate with the definition used by the lending agency. In the absence of a definition by the lending agency, "farmworker" means any person employed in the harvesting of agricultural crops who derives at least 50 percent of his income from such employment.

History.—ss. 1, 5, ch. 79-220.
[1]Note.—Expires July 1, 1984.
[2]Note.—Section 3, ch. 79-220, provides that in the event of reorganization in which the Bureau of Migrant Labor is transferred to the Office of the Governor, the functions provided by ch. 79-220 shall be transferred with the bureau, and powers and duties delegated by ch. 79-220 to the Secretary of Community Affairs shall be reposed in the Office of the Governor. Section 4, ch. 79-190, provides that all powers, duties, functions, records, property, and funds of the migrant labor section of the Department of Community Affairs are transferred to the Executive Office of the Governor.

[1]420.404 Farmworker Housing Assistance Trust Fund.—

(1) There is established in the State Treasury a separate trust fund to be named the "Farmworker Housing Assistance Trust Fund." There shall be deposited into the fund the moneys specified in s. 2 of chapter 79-220, Laws of Florida. Income earned by the fund invested pursuant to s. 215.49 shall be deposited in the General Revenue Fund of the state unallocated. The fund shall be administered by the [2]department according to the provisions of this part and with moneys appropriated by s. 2 of chapter 79-220, Laws of Florida, for that purpose.

(2) All funds in the Farmworker Housing Assistance Trust Fund on June 30, 1984, shall revert and be transferred to the General Revenue Fund unallocated.

History.—ss. 1, 4, 5, ch. 79-220.
[1]Note.—Expires July 1, 1984.
[2]Note.—Section 3, ch. 79-220, provides that in the event of reorganization in which the Bureau of Migrant Labor is transferred to the Office of the Governor, the functions provided by ch. 79-220 shall be transferred with the bureau, and powers and duties delegated by ch. 79-220 to the Secretary of Community Affairs shall be reposed in the Office of the Governor. Section 4, ch. 79-190, provides that all powers, duties, functions, records, property, and funds of the migrant labor section of the Department of Community Affairs are transferred to the Executive Office of the Governor.

[1]420.405 Grants authorized; activities eligible for support.—

(1) The [2]secretary is authorized to make grants from the fund to eligible local public bodies and nonprofit organizations when the [2]secretary determines that:

(a) A need for farmworker housing exists in the area described in the application.

(b) Federal, state, or local assistance funds are available or are likely to be available to aid in the site acquisition, construction, maintenance, or sup-

port of the farmworker housing described in the application.

(c) Funds from other sources are not readily available.

(d) When an application is from a nonprofit organization, the governing board of which consists of not less than one-third farmworker representation.

(2) Activities of sponsors which are eligible for farmworker housing assistance grants include, but are not limited to:

(a) Loan and grant packaging activities required to initiate a farmworker housing center or rehabilitate an existing farmworker housing center, including, but not limited to, administrative, engineering, and legal requirements of the program sponsor and the lending institutions.

(b) Provision of earnest money for site acquisition.

(c) Initiation of a management component to make the farmworker housing center self-sustaining.

(d) Initiation of a counseling component for residents of the farmworker housing center.

(3) The grant authority of the [2]secretary under this part shall expire June 30, 1984.

History.—ss. 1, 4, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.
[2]**Note.**—Section 3, ch. 79-220, provides that in the event of reorganization in which the Bureau of Migrant Labor is transferred to the Office of the Governor, the functions provided by ch. 79-220 shall be transferred with the bureau, and powers and duties delegated by ch. 79-220 to the Secretary of Community Affairs shall be reposed in the Office of the Governor. Section 4, ch. 79-190, provides that all powers, duties, functions, records, property, and funds of the migrant labor section of the Department of Community Affairs are transferred to the Executive Office of the Governor.

[1]420.406 Application procedure.—

(1) Applications shall be submitted to the [2]Bureau of Migrant Labor in a form established by rule of the [2]department. To be considered, an application must meet the requirements of s. 420.405(1) and:

(a) Indicate that the sponsor meets all requirements of local, state, and federal lending agencies relative to its eligibility as a sponsor of farmworker housing.

(b) Be accompanied by a resolution of the governing board of the sponsor authorizing the application.

(c) Contain such other information or material required by the rules of the [2]department.

(2) The [2]Bureau of Migrant Labor shall review applications and make recommendations to the [2]secretary relative to granting or denying the application. A recommendation to grant an application shall be accompanied by a recommended amount of the grant and necessary further conditions or requirements.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.
[2]**Note.**—Section 3, ch. 79-220, provides that in the event of reorganization in which the Bureau of Migrant Labor is transferred to the Office of the Governor, the functions provided by ch. 79-220 shall be transferred with the bureau, and powers and duties delegated by ch. 79-220 to the Secretary of Community Affairs shall be reposed in the Office of the Governor. Section 4, ch. 79-190, provides that all powers, duties, functions, records, property, and funds of the migrant labor section of the Department of Community Affairs are transferred to the Executive Office of the Governor.

[1]420.407 Rules of the [2]department; annual reports.—

(1) The [2]secretary is authorized to adopt rules necessary to implement this part and to further specify the purposes for which grant funds may be expended, the required content of applications, application procedures, and reporting requirements for sponsors awarded grants under this part.

(2) The [2]secretary shall submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate by June 30 an annual report summarizing grants made, loan commitments received by sponsors, and projects initiated and completed.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.
[2]**Note.**—Section 3, ch. 79-220, provides that in the event of reorganization in which the Bureau of Migrant Labor is transferred to the Office of the Governor, the functions provided by ch. 79-220 shall be transferred with the bureau, and powers and duties delegated by ch. 79-220 to the Secretary of Community Affairs shall be reposed in the Office of the Governor. Section 4, ch. 79-190, provides that all powers, duties, functions, records, property, and funds of the migrant labor section of the Department of Community Affairs are transferred to the Executive Office of the Governor.

[1]420.408 Application of Florida Residential Landlord and Tenant Act.—Tenants residing in any housing constructed under this part shall be subject to the provisions of part II of chapter 83, the Florida Residential Landlord and Tenant Act, provided that there shall be no eviction except for good cause shown.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.

[1]420.409 Right to receive visitors.—The right of residents living in facilities constructed under this part to receive visitors of their choice shall not be abridged.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.

[1]420.411 Administration.—The administration of this part shall be commensurate with the cooperation agreement between the Governor of the State of Florida and the Government of the United States of America acting through the United States Department of Agriculture, its agent.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.

[1]420.412 Supplementary nature of part.—The provisions of this part and the powers conferred herein shall be in addition and supplemental to those conferred by any other law.

History.—ss. 1, 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.

[1]420.413 Expiration of this part.—The provisions of this part shall expire and be void and inoperative on July 1, 1984.

History.—s. 5, ch. 79-220.
[1]**Note.**—Expires July 1, 1984.

PART V

NEIGHBORHOOD HOUSING REHABILITATION PROGRAMS

420.421 Short title.—Sections 420.421-420.429 may be cited as the "Neighborhood Housing Services Act."

History.—s. 1, ch. 79-259.

420.422 Legislative findings.—The Legislature finds that:

(1) A substantial number of housing units in this state are in deteriorating condition, many residents are living in dwelling units which do not conform to applicable local codes and ordinances that are intended to ensure the health and safety of the occupants, and this condition impedes the development and conservation of healthy, safe, and viable communities in this state.

(2) Deteriorating housing contributes to the decline of neighborhoods and the surrounding areas, causes a reduction of the value of property comprising the tax base of local communities, and eventually requires the expenditures of disproportionate amounts of public funds for health, social services, and police protection to prevent the development of slums and the social and economic disruption found in slum communities.

(3) The rehabilitation of suitable housing will increase its economic life, is more economical and less disruptive than replacement of the housing and the relocation of its occupants, can better promote community development when conducted through organized housing rehabilitation programs, and is essential to promote sound community development in this state.

(4) The rehabilitation of housing will result in the conservation of energy and environmental resources through the installation of insulation and through discouraging the inefficient use of energy and environmental resources caused by low density sprawl in undeveloped areas.

(5) Unless the problems of deteriorating housing and the accompanying problems associated with the decline of neighborhoods and surrounding areas and the loss of valuable property from the tax base are addressed, the health, safety, and welfare of the residents of the affected communities and of this state will be detrimentally affected.

(6) The amount of public resources currently available or likely to be available for the rehabilitation and maintenance of marginal or substandard residential units in this state is grossly inadequate.

(7) If significant progress is to be made in adequately reducing or eliminating substandard housing in this state, it is imperative that the resources of the private sector be urged to assist in the rehabilitation of housing.

(8) A partnership of state and local public agencies with private residential financing institutions to coordinate and optimize their respective resources is critical to any serious effort to conserve and protect the state's increasingly valuable stock of existing housing.

(9) The neighborhood housing services program of the Neighborhood Reinvestment Corporation has proven itself to be a highly effective mechanism for rehabilitating housing and revitalizing declining neighborhoods by combining public resources with private resources.

(10) The creation and expansion of neighborhood housing services programs among the municipalities and counties of this state will serve the interests of the citizens of this state.

History.—s. 2, ch. 79-259.

420.423 Policy and purpose.—It is the policy of this state to provide a necessary means to prevent the deterioration of housing, the decline of neighborhoods and surrounding areas, and the inefficient use of energy and environmental resources associated with such deterioration and decline. The purpose of ss. 420.421-420.429 are to assist local governments in participating in a cooperative program with private financial institutions to deliver effective and continuing support to declining neighborhoods in order to reverse that decline and restore the health and vitality of such neighborhoods. The Legislature, therefore, declares that the rehabilitation of housing to facilitate the preservation and revitalization of neighborhoods, the development of healthy, safe, and viable communities in this state, and all the purposes of ss. 420.421-420.429 are public purposes for which public money may be borrowed, expended, loaned, and granted.

History.—s. 3, ch. 79-259.

420.424 Definitions.—As used in ss. 420.421-420.429:

(1) "Department" means the Department of Community Affairs.

(2) "Secretary" means the Secretary of the Department of Community Affairs.

(3) "Fund" means the Neighborhood Housing Services Grant Fund.

(4) "Local government" means any county or incorporated municipality within this state.

(5) "Neighborhood housing services corporation" means a private, nonprofit, community-based corporation organized under the laws of this state to develop and administer a local neighborhood housing services program.

(6) "Neighborhood housing services program" means a program developed by the Neighborhood Reinvestment Corporation and implemented locally by neighborhood housing services corporations to stimulate reinvestment in urban neighborhoods.

(7) "Neighborhood Reinvestment Corporation" means a corporation or its successor sponsored by the United States Department of Housing and Urban Development, the Federal Home Loan Bank Board, the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, and the National Credit Union Administration for the purpose of creating a partnership between private financial institutions, government, and citizens to undertake the rehabilitation and revitalization of declining residential neighborhoods.

(8) "Project" means a neighborhood housing services program distinctly established and funded to serve a defined neighborhood.

(9) "Rehabilitation" means the repair, renovation, reconstruction, or other improvement of housing to restore that housing to a sound condition or to

ensure that the housing can be maintained in that condition or to improve the general utility and attractiveness of such housing.

History.—s. 4, ch. 79-259.

420.425 Neighborhood Housing Services Grant Fund.—There is established in the State Treasury a separate trust fund to be called the Neighborhood Housing Services Grant Fund. The fund shall be administered by the department as a grant fund for carrying out the purposes of ss. 420.421-420.429. There shall be deposited into the fund all moneys appropriated by the Legislature or moneys received from any other sources for the purpose of ss. 420.421-420.429.

History.—s. 5, ch. 79-259.

420.426 Eligible applicants.—To receive a grant, an applicant must:

(1) Be a local government within this state;

(2) Be able to demonstrate a clear need for the financial assistance made available through ss. 420.421-420.429; and

(3) Be certified by the Neighborhood Reinvestment Corporation Program as a participant.

History.—s. 6, ch. 79-259.

420.427 Project eligibility.—

(1) Grants may be provided to newly incorporated projects or to existing projects that are expanding to include adjacent geographical areas. Projects are eligible for funding each time they expand.

(2) Each individual project of a local government having one or more projects within its jurisdiction is eligible for funding.

(3) In no case shall more than $125,000 be granted to an individual project.

History.—ss. 8, 9, ch. 79-259.

420.428 Eligible activities.—Grant recipients may use grant funds made available pursuant to ss. 420.421-420.429 to fulfill some or all of the local government's financial responsibility for participating in the program. Use of these grant funds is restricted to:

(1) Supporting the development of the corporation;

(2) Providing operating support to the neighborhood housing services corporation; and

(3) Funding a revolving high risk loan fund.

History.—s. 7, ch. 79-259.

420.429 Authority of the department.—The department shall have all the powers necessary to carry out the purposes and provisions of ss. 420.421-420.429. The department may:

(1) Make contracts and agreements with the Federal Government, other agencies of the state, any other public agency, or any other person, association, corporation, local government, or other entity in exercising its powers and performing its duties under ss. 420.421-420.429.

(2) Seek and accept funding from any public or private source.

(3) Adopt and enforce rules not inconsistent with ss. 420.421-420.429 for the administration of the Neighborhood Housing Services Grant Fund.

(4) Assist in training employees of local governments and local agencies to help achieve and increase their capacity to administer community conservation programs and provide technical assistance and advice to local governments and local agencies involved with neighborhood housing services programs.

History.—s. 10, ch. 79-259.

CHAPTER 421

PUBLIC HOUSING

PART I HOUSING AUTHORITIES (ss. 421.001-421.54)

PART II MISCELLANEOUS PROVISIONS (s. 421.55)

PART I

HOUSING AUTHORITIES

421.001 State's role in housing and urban development.—The role of state government required by part I of chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (Tax Exemption of Housing Authorities), and chapter 424 (Limited Dividend Housing Companies) is the responsibility of the Department of Community Affairs, and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106.

421.01 Short title.—Part I of this chapter may be referred to as the "Housing Authorities Law."

History.—s. 1, ch. 17981, 1937; CGL 1940 Supp. 7100(3-a).

421.02 Finding and declaration of necessity.—It is hereby declared that:

(1) There exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accom-

modations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities.

(2) Slum areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income, as herein defined, would therefore not be competitive with private enterprise.

(3) The clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income, including the acquisition by a housing authority of property to be used for or in connection with housing projects or appurtenant thereto, are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of public concern.

(4) The necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

History.—s. 2, ch. 17981, 1937; CGL 1940 Supp. 7100(3-b).

421.03 Definitions.—The following terms, wherever used or referred to in this part, shall have the following respective meanings for the purposes of this part, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean any of the public corporations created by s. 421.04.

(2) "City" shall mean any city or town of the state having a population of more than 2,500, according to the last preceding federal or state census. "The city" shall mean the particular city for which a particular housing authority is created.

(3) "Governing body" shall mean the city council, the commission, or other legislative body charged with governing the city, as the case may be.

(4) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(5) "Clerk" shall mean the clerk of the city or the officer of the city charged with the duties customarily imposed on the clerk thereof.

(6) "Area of operation":

(a) In the case of a housing authority of a city having a population of less than 25,000, shall include such city and the area within 5 miles of the territorial boundaries thereof; and

(b) In the case of a housing authority of a city having a population of 25,000 or more shall include such city and the area within 10 miles from the territorial boundaries thereof; provided however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined; and further provided that the area of operation shall not extend outside of the boundaries of the county in which the city is located and no housing authority shall have any power or jurisdiction outside of the county in which the city is located.

(7) "Federal Government" shall include the United States, the Federal Emergency Administration of Public Works or any other agency or instrumentality, corporate or otherwise, of the United States.

(8) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(9) "Housing project" shall mean any work or undertaking:

(a) To demolish, clear, or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or

(b) To provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes; or

(c) To accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(10) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(11) "Debentures" shall mean any notes, interim certificates, debentures, revenue certificates, or other obligations issued by an authority pursuant to this chapter.

(12) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(13) "Obligee of the authority" or "obligee" shall include any holder of debentures, trustee or trustees for any such holders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Govern-

ment when it is a party to any contract with the authority.

History.—s. 3, ch. 17981, 1937; CGL 1940 Supp. 7100(3-c); s. 1, ch. 20219, 1941; s. 1, ch. 28061, 1953; s. 24, ch. 57-1; s. 1, ch. 67-566.

421.04 Creation of housing authorities.—

(1) In each city, as herein defined, there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city by proper resolution shall declare that there is need for an authority to function in such city. The determination as to whether there is such need for an authority to function:

(a) May be made by the governing body on its own motion; or

(b) Shall be made by the governing body upon the filing of a petition signed by 25 residents of the city asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

(2) The governing body may adopt a resolution declaring that there is need for a housing authority in the city if it shall find that:

(a) Insanitary or unsafe inhabited dwelling accommodations exist in such city; or

(b) There is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(3) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms, no further detail being necessary, that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

History.—s. 4, ch. 17981, 1937; CGL 1940 Supp. 7100(3-d).

421.05 Appointment, qualifications, and tenure of commissioners.—

(1) When the governing body of a city adopts a resolution as aforesaid, the mayor with the approval of the governing body shall promptly appoint five persons as commissioners of the authority created for said city. Three of the commissioners who are first appointed shall be designated to serve for terms of 1, 2, and 3 years respectively; and the remaining two of such commissioners shall be designated to serve for terms of 4 years each, from the date of their appointment. Thereafter commissioners shall be appointed as aforesaid for a term of office of 4 years, except that a vacancy shall be filled for the unexpired term by an appointment of the mayor with the approval of the governing body within 60 days after such vacancy occurs. No commissioner of an authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(2) The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor with the concurrence of the governing body shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its commissioners a vice chairman, and it may employ a secretary, who shall be executive director, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History.—s. 5, ch. 17981, 1937; CGL 1940 Supp. 7100(3-e); s. 1, ch. 59-413; s. 1, ch. 78-165.

421.06 Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office.

History.—s. 6, ch. 17981, 1937; CGL 1940 Supp. 7100(3-f).

421.07 Removal of commissioners.—For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor with the concurrence of the governing body, but a commissioner shall be removed only after he shall have been given a copy of the charges at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

History.—s. 7, ch. 17981; 1937; CGL 1940 Supp. 7100(3-g); s. 2, ch. 59-413.

421.08 Powers of authority.—An authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this chapter, and having all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; provided, however, that notwithstanding any other power or provision in this chapter, the authority shall not construct, lease, control, purchase or otherwise establish in connection with or as a part of any housing project or any other real or any other property under its control, any system, work, facilities, plants or other equipment for the purpose of furnishing utility service of any kind to such projects or to any tenant or occupant thereof in the event that a system, work, facility, plant or other equipment for the furnishing of the same utility service is being actually operated by a municipality or private concern in the area of operation or the city or the territory immediately adjacent thereto; provided, further, that nothing herein shall be construed to prohibit the construction or acquisition by the authority of any system, work, facilities or other equipment for the sole and only purpose of receiving utility services from any such municipality or such private concern and then distributing such utility services to the project and to the tenants and occupants thereof; and, notwithstanding anything to the contrary contained in this chapter or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the Federal Government may have attached to its financial aid of the project.

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the Federal Government of the payment of any such debts or parts thereof, whether or not incurred by said authority, including the power to pay premiums on any such insurance.

(5) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its debentures at a price not more than the principal amount thereof and accrued interest, all debentures so purchased to be canceled.

(6) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(7) Acting through one or more commissioners or other person or persons designated by the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(8) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to acquisition, operation or disposition of

property by other public bodies shall be applicable to an authority unless the Legislature shall specifically so state.

History.—s. 8, ch. 17981, 1937; CGL 1940 Supp. 7100(3-h).
cf.—ss. 421.24, 421.47, 421.52 Validation, etc., of acts.
s. 421.32 Rural housing projects.

421.09 Operation not for profit.—It is the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its project at no higher rate than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenue, income and receipts of the authority from whatever sources derived, will be sufficient:

(1) To pay, as the same shall become due, the principal and interest on the debentures of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and

(3) To create, during not less than the 6 years immediately succeeding its issuance of any debentures, a reserve sufficient to meet the largest principal and interest payments which will be due on such debentures in any one year thereafter, and to maintain such reserve.

History.—s. 9, ch. 17981, 1937; CGL 1940 Supp. 7100(3-i).

421.091 Financial accounting and investments; fiscal year.—

(1) A complete and full financial accounting and audit shall be made biennially by a certified public accountant. A copy of said audit shall be filed with the governing body.

(2) The fiscal year of a housing authority shall be the fiscal year established by the Federal Government.

History.—s. 3, ch. 59-413; s. 2, ch. 78-165.

421.10 Rentals and tenant selection.—

(1) In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenants selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(c) It shall accept any person as a tenant in any housing project according to the appropriate guidelines as established by the United States Department of Housing and Urban Development or other federal agencies.

(d) The Department of Health and Rehabilitative Services, pursuant to 45 C.F.R. s. 233.20(a)(3)(vii)(c), shall not consider as income for aid to families with dependent children assistance received by recipients from other agencies or organizations such as public housing authorities.

(2) Nothing contained in this section or s. 421.09, shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section.

(3) This section shall not apply to housing facilities financed by loans made for the purpose of providing such facilities for domestic farm labor pursuant to s. 514 of the Federal Housing Act of 1949.

History.—s. 10, ch. 17981, 1937; s. 1, ch. 19510, 1939; CGL 1940 Supp. 7100(3-j); s. 7, ch. 22858, 1945; s. 1, ch. 65-223; s. 3, ch. 78-165.
cf.—s. 421.32 Rural housing projects.

421.101 False representations to obtain lower rent in housing accommodations; penalty.—Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact in order to obtain a lower rent for housing accommodations in a low rent housing development operated pursuant to chapter 421, than the rental such person is required to pay pursuant to federal or state statutes, schedule of rents or rules and regulations as determined and fixed by housing authorities created pursuant to chapter 421, aforesaid, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and each such false statement or representation or failure to disclose a material fact as aforesaid shall constitute a separate offense.

History.—s. 1, ch. 61-468; s. 362, ch. 71-136.

421.11 Cooperation of authorities.—

(1) Any two or more housing authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, debentures, notes or other obligations and giving security therefor; planning; undertaking; owning; constructing; operating; or contracting with respect to a housing project or projects located within the area of operation of any one or more of said authorities. For such purpose, an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

(2) Any county housing authority may enter into an interlocal agreement with one or more local governing bodies pursuant to the provisions of s. 163.01, the Florida Interlocal Cooperation Act of 1969, with respect to projects or programs located within the

county or an adjacent county, and any city housing authority may enter into such agreement with respect to projects or programs located within the county, provided that no power granted an authority under s. 421.08 may be reserved to or exercised by a local governing body under such agreement.

History.—s. 11, ch. 17981, 1937; CGL 1940 Supp. 7100(3-k); s. 1, ch. 21699, 1943; s. 4, ch. 78-165.

421.12 Eminent domain.—An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in chapters 73 and 74. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent.

History.—s. 12, ch. 17981, 1937; CGL 1940 Supp. 7100(3-l).

421.13 Planning, zoning and building laws.—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

History.—s. 13, ch. 17981, 1937; CGL 1940 Supp. 7100(3-x).

421.14 Debentures.—

(1) An authority may issue debentures from time to time in its discretion, for any of its corporate purposes. An authority may also issue refunding debentures for the purpose of paying or retiring debentures previously issued by it. An authority may issue such types of debentures as it may determine, including debentures on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the housing project financed with the proceeds of such debentures, or with such proceeds together with a grant from the federal government in aid of such project;

(b) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such debentures; or

(c) From its revenues generally.

Any of such debentures may be additionally secured by a pledge of any revenues of any housing project, projects or other property of the authority.

(2) Neither the commissioners of an authority nor any person executing the debentures shall be liable personally on the debentures by reason of the issuance thereof. The debentures and other obligations of an authority, and such debentures and obligations shall so state on their face, shall not be a debt of the city, the county, the state or any political subdivision thereof, and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such debentures or obligations be payable out of any funds or properties other than those of said authority. The debentures shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction.

History.—s. 14, ch. 17981, 1937; CGL 1940 Supp. 7100(3-y).

421.15 Form and sale of debentures.—

(1) Debentures of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such dates, mature at such times, bear an average interest cost rate net of federal subsidies not exceeding the rate established according to s. 215.685, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such places and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture may provide.

(2) The debentures may be sold at public sale held after notice published once at least 5 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the City of Chicago, Illinois, or in the City of New York, New York; however, such debentures may be sold to the Federal Government at private sale without any public advertisement.

(3) In the event an offer of an issue of debentures at public sale produces no bid, or in the event all bids received are rejected, the authority is authorized to negotiate for the sale of such debentures under such rates and terms as are acceptable; however, upon their sale, the State Board of Administration shall be notified, and no such bonds shall be so sold or delivered on terms less favorable than the terms contained in any bids rejected at the public sale thereof, or the terms contained in the notice of public sale if no bids were received at such public sale.

(4) In case any of the commissioners or officers of the authority whose signatures appear on any debentures or coupons shall cease to be such commissioners or officers before the delivery of such debentures, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any debentures issued pursuant to this chapter shall be fully negotiable.

(5) In any suit, action or proceedings involving the validity or enforceability of any debenture of an authority or the security therefor, any such debenture reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this chapter.

History.—s. 15, ch. 17981, 1937; CGL 1940 Supp. 7100(3-z); s. 5, ch. 78-165.

421.16 Provisions of debentures and trust indentures.—In connection with the issuance of debentures or the incurring of obligations under leases and in order to secure the payment of such indentures or obligations, an authority, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, gross or net fees or gross or net revenues to which its right then exists or may thereafter come into existence.

(2) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its rights to sell, lease or to otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(3) To covenant as to the debentures to be issued and as to the issuance of such debentures in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated debentures; to covenant against extending the time for the payment of its debentures or interest thereon; and to redeem the debentures, and to covenant for their redemption and to provide the terms and conditions thereof.

(4) To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(5) To prescribe the procedure, if any, by which the terms of any contract with the holders of debentures may be amended or abrogated, the amount of debentures the holders of which must consent thereto, and the manner in which such consent may be given.

(6) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(7) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation, and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its debentures or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(8) To vest in a trustee or trustees or the holders of debentures or any proportion of them the right to enforce the payment of the debentures or any covenants securing or relating to the debentures; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of debentures or any proportion of them may enforce any covenant or rights securing or relating to the debentures.

(9) To exercise all or any part or combination of the powers herein granted.

History.—s. 16, ch. 17981, 1937; CGL 1940 Supp. 7100(3-aa).

421.17 Validation of debentures and proceedings.—

(1) A housing authority shall have the right, if it deems it expedient, to determine its authority to issue any debentures, and the legality of all proceedings had or taken in connection therewith, in the same manner and to the same extent, except as otherwise provided in this section, as provided in chapter 75 for the determination by a county, municipality, taxing district, or other political district or subdivision of its authority to incur bonded debt or to issue certificates of indebtedness and of the legality of all proceedings had or taken in connection therewith.

(2) The petition to validate such debentures, and the proceedings had or taken in connection therewith, shall be filed by the housing authority in the Circuit Court for the county in which is located the city for which said housing authority was created, except that whenever it appears that a housing authority is empowered to function in more than one county the Circuit Court of any county in the whole or any part of which the housing authority is empowered to function shall have jurisdiction of the cause in the same manner as provided in said chapter whenever a municipality, taxing district or other political district or subdivision shall extend into more than one county.

(3) The notice required by s. 75.06 shall be addressed to the taxpayers and citizens of the city for which such housing authority has been created and of the county, or counties, in the event such housing authority is empowered to function in more than one county, in the whole or any part of which the housing authority is empowered to function; and by the publication of such notice as required by said chapter 75 all taxpayers and citizens of such city and such county or counties, as the case may be, shall be considered as parties defendant to such proceedings, and the Circuit Court in which the proceeding is brought shall have jurisdiction of all of the same as if they were named defendants in the petition filed pursuant to said chapter and personally served with process.

(4) In the event no appeal is taken within the time prescribed by said chapter, or if taken, and the decree validating said debentures is affirmed by the Supreme Court, the decree of the Circuit Court validating and confirming the issuance of the debentures of the housing authority shall be forever conclusive as to the validity of said debentures against the housing authority and against all taxpayers and

citizens of the city for which said housing authority was created and of the county or counties in the whole or part of which the housing authority is empowered to function; and the validity of said debentures shall never be called in question in any court in this state. Debentures of a housing authority, when issued under the provisions of said chapter, shall have stamped or written thereon by the proper officers of the housing authority issuing the same, the words: "Validated and Confirmed by Decree of the Circuit Court," specifying the date when such decree was rendered and the court in which it was rendered, which shall be signed by the Clerk of the Circuit Court in which the decree was rendered, which entry shall be original evidence of said decree in any court in this state.

History.—s. 17, ch. 17981, 1937; CGL 1940 Supp. 7100(3-bb).
cf.—ss. 421.26, 421.48, 421.52 Notes, bonds, debentures; validation, etc.

421.18 Remedies of an obligee of authority.—An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter.

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority.

History.—s. 18, ch. 17981, 1937; CGL 1940 Supp. 7100(3-cc).

421.19 Additional remedies conferrable by authority.—An authority shall have power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in debentures, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligation of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

History.—s. 19, ch. 17981, 1937; CGL 1940 Supp. 7100(3-dd).

421.21 Aid from Federal Government; tax exemptions.—

(1) In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government, and to these ends, to comply with such conditions and enter into such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any housing project by such authority.

(2) In addition to the powers conferred upon an authority by subsection (1) and other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the Federal Government under s. 202 of the Housing Act of 1959 (Pub. L. No. 86-372) or any law or program of the United States Department of Housing and Urban Development, which provides for direct federal loans in the maximum amount, as defined therein, for the purpose of assisting certain nonprofit corporations to provide housing and related facilities for elderly families and elderly persons.

(a) Housing authorities created under this section are authorized to execute mortgages, notes, bills, or other forms of indebtedness together with any agreements, contracts, or other instruments required by the United States Department of Housing and Urban Development in connection with loans made for the purposes set forth in this subsection.

(b) This provision relating to housing facilities for the elderly is cumulative and in addition to the powers given to housing authorities under this chapter. All powers granted generally by law to housing authorities in Florida relating to issuance of trust indentures, debentures, and other methods of raising capital shall apply also to housing authorities in connection with their participation in programs of the United States Department of Housing and Urban Development.

(3) It is the legislative intent that the tax exemption of housing authorities provided by chapter 423, shall specifically apply to any housing authority created under this section.

History.—s. 21, ch. 17981, 1937; CGL 1940 Supp. 7100(3-ff); ss. 1, 2, ch. 61-197; s. 7, ch. 78-165.

421.22 Reports.—At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

History.—s. 22, ch. 17981, 1937; CGL 1940 Supp. 7100(3-gg).

421.23 Liabilities of authority.—In no event shall the liabilities, whether ex contractu or ex delicto, of an authority arising from the operation of its housing projects, be payable from any funds other than the rents, fees or revenues of such projects and any grants or subsidies paid to such authority by the Federal Government.

History.—s. 23, ch. 17981, 1937; CGL 1940 Supp. 7100(3-hh); s. 7, ch. 22858, 1945.

421.24 Organization and establishment.—The establishment and organization of housing authorities in the state under the provisions of the Housing Authorities Law of this state, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 1, ch. 19511, 1939; CGL 1940 Supp. 7100(3-kk).

421.25 Contracts and undertakings.—All contracts, agreements, obligations, and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance, or operation of any housing project or projects or to obtaining aid therefor from the United States Department of Housing and Urban Development, including, without limiting the generality of the foregoing, loan and annual contributions, contracts and leases with the United States Department of Housing and Urban Development, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds, relating to cooperation and contributions in aid of housing projects, payments, if any, in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things heretofore undertaken, performed, or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 2, ch. 19511, 1939; CGL 1940 Supp. 7100(3-ll); s. 8, ch. 78-165.

421.26 Notes and bonds.—All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 3, ch. 19511, 1939; CGL 1940 Supp. 7100(3-mm).

421.261 Continuance of municipal housing authorities when municipality abolished; counties in excess of 400,000.—Whenever a municipality in any county having a population in excess of 400,000 according to the most recent official census has been or hereafter shall be abolished, wherein at the time of such abolishment a housing authority of such municipality was or is in existence, such housing authority shall continue to function in all respects; provided, however, that the name of such housing authority shall thenceforth be such as may be determined by the county commissioners of the county wherein it functions. Each such housing authority and the commissioners thereof, within the area of operation of such housing authority as hereinafter defined, shall have the same functions, rights, powers, duties, immunities and privileges provided for housing authorities created for cities. Each such housing authority shall continue to operate and prosecute all projects operated or initiated by it prior to the abolishment of the municipality, and shall be entitled to all benefits and privileges thereafter conferred upon housing authorities for cities. The commissioners of each such housing authority shall continue in office after the abolishment of the particular municipality for the remainder of their respective terms. Their successors shall be appointed by resolution of the commissioners of the county. As used in the Housing Authorities Law, the terms "mayor" and "governing body" shall be construed as meaning "county commissioners," the term "city" as used therein shall be construed as meaning "county," and the term "clerk" as used therein shall be construed as meaning "clerk of the circuit court of the county," unless different meanings clearly appear from the contents. The area of operation of any such housing authority shall continue to be the same as that before the abolishment of the municipality, unless extended by resolution of the county commissioners, provided that no such extension shall include any territory lying within a city as defined in the Housing Authorities Law.

History.—s. 1, ch. 28305, 1953.
cf.—s. 11.031 Official census.

421.27 Housing authorities in counties.—

(1) In each county of the state there is hereby created a public body corporate and politic to be known as the "housing authority" of the county; provided, however, that such housing authority shall not transact any business or exercise its powers hereunder until or unless the governing body of such county, by proper resolution shall declare at any time hereafter that there is need for a housing authority to function in and for such county, which declaration shall be made by such governing body for such county in the same manner and subject to the same conditions as the declaration of the governing body of a city required by s. 421.04 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers, except that the petition referred to in said s. 421.04 shall be signed by 25 residents of such county.

(2) Upon notification of the adoption of such resolution the commissioners of a housing authority created for a county, who shall be qualified electors of such county, shall be appointed by the Governor in

the same manner as the commissioners of a housing authority created for a city may be appointed by the mayor; and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof, within the area of operation of such housing authority as hereinafter defined, shall have the same functions, rights, powers, duties, immunities and privileges provided for housing authorities created for cities and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities were applicable to housing authorities created for counties; provided, that for such purposes the term "mayor" as used in the Housing Authorities Law shall be construed as meaning "Governor," the term "governing body" as used therein shall be construed as meaning "county commissioners," the term "city" as used therein shall be construed as meaning "county," and the term "clerk" as used therein shall be construed as meaning "county clerk," as herein defined, unless a different meaning clearly appears from the context; and provided further that the Governor may appoint any persons as commissioners of a housing authority created for a county who are qualified electors in such county; and provided further that such commissioners may be removed or suspended in the same manner and for the same reasons as other officers appointed by the governor.

(3) The area of operation of a housing authority created for a county shall include all of the county for which it is created except that portion of the county which lies within the territorial boundaries of any city as defined in the Housing Authorities Law, as amended.

History.—s. 1, ch. 20220, 1941.

421.28 Creation of regional housing authority.—

(1) If the governing body of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and exercise its powers and other functions in such counties; and thereupon each housing authority created by s. 421.27 for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereafter provided; provided that the governing body of a county shall not adopt a resolution as aforesaid if there is a housing authority created for such county which has any obligations outstanding unless first:

(a) All obligees of such county housing authority and parties to the contracts, bonds, notes and other obligations of such county housing authority agree with such county housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes or other obligations; and

(b) The commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided;

and provided further that when the above two conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations and property of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced and prosecuted against such county housing authority.

(2) When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the recorder of deeds of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

(3) The governing body of each of two or more contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such governing body finds, and only if it finds:

(a) That insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe and sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(b) That a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of this Housing Authorities Law in such county.

(4) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for a regional housing authority and finds in substantially the foregoing terms, no further detail being necessary, that the conditions enumerated in subsection (3) exist. A copy of such resolution of the governing body of a county, duly certified by the county clerk of such county, shall be admissible in evidence in any suit, action or proceeding.

History.—s. 1, ch. 20220, 1941.

421.29 Area of operation of regional housing authority.—

(1) The area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established except such portions of the counties which lie within the territorial boundaries of cities, as defined in the Housing Authorities Law, as amended.

(2) The area of operation of a regional housing authority shall be increased from time to time to include one or more additional counties not already within a regional housing authority, except such portion or portions of such additional county or counties which lie within the territorial boundaries of any city, as defined, if the governing body of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, the county housing authority created by s. 421.27 for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any obligations outstanding unless first:

(a) All obligees of any such county housing authority and parties to the contracts, bonds, notes and other obligations of any such county housing authority agree with such county housing authority and the regional housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes or other obligations, and second:

(b) The commissioners of such county housing authority and the commissioners of such regional housing authority adopt resolutions consenting to the transfer of all the rights, contracts, obligations and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided, and provided further, that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, agreements, obligations and property of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced and prosecuted against such county housing authority.

(3) When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the recorder of deeds of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

(4) The governing body of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties shall by resolution declare that there is a need for the addition of such county or counties to the regional housing authority, if:

(a) The governing body of each of such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(b) The governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this Housing Authorities Law if the area of operation of the regional housing authority shall be increased to include such additional county or counties.

(5) In determining whether dwelling accommodations are unsafe or insanitary under this or s. 421.28, the governing body of a county shall take into consideration the safety and sanitation of the dwellings, the light and airspace available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(6) In connection with the issuance of bonds or the incurring of other obligations a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase of its area of operation.

(7) No governing body of a county shall adopt any resolution authorized by this or s. 421.28 unless a public hearing has first been held. The clerk of such county shall give notice of the time, place and purpose of the public hearing at least 10 days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the state and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

History.—s. 1, ch. 20220, 1941; s. 150, ch. 77-104.

421.30 Commissioners of regional authorities.—

(1) When a regional housing authority has been created as provided above, the Governor shall thereupon appoint one qualified elector from each county included in such regional housing authority as a commissioner of the regional housing authority.

When the area of operation of a regional housing authority is increased to include an additional county or counties as herein provided, the Governor shall thereupon appoint one qualified elector from each such additional county as a commissioner of the regional housing authority. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed as provided above for such county, shall be thereupon abolished.

(2) If the area of operation of a regional housing authority consists at any time of an even number of counties, the Governor shall appoint one additional commissioner, who shall be a qualified elector from one of the counties in such area of operation, whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties.

(3) A certificate of the appointment of any commissioner of a regional housing authority shall be filed with the county clerk of the county from which the commissioner is appointed, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The commissioners of a regional housing authority shall be appointed for terms of 4 years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein. The Governor shall thereafter appoint the successor of each commissioner of a regional housing authority.

(4) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(5) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

History.—s. 1, ch. 20220, 1941; s. 2, ch. 21699, 1943.

421.31 Powers of regional housing authority; definitions.—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges and immunities provided for housing authorities created for cities or counties and the commissioners of such housing authorities in the same manner as though all the provisions of law applicable to housing authorities created for cities or counties were applicable to regional housing authorities; provided that for such purposes the term "mayor" as used in the Housing Authorities Law shall be construed as meaning "Governor," the term "governing body" as used therein shall be construed as meaning "county commissioners," the term "city" as used therein shall be construed as meaning "county" and the term "clerk" as used therein shall be construed as meaning "county clerk," as herein defined, unless a different meaning clearly appears from the context; and provided further that the Governor may appoint any person as commissioner of a regional housing authority who is a qualified elector in the county from which he is appointed; and provided further that any commissioner of a regional housing authority may be removed or suspended in the same manner and for the same reason as other officers appointed by the Governor. A regional housing authority shall have power to select any appropriate corporate name.

History.—s. 1, ch. 20220, 1941.

421.32 Rural housing projects.—County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income and domestic farm labor as defined in s. 514 of the Federal Housing Act of 1949. In connection with such projects, any such housing authority may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this law. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. In providing housing for farmers of low income, county housing authorities and regional housing authorities shall not be subject to the limitations provided in ss. 421.08(3) and 421.10(3). Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

History.—s. 1, ch. 20220, 1941; s. 3, ch. 65-223.

421.321 Execution of mortgages.—County and regional housing authorities organized under this chapter are authorized to execute mortgages encumbering real property as security for loans made for providing facilities for domestic farm labor pursuant to s. 514 of the Federal Housing Act of 1949.

History.—s. 4, ch. 65-223.

421.33 Housing applications by farmers.—The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority created for a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. Provided, however, that if it becomes necessary for an applicant under this paragraph to convey any portion of his then homestead in order to take advantages as provided herein, then in that event, the parting with title to a portion of said homestead

shall not affect the remaining portion of same, but all rights that said owner may have in and to same under and by virtue of the Constitution of the state or any law passed pursuant thereto, shall be deemed and held to apply to such remaining portion of said land, the title of which remains in said applicant; it being the intention of the Legislature to permit the owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing to take advantage of the provisions of this law without jeopardizing their rights in their then homestead by reason of any requirement that may be necessary in order for them to receive the benefits herein provided; and no court shall ever construe that an applicant who has taken advantage of this law has in any manner, shape or form abandoned his rights in any property that is his then homestead by virtue of such action upon his part, but it shall be held, construed and deemed that such action upon the part of any applicant hereunder was not any abandonment of his then homestead, and that all rights that he then had therein shall be and remain as provided by the Constitution and any law enacted pursuant thereto.

History.—s. 1, ch. 20220, 1941; s. 7, ch. 22858, 1945.

421.34 Additional definitions.—

(1) "Farmers of low income," as used in this law, shall mean persons or families who at the time of their admission to occupancy in a dwelling of a housing authority:

(a) Live under unsafe or insanitary housing conditions;

(b) Derive their principal income from operating or working upon a farm; and

(c) Had an aggregate average annual net income for the 3 years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing without overcrowding;

provided, however, that this definition shall not apply to persons using facilities the construction of which was financed with proceeds of loans made pursuant to s. 514 of the Federal Housing Act of 1949.

(2) "Governing body," as used in this law with regard to a county, shall mean the county commissioners or other legislative body of the county.

(3) "Clerk," as used in this law with regard to a county or county authority, shall mean the clerk and accountant of the board of county commissioners or the officer having duties customarily imposed on such clerk.

History.—s. 1, ch. 20220, 1941; s. 5, ch. 65-223.

421.35 Supplemental nature of sections.— The powers conferred by ss. 421.27-421.34 shall be in addition and supplemental to the powers conferred by any other law.

History.—s. 2, ch. 20220, 1941.

421.36 Short title.—Sections 421.27-421.35 may be cited and referred to as the "Rural Housing Authorities Law of Florida."

History.—s. 1, ch. 20220, 1941.

421.37 Defense housing; finding and declaration of necessity.—It is hereby found and declared that the national defense program involves large increases in the military forces and personnel of this state, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the state; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this state which impedes the national defense program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of national defense activities in this state and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities which otherwise would not be provided at this time; and that such provisions are for the public use and purpose of facilitating the national defense program in this state. It is further declared to be the purpose of this law to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the Federal Government, or to cooperate with or act as agent of the federal government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in national defense activities.

History.—s. 1, ch. 20221, 1941.

421.38 Defense housing by authorities.—

(1) Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this law after the termination of the existing war by the signing of a definitive treaty of peace, or by the proclamation of the President of the United States that hostilities have ceased or that the emergency in justification of extraordinary wartime powers no longer exists, whichever shall first occur.

(2) In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this law, and housing

projects developed or administered hereunder shall constitute "housing projects" under the Housing Authorities Law, as that term is used therein; provided, that during the period, herein called the "national defense period," that a housing authority finds, which finding shall be conclusive in any suit, action or proceeding, that within its area of operation, as defined in the Housing Authorities Law, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the national defense activities, any project developed or administered by such housing authority, or by any housing authority cooperating with it, in such area pursuant to this law, with the financial aid of the Federal Government, or as agents for the Federal Government as hereinafter provided, shall not be subject to the limitations provided in s. 421.10 and the second sentence of s. 421.09; and provided, further, that during the national defense period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the national defense period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of the Housing Authorities Law.

History.—s. 2, ch. 20221, 1941; s. 1, ch. 21697, 1943.

421.39 Acting for Federal Government on defense housing.—A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the Federal Government in the development or administration of projects by the Federal Government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and may undertake the development or administration of any such project for the Federal Government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell, in whole or in part, to the Federal Government any housing project developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project.

History.—s. 3, ch. 20221, 1941.

421.40 Cooperation by public bodies on defense housing.—Any state public body, as defined in the Housing Cooperation Law shall have the same rights and powers to cooperate with housing authorities, or with the Federal Government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities that such state public body has pursuant to such law for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income.

History.—s. 4, ch. 20221, 1941.

421.41 Bonds for defense housing legal investments.—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this law shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to the Housing Authorities Law for the development of a slum clearance or housing project for persons of low income.

History.—s. 5, ch. 20221, 1941.

421.42 Defense housing contracts validated.—All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking, including cooperating with or acting as agent of the Federal Government in, the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 6, ch. 20221, 1941.

421.43 Removal of restrictions for defense housing.—This law shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this law and for a housing authority to cooperate with, or act as agent for, the Federal Government in the development or administration of similar projects by the Federal Government. In acting under this authorization, a housing authority shall not be subject to any limitations, restrictions or requirements of other laws, except those relating to land acquisition, prescribing the procedure or action to be taken in the development or administration of any public works, including slum clearance and housing projects for persons of low income or undertakings or projects of municipal or public corporations or political subdivisions or agencies of the state. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the Federal Government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and to effectuate the purposes of this law.

History.—s. 7, ch. 20221, 1941.

421.44 Defense housing; definitions.—

(1) "Persons engaged in national defense activities," as used in this law, shall include: Enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in any industries connected with and essential to the national defense program; and shall include the families of the aforesaid persons who are living with them.

(2) "Persons of low income," as used in this law,

shall mean persons or families who lack the amount of income which is necessary, as determined by the housing authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(3) "Development," as used in this law, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project, including the negotiation or award of contracts therefor, and shall include the acquisition of any project, in whole or in part, from the Federal Government.

(4) "Administration," as used in this law, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project, in whole or in part, from the Federal Government.

(5) "Federal Government," as used in this law, shall mean the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(6) The development of a project shall be deemed to be "initiated," within the meaning of this law, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the Federal Government with respect to the exercise of powers hereunder in the development of such project of the Federal Government for which an allocation of funds has been made prior to the termination of the existing war by the signing of a definitive treaty of peace, or by the proclamation of the President of the United States that hostilities have ceased or that the emergency in justification of extraordinary wartime powers no longer exists, whichever shall first occur.

(7) "Housing authority," as used in this law, shall mean any housing authority established or hereafter established pursuant to the Housing Authorities Law.

History.—s. 8, ch. 20221, 1941; s. 2, ch. 21697, 1943; s. 7, ch. 22858, 1945; s. 24, ch. 57-1.

421.45 Provisions supplemental.—The powers conferred by ss. 421.37-421.44 shall be in addition and supplemental to the powers conferred by any other law, and nothing contained therein shall be construed as limiting any other powers of a housing authority.

History.—s. 9, ch. 20221, 1941.

421.46 Organization and establishment of housing authorities validated.—The establishment and organization of housing authorities under the provisions of the Housing Authorities Law of this state together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 1, ch. 20222, 1941.

421.47 Contracts and undertakings of housing authorities validated.—All contracts, agreements, obligations, and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance, or operation of any housing project or projects or to obtaining aid therefor from the United States Department of Housing and Urban Development, including, without limiting the generality of the foregoing, loan and annual contributions contracts and leases with the United States Department of Housing and Urban Development, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds, relating to cooperation and contributions in aid of housing projects, payments, if any, in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things heretofore undertaken, performed, or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 2, ch. 20222, 1941; s. 9, ch. 78-165.

421.48 Notes and bonds of housing authorities validated.—All proceedings, laws and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—s. 3, ch. 20222, 1941.

421.49 Area of operation of housing authorities for defense housing.—In the development or the administration of projects, under ss. 421.37-421.48, to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities or in otherwise carrying out the purposes of such law, or in the administration of such projects in accordance with the provisions of the housing authorities law, a housing authority of a city may exercise its powers within the territorial boundaries of said city and an area within 10 miles from said boundaries, excluding the area within the territorial boundaries of any other city which has heretofore established a housing authority.

History.—s. 1, ch. 20249, 1941.

421.50 Decreasing area of operation of regional authority.—

(1) The area of operation of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the governing body of each of the counties in such area

and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area; provided, that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds, debentures or notes unless first, all holders of such bonds, debentures or notes consent in writing to such action; and provided, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created by and authorized to transact business and exercise its powers pursuant to s. 421.04 or s. 421.27, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county. The governing body of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if each such governing body and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded, the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area.

(2) The governing body of a county shall not adopt any resolution authorized by this section unless a public hearing has first been held in accordance with the provisions of the Housing Authorities Law.

(3) A certificate of the appointment of any commissioner of a regional housing authority shall be filed with the county clerk of the county from which the commissioner is appointed, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The commissioners of a regional housing authority shall be appointed for terms of 4 years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein. The Governor shall thereafter appoint the successor of each commissioner of a regional housing authority.

(4) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(5) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

History.—s. 3, ch. 21699, 1943.

421.51 Authority for county excluded from regional authority.—At any time after a county or counties is excluded from the area of operation of a regional housing authority as provided above, the governing body of any such county may adopt a resolution declaring that there is a need for a housing authority in the county, if the governing body shall declare and find such need according to the provisions of the Housing Authorities Law. Thereupon a public body corporate and politic, to be known as the "housing authority of the county," shall exist for such county and may transact business and exercise its powers in the same manner as though created by the Housing Authorities Law. Nothing contained herein shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in s. 421.28 or s. 421.29.

History.—s. 4, ch. 21699, 1943.

421.52 Authorities; creation, obligations, etc., validated.—

(1) The creation, establishment and organization of housing authorities under the provisions of chapter 17981, Laws of Florida, 1937, as amended, or chapter 20220, Laws of Florida, 1941 (ss. 421.01-421.36), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects.

(2) All agreements and undertakings of such housing authorities heretofore entered into, relating to financing, or aiding in the development or operation of any housing projects, including, without limiting the generality of the foregoing, loan and annual contributions contracts, agency contracts, and leases, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or debentures issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or debentures, relating to cooperation in aid of housing projects, payments to public bodies in the state, furnishing of municipal services and facilities and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects.

(3) All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and debentures by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and debentures heretofore issued by housing authorities are hereby validated and declared legal in all respects.

History.—ss. 1-3, ch. 21698, 1943.

421.54 Housing authority, Orange and Seminole Counties; limitation.—

(1) Any housing authority created within Orange and Seminole Counties by s. 421.04, shall acquire, construct, contract to construct, purchase, lease, rent, operate, insure, or commit to the acquisition,

construction, contract for construction, purchase, lease, rental, or operation of any housing project involving new construction only upon the approval thereof by a majority vote of the governing body of the area where the housing project is to be located, which vote shall be taken at a public hearing which has been advertised by publishing a notice thereof in a newspaper in general circulation in the area once only at least 15 days prior to said hearing, by posting a notice of such proposed project in a conspicuous location on the site of the proposed project, and by mailing a copy of such notice to all adjacent property owners within 300 feet of the proposed project no less than 10 days nor more than 15 days prior to such hearing. At such public hearing the names of the real parties in interest, directly or indirectly, in the proposed project shall be disclosed.

(2) In the event such housing project is not approved by a majority vote of the governing body at such public hearing, then upon request of the housing authority at said public hearing, the governing body shall order a referendum election of the freeholders in the precinct wherein the proposed housing project is to be located. Approval of a majority of those voting in such election shall constitute approval of such housing project.

(3) The cost of such public hearings and referendum elections shall be borne by the housing authority.

History.—ss. 1-3, ch. 69-303.

PART II

MISCELLANEOUS PROVISIONS

421.55 Relocation of displaced persons.—

(1) It is the intent of the Legislature to authorize the state and its departments, agencies, political subdivisions, and legislatively established port and airport authorities to comply with the provisions and requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, in those public projects or programs for which federal or federal-aid funds are available and are used.

(2) As used in this section:

(a) "State" means the State of Florida, any department, agency or political subdivision thereof, or any port or airport authority established by the Legislature.

(b) "Public Law 91-646" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 adopted by the United States Congress.

(c) "Displaced person" means any individual, partnership, corporation, or association that is required to move from any real property on or after March 20, 1972, as a result of the acquisition of such real property for public purposes, or who, as the result of the acquisition for public purposes of real property on which such person is conducting a business or farm operation as defined in Public Law 91-646, is required to move said business or farm operation.

(3) The state is authorized and empowered, in acquiring real property for use in any public project or program in which federal or federal-aid funds are used, to make all such relocation and other payments to or for displaced persons as are required under the provisions of Public Law 91-646, and to provide such displaced persons with relocation services and make available to them replacement dwellings, as required by Public Law 91-646.

(4) The state is authorized and empowered, in acquiring real property for use in any public project or program in which federal or federal-aid funds are used, to follow and conform with the land acquisition policies set forth in Public Law 91-646, and to pay or reimburse owners of property so acquired in the manner specified in Public Law 91-646. This authority shall include, as to federal-aid highways and airports, as a last resort, the use of eminent domain powers to acquire real property for replacement housing as required by Public Law 91-646.

History.—ss. 1-4, ch. 72-71.

CHAPTER 422

HOUSING COOPERATION LAW

422.001 State's role in housing and urban development.—The role of state government required by part I, chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (Tax Exemption of Housing Authorities), and chapter 424 (Limited Dividend Housing Companies), is the responsibility of the Department of Community Affairs, and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106.

422.01 Short title.—This chapter may be referred to as the "Housing Cooperation Law."

History.—s. 1, ch. 17982, 1937; CGL 1940 Supp. 7100(3-oo).

422.02 Finding and declaration of necessity.—It has been found and declared in the Housing Authorities Law that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is found and declared that the assistance herein provided for the remedying of the conditions set forth in the Housing Authorities Law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest.

History.—s. 2, ch. 17982, 1937; CGL 1940 Supp. 7100(3-pp).

422.03 Definitions.—The following terms, whenever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority created pursuant to the Housing Authorities Law of this state.

(2) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the Housing Authorities Law or any similar work or undertaking of the Federal Government.

(3) "State public body" shall mean any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) "Governing body" shall mean the council, commission, board of supervisors or trustees, or other board or body having charge of the fiscal affairs of the state public body.

(5) "Federal Government" shall mean the United States, the Federal Emergency Administration of Public Works, or any other agency or instrumentality, corporate or otherwise, of the United States.

History.—s. 3, ch. 17982, 1937; CGL 1940 Supp. 7100(3-qq).
cf.—s. 1.01 Definitions.

422.04 Cooperation in undertaking housing projects.—

(1) For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its property to a housing authority or the Federal Government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city or town also may change its map;

(e) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a housing authority or the Federal Government respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter;

(f) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(g) Purchase or legally invest in any of the debentures of a housing authority and exercise all of the rights of any holder of such debentures;

(h) With respect to any housing project which a housing authority has acquired or taken over from the Federal Government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction;

(i) In connection with any public improvements made by a state public body in exercising the powers herein granted, such state public body may incur the entire expense thereof.

(2) Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

History.—s. 4, ch. 17982, 1937; CGL 1940 Supp. 7100(3-rr).

422.05 Contracts for payments for services.—In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may contract with a housing authority or the Federal Government with respect to the sum or sums, if any, which the housing authority or the Federal Government may agree to pay, during any year or period of years, to the state public body for the improvements, services and facilities to be furnished by it for the benefit of said housing project, but in no event shall the amount of such payments exceed the estimated cost to the state public body of the improvements, services or facilities to be so furnished; provided, however, that the absence of a contract for such payments shall in no way relieve any state public body from the duty to furnish, for the benefit of said housing project, customary improvements and such services and facilities as such state public body usually furnishes without a service fee.

History.—s. 5, ch. 17982, 1937; CGL 1940 Supp. 7100(3-ss).

422.06 Advances to housing authority.—When any housing authority which is created for any city becomes authorized to transact business and exercise its powers therein, the governing body of the city shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and shall appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a donation. Any city, town or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

History.—s. 6, ch. 17982, 1937; CGL 1940 Supp. 7100(3-tt).

422.07 Procedure for exercising powers.—The exercise by a state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History.—s. 7, ch. 17982, 1937; CGL 1940 Supp. 7100 (3-uu).

422.08 Supplemental nature of chapter.—The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

History.—s. 8, ch. 17982, 1937; CGL 1940 Supp. 7100(3-vv).

CHAPTER 423

TAX EXEMPTION OF HOUSING AUTHORITIES

423.001 State's role in housing and urban development.—The role of state government required by part I, chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (Tax Exemption of Housing Authorities), and chapter 424 (Limited Dividend Housing Companies), is the responsibility of the Department of Community Affairs, and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106.

423.01 Finding and declaration of property of tax exemption for housing authorities.—It has been found and declared in the Housing Authorities Law and the Housing Cooperation Law that:

(1) There exist in the state housing conditions which constitute a menace to the health, safety, morals and welfare of the residents of the state;

(2) These conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident prevention, and other public services and facilities;

(3) The public interest requires the remedying of these conditions by the creation of housing authorities to undertake projects for slum clearance and for providing safe and sanitary dwelling accommodations for persons who lack sufficient income to enable them to live in decent, safe and sanitary dwellings without overcrowding; and

(4) Such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

History.—s. 1, ch. 17983, 1937; CGL 1940 Supp. 7100(3-xx).

423.02 Housing projects exempted from taxes and assessments; payments in lieu thereof.—The housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state, provided, however, that in lieu of such taxes or special assessments a housing authority may agree to make payments to any city, town, county or political subdivision of the state for services, improvements or facilities furnished by such city, town, county or political subdivision for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, town, county or political subdivision of the services, improvements or facilities to be so furnished.

History.—s. 2, ch. 17983, 1937; CGL 1940 Supp. 7100(3-yy).

423.03 Housing debentures exempted from taxation.—The debentures of a housing authority, together with interest thereon and income therefrom, shall be exempt from all taxes. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 3, ch. 17983, 1937; CGL 1940 Supp. 7100(3-zz); s. 15, ch. 73-327.

CHAPTER 424

LIMITED DIVIDEND HOUSING COMPANIES

424.001 State's role in housing and urban development.—The role of state government required by part I chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (Tax Exemption of Housing Authorities), and chapter 424 (Limited Dividend Housing Companies), is the responsibility of the Department of Community Affairs, and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106.

424.01 Short title.—This chapter shall be known as "Florida State Housing Law."

History.—s. 1, ch. 16028, 1933; CGL 1936 Supp. 4151(132).

424.02 Finding and declaration of necessity.—It is hereby found and declared by the legislature to be necessary to provide housing for families of low income and in providing for such housing, being now otherwise impossible, that provision be made by law for the investment of private and public funds at low interest rates, acquisition at fair prices, of adequate parcels of land, and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale at prices which families of low income can afford to pay, to effectuate which there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination.

History.—s. 2, ch. 16028, 1933; CGL 1936 Supp. 4151(133).

424.03 Purpose, intent, and construction of chapter.—The purpose and intention of the legislature in the enactment of this chapter is to provide the necessary legislation for the creation of adequate facilities to make available to persons in Florida the benefits of the laws of the United States creating the Reconstruction Finance Corporation and vesting it with power to make loans and advances for housing facilities and it shall be liberally construed as vesting in said Department of Community Affairs all necessary authority to enable the said department to make rules and regulations for the control, supervision, regulation and promotion of the activities of housing companies in such manner as to be in accord with the requirements of the Reconstruction Finance Corporation and the laws of the United States.

History.—s. 3, ch. 16028, 1933; CGL 1936 Supp. 4151(134); ss. 18, 35, ch. 69-106.

cf.—s. 421.21 Federal aid.

424.04 Supervision of housing construction.—The Department of Community Affairs shall have and exercise power to control, regulate and supervise, in accordance with the terms and provisions of this chapter all housing companies authorized to be created, and which may come into existence under this chapter, and to secure the construction of new housing facilities under public supervision, in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale of such housing facilities, at prices which families of low income can afford to pay.

History.—s. 4, ch. 16028, 1933; CGL 1936 Supp. 4151(135); s. 161, ch. 71-377.

424.05 Investigations by department.—The Department of Community Affairs shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this chapter, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this chapter may be conducted by the department. The department may administer oaths, take affidavits and make personal inspections of all places to which its duties relate. The department may subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this chapter, and to examine them in relation to any matter it has power to investigate, and issue commissions for the examination of witnesses who are out of the state or are unable to attend before the department or excused from attendance.

History.—s. 5, ch. 16028, 1933; CGL 1936 Supp. 4151(136); ss. 18, 35, ch. 69-106.

424.06 Specific powers of department.—In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this chapter the Department of Community Affairs may:

(1) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations;

(2) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the department or by the terms of any project approved by the department, or to refrain from doing any acts in violation thereof;

(3) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed;

(4) Through agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof;

(5) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited;

(6) Require every such corporation to file with the department an annual report setting forth such information as the department may require verified by the oath of the president and general manager or receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the department. The department may further require specific answers to questions upon which the department may desire information and may also require such corporation to file periodic reports in the form covering the period and at the time prescribed by the department;

(7) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this chapter.

History.—s. 6, ch. 16028, 1933; CGL 1936 Supp. 4151(137); ss. 18, 35, ch. 69-106.

424.07 Housing projects must have approval of department.—No housing project proposed by a limited dividend housing corporation incorporated under this chapter shall be undertaken and no building or other construction shall be placed under contract or started without the approval of the Department of Community Affairs. No housing project shall be approved by the department unless the corporation agrees to accept a designee of the department as a member of the board of directors of said corporation.

History.—s. 6, ch. 16028, 1933; CGL 1936 Supp. 4151(138); ss. 18, 35, ch. 69-106.

424.08 Department to fix maximum prices; basis of determination.—The Department of Community Affairs shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the department from time to time. The payments to be made by such corporations shall be:

(1) All fixed charges, and all operating maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the department to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the department; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the department.

(2) A dividend not exceeding the maximum fixed by this chapter upon the stock of the corporation allotted to the project by the department.

(3) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the department for the gradual retirement of stock, and income debentures of the corporation to the extent permitted by this chapter.

History.—s. 7, ch. 16028, 1933; CGL 1936 Supp. 4151(139); ss. 18, 35, ch. 69-106.

424.09 Actions by department for violations.—

(1) Whenever the Department of Community Affairs shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit to do anything required of it by law or by order of the department and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law of or of any order of the department, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the court of chancery of the county in which the said company is located, in the name of the department for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The department shall begin such action or proceeding by a petition and complaint to the said court of chancery, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding 20 days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

(2) In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the

court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief.

History.—s. 8, ch. 16028, 1933; CGL 1936 Supp. 4151(140); ss. 18, 35, ch. 69-106.

424.10 Incorporation; purpose; shares; articles.—Any number of natural persons not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing with the Department of State, articles of incorporation, hereinafter called "articles," setting forth the information required by s. 607.164, except as herein modified or changed.

(1) The purpose for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the Department of Community Affairs.

(2) The shares of which the capital shall consist shall have a par value.

(3) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the Department of Community Affairs or of other appropriate state authority; that all real estate acquired by it and all structures erected by it, shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the State Housing Law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock together with cumulative dividends at the rate of 6 percent per annum, and that any surplus in excess of such amount if said company shall be dissolved, shall revert to the state.

History.—s. 9, ch. 16028, 1933; CGL 1936 Supp. 4151(141); ss. 10, 18, 35, ch. 69-106; s. 6, ch. 79-9.

424.11 Dividends limited.—No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of 6 percent per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

History.—s. 10, ch. 16028, 1933; CGL 1936 Supp. 4151(142).

424.12 No free securities to be issued.—No limited dividend housing company incorporated under this chapter shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the Department of Community Affairs and such valuation shall be used in computing actual or estimated cost.

History.—s. 11, ch. 16028, 1933; CGL 1936 Supp. 4151(143); ss. 18, 35, ch. 69-106.

424.13 Income debenture certificates; exchange for stock.—The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than 7½ percent per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the Department of Community Affairs for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor.

History.—s. 12, ch. 16028, 1933; CGL 1936 Supp. 4151(144); ss. 18, 35, ch. 69-106; s. 34, ch. 73-302.

424.14 Limitations on powers of housing companies.—No limited dividend housing company incorporated under this chapter shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the Department of Community Affairs a certificate that such acquisition is necessary or convenient for the public purpose defined in this chapter.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the department, provided, however, that leases conforming to the regulations and rules of the department and for actual occupancy by the lessees may be made without the consent of the department. Any conveyance, encumbrance, lease or sublease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than 7½ percent per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the department and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the department.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the department.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the department.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the department under such regulations as the department from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the department.

(11) Make any guaranty without approval of the department.

History.—s. 13, ch. 16028, 1933; CGL 1936 Supp. 4151(145); ss. 18, 35, ch. 69-106; s. 35, ch. 73-302.

424.15 Bonds and mortgages of housing companies.—Any company formed under this chapter may, subject to the approval of the Department of Community Affairs, borrow funds and secure the repayment thereof by bonds and mortgages or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the department, including the right to assignment of rents and entry into the possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the department under this chapter. Provisions for the amortization of the bonded indebtedness of companies formed under this chapter shall be subject to the approval of the department.

History.—s. 14, ch. 16028, 1933; CGL 1936 Supp. 4151(146); ss. 18, 35, ch. 69-106.

424.16 Surplus; accumulation and disposition.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in s. 424.08 (1), (2) and (3) shall be subject to the approval of the Department of Community Affairs. The amount of such surplus shall not exceed 15 percent of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends or interest, less any payments or distributions theretofore made other than by dividends provided in s. 424.11, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the state, or shall be disposed of in such other manner as the department may direct and the then Governor may approve.

History.—s. 15, ch. 16028, 1933; CGL 1936 Supp. 4151(147); ss. 18, 35, ch. 69-106.

424.17 Reduction of rentals with excess earnings.—If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in s. 424.08, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the Department of Community Affairs shall deem such balance too small for the purposes, be applied to the reduction of rentals.

History.—s. 16, ch. 16028, 1933; CGL 1936 Supp. 4151(148); ss. 18, 35, ch. 69-106.

424.18 Foreclosure actions; judicial sales.—

(1) In any foreclosure action the Department of Community Affairs shall be made a party defendant; and such department shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the department. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court may make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in subsection (2), be sold to a limited dividend housing corporation organized under this chapter, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this chapter.

(2) Notwithstanding the foregoing provision of this section, wherever it shall appear that a corporation, subject to the supervision either of the Department of Insurance or Department of Banking and Finance, or the Federal Government or any agency or department of the Federal Government, shall have loaned on a mortgage which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the state, free from any restrictions contained in this section, except that the Department of Community Affairs shall be made a party defendant and that such department shall take all steps necessary to protect the interest of the public and no costs shall be awarded against it.

History.—s. 17, ch. 16028, 1933; CGL 1936 Supp. 4151(149); ss. 12, 13, 18, 35, ch. 69-106.

424.19 Purchase of property of other limited dividend housing corporations.—Before any limited dividend housing corporation incorporated under this chapter shall purchase the property of any other limited dividend housing corporation, it shall file an application with the Department of Community Affairs in the manner hereinbefore provided as for a new project and shall obtain the consent of the department to the purchase and agree to be bound by the provisions of this chapter, and the department shall not give its consent unless it is shown to the satisfaction of the department that the project is one that can be successfully operated according to the provisions of this chapter.

History.—s. 18, ch. 16028, 1933; CGL 1936 Supp. 4151(150); ss. 18, 35, ch. 69-106.

424.20 Sales under judgments against housing companies.—In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon 60 days' written notice to the Department of Community Affairs. Upon receipt of such notice the department shall take such steps as in its judgment may be necessary to protect the rights of all parties.

History.—s. 19, ch. 16028, 1933; CGL 1936 Supp. 4151(151); ss. 18, 35, ch. 69-106.

424.21 Fees for services of department.—The Department of Community Affairs may charge and collect from a limited dividend housing corporation, incorporated under this chapter, reasonable fees in accordance with rates to be established by the rules of the department for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of 1 percent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the department, or any of its employees, in performance of their duties under this chapter an amount reasonably calculated to meet the expense of the department incurred in connection therewith. In no event shall any part of the expenses of the department ever be paid out of the State Treasury. The department may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in s. 424.08 pursuant to rules to be established by the department.

History.—s. 20, ch. 16028, 1933; CGL 1936 Supp. 4151(152); ss. 18, 35, ch. 69-106.

424.22 Duration of corporate existence.—The corporate existence of any corporation authorized hereunder shall not extend beyond 25 years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the incorporation board, by approval of the Department of Community Affairs, should grant an extension for an additional period of time.

History.—s. 22, ch. 16028, 1933; CGL 1936 Supp. 4151(154); ss. 18, 35, ch. 69-106.

CHAPTER 425

RURAL ELECTRIC COOPERATIVES

425.01 Short title.—This chapter may be cited as the "Rural Electric Cooperative Law."

History.—s. 1, ch. 19138, 1939; CGL 1940 Supp. 6494(43).

425.02 Purpose.—Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives."

History.—s. 2, ch. 19138, 1939; CGL 1940 Supp. 6494(45).
cf.—Ch. 619 Nonprofit Cooperative Associations.

425.03 Definitions.—In this chapter, unless the context otherwise requires:

(1) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 2500 persons;

(2) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic; and

(3) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History.—s. 29, ch. 19138, 1939; CGL 1940 Supp. 6494(44).

425.04 Powers.—A cooperative shall have power:

(1) To sue and be sued, in its corporate name;

(2) To have perpetual existence;

(3) To adopt a corporate seal and alter the same at pleasure;

(4) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members; to process, treat, sell, and dispose of water and water rights; to purchase, construct, own and operate water systems; to own and operate sanitary sewer systems; and to supply water and sanitary sewer services. However, no cooperative shall distribute or sell any electricity, or electric energy to any person residing within any town, city or area which person is receiving adequate central station service or who at the time of commencing such service, or offer to serve, by a cooperative, is receiving adequate central station service from any utility agency, privately or municipally owned individual partnership or corporation;

(5) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such person in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(6) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(7) To become a member in one or more other cooperatives or corporations or to own stock therein;

(8) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(9) To purchase or otherwise acquire; to own, hold, use and exercise; and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise

dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and easement;

(10) To borrow money and otherwise contract indebtedness; to issue notes, bonds, and other evidences of indebtedness therefor; and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(11) To construct, maintain, and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(12) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(13) To conduct its business and exercise any or all of its powers within or without this state;

(14) To adopt, amend and repeal bylaws; and

(15) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History.—s. 3, ch. 19138, 1939; CGL 1940 Supp. 6494(46); s. 1, ch. 71-83.

425.05 Name.—The name of each cooperative shall include the words "electric" and "cooperative" and the abbreviation "inc."; provided, however, such limitation shall not apply if, in an affidavit made by the president or vice president of a cooperative and filed with the Department of State, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History.—s. 4, ch. 19138, 1939; CGL 1940 Supp. 6494(47); ss. 10, 35, ch. 69-106.

425.06 Incorporators.—Five or more natural persons or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

History.—s. 5, ch. 19138, 1939; CGL 1940 Supp. 6494(48).

425.07 Articles of incorporation.—

(1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed and acknowledged by each of the incorporators, and shall state:

(a) The name of the cooperative;

(b) The address of its principal office;

(c) The names and addresses of the incorporators;

(d) The names and addresses of the persons who shall constitute its first board of trustees; and

(e) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

(2) Such articles of incorporation shall be submitted to the Department of State for filing as provided in this chapter.

History.—s. 6, ch. 19138, 1939; CGL 1940 Supp. 6494(49); ss. 10, 35, ch. 69-106.

425.08 Bylaws.—The original bylaws of a cooperative, and the first bylaws for a corporation after the effective date of the conversion thereof into a cooperative, pursuant to s. 425.17, shall be adopted by its board of trustees. Thereafter, bylaws shall be adopted, amended or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

History.—s. 7, ch. 19138, 1939; CGL 1940 Supp. 6494(50).

425.09 Members.—

(1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member thereof if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

(2) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(3) Special meeting of the members may be called by the board of trustees, by any three trustees, by not less than 10 percent of the members, or by the president.

(4) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(5) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than 10 nor more than 25 days before the date of the meeting.

(6) One percent of all members, present in person, shall constitute a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(7) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail they shall also prescribe the conditions under which proxy or mail voting shall be exercised. In any event, no person shall vote as proxy for more than three members at any meeting of the members.

History.—s. 8, ch. 19138, 1939; CGL 1940 Supp. 6494(51); s. 1, ch. 75-4; s. 1, ch. 79-51.

425.10 Board of trustees.—

(1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors. Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed to each trustee for attendance at each meeting of the board of trustees and that such may be allowed for the performance of other cooperative business, provided it has prior approval of the board of trustees.

(2) The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as hereinafter otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(3) The bylaws may provide that, in lieu of electing the whole number of trustees annually, the trustees may be divided into three classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting and the term of the third class to expire at the third succeeding annual meeting. At each annual meeting after such classification a number of trustees equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting.

(4) A majority of the board of trustees shall constitute a quorum.

(5) If a husband and wife hold a joint membership in a cooperative, either one, but not both, may be elected a trustee.

(6) The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by this chapter, or its articles of incorporation or bylaws.

History.—s. 9, ch. 19138, 1939; CGL 1940 Supp. 6494(52); s. 1, ch. 28053, 1953; s. 1, ch. 74-33.

425.11 Voting districts.—Notwithstanding any other provision of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district:

(1) A designated number of trustees shall be elected by the members residing therein; or

(2) A designated number of delegates shall be elected by such members; or

(3) Both such trustees and delegates shall be elected by such members.

In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History.—s. 10, ch. 19138, 1939; CGL 1940 Supp. 6494(53).

425.12 Officers.—The officers of a cooperative shall consist of a president, vice president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History.—s. 11, ch. 19138, 1939; CGL 1940 Supp. 6494(54).

425.13 Amendment of articles of incorporation.—A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall first be approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than

two-thirds of those members voting thereon at such meeting; and

(2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) The name of the cooperative;

(b) The address of its principal office;

(c) The date of the filing of its articles of incorporation with the Department of State; and

(d) The amendment to its articles of incorporation.

The president or vice president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the Department of State for filing as provided in this chapter.

(3) A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed and acknowledged by its president or vice president under its seal attested by its secretary, with the Department of State and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if the same are not already on file therein.

History.—s. 12, ch. 19138, 1939; CGL 1940 Supp. 6494(55); ss. 10, 35, ch. 69-106.

425.14 Consolidation.—Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative," may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) The name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation with the Department of State;

(b) The name of the new cooperative and the address of its principal office;

(c) The names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) The terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting; and

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the Department of State for filing as provided in this chapter.

History.—s. 13, ch. 19138, 1939; CGL 1940 Supp. 6494(56); ss. 10, 35, ch. 69-106.

425.15 Merger.—Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative," may merge into another cooperative, hereinafter designated the "surviving cooperative," by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) The name of each merging cooperative, the address of its principal office, the date of the filing of its articles of incorporation with the Department of State;

(b) The name of the surviving cooperative and the address of its principal office;

(c) A statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) The names and addresses of the persons who shall constitute the board of trustees of the surviving cooperative until the next following annual meeting of the members thereof;

(e) The terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into

memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(f) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperatives;

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting; and

(3) Upon such approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the Department of State for filing as provided in this chapter.

History.—s. 14, ch. 19138, 1939; CGL 1940 Supp. 6494(57); ss. 10, 35, ch. 69-106.

425.16 Effect of consolidation or merger.—The effect of consolidation or merger shall be as follows:

(1) The several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation, and, in the case of a merger, shall be that cooperative designed in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, shall cease;

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter, and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action, of each of the consolidating or merging cooperatives, and furthermore all and every interest of, or belonging or due to, each of the cooperatives so consolidated or merged, shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate, or any interest therein, under the laws of this state vested in any such cooperatives shall not revert or be in any way impaired by reason of such consolidation or merger;

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged, and any claim existing, or action or proceeding impending, by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger; and

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History.—s. 15, ch. 19138, 1939; CGL 1940 Supp. 6494(58).

425.17 Conversion of existing corporations.—Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) The name of the corporation prior to its conversion into a cooperative;

(b) The address of the principal office of such corporation;

(c) The date of the filing the articles of incorporation of such corporation with the Department of State;

(d) The statute under which such corporation was organized;

(e) The name assumed by such corporation;

(f) A statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) The names and addresses of the persons who shall constitute the board of trustees of such corporation after the completion of the conversion thereof until the next following annual meeting of its members;

(h) The manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(i) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of such corporation;

(2) The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees

or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders shall be executed and acknowledged on behalf of such corporation by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the Department of State for filing as provided in this chapter. The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History.—s. 16, ch. 19138, 1939; CGL 1940 Supp. 6494(59); ss. 10, 35 ch. 69-106.

425.18 Initiative by members.—Notwithstanding any other provision of this chapter, any proposition embodied in a petition signed by not less than 10 percent of the members of a cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History.—s. 17, ch. 19138, 1939; CGL 1940 Supp. 6494(60).

425.19 Dissolution.—

(1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the Department of State articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) The name of the cooperative;

(b) The address of its principal office;

(c) The date of its incorporation;

(d) That the cooperative has not commenced business;

(e) That the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) That no debt of the cooperative remains unpaid; and

(g) That a majority of the incorporators elect that the cooperative be dissolved. Such articles of dissolution shall be submitted to the Department of State for filing as provided in this chapter.

(2) A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(a) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting;

(b) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate," shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:

1. The name of the cooperative;
2. The address of its principal office;
3. The names and addresses of its trustees; and
4. The total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative.

The president or vice president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the Department of State for filing as provided in this chapter;

(c) Upon the filing of the certificate and affidavit by the Department of State, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the Department of State;

(d) After the filing of the certificate and affidavit by the Department of State the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation

in the county in which the principal office of the cooperative is located;

(e) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate, or, if the cooperative shall not have been in existence for such period, during the period of its existence; and

(f) When all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor, and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

1. The name of the cooperative;
2. The address of the principal office of the cooperative;
3. That the cooperative has heretofore delivered to the Department of State a certificate of election to dissolve and the date on which the certificate was filed by the Department of State in the records of its office;
4. That all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;
5. That all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and
6. That there are no actions or suits pending against the cooperative. The president or vice president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with.

Such articles of dissolution and affidavit accompanied by proof of the publication required in this subsection, shall be submitted to the Department of State for filing as provided in this chapter.

History.—s. 18, ch. 19138, 1939; CGL 1940 Supp. 6494(61); s. 7, ch. 22858, 1945; ss. 10, 35, ch. 69-106.

425.20 Filing of articles.—Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the Department of State for filing in the records of its office. If the Department of State shall find that the articles presented conform to the requirements of this chapter, it shall upon the payment of the fees as in this chapter provided, file the articles so presented in the records of its office and upon such filing the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect. The Department of State immediately upon the filing in its office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the Department of State or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to s. 425.19(2)(b).

History.—s. 19, ch. 19138, 1939; CGL 1940 Supp. 6494(62); ss. 10, 35, ch. 69-106.

425.21 Refunds to members.—Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

(1) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(2) To pay interest and principal obligations of the cooperative coming due in such fiscal year;

(3) To finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(4) To provide a reasonable reserve for working capital;

(5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(6) To provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative,

shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History.—s. 20, ch. 19138, 1939; CGL 1940 Supp. 6494(63).

425.22 Disposition of property.—A cooperative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or oth-

er disposition or encumbrance is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the cooperative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting. However, notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or deed of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States or any instrumentality or agency thereof or to any bank, financial institution, corporation, or person lending money or credit to such cooperative.

History.—s. 21, ch. 19138, 1939; CGL 1940 Supp. 6494(64); s. 1, ch. 70-14; s. 1, ch. 71-37.

425.23 Nonliability of members for debts of cooperative.—The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

History.—s. 22, ch. 19138, 1939; CGL 1940 Supp. 6494(65).

425.24 Recordation of mortgages.—Any mortgage, deed of trust, or other instrument executed by a cooperative or foreign corporation transacting business in this state pursuant to this chapter, which, by its terms, creates a lien upon real and personal property then owned or after-acquired, and which is recorded as a mortgage of real property in any county in which such property is located or is to be located shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office of such county as a mortgage on personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately upon the acquisition of such property by the mortgagor, and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record and tax liens, affecting such property.

History.—s. 23, ch. 19138, 1939; CGL 1940 Supp. 6494(66).

425.25 Waiver of notice.—Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History.—s. 24, ch. 19138, 1939; CGL 1940 Supp. 6494(67).

425.26 Trustees, officers or members, notaries.—No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

History.—s. 25, ch. 19138, 1939; CGL 1940 Supp. 6494(68).

425.27 Foreign corporations.—Any corporation organized under the laws of another state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state, shall be allowed to transact business in this state and shall have the same rights, powers, and privileges as a cooperative organized under this chapter upon the filing with the Department of State of a certified copy of its charter or articles of incorporation and upon payment of the filing fee in this chapter provided.

History.—s. 26, ch. 19138, 1939; CGL 1940 Supp. 6494(69); ss. 10, 35, ch. 69-106.

425.28 Fees.—The Department of State shall charge and collect for:

(1) Filing articles of incorporation, $10;
(2) Filing articles of amendment, $5;
(3) Filing articles of consolidation or merger, $5;
(4) Filing articles of conversion, $5;
(5) Filing certificate of election to dissolve, $5;
(6) Filing articles of dissolution, $5;
(7) Filing certificate of change of principal office, $2;
(8) Filing certified copy of charter or articles of incorporation of foreign corporation pursuant to s. 425.27, $10.

History.—s. 27, ch. 19138, 1939; CGL 1940 Supp. 6494(70); ss. 10, 35, ch. 69-106.

425.29 Exemption from Sale of Securities Law.—The provisions of the Sale of Securities Law shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or foreign corporation transacting business in this state pursuant to this chapter to the United States or any agency or instrumentality thereof, to any commercial bank or banking institution chartered by state or national laws, to any financing institution, organized on a cooperative plan for the purpose of financing its members' programs, projects, and undertakings, in which the cooperative holds membership, or to any mortgage, deed of trust, or other security agreement executed to secure the same. The provisions of said sale of securities law shall not apply to the issuance of membership certificates by any cooperative or any such foreign corporation.

History.—s. 28, ch. 19138, 1939; CGL 1940 Supp. 6494(71); s. 2, ch. 71-37.

CHAPTER 427

TRANSPORTATION SERVICES

[1]**427.011 Definitions.**—For the purposes of ss. 427.011-427.018:

(1) "Transportation disadvantaged" means those individuals who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities.

(2) "Metropolitan planning organization" means the organization responsible for carrying out transportation planning and programming in accordance with the provisions of 23 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f)(3).

(3) "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or any other unit or entity of the state or of a city, town, municipality, county, or other local governing body or a private nonprofit service-providing agency.

(4) "Transportation improvement program" means a staged multiyear program of transportation improvements, including an annual element, which is developed by a metropolitan planning organization.

(5) "Coordinated community transportation provider" means a transportation provider designated by a metropolitan planning organization, or by the appropriate agency as provided for in ss. 427.011-427.018 in an area outside the purview of a metropolitan planning organization, to serve the transportation disadvantaged population in a community and which, to the fullest extent possible, reduces the fragmentation and duplication of service provision among all the state or federally funded programs that provide services to transportation disadvantaged individuals.

(6) "Member department" means a department whose secretary is a member of the coordinating council.

(7) "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(8) "Transportation disadvantaged funds" means any state or available federal funds that are for the transportation of the transportation disadvantaged. Such funds may include, but are not limited to, funds for planning, administration, operation, procurement, and maintenance of vehicles or equipment and capital investments. Transportation disadvantaged funds shall not include funds for the transportation of children to public schools.

History.—ss. 1, 9, ch. 79-180.
[1]**Note.**—Expires July 1, 1984.

[1]**427.012 Coordinating Council on the Transportation Disadvantaged.**—There is created a Coordinating Council on the Transportation Disadvantaged, hereafter referred to as the coordinating council.

(1) The coordinating council shall consist of the following members:

(a) The Secretary of the Department of Transportation, or his designate, who shall serve as chairman of the coordinating council.

(b) The Secretary of the Department of Community Affairs or his designate.

(c) The Secretary of the Department of Health and Rehabilitative Services or his designate.

(d) The president of the Florida Association for Community Action Agencies, who shall serve at the pleasure of said association.

(e) A person over the age of 60 who is a member of a recognized statewide organization representing elderly Floridians. Such person shall be appointed by the Governor to represent elderly Floridians, shall serve a term of 4 years, and shall be appointed within 30 days of October 1, 1979.

(f) A handicapped person who is a member of a recognized statewide organization representing handicapped Floridians. Such person shall be appointed by the Governor to represent handicapped Floridians, shall serve a term of 4 years, and shall be appointed within 30 days of October 1, 1979.

(2) The Department of Transportation shall have the primary responsibility for providing staff support and for carrying out the policies and procedures of the coordinating council.

(3) All members of the coordinating council shall be allowed per diem and traveling expenses, as provided for in s. 112.061.

(4) The coordinating council shall be organized and hold its first meeting no later than January 1, 1980, and shall make an annual report to the Governor and the Legislature.

History.—ss. 2, 8, 9, ch. 79-180.
[1]**Note.**—Expires July 1, 1984.

[1]**427.013 Coordinating council; purpose and responsibilities.**—The purpose of the coordinating council is to foster the coordination of transportation services provided to the transportation disadvan-

taged. In carrying out this purpose, the coordinating council shall:

(1) Compile all available information on the transportation needs of the transportation disadvantaged in the state.

(2) Establish statewide objectives for providing essential transportation services for the transportation disadvantaged.

(3) Develop policies and procedures for the coordination of federal and state funding for the transportation disadvantaged.

(4) Analyze barriers prohibiting the coordination of transportation services to the transportation disadvantaged and aggressively pursue the elimination of these barriers.

(5) Serve as a clearinghouse for information about funding sources and innovations in serving the transportation disadvantaged.

(6) Assist communities in developing transportation systems designed to serve the transportation disadvantaged. In providing such assistance, special emphasis shall be placed on working with rural communities.

(7) Assure that all procedures, guidelines, and directives issued by member departments are conducive to the coordination of transportation services.

(8) Develop standards covering coordination, operation, and utilization of transportation services for the disadvantaged.

(9) Develop rules and procedures to implement the provisions of ss. 427.011-427.018. The rules shall identify procedures for coordinating with the review procedures pursuant to Office of Management and Budget circular A-95 and s. 216.212(1) and any other appropriate grant review process.

(10) Approve the appointment of all coordinated community transportation providers and agencies that plan for the coordination of transportation for the transportation disadvantaged in areas outside the purview of a metropolitan planning organization.

History.—ss. 3, 9, ch. 79-180.
[1]**Note.**—Expires July 1, 1984.

[1]427.014 Department of Transportation; powers and duties.—The Department of Transportation, in carrying out the policies and procedures of the coordinating council, shall:

(1) Prepare a statewide 5-year transit and paratransit development plan addressing the transportation problems of the transportation disadvantaged. The plan shall be reviewed and approved by the coordinating council and may be amended as authorized by rules promulgated by the coordinating council. The plan shall be developed in a manner that will assure maximum use of existing resources and optimum integration and coordination of the various modes of transportation. In addition, the plan shall incorporate transportation improvement programs developed by metropolitan planning organizations, as well as plans developed by the body or agency designated by the Department of Transportation in areas outside the purview of metropolitan planning organizations, as provided for in subsection (3). Further, prior to the commencement of each fiscal year, the Department of Transportation shall develop an annual element of the 5-year plan, which shall also be reviewed and approved by the coordinating council and which may be amended in accordance with rules promulgated by the coordinating council. The annual element shall outline the manner in which transportation disadvantaged funds are to be expended. No transportation disadvantaged funds shall be expended unless they are contained in the annual element.

(2) Have the primary responsibility for monitoring and, without delaying the application process, coordinating applications for all transportation disadvantaged funds.

(3) With the approval of the coordinating council, designate an official body or agency in any area outside the purview of a metropolitan planning organization to plan for the coordination of transportation for the transportation disadvantaged. Each designated official body or agency shall designate the coordinated community transportation provider to serve its area.

(4) Coordinate all programs with appropriate state agencies, regional planning agencies, and local agencies with transportation systems in the area of any proposed transportation project to ensure compatibility of transportation systems for the transportation disadvantaged with available systems in the area and also to ensure that the most cost-effective and efficient method of providing transportation to the disadvantaged is programmed for development.

History.—ss. 4, 9, ch. 79-180.
[1]**Note.**—Expires July 1, 1984.

[1]427.015 Function of the metropolitan planning organization in coordinating transportation for the transportation disadvantaged.—

(1) In developing the transportation improvement program, each metropolitan planning organization in this state shall include a realistic estimate of the revenue that will be derived from transportation disadvantaged funds in its area. The transportation improvement program shall also identify transportation improvements that will be advanced with such funds during the program period. Funds required by this subsection to be included in the transportation improvement program shall only be included after consultation with all affected agencies and shall only be expended if such funds are included in the transportation improvement program.

(2) Each metropolitan planning organization shall designate a single coordinated community transportation provider with which any agency receiving transportation disadvantaged funds shall contract for the provision of transportation services. If, for reasons identified in rules promulgated by the coordinating council, a single coordinated community transportation provider cannot be designated, the metropolitan planning organization may designate more than one coordinated community transportation provider to serve the area, provided that all providers agree upon a common plan for the coordinated delivery of service. The designation of any coordinated community transportation provider shall be subject to the approval of the coordinating council.

(3) Nothing in this section shall be construed to prohibit the coordinated community transportation provider from subcontracting with other transporta-

tion providers, with the consent of the coordinating council.

History.—ss. 6, 9, ch. 79-180.
[1]Note.—Expires July 1, 1984.

[1]427.016 Expenditure of state and federal funds for the transportation disadvantaged.—All transportation disadvantaged funds shall be expended to purchase transportation services from public, private, or private nonprofit providers, unless otherwise prohibited by law. However, in areas where transportation suited to the unique needs of a transportation disadvantaged person cannot be purchased, the service may be provided directly by the appropriate agency.

History.—ss. 5, 9, ch. 79-180.
[1]Note.—Expires July 1, 1984.

[1]427.017 Conflicts with federal laws or regulations.—Upon notification by an agency of the Federal Government that any provision of this act conflicts with federal laws or regulations, the state or local agencies involved may take any reasonable steps necessary to assure continued federal funding. Further, it is the legislative intent that the conflict shall not affect other provisions or applications of this act that can effectively be implemented without implementation of the provision in question, and to this end, the provisions of this act are declared severable.

History.—ss. 7, 9, ch. 79-180.
[1]Note.—Expires July 1, 1984.

[1]427.018 Expiration of ss. 427.011-427.018.—The provisions of ss. 427.011-427.018 shall expire and be void and inoperative July 1, 1984.

History.—s. 9, ch. 79-180.
[1]Note.—Expires July 1, 1984.

TITLE XXX

LABOR

CHAPTER 440

WORKERS' COMPENSATION

440.01 Short title.—This chapter may be cited as the "Workers' Compensation Law."

History.—s. 1, ch. 17481, 1935; CGL 1936 Supp. 5966(1); s. 23, ch. 78-300; ss. 1, 124, ch. 79-40; s. 21, ch. 79-312.

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(1) "Employment."

(a) "Employment," subject to the other provisions of this chapter, means any service performed

by an employee for the person employing him.

(b) The term "employment" shall include:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein, including officers elected at the polls.

2. All private employments in which three or more employees are employed by the same employer.

(c) The term "employment" shall not include service performed by or as:

1. Domestic servants in private homes.

2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, who employs 5 or less regular employees and who employs less than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term "agricultural labor" includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players.

(2) "Employee."

(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors whether lawfully or unlawfully employed.

(b) The term "employee" shall include any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous. However, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of the election with the division as provided in s. 440.05. Services shall be presumed to have been rendered the corporation in cases where such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) The term "employee" shall include a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

(d) The term "employee" shall not include:

1. An independent contractor, including:

a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission;

b. Bands, orchestras, and musical and theatrical performers, including disc jockeys, performing in licensed premises as defined in chapter 562, provided that a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment;

2. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer; or

3. A volunteer who falls into one of the following categories:

a. Volunteers who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, in the event that such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the division.

b. Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter.

(3) The term "casual" as used in this section shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding 10 working days, without regard to the number of men employed, and where the total labor cost of such work is less than $100.

(4) The term "employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

(5) The term "person" means individual, partnership, association, or corporation, including any public service corporation.

(6) The term "injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eyeglasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.

(7)(a) The term "carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes self-insurers.

(b) The term "self-insurer" means:

1. Any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) or (6) as an individual self-insurer;

2. Any employer who has secured payment of compensation through a group self-insurer pursuant to s. 440.57; or

3. Any group self-insurer established pursuant to s. 440.57.

(8)(a) The term [1]"commission" means the Industrial Relations Commission within the Department of Labor and Employment Security.

(b) The term "division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.

(9) "Disability" means incapacity because of the injury to earn in the same or any other employment

the wages which the employee was receiving at the time of the injury.

(10) "Death" as a basis for a right to compensation means only death resulting from an injury.

(11) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter.

(12) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer, only when such gratuities are received with the knowledge of the employer. In employment in which an employee receives consideration other than cash as a portion of this compensation, the value of such compensation shall be subject to the determination of the deputy commissioner.

(13) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, halfbrothers and halfsisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother" and "sister" includes only persons who at the time of the death of the deceased employees are under 18 years of age, or under 22 years of age if a full-time student in an accredited educational institution.

(14) The term "parent" includes stepparents and parents by adoption, parents-in-law, and any persons who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him, and were dependent on the injured employee.

(15) The term "spouse" includes only a spouse substantially dependent for financial support upon the decedent and living with the decedent at the time of the decedent's injury and death, or substantially dependent upon the decedent for financial support and living apart at said time for justifiable cause.

(16) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(17) The term "time of injury" means the time of the occurrence of the accident resulting in the injury.

(18) "Accident" means only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to fright or excitement only, or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of, and in the course of, employment and resulting in death, only acceleration of death reasonably attributable to the accident shall be compensable.

(19) The term "registered mail" includes certified mail and any mail service which provides for a receipt to the sender and a record of delivery at the office of address.

(20) The term "weekly compensation rate" shall be deemed to mean and refer to the amount of compensation payable for a period of 7 consecutive days, including any Saturdays, Sundays, holidays, and other nonworking days which fall within such period of 7 consecutive days. When Saturdays, Sundays, holidays, or other nonworking days immediately follow the first 7 days of disability or occur at the end of a period of disability as the last day or days of such period, such nonworking days constitute a part of the period of disability with respect to which compensation is payable.

(21) The term "permanent impairment" means any anatomic or functional abnormality or loss, existing after the date of maximum medical improvement, which results from the injury.

(22) The term "date of maximum medical improvement" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.

History.—s. 2, ch. 17481, 1935; s. 1, ch. 17482, 1935; s. 1, ch. 17483, 1935; CGL 1936 Supp. 5966(2); s. 1, ch. 18413, 1937; s. 1, ch. 20672, 1941; s. 1, ch. 28238, 1953; s. 1, ch. 29778, 1955; s. 1, ch. 57-155; s. 1, ch. 57-225; s. 1, ch. 59-100; s. 1, ch. 65-184; s. 1, ch. 67-554; ss. 17, 35, ch. 69-106; s. 1, ch. 71-80; s. 162, ch. 71-377; s. 1, ch. 72-243; s. 1, ch. 73-127; s. 1, ch. 73-283; s. 116, ch. 73-333; s. 1, ch. 74-46; s. 1, ch. 74-124; s. 1, ch. 74-197; s. 1, ch. 75-209; s. 1, ch. 77-174; s. 1, ch. 77-290; ss. 1, 23, ch. 78-300; s. 15, ch. 79-7; ss. 2, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before the commission to the District Court of Appeal, First District, effective October 1, 1979.

cf.—s. 1.01 Definitions.

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by deputy commissioners and the [1]Industrial Relations Commission are exempt from chapter 120, and neither the deputy commissioners nor the [1]Industrial Relations Commission shall be considered an agency or a part thereof. Advisory opinions of the division pursuant to s. 440.19(1) as to the entitlement of an employee or his dependents to benefits under this chapter are exempt from chapter 120. In all instances in which the division institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the division shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the division does not agree with the protest, it shall refer the matter to the deputy commissioner for determination pursuant to s. 440.25(3) and (4). Such action of the division is exempt from the provisions of chapter 120.

History.—s. 15, ch. 77-290; s. 23, ch. 78-300; ss. 3, 124, ch. 79-40; ss. 6, 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Com-

mission and transferred all appeals pending before the commission to the District Court of Appeal, First District, effective October 1, 1979.

440.03 Application.—Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.

History.—s. 3, ch. 17481, 1935; CGL 1936 Supp. 5966(3); s. 1, ch. 70-148; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.04 Waiver of exemption.—

(1) Every employer having in his employment any employee not included in the definition "employee" or excluded or exempted from the operation of this chapter may at any time waive such exclusion or exemption and accept the provisions of this chapter by giving notice thereof as provided in s. 440.05, and by so doing be as fully protected and covered by the provisions of this chapter as if such exclusion or exemption had not been contained herein.

(2) When any policy or contract of insurance specifically secures the benefits of this chapter to any person not included in the definition of "employee" or whose services are not included in the definition of "employment" or who is otherwise excluded or exempted from the operation of this chapter, the acceptance of such policy or contract of insurance by the insured and the writing of same by the carrier shall constitute a waiver of such exclusion or exemption and an acceptance of the provisions of this chapter with respect to such person, notwithstanding the provision of s. 440.05 with respect to notice.

(3) A corporate officer who has exempted himself by proper notice from the operation of this chapter may at any time revoke such exemption and thereby accept the provisions of this chapter by giving notice as provided in s. 440.05.

History.—s. 4, ch. 17481, 1935; CGL 1936 Supp. 5966(4); s. 2, ch. 18413, 1937; s. 2, ch. 29778, 1955; s. 4, ch. 70-148; s. 2, ch. 74-197; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.05 Notice of exemption or acceptance and waiver of exemption or acceptance.—

(1) Every corporate officer who elects not to accept the provisions of this chapter or who, after electing such exemption, then revokes that exemption shall mail to the division in Tallahassee notice to such effect in accordance with a form to be prescribed by the division.

(2) Every sole proprietor or partner who elects to be included in the definition of "employee" or who, after such election, then revokes that election shall mail to the division in Tallahassee notice to such effect, in accordance with a form to be prescribed by the division.

(3) No notice given pursuant to subsection (1) or subsection (2) shall become effective until 30 days after the date it is mailed to the division in Tallahassee. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice shall be effective as of 12:01 a.m. of the day following the date it is mailed to the division in Tallahassee.

History.—s. 5, ch. 17481, 1935; CGL 1936 Supp. 5966(5); ss. 17, 35, ch. 69-106; s. 2, ch. 70-148; s. 1, ch. 70-439; s. 3, ch. 74-197; s. 2, ch. 75-209; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.06 Failure to secure compensation; effect.—Every employer who fails to secure the payment of compensation under this chapter as provided in s. 440.38 may not, in any suit brought against him by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his employment, or that the injury was due to the comparative negligence of the employee.

History.—s. 6, ch. 17481, 1935; CGL 1936 Supp. 5966(6); s. 5, ch. 70-148; s. 23, ch. 78-300; ss. 4, 124, ch. 79-40; s. 21, ch. 79-312.

440.075 When corporate officer rejects chapter; effect.—Every corporate officer who elects to reject this chapter shall, in any action to recover damages for injury or death brought against the corporate employer, proceed as at common law, and the employer in such suit may avail itself of all defenses that exist at common law.

History.—s. 4, ch. 74-197; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.09 Coverage.—

(1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the disability or death results from an injury arising out of and in the course of employment. Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in s. 440.15(6) shall for the purpose of this chapter be considered as a death resulting from the accident causing the hernia. Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.

(2) No compensation shall be payable in respect of the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or the Jones Act.

(3) No compensation shall be payable if the injury was occasioned primarily by the intoxication of the employee; by the influence of any narcotic drugs, barbiturates, or other stimulants not prescribed by a physician, which affected the employee to such an extent that the employee's normal faculties were impaired; or by the willful intention of the employee to injure or kill himself, herself, or another. If there was at the time of the injury 0.10 percent or more by weight of alcohol in the employee's blood, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was occasioned primarily by the intoxication of the employee. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(4) Where injury is caused by the willful refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully promul-

gated by the division, and brought prior to the accident to his or her knowledge, the compensation as provided in this chapter shall be reduced 25 percent.

History.—s. 9, ch. 17481, 1935; CGL 1936 Supp. 5966(9); s. 3, ch. 18413, 1937; s. 1, ch. 28236, 1953; s. 1, ch. 57-293; s. 2, ch. 73-127; s. 5, ch. 74-197; s. 3, ch. 75-209; s. 2, ch. 77-290; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.10 Liability for compensation.—

(1) Every employer coming within the provisions of this chapter, including any brought within the chapter by waiver of exclusion or of exemption, shall be liable for, and shall secure, the payment to his employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors who have three or more employees engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment or who is exempt. A subcontractor who employs fewer than three employees shall certify in writing to the contractor that such subcontractor and its employees are exempt from coverage under this chapter. A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness of liability provisions of s. 440.11 from action at law or in admiralty on account of injury of such employee of another subcontractor.

(2) Compensation shall be payable irrespective of fault as a cause for the injury, except as provided in s. 440.09(3).

History.—s. 10, ch. 17481, 1935; CGL 1936 Supp. 5966(10); s. 4, ch. 18413, 1937; s. 6, ch. 74-197; s. 23, ch. 78-300; ss. 5, 124, ch. 79-40; s. 21, ch. 79-312.

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment.

(2) An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract. The exclusion from liability under this subsection shall not apply in any case in which injury or death is proximately caused by the willful and unprovoked physical aggression, or by the negligent operation of a motor vehicle, by employees, officers, or directors of the employer's workers' compensation carrier, service agent, or safety consultant.

History.—s. 11, ch. 17481, 1935; CGL 1936 Supp. 5966(11); s. 1, ch. 70-25; s. 1, ch. 71-190; s. 4, ch. 75-209; ss. 2, 23, ch. 78-300; ss. 6, 124, ch. 79-40; s. 21, ch. 79-312.

440.12 Time for commencement and limits on weekly and monthly rate of compensation.—

(1) No compensation shall be allowed for the first 7 days of the disability, except benefits provided for in s. 440.13; however, if the injury results in disability of more than 14 days, compensation shall be allowed from the commencement of the disability. All weekly compensation payments, except for the first payment, shall be paid by check.

(2) Compensation for disability resulting from injuries which occur after December 31, 1974, shall not be less than $20 per week. However, if the employee's wages at the time of injury are less than $20 per week, he shall receive his full weekly wages. If his wages at the time of the injury exceed $20 per week, compensation shall not exceed an amount per week which is:

(a) Equal to 100 percent of the statewide average weekly wage, determined as hereinafter provided for the year in which the injury occurred; however, the [1]increase to 100 percent from 66⅔ percent of the statewide average weekly wage shall apply only to injuries occurring on or after July 1, 1979; and

(b) Adjusted to the nearest dollar.

For the purpose of this subsection, the "statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Unemployment Compensation Law as reported to the department for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the department on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. The statewide average weekly wage deter-

mined by the department shall be reported annually to the Legislature.

(3) Monthly wage-loss benefits shall not exceed 4.3 times the maximum weekly benefit as computed pursuant to subsection (2).

(4) The provisions of this section as amended effective July 1, 1951, shall govern with respect to disability due to injuries suffered prior to July 1, 1959. The provisions of this section as amended effective July 1, 1959, shall govern with respect to disability due to injuries suffered after June 30, 1959, and prior to January 1, 1968. The provisions of this section as amended effective January 1, 1968, shall govern with respect to disability due to injuries suffered after December 31, 1967, and prior to July 1, 1970. The provisions of this section as amended effective July 1, 1970, shall govern with respect to disability due to injuries suffered after June 30, 1970, and prior to July 1, 1972. The provisions of this section as amended effective July 1, 1972, shall govern with respect to disability due to injuries suffered after June 30, 1972, and prior to July 1, 1973. The provisions of this section, as amended effective July 1, 1973, shall govern with respect to disability due to injuries suffered after June 30, 1973, and prior to January 1, 1975.

History.—s. 12, ch. 17481, 1935; CGL 1936 Supp. 5966(12); s. 5, ch. 18413, 1937; s. 1, ch. 21824, 1943; ss. 1, 3, ch. 26876, 1951; s. 1, ch. 59-151; s. 1, ch. 67-239; s. 1, ch. 70-172; s. 1, ch. 72-198; ss. 3, 4, ch. 73-127; s. 7, ch. 74-197; ss. 3, 23, ch. 78-300; ss. 7, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—The increase referred to was enacted by s. 7, ch. 79-40, which amended this paragraph, effective August 1, 1979.

440.13 Medical services and supplies; penalty for violations; limitations.—

(1) Subject to the limitations specified in s. 440.19(2)(b), the employer shall furnish to the employee such remedial treatment, care, and attendance under the direction and supervision of a qualified physician or surgeon or other recognized practitioner, nurse, or hospital, and for such period as the nature of the injury or the process of recovery may require, including medicines, crutches, artificial members, and other apparatus. If the employer fails to provide the same after request by the injured employee, such injured employee may do so at the expense of the employer, the reasonableness and the necessity to be approved by a deputy commissioner. The employee shall not be entitled to recover any amount personally expended for such treatment or service unless such employee shall have requested the employer to furnish the same and the employer shall have failed, refused, or neglected to do so or unless the nature of the injury required such treatment, nursing, and services and the employer or the superintendent or foreman thereof, having knowledge of such injury, shall have neglected to provide the same. Nor shall any claim for medical, surgical, or other remedial treatment be valid and enforceable unless, within 10 days following the first treatment, except in cases where first-aid only is rendered, and thereafter at such intervals as the division by regulation may prescribe, the physician or other recognized practitioner giving such treatment or treatments furnishes to the division and to the employer, or to the carrier if the employer is not self-insured, a report of such injury and treatment on forms prescribed by the division; however, a deputy commissioner, for good cause, may excuse the failure of the physician or other recognized practitioner to furnish any report within the period prescribed and may order the payment to such employee of such remuneration for treatment or service rendered as the deputy commissioner finds equitable. Along with such reports, the physician or other recognized practitioner shall furnish a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained. Said sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, that the facts alleged are true, to the best of my knowledge and belief, and that the treatment and services rendered were reasonable and necessary with respect to the bodily injury sustained." All medical reports obtained or received by the employer, the carrier, or the injured employee, or the attorney for any of them, with respect to the remedial treatment, care, and attendance of the injured employee, including reports of every examination, diagnosis, or disability evaluation, shall be filed with the Division of Workers' Compensation within 5 days after receipt of same. A medical report not previously filed with the division shall not be received in evidence in a contested case unless the party offering same has furnished a copy thereof to the opposing party or his attorney at least 5 days prior to the hearing at which it is offered. The physician shall also furnish to the injured employee, or to his attorney, on demand, a copy of each such report without charge to the injured employee, except actual cost to the physician or hospital furnishing same.

(2) If an injured employee objects to the medical attendance furnished by the employer, it shall be the duty of the employer to select another physician to treat the injured employee unless a deputy commissioner determines that a change in medical attendance is not for the best interests of the injured employee; however, a deputy commissioner may at any time, for good cause shown, in the deputy commissioner's discretion, order a change in such remedial attention, care, or attendance. It shall be unlawful for any employer or representative of any insurance company or insurer to coerce or attempt to coerce a sick or injured employee in the selection of a physician, surgeon, or other attendant or remedial treatment, nursing or hospital care, or any other service that the sick or injured employee may require; and any employer or representative of any insurance company or insurer who violates this provision shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) All fees and other charges for such treatment or service, including treatment or service provided by any hospital or other health care provider, shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living and shall be subject to rules adopted by the division, which shall adopt schedules of maximum charges for such treatment or services. An individual health care provider shall be paid either his usual and customary charge for a treatment or service or the maximum charge, whichever is less. A hospital shall be paid the lowest charge currently assessed for such treatment or ser-

vice in the community in which the hospital is located.

(b) There is hereby created an advisory committee to aid and assist the Department of Labor and Employment Security in adopting schedules of maximum charges for hospital treatment and services payable through workers' compensation benefits, to be appointed by and serve at the pleasure of the Secretary of Labor and Employment Security.

(c) The Division of Workers' Compensation of the Department of Labor and Employment Security shall be empowered to investigate hospitals and medical practitioners to determine if they are in compliance with the schedule of charges adopted by the division or if they are requiring unjustified treatment, hospitalization, or office visits. If the division finds that the hospital or medical practitioner has made such excessive charges or required such treatment, hospitalization, or visits, the hospital or medical practitioner shall not receive payment under this chapter from a carrier, employer, or employee for the excessive fees or unjustified treatment, hospitalization, or visits, and, furthermore, the hospital or medical practitioner shall be liable to return to the carrier or self-insurer any such fees or charges already collected.

(d)1. As used in this subsection:

a. "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. Such evaluation is accomplished by means of a system which identifies the utilization of medical services above the usual range of utilization for such services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the division for referral to a peer review committee.

b. "Peer review" means an evaluation by a peer review committee, after utilization review, of the appropriateness, quality, and cost of health care and health services provided a patient, based on medically accepted standards.

c. "Peer review committee" means a committee composed of health care providers licensed under the same authority as the health care provider who rendered the services being reviewed.

d. "Health care provider" means a physician licensed under chapter 458, an osteopath licensed under chapter 459, a chiropractor licensed under chapter 460, a podiatrist licensed under chapter 461, an optometrist licensed under chapter 463, or a dentist licensed under chapter 466.

2. The division shall develop and implement, or contract with a qualified entity to develop and implement, utilization review of the services rendered by a health care provider, which services are paid for in whole or in part pursuant to this chapter.

3. The division shall contract with a private nonprofit medical foundation to provide peer review of health care services rendered pursuant to this chapter. Under the terms of such contract, the foundation shall establish and maintain a procedure by which a peer review committee shall review the services rendered by a health care provider, which services are paid for in whole or in part pursuant to this chapter. Such review shall occur upon a determination by the division that information referred to it by the entity responsible for utilization review contains reliable information that a health care provider is rendering services in a manner which may be inappropriate with respect to either the level or the quality of care. The report and recommendations of the peer review committee shall be submitted to the division for such action as may be necessary in accordance with this section.

4. By accepting payment pursuant to this chapter for remedial treatment rendered to an injured employee, a health care provider shall be deemed to consent to submitting all necessary records and other information concerning such treatment to utilization review and peer review as provided by this section. Such health care provider shall further agree to comply with any decision of the division pursuant to subparagraph 5.

5. If it is determined that a health care provider improperly overutilized or otherwise rendered or ordered inappropriate medical treatment or services, or that the cost of such treatment or services was inappropriate, the division may order the health care provider to show cause why he should not be required to repay the amount which was paid for the rendering or ordering of such treatment or services and shall inform him of his right to a hearing under the provisions of s. 120.57. If a hearing is not requested within 30 days of receipt of the order and the division director decides to proceed with the matter, a hearing shall be conducted, a prima facie case established, and a final order issued. If the final order, including judicial review if the order is appealed, is adverse to the health care provider, the division shall provide the licensing board of the health care provider with full documentation of such determination.

6. The criteria or standards established for the utilization review shall be adopted by the division as rules pursuant to chapter 120. The referral by the entity responsible for the utilization review, the decision of the division to refer the matter to the peer review committee, the establishment by the foundation of the procedures by which a peer review committee reviews the rendering of health care services, and the peer review committee's review proceedings, report, and recommendation shall not be subject to the provisions of chapter 120.

7. The provisions of s. 768.40 shall apply to any officer, employee, or agent of the division and to any officer, employee, or agent of any entity with which the division has contracted pursuant to this section.

(4) An injured employee is entitled, as a part of his remedial treatment, care, and attendance, to reasonable actual cost of transportation to and from the doctor's office, hospital, or other place of treatment by the most economical means of transportation available and suitable in the individual case. When the employee is entitled to such reimbursement for transportation by private automobile, it shall be presumed, in the absence of proof, that the actual cost is the amount allowed by the state to employees for official travel.

History.—s. 13, ch. 17481, 1935; CGL 1936 Supp. 5966(13); s. 6, ch. 18413, 1937; CGL 1940 Supp. 8135(14-a); s. 2, ch. 20672, 1941; s. 2, ch. 21824, 1943; s. 1, ch. 22814, 1945; s. 1, ch. 25244, 1949; s. 1, ch. 28241, 1953; s. 2, ch. 57-225;

ss. 1, 2, ch. 63-91; ss. 17, 35, ch. 69-106; s. 363, ch. 71-136; s. 5, ch. 75-209; s. 3, ch. 77-290; ss. 4, 23, ch. 78-300; s. 16, ch. 79-7; ss. 8, 124, ch. 79-40; ss. 7, 21, ch. 79-312.

440.14 Determination of pay.—

(1) Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined, subject to the limitations of s. 440.12(2), as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of 13 weeks immediately preceding the injury, his average weekly wage shall be one-thirteenth of the total amount of wages earned in such employment during the said 13 weeks. As used in this paragraph, the term "substantially the whole of 13 weeks" shall be deemed to mean and refer to a constructive period of 13 weeks as a whole, which shall be defined as a consecutive period of 91 days, and the term "during substantially the whole of 13 weeks" shall be deemed to mean during not less than 90 percent of the total customary full-time hours of employment within such period considered as a whole.

(b) If the injured employee shall not have worked in such employment during substantially the whole of 13 weeks immediately preceding the injury, the wages of a similar employee in the same employment who has worked substantially the whole of such 13 weeks shall be used in making the determination under the preceding paragraph.

(c) If an employee is a seasonal worker and the foregoing method cannot be fairly applied in determining the average weekly wage, then the employee may use, instead of the 13 weeks immediately preceding the injury, the calendar year or the 52 weeks immediately preceding the injury. The employee will have the burden of proving that this method will be more reasonable and fairer than the method set forth in paragraphs (a) and (b) and, further, must document prior earnings with W-2 forms, written wage statements, or income tax returns. The employer shall have 30 days following the receipt of this written proof to adjust the compensation rate, including the making of any additional payment due for prior weekly payments, based on the lower rate compensation.

(d) If any of the foregoing methods cannot reasonably and fairly be applied the full-time weekly wages of the injured employee shall be used, except as otherwise provided in paragraph (e) or paragraph (f).

(e) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages.

(f) If it be established that the injured employee was a part-time worker at the time of the injury, that he had adopted part-time employment as his customary practice, and that under normal working conditions he probably would have remained a part-time worker during the period of disability, these factors shall be considered in arriving at his average weekly wages. For the purpose of this paragraph the term "part-time worker" means an individual who customarily works less than the full-time hours or full-time workweek of a similar employee in the same employment.

(g) If compensation is due for a fractional part of the week, the compensation for such fractional part shall be determined by dividing the weekly compensation rate by the number of days employed per week to compute the amount due for each day.

(2) The average monthly wages of the injured employee at the time of the injury shall be 4.3 times the average weekly wage determined pursuant to this section.

History.—s. 14, ch. 17481, 1935; CGL 1936 Supp. 5966(14); s. 3, ch. 20672, 1941; s. 2, ch. 28241, 1953; s. 1, ch. 63-160; s. 8, ch. 74-197; s. 1, ch. 77-290; s. 23, ch. 78-300; ss. 9, 124, ch. 79-40; s. 21, ch. 79-312.

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66⅔ percent of the average weekly wages shall be paid to the employee during the continuance of such total disability.

(b) Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof or paraplegia or quadriplegia shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. In such other cases, no compensation shall be payable under paragraph (a) if the employee is engaged in, or is physically capable of engaging in, gainful employment, and the burden shall be upon the employee to establish that he is not able uninterruptedly to do even light work due to physical limitation.

(c) In cases of permanent total disability resulting from injuries which occurred prior to July 1, 1955, such payments shall not be made in excess of 700 weeks.

(d) If an employee who is being paid compensation for permanent total disability shall become rehabilitated to the extent that he shall establish an earning capacity, he shall be paid, instead of the compensation provided in paragraph (a), wage-loss benefits pursuant to paragraph (3)(b). The division shall adopt rules to enable a permanently and totally disabled employee who may have reestablished an earning capacity to undertake a trial period of reemployment without prejudicing his return to permanent total status in the case that such employee is unable to sustain an earning capacity.

(e)1. In case of permanent total disability resulting from injuries which occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under the provisions of s. 440.20(12), the injured employee shall receive from the division additional weekly compensation benefits equal to 5 percent of the injured employee's weekly compensation rate as established pursuant to the law in effect on the date of his injury, multiplied by the number of calendar years since the date of injury, and subject to the maximum

weekly compensation rate set forth in s. 440.12(2). Such additional benefits shall be paid out of the Workers' Compensation [1]Administration Trust Fund. This applies to payments due after October 1, 1974.

2.a. The division shall provide by rule for the periodic reporting to the division of all earnings of any nature and social security income by the injured employee entitled to or claiming additional compensation under subparagraph 1. Neither the division nor the employer or carrier shall make any payment of those additional benefits provided by subparagraph 1. for any period during which the employee willfully fails or refuses to report upon request by the division in the manner prescribed by said rules.

b. The division shall provide by rule for the periodic reporting to the employer or carrier of all earnings of any nature and social security income by the injured employee entitled to or claiming benefits for permanent total disability. The employer or carrier shall not be required to make any payment of benefits for permanent total disability for any period during which the employee willfully fails or refuses to report upon request by the employer or carrier in the manner prescribed by said rules.

(2) TEMPORARY TOTAL DISABILITY.—

(a) In case of disability total in character but temporary in quality, 66⅔ percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 350 weeks except as provided in s. 440.12(1).

(b) Notwithstanding the provisions of paragraph (a), an employee who has sustained the loss of an arm, leg, hand, or foot, or total loss of use of such arm, leg, hand, or foot, or total loss of use of such member because of organic damage to the nervous system, or has lost the sight of both eyes shall be paid temporary total disability of 80 percent of his average weekly wage until such employee has completed his training in the use of artificial members or appliances as necessary and completed training or education under a rehabilitative program pursuant to s. 440.49, if provided. In no event should the increased temporary total disability compensation provided for in this paragraph extend beyond 6 months from the date of injury. The compensation provided by this paragraph is not subject to the limits provided in s. 440.12(2), but instead is subject to a maximum weekly compensation rate of $400. If, at the conclusion of this period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraph (a) and s. 440.49(1)(e). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not s. 440.49(1)(e).

(3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.—

(a) *Impairment benefits.*—

1. In case of permanent impairment due to amputation, loss of 80 percent or more of vision, after correction, or serious facial or head disfigurement resulting from an injury other than an injury entitling the injured worker to permanent total disability benefits pursuant to subsection (1), there shall be paid to the injured worker the following:

a. Fifty dollars for each percent of permanent impairment of the body as a whole from 1 percent through 50 percent; and

b. One hundred dollars for each percent of permanent impairment of the body as a whole for that portion in excess of 50 percent.

2. Once the employee has reached the date of maximum medical improvement, impairment benefits are due and payable within 20 days after the carrier has knowledge of the impairment.

3. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the division shall establish and use a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule shall be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for such purpose, such as the American Medical Association's Guides to the Evaluation of Permanent Impairment. On August 1, 1979, and pending the adoption, by rule, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes hereof.

(b) *Wage-loss benefits.*—

1. Each injured worker who suffers any permanent impairment, which permanent impairment is determined pursuant to the schedule adopted in accordance with subparagraph 3. of paragraph (a), may be entitled to wage-loss benefits under this subsection. Such benefits shall be based on actual wage-loss and shall not be subject to the minimum compensation rate set forth in s. 440.12(2). Such wage-loss benefits shall be, subject to the maximum compensation rate as set forth in s. 440.12(2), equal to 95 percent of the difference between 85 percent of the employee's average monthly wage and the salary, wages, and other remuneration the employee is able to earn after reaching maximum medical improvement, as compared on a monthly basis; however, the monthly wage-loss benefits shall not exceed an amount equal to 66⅔ percent of the employee's average monthly wage at the time of injury. In order to simplify the comparison of the preinjury average monthly wage with the salary, wages, and other remuneration the employee is able to earn after reaching maximum medical improvement, the division may by rule provide for the modification of the monthly comparison so as to coincide as closely as possible with the injured worker's pay periods.

2. The amount determined to be the salary, wages, and other remunerations the employee is able to earn after reaching the date of maximum medical improvement shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his or her income or fails to accept employment commensurate with his or her abilities, the salary, wages, and other

remuneration the employee is able to earn after the date of maximum medical improvement shall be deemed to be the amount which would have been earned if the employee did not limit his or her income or accepted appropriate employment. Whenever a wage-loss benefit as set forth in subparagraph 1. may be payable, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury.

3. The right to wage-loss benefits shall terminate:

a. As of the end of any 2-year period commencing at any time subsequent to the month when the injured employee reaches the date of maximum medical improvement, unless during such 2-year period wage-loss benefits shall have been payable during at least 3 consecutive months;

b. For injuries occurring on or before July 1, 1980, 350 weeks after the injured employee reaches the date of maximum medical improvement;

c. For injuries occurring after July 1, 1980, 525 weeks after the injured employee reaches maximum medical improvement; or

d. When the injured employee reaches age 65,

whichever comes first.

4. When the injured employee reaches age 62, wage-loss benefits shall be reduced by the total amount of social security retirement benefits which the employee is receiving, not to exceed 50 percent of the employee's wage-loss benefits.

5. Beginning with the 25th month after maximum medical improvement and for the purpose of determining wage-loss benefits, the total wages, salary, and other remuneration for the month in consideration shall be discounted as follows:

a. For those injuries occurring on or after July 1, 1979, and on or before July 1, 1980, by a factor of 3 percent and compounded annually at 3 percent thereafter; and

b. For those injuries occurring after July 1, 1980, by a factor of 5 percent and compounded annually at 5 percent thereafter.

However, with respect to any year in which the annual rate of inflation, calculated by using the National Consumer Price Index published by the United States Department of Labor, is less than the applicable discount factor, such rate shall be substituted for such discount factor for that year.

6. The division shall keep such records and conduct such investigations as are necessary to determine the feasibility of providing additional protection from inflation for workers entitled to wage-loss benefits and shall report its findings to the Legislature not later than March 1, 1981.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) In case of temporary partial disability, benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in s. 440.12(2). The compensation shall be equal to 95 percent of the difference between 85 percent of the employee's average monthly wage and the salary, wages, and other remuneration the employee is able to earn, as compared on a monthly basis; however, the monthly wage-loss benefits shall not exceed an amount equal to 66⅔ percent of the employee's average monthly wage at the time of injury. In order to simplify the comparison of the preinjury average monthly wage with the salary, wages, and other remuneration the employee is able to earn, the division may by rule provide for the modification of the monthly comparison so as to coincide as closely as possible with the injured worker's pay periods.

(b) The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his or her income or fails to accept employment commensurate with his or her abilities, the salary, wages, and other remuneration the employee is able to earn shall be deemed to be the amount which would have been earned if the employee did not limit his or her income or accepted appropriate employment. Whenever a wage-loss benefit as set forth in paragraph (a) may be payable, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury.

(c) Such benefits shall be paid during the continuance of such disability, not to exceed a period of 5 years.

(5) SUBSEQUENT INJURY.—

(a) The fact that an employee has suffered previous disability, impairment, anomaly, or disease, or received compensation therefor, shall not preclude him from benefits for a subsequent injury nor preclude benefits for death resulting therefrom. Compensation for temporary disability, medical benefits, and wage-loss benefits shall not be subject to apportionment.

(b) If a compensable permanent impairment, or any portion thereof, is a result of aggravation or acceleration of a preexisting condition, or is the result of merger with a preexisting impairment, an employee eligible to receive impairment benefits under paragraph (3)(a) shall receive such benefits for the total impairment found to result, excluding the degree of impairment existing at the time of the subject accident or injury or which would have existed by the time of the impairment rating without the intervention of the compensable accident or injury. The degree of permanent impairment attributable to the accident or injury shall be compensated in accordance with paragraph (3)(a). As used in this paragraph, "merger" means the combining of a preexisting permanent impairment with a subsequent compensable permanent impairment which, when the effects of both are considered together, result in a permanent impairment rating which is greater than the sum of the two permanent impairments ratings when each impairment is considered individually.

(c) If an employee receiving wage-loss benefits suffers a subsequent injury causing temporary disability, both wage-loss benefits and temporary disability benefits shall be payable during the duration of temporary disability; however, the total benefits payable shall not exceed the maximum compensation rate in effect for temporary disability at the time of the subsequent injury. Any reduction in ben-

efits due to such limit shall be applied first to the wage-loss benefits payable as a result of the prior injury.

(d) If an employee receiving wage-loss benefits suffers a subsequent injury causing an additional compensable wage loss, benefits for each wage loss shall be payable; however, the total wage-loss benefits payable shall not exceed the maximum compensation rate in effect for permanent disability at the time of the subsequent injury. Any reduction in wage-loss benefits due to such limitation shall be applied first to the benefits payable as a result of the prior injury.

(6) HERNIA.—In all claims for compensation for hernia resulting from injury by an accident arising out of and in the course of employment, it must be proved to the satisfaction of the division:

(a) That there was an injury resulting in hernia.

(b) That the hernia appeared suddenly.

(c) That it was accompanied by pain.

(d) That the hernia immediately followed an accident.

(e) That the hernia did not exist prior to the accident for which compensation is claimed.

(f) All hernia, inguinal, femoral, or otherwise, so proved to be the result of an injury by accident arising out of and in the course of the employment, shall be treated at the expense of the employer in a surgical manner by radical operation. Compensation shall be paid for a period of 6 weeks from the date of the operation. In case the injured employee refuses to undergo the radical operation for the cure of said hernia, no compensation will be allowed during the time of refusal. This shall not apply to those who by religious belief do not use medical or surgical treatment. If, however, it is shown that the employee had some chronic disease, or is otherwise in such physical condition that the [2]judge of industrial claims considers it unsafe for the employee to undergo said operation, the compensation shall be paid as otherwise provided in subsection (4), but not for exceeding 30 weeks. Compensation shall be allowed for temporary total disability as provided by subsection (2) for such disability before the operation.

(7) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee refuses employment suitable to the capacity thereof, offered to or procured therefor, such employee shall not be entitled to any compensation at any time during the continuance of such refusal unless at any time in the opinion of the [2]judge of industrial claims such refusal is justifiable.

(8) EMPLOYEE LEAVES EMPLOYMENT.—If an injured employee, when receiving compensation for temporary partial disability, leaves the employment of the employer by whom he was employed at the time of the accident for which such compensation is being paid, he shall, upon securing employment elsewhere, give to such former employer an affidavit in writing containing the name of his new employer, the place of employment and the amount of wages being received at such new employment and until he gives such affidavit the compensation for temporary partial disability will cease. The employer by whom such employee was employed at the time of the accident for which such compensation is being paid may also at any time demand of such employee additional affidavit in writing containing the name of his employer, the place of his employment and the amount of wages he is receiving, and if the employee, upon such demand, fails or refuses to make and furnish such affidavit, his right to compensation for temporary partial disability shall cease until such affidavit is made and furnished.

(9) EMPLOYEE BECOMES INMATE OF INSTITUTION.—In case an employee who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable unless he has dependent upon him for support a person or persons defined as dependents elsewhere in this chapter, whose dependency shall be determined as if the employee were deceased and to whom compensation would be paid in case of death and such compensation as is due said employee shall be paid such dependents during the time he remains such inmate.

(10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.—

(a) Weekly compensation benefits payable under this chapter for disability resulting from injuries to an employee who becomes eligible for benefits under 42 U.S.C. s. 423 shall be reduced to an amount whereby the sum of such compensation benefits payable under this chapter and such total benefits otherwise payable for such period to the employee and his dependents, had such employee not been entitled to benefits under this chapter, under 42 U.S.C. ss. 423 and 402, does not exceed 80 percent of the employee's average weekly wage. However, this provision shall not operate to reduce an injured worker's benefits under this chapter to a greater extent than they would have otherwise been reduced under 42 U.S.C. s. 424(a). This reduction of compensation benefits shall not be applicable to any compensation benefits payable for any week subsequent to the week in which the injured worker reaches the age of 62 years.

(b) If the provisions of 42 U.S.C. s. 424(a) are amended to provide for a reduction or increase of the percentage of average current earnings that the sum of compensation benefits payable under this chapter and the benefits payable under 42 U.S.C. s. 423 and s. 402 can equal, the amount of the reduction of benefits provided in this subsection shall be reduced or increased accordingly.

(c) No disability compensation benefits payable for any week, including those benefits provided by paragraph (1)(e), shall be reduced pursuant to this subsection until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. ss. 423 and 402 and the employee has begun receiving such social security benefit payments. The employee shall, upon demand by the division, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to him and authorize the Division of Employment Security to release unemployment compensation information relating to him in accordance with rules to be promulgated by the division prescribing the procedure and manner for requesting the authorization and for compliance by

the employee. Neither the division nor the employer or carrier shall make any payment of benefits for total disability or those additional benefits provided by paragraph (1)(e) for any period during which the employee willfully fails or refuses to authorize the release of information in the manner and within the time prescribed by said rules. The authority for release of disability information granted by an employee under this paragraph shall be effective for a period not to exceed 12 months, such authority to be renewable as the division may prescribe by rule.

(11) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT COMPENSATION.—

(a) No compensation benefits shall be payable for temporary total disability or permanent total disability under this chapter for any week in which the injured employee has received, or is receiving, unemployment compensation benefits.

(b) If an employee is entitled to both wage-loss benefits pursuant to subsection (3) and unemployment compensation benefits, such unemployment compensation benefits shall be primary and the wage-loss benefits shall be supplemental only, the sum of the two benefits not to exceed the amount of wage-loss benefits which would otherwise be payable. For purposes of termination of wage-loss benefits pursuant to sub-subparagraph (3)(b)3.a., the term "payable" shall be construed to include payment of unemployment compensation benefits in lieu of income supplement benefits as provided in this subsection.

History.—s. 15, ch. 17481, 1935; CGL 1936 Supp. 5966(15); s. 4, ch. 20672, 1941; s. 2, ch. 22814, 1945; s. 1, ch. 23921, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26877, 1951; s. 10, ch. 26484, 1951; s. 1, ch. 29803, 1955; s. 3, ch. 29778, 1955; s. 1, ch. 59-103; s. 1, ch. 59-102; s. 2, ch. 61-119; s. 1, ch. 61-188; s. 1, ch. 63-235; s. 1, ch. 65-168; ss. 17, 35, ch. 69-106; s. 1, ch. 70-71; s. 1, ch. 70-312; s. 5, ch. 73-127; s. 9, ch. 74-197; s. 6, ch. 75-209; s. 1, ch. 77-174; s. 4, ch. 77-290; ss. 5, 23, ch. 78-300; ss. 10, 124, ch. 79-40; ss. 8, 21, ch. 79-312.

[1]**Note.**—The word "Administration" was inserted by the editors to conform to the provisions of s. 440.50(1).

[2]**Note.**—See s. 35, ch. 79-40, which changed the title of judges of industrial claims to "deputy commissioners."

440.151 Occupational diseases.—

(1)(a) Where the employer and employee are subject to the provisions of the Workers' Compensation Law, the disablement or death of an employee resulting from an occupational disease as hereinafter defined shall be treated as the happening of an injury by accident, notwithstanding any other provisions of this chapter, and the employee or, in case of death, his dependents shall be entitled to compensation as provided by this chapter, except as hereinafter otherwise provided; and the practice and procedure prescribed by this chapter shall apply to all proceedings under this section, except as hereinafter otherwise provided. Provided, however, that in no case shall an employer be liable for compensation under the provisions of this section unless such disease has resulted from the nature of the employment in which the employee was engaged under such employer and was actually contracted while so engaged, meaning by "nature of the employment" that to the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations, or the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded, or timely claim made as provided in this section, and results within 350 weeks after such last exposure.

(b) No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represents himself in writing as not having previously been disabled, laid off or compensated in damages or otherwise, because of such disease.

(c) Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

(d) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this Workers' Compensation Law would give right to compensation, arose subsequent to the beginning of the first compensable disability, save only to afterborn children of a marriage existing at the beginning of such disability.

(e) The presumptions in favor of claimants established by s. 440.26 of this Workers' Compensation Law shall not apply to a claim for compensation for an occupational disease under this section.

(f) No compensation shall be payable for disability or death resulting from tuberculosis arising out of and in the course of employment by the Division of Health of the Department of Health and Rehabilitative Services at a state tuberculosis hospital, or aggravated by such employment, when the employee had suffered from said disease at any time prior to the commencement of such employment.

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public.

(3) Except as hereinafter otherwise provided in this section, "disablement" means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such dis-

ease; and "disability" means the state of being so incapacitated.

(4) This section shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before this section shall have taken effect.

(5) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; and the notice of injury and claim for compensation, as hereinafter required, shall be given and made to such employer; provided, however, that in case of disability from any dust disease the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease for a period of at least 60 days.

(6) The time for notice of injury or death provided in s. 440.185(1) shall be extended in cases of occupational diseases to a period of 90 days.

History.—s. 1, ch. 22852, 1945; s. 1, ch. 23921, 1947; s. 11, ch. 25035, 1949; s. 3, ch. 28241, 1953; s. 1, ch. 65-116; ss. 19, 35, ch. 69-106; ss. 10, 24, ch. 74-197; s. 23, ch. 78-300; ss. 11, 124, ch. 79-40; s. 21, ch. 79-312.

440.152 Division to make study of occupational diseases, etc.—The division shall make a continuous study of occupational diseases and the ways and means for their control and prevention; shall make and enforce necessary regulations for such control. For this purpose the division is authorized to cooperate with employers, employees and carriers and with the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 22852, 1945; s. 1, ch. 23921, 1947; ss. 17, 19, 35, ch. 69-106; s. 7, ch. 75-209; s. 331, ch. 77-147; s. 10, ch. 77-320; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) Actual funeral expenses not to exceed $1,000.

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $50,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66⅔ percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, said compensation to cease upon the spouse's death or remarriage.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16⅔ percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children be the product of the union existing at the time of death or of a former marriage or marriages, the deputy commissioner may provide for the payment of compensation in such manner as to the deputy commissioner may appear just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death or remarriage of such spouse, 33⅓ percent for each child.

3. To the child or children, if there is no spouse, 33⅓ percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(2) For the purpose of this chapter the dependence of a spouse of a deceased employee shall terminate with remarriage. The dependence of a child, except a child physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of 18 years of age, with the attainment of 22 years of age if a full-time student in an accredited educational institution, or upon marriage.

(3) Where, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66⅔ percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the deputy commissioner determines otherwise in accordance with the provisions of subsection (4).

(4) If the deputy commissioner determines that payments in accordance with paragraph (3)(b) would provide no substantial benefit to any person of such class, the deputy commissioner may provide for the payment of such compensation to the person or persons within such class who the deputy commissioner considers will be most benefited by such payment.

(5) Upon the cessation of compensation under this section to any person, the compensation of the remaining persons entitled to compensation, for the unexpired part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

(6) Relationship to the deceased giving right to compensation under the provisions of this section must have existed at the time of the accident, save only in the case of afterborn children of the deceased.

(7) Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving spouse and child or children, or if there be no surviving spouse or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of 1 year prior

to the date of the injury, and except that the deputy commissioner may, at the deputy commissioner's option, or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the deputy commissioner, and provided further that compensation to dependents referred to in this subsection shall in no case exceed $1,000.

History.—s. 16, ch. 17481, 1935; s. 7, ch. 18413, 1937; CGL 1936 Supp. 5966(16); s. 5, ch. 20672, 1941; s. 1, ch. 26966, 1951; ss. 4-6, ch. 28241, 1953; s. 1, ch. 57-143; s. 2, ch. 67-239; ss. 17, 35, ch. 69-106; s. 6, ch. 73-127; s. 11, ch. 74-197; s. 8, ch. 75-209; s. 23, ch. 78-300; ss. 12, 124, ch. 79-40; ss. 9, 21, ch. 79-312.

440.17 Guardian for minor or incompetent.—Prior to the filing of a claim, the division, and after the filing of a claim, a deputy commissioner, may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter; however, the deputy commissioner, in the deputy commissioner's discretion, may designate in the compensation award a person to whom payment of compensation may be paid for a minor or incompetent, in which event payment to such designated person shall discharge all liability for such compensation.

History.—s. 17, ch. 17481, 1935; CGL 1936 Supp. 5966(17); s. 8, ch. 18413, 1937; ss. 17, 35, ch. 69-106; s. 9, ch. 75-209; ss. 13, 124, ch. 79-40; s. 21, ch. 79-312.

440.185 Notice of injury or death; reports; penalties for violations.—

(1) Within 30 days after the date of injury, the employee shall give notice of such injury to the employer and to the division. However, failure to give such notice shall not be a bar to any claim under this chapter unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect to such injury or death, and if:

(a) The employer or the agent thereof in charge of the business in the place where the injury occurred or the carrier had knowledge of the injury and the deputy commissioner determines that the employer or carrier has not been prejudiced by the employee's failure to give such notice; or

(b) The deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given. However, when the delay in giving notice is so excused, no compensation shall be payable for aggravation of the injury caused by want of "first aid" or proper medical treatment during such delay, and every presumption shall be against the validity of the claim.

(2) Within 7 days of actual knowledge of injury or death, the employer shall report same to the carrier and the division and the employee, on a form prescribed by the division, providing the following information:

(a) The name, address, and business of the employer;

(b) The name, social security number, street, mailing address, telephone number, and occupation of the employee;

(c) The cause and nature of the injury or death;

(d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and

(e) Such other information as the division may require, including a clear and understandable summary statement of the rights, benefits, and obligations of injured workers under the Workers' Compensation Law.

(3) In addition to the requirements of subsection (2), the employer shall notify the division within 24 hours by telephone or telegraph of any injury resulting in death. However, this special notice shall not be required when death results subsequent to the submission to the division of a previous report of the injury pursuant to subsection (2).

(4) Upon receipt of notice of injury from the employer, or any other indication of a compensable injury, the division shall immediately mail to the injured worker an informational brochure, as prescribed by the division, which sets forth in clear and understandable language a summary statement of the rights, benefits, and obligations of injured workers under the Workers' Compensation Law, together with an explanation of its operation. The division shall review any such notice or indication of injury received and, if it appears to the division that the injury will result in permanent impairment, the division shall, within 3 days of receipt of such notice or indication of injury, contact the injured worker or a family member serving as personal representative thereof by telephone, if possible, otherwise by mail, in order to discuss the rights and benefits of the injured employee under the Workers' Compensation Law and to assist the injured worker in securing any benefits provided for under this chapter to which such injured worker is entitled.

(5) Additional reports with respect to such injury and of the condition of such employee, including copies of medical reports, shall be sent by the employer or carrier to the division at such times and in such manner as the division may prescribe.

(6) In the absence of a stipulation by the parties, reports provided for in subsection (2), subsection (4), or subsection (5) shall not be evidence of any fact stated in such report in any proceeding relating thereto, except for medical reports which, if otherwise qualified, may be admitted at the discretion of the deputy commissioner.

(7) Every insurance carrier writing workers' compensation insurance for employment covered under this chapter shall file written notice with the division within 21 days after the issuance of a policy or contract of insurance. Notice of cancellation or expiration of a policy as set out in s. 440.42(2) shall be mailed to the division in accordance with rules promulgated by the division under chapter 120.

(8) When a claimant, employer, or carrier has the right, or is required, to mail a report or notice with required copies within the times prescribed in subsection (2), subsection (4), or subsection (5), such mailing will be completed and in compliance with this section if it is postmarked and mailed prepaid to the appropriate recipient prior to the expiration of the time-frames prescribed in this section.

(9) Any employer or carrier who fails or refuses

to send any form, report, or notice required by this section shall be subject to a civil penalty not to exceed $100 for each such failure or refusal. However, any employer who fails to notify the carrier of the injury on the prescribed form or by letter within the 7 days required in subsection (2) shall be liable for the civil penalty, which shall be paid by the employer and not the carrier. Failure by the employer to meet its obligations under subsection (2) shall not relieve the carrier from liability for the civil penalty if it fails to comply with subsections (4) and (5).

(10) Any compensable wage loss shall be reported by the employee to the carrier or self-insured employer within 30 days after the termination of the month for which such loss is claimed. The division shall provide by rule for the reporting of wage loss by the injured worker, and for the reporting of wage loss and payment of wage-loss benefits by the employer, to the division and may prescribe forms for such reporting. The division, upon request by the employer or carrier, shall provide verification through unemployment compensation records of any claimed wage loss and shall obtain such verification from other states, if applicable. The division shall require by rule that the employer inform a worker who suffers a permanent impairment of his possible entitlement to wage-loss and other benefits and of the worker's obligation to report a claimed wage loss.

History.—s. 10, ch. 75-209; s. 1, ch. 77-174; ss. 6, 23, ch. 78-300; ss. 14, 124, ch. 79-40; ss. 10, 21, ch. 79-312.

440.19 Time and procedure for filing claims.—

(1) Upon receipt by the division, every claim for benefits filed under this chapter shall be evaluated by the division to ascertain whether the claim can be resolved without a hearing, and within 10 days of such receipt the division shall make a decision as to the entitlement to benefits and shall notify the parties with respect thereto. Any such decision by the division shall be advisory. At any hearing before the deputy commissioner, the decision of the division shall not be res judicata, but shall be included in the case file in the division and shall be deemed a part of the proceeding. The case file shall also reflect any response of a party to the advisory opinion filed within 10 days after the issuance of such opinion. No request for hearing shall be filed until the division issues its decision, or until 10 days after the filing of the claim, whichever is earlier.

(2)(a) The right to compensation for disability, impairment, or wage loss under this chapter shall be barred unless a claim therefor which meets the requirements of paragraph (d) is filed within 2 years after the time of injury, except that, if payment of compensation has been made or remedial treatment has been furnished by the employer on account of such injury, a claim may be filed within 2 years after the date of the last payment of compensation or after the date of the last remedial treatment furnished by the employer.

(b) All rights for remedial attention under this section shall be barred unless a claim therefor which meets the requirements of paragraph (d) is filed with the division within 2 years after the time of injury, except that, if payment of compensation has been made or remedial attention has been furnished by the employer without an award on account of such injury, a claim may be filed within 2 years after the date of the last payment of compensation or within 2 years after the date of the last remedial attention furnished by the employer; and all rights for remedial attention under this section pursuant to the terms of an award shall be barred unless a further claim therefor is filed with the division within 2 years after the entry of such award, except that, if payment of compensation has been made or remedial attention has been furnished by the employer under the terms of the award, a further claim may be filed within 2 years after the date of the last payment of compensation or within 2 years after the date of the last remedial attention furnished by the employer. However, no statute of limitations shall apply to the right for remedial attention relating to the insertion or attachment of a prosthetic device to any part of the body.

(c) The right to compensation for death under this chapter shall be barred unless a claim therefor which meets the requirements of paragraph (d) is filed within 2 years after the death, except that, if payment of compensation has been made without an award on account of such death, a claim may be filed within 2 years after the date of the last payment.

(d) Such claim shall be filed with the division at its office in Tallahassee and shall contain the name and address of the employee, the name and address of the employer, and a statement of the time, place, nature, and cause of the injury, or such fairly equivalent information as will put the division and the employer on notice with respect to the identity of the parties and the specific compensation benefit which is due but has not been paid or is not being provided. Any claim, or portion thereof, not in compliance with this subsection shall be subject to dismissal upon motion of any interested party, the division, or a deputy commissioner.

(e) Any deputy commissioner receiving a claim for compensation in any form shall, immediately upon receipt of such claim, mail said claim to the division at its office in Tallahassee.

(f) In no event and under no circumstances shall any of the rights of employees under the Workers' Compensation Law be prejudiced or lost by failure or delay of deputy commissioners in mailing claims in any form to the division in Tallahassee.

(3) Notwithstanding the provisions of subsection (2), failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(4) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subsection (2) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(5) When recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (2) shall begin to run only from the date of termination of such suit, but in such an event the employer shall be allowed a credit of his actual cost of defending said suit in a sum not exceeding $250, which shall be deducted from any compensation allowed or awarded to said employee under this chapter.

(6) An employer or carrier shall, at the request of an employee or the attorney thereof, furnish to such person any medical information and earnings information relating to such employee, whether or not a claim therefor has been filed.

History—s. 19, ch. 17481, 1935; CGL 1936 Supp. 5966(19); s. 1, ch. 23908, 1947; s. 10, ch. 26484, 1951; s. 4, ch. 29778, 1955; s. 1, ch. 57-192; s. 1, ch. 65-120; s. 2, ch. 67-554; ss. 17, 35, ch. 69-106; s. 23, ch. 78-300; ss. 15, 124, ch. 79-40; ss. 11, 21, ch. 79-312.

440.20 Payment of compensation.—

(1) Compensation under this chapter shall be paid periodically, promptly in the usual manner and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(2) The first installment of compensation for total disability or death shall become due on the 14th day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments weekly or biweekly, except when the deputy commissioner determines that payments in installments should be made monthly or at some other period.

(3) Impairment benefits shall be payable in accordance with s. 440.15(3)(a)2.

(4) Benefits payable pursuant to s. 440.15(3)(b) or (4) shall be paid monthly, subsequent to the termination of the period for which such payments are due, within 14 days of the date upon which the carrier or employer has knowledge of the compensable wage loss.

(5) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the division, in accordance with a form prescribed by the division, that payment of compensation has begun or has been suspended, as the case may be.

(6) If the carrier controverts the right to compensation, it shall file with the division, on or before the 21st day after it has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the division, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted, together with a written explanation setting forth in detail the reason or reasons why the claim has been controverted, and a copy of such notice shall be furnished by the carrier to the employee and employer.

(7) If any installment of compensation for death or dependency benefits, disability, permanent impairment, or wage loss payable without an award is not paid within 14 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a punitive penalty of an amount equal to 10 percent thereof, which shall be paid at the same time as, but in addition to, such installment of compensation, unless notice is filed under subsection (6) or unless such nonpayment results from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 14 days after it became due and the claimant concludes the prosecution of the claim before a deputy commissioner without having specifically claimed additional compensation in the nature of a penalty under this section, he will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived his right to claim such penalty. However, during the course of a hearing, the deputy commissioner shall on his own motion raise the question of whether such penalty should be awarded or excused. The division may assess without a hearing the abovementioned 10 percent additional payment against either the employer or the insurance carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the division or the deputy commissioner determines that the 10 percent additional payment should be made by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee.

(8) If any compensation, payable under the terms of an award, is not paid within 20 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 percent thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in s. 440.25.

(9) In addition to any other penalties provided by this chapter for late payment, if any installment of compensation is not paid when it becomes due, the employer or carrier shall pay interest thereon at the rate of 12 percent per annum from the date the installment becomes due until it is paid, whether such installment is payable without an order or under the terms of an order.

(a) Within 30 days after final payment of compensation has been made, the employer shall send to the division a notice, in accordance with a form prescribed by the division, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid.

(b) If the employer fails to so notify the division within such time, the division shall assess against such employer a civil penalty in an amount not over $100.

(10) The division:

(a) May upon its own initiative at any time in a

case in which payments are being made without an award investigate same; and

(b) Shall, in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended,

upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examination to be made, or hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(11) Whenever the division deems it advisable, it may require any employer to make a deposit with the Treasurer to secure the prompt and convenient payments of such compensation, and payments therefrom upon any awards shall be made upon order of the division or deputy commissioner.

(12)(a) It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he receive disability or wage-loss payments on a periodic basis. Lump sum payments in exchange for the employer's or carrier's release from liability for future payments of compensation, other than for medical expenses, shall be allowed only under special circumstances, as when the claimant can demonstrate that lump sum payments will definitely aid in his rehabilitation or are otherwise clearly in his best interests and that lump sum payments will avoid undue expense or undue hardship to any party, or that such claimant has removed himself or is about to remove himself from the state. In no case shall a lump sum payment be allowed in exchange for the release of an employer's or carrier's liability for future medical expenses. In no case shall a lump sum settlement be allowed until 6 months after the date of maximum medical improvement has been reached.

(b) Upon the application of any party in interest or upon joint petition of all interested parties, and after giving due consideration to the interests of all interested parties, if a deputy commissioner finds that a lump sum payment in exchange for release from liability is proper under paragraph (a), said deputy commissioner may enter a compensation order requiring that the liability of the employer for compensation shall be discharged by the payment of a lump sum equal to the present value of all future payments of compensation, computed at 4 percent true discount compounded annually, or requiring that the employer make advance payment of a part of the compensation for which said employer is liable by the payment of a lump sum equal to the present value of such part of the compensation, computed at 4 percent true discount compounded annually. A compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under s. 440.28. However, nothing in this subsection shall be construed to mean that a deputy commissioner is required to approve any award for lump sum payment when it is determined by the deputy commissioner that the payment being made is in excess of the value of benefits the claimant would be entitled to under this chapter. The deputy commissioner shall make or cause to be made such investigations as he considers necessary, in each case in which the parties have stipulated that a proposed final settlement of liability of the employer for compensation shall not be subject to modification or review under s. 440.28, to determine whether such final disposition will definitely aid the rehabilitation of the injured worker or otherwise is clearly for the best interests of the person entitled to compensation and, in his discretion, may have an investigation made by the Rehabilitation Section of the Division of Workers' Compensation. The joint petition and the report of any investigation so made will be deemed a part of the proceeding. A deputy commissioner, in his discretion, may hear testimony relating to a proposed stipulation for settlement under this subsection without having in hand the division file; however, he shall in no event enter an order thereon without first having reviewed the division file. An employer shall have the right to appear at any hearing pursuant to this subsection which relates to the discharge of such employer's liability and to present testimony at such hearing. The carrier shall provide reasonable notice to the employer of the time and date of any said hearing and inform him of his rights to appear and testify. When the claimant is represented by counsel or when the claimant and carrier or employer are represented by counsel, final approval of the lump sum settlement agreement, as provided for in a joint petition and stipulation, shall be approved by entry of an order within 7 days of the filing of such joint petition and stipulation without a hearing, unless the deputy commissioner determines, in his discretion, that additional testimony is needed before such settlement can be approved or disapproved and so notifies the parties. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which such person is entitled to compensation shall, in the absence of special circumstances making such course improper, be determined in accordance with the most recent United States Life Tables published by the National Office of Vital Statistics of the United States Department of Health, Education, and Welfare. The probability of the happening of any other contingency affecting the amount or duration of the compensation, except the possibility of the remarriage of a surviving spouse, shall be disregarded. As a condition of approving a lump sum payment to a surviving spouse, the deputy commissioner, in the deputy commissioner's discretion, may require security which will insure that, in the event of the remarriage of such surviving spouse, any unaccrued future payments so paid may be recovered or recouped by the employer or carrier. Such applications shall be considered and determined in accordance with ss. 440.25 and 440.27 and the rules of procedure adopted by the Supreme Court.

(13)(a) Liability of an employer for future payments of compensation shall not be discharged by advance payment unless prior approval of a deputy commissioner or the division has been obtained as hereinafter provided. The approval shall not consti-

tute an adjudication of the claimant's percentage of disability.

(b) When the claimant has reached maximum recovery and returned to his former or equivalent employment with no substantial reduction in wages, such approval of a reasonable advance payment of a part of the compensation payable to the claimant may be given informally by letter by a deputy commissioner, by the division director, or by the administrator of claims of the division.

(c) In the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent:

1. An advance payment of compensation not in excess of $2,000 may be approved informally by letter, without hearing, by any deputy commissioner, by the division director, or by the administrator of claims of the division.

2. An advance payment of compensation not in excess of $2,000 may be ordered by any deputy commissioner after giving the interested parties opportunity for a hearing thereon pursuant to not less than 10 days' notice by mail, unless such notice is waived, and after giving due consideration to the interests of the person entitled thereto. When the parties have stipulated to an advance payment of compensation not in excess of $2,000, such advance may be approved by an order of a deputy commissioner, with or without hearing, or informally by letter by any such deputy commissioner, or by the division director, if such advance is found to be for the best interests of the person entitled thereto.

3. When the parties have stipulated to an advance payment in excess of $2,000, subject to the approval of the division, said payment may be approved by a deputy commissioner by order if he finds that same is for the best interests of the person entitled thereto and is reasonable under the circumstances of the particular case. The deputy commissioner shall make or cause to be made such investigations as he considers necessary concerning the stipulation and, in his discretion, may have an investigation of the matter made by the Rehabilitation Section of the division. The stipulation and the report of any investigation shall be deemed a part of the record of the proceedings.

(d) When an application for an advance payment in excess of $2,000 is opposed by the employer or carrier, it shall be heard by a deputy commissioner after giving the interested parties not less than 10 days' notice of such hearing by mail, unless such notice is waived. In his discretion, the deputy commissioner may have an investigation of the matter made by the Rehabilitation Section of the division, in which event the report and recommendation of said section will be deemed a part of the record of the proceedings. If the deputy commissioner finds that such advance payment is for the best interests of the person entitled to compensation, will not materially prejudice the rights of the employer and carrier, and is reasonable under the circumstances of the case, he may order the same paid.

(14) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(15) When an employee is injured and the employer pays his full wages or any part thereof during the period of disability, or pays medical expenses for such employee, and the case is contested by the carrier or the carrier and employer, and thereafter the carrier, either voluntarily or pursuant to an award, makes a payment of compensation or medical benefits, the employer shall be entitled to reimbursement to the extent of the compensation paid or awarded, plus medical benefits, if any, out of the first proceeds paid by the carrier in compliance with said voluntary payment or award, provided the employer furnishes satisfactory proof to the judge of such payment of compensation and medical benefits. Any payment by the employer over and above compensation paid or awarded and medical benefits, pursuant to subsection (14), shall be considered a gratuity.

(16)(a) The division shall examine on an ongoing basis claims files in its possession in order to identify questionable claims handling techniques, questionable patterns of claims, or a pattern of repeated unreasonably controverted claims by employers, carriers, or self-insurers and shall certify its findings to the Department of Insurance. Only such questionable techniques, patterns, or repeated unreasonably controverted claims as constitute a general business practice of a carrier in the judgment of the division shall be certified in its findings by the division to the Department of Insurance. Such certification by the division is exempt from the provisions of chapter 120. Upon receipt of any such certification, the Department of Insurance shall take appropriate action so as to bring such general business practices to a halt pursuant to s. 440.38(3)(a). Upon receipt by the division of a written request for an investigation raising such questionable techniques, patterns, or repeated unreasonably controverted claims, the division shall investigate the particular carrier in question and shall certify its findings to the Department of Insurance with a copy to the requesting party.

(b) The division shall publish annually a report which indicates the promptness of first payment of compensation records of each carrier or self-insurer so as to focus attention on those carriers or self-insurers with poor payment records for the preceding year. A copy of such report shall be certified to the Department of Insurance which shall take appropriate steps so as to cause such poor carrier payment practices to halt pursuant to s. 440.38(3)(a). In addition, the division shall take appropriate action so as to halt such poor payment practices of self-insurers. "Poor payment practice" means a practice of late payment sufficient to constitute a general business practice.

(c) The division shall promulgate rules providing guidelines to carriers, self-insurers, and employers to indicate behavior that may be construed as questionable claims handling techniques, questionable patterns of claims, repeated unreasonably controverted claims, or poor payment practices.

(17) No penalty assessed under this section shall be recouped by any carrier or self-insurer in the rate base, premium, or in any rate filing. In the case of carriers the Department of Insurance shall enforce

this subsection, and in the case of self-insurers the division shall enforce this subsection.

History.—s. 20, ch. 17481, 1935; CGL 1936 Supp. 5966(20); s. 9, ch. 18413, 1937; s. 6, ch. 20672, 1941; s. 2, ch. 23921, 1947; s. 2, ch. 26877, 1951; s. 5, ch. 29778, 1955; s. 1, ch. 59-422; ss. 1, 2, ch. 65-203; s. 2, ch. 67-554; ss. 17, 35, ch. 69-106; s. 13, ch. 74-197; s. 11, ch. 75-209; s. 1, ch. 77-174; s. 5, ch. 77-290; ss. 7, 23, ch. 78-300; ss. 16, 124, ch. 79-40; ss. 12, 21, ch. 79-312; s. 179, ch. 79-400.

440.205 Coercion of employees.—No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law.

History.—s. 17, ch. 79-40.

440.21 Invalid agreements; penalty.—

(1) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

History.—s. 21, ch. 17481, 1935; CGL 1936 Supp. 5966(21), 8135(10); s. 364, ch. 71-136; s. 118, ch. 71-355; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.22 Assignment and exemption from claims of creditors.—No assignment, release, or commutation of compensation or benefits due or payable under this chapter except as provided by this chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, which exemption may not be waived.

History.—s. 22, ch. 17481, 1935; CGL 1936 Supp. 5966(22); s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.23 Compensation a lien against assets.—Compensation shall have the same preference of lien against the assets of the carrier or employer without limit of an amount as is now or may hereafter be allowed by law to the claimant for unpaid wages or otherwise.

History.—s. 23, ch. 17481, 1935; CGL 1936 Supp. 5966(23); s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.24 Enforcement of compensation orders; penalties.—

(1) In case of default by the employer or carrier in the payment of compensation due under any compensation order of a deputy commissioner or order of the [1]commission or other failure by the employer or carrier to comply with such order within 10 days after the order becomes final, any circuit court of this state within the jurisdiction of which the employer or carrier resides or transacts business shall, upon application by the division or any beneficiary under such order, have jurisdiction to issue a rule nisi directing such employer or carrier to show cause why a writ of execution, or such other process as may be necessary to enforce the terms of such order, shall not be issued, and, unless such cause is shown, the said court shall have jurisdiction to issue a writ of execution or such other process or final order as may be necessary to enforce the terms of such order of the deputy commissioner or [1]commission.

(2) In any case where the employer is insured and the carrier fails to comply with any compensation order of a deputy commissioner, the [1]commission, or the court within 10 days after such order becomes final, the division shall notify the Department of Insurance of such failure, and the Department of Insurance shall thereupon suspend the license of such carrier to do an insurance business in this state, until such carrier has complied with such order.

(3) In any case where the employer is a self-insurer and fails to comply with any compensation order of a deputy commissioner, the [1]commission, or the court within 10 days after such order becomes final, the division may suspend or revoke any authorization previously given to the employer to become a self-insurer, and the division may sell such of the securities deposited by such self-insurer with the division as may be necessary to satisfy such order.

(4) In any case wherein the employee fails to comply with any order of a deputy commissioner within 10 days after such order becomes final, the deputy commissioner may dismiss the claim or suspend payments due under said claim until the employee complies with such order. The deputy commissioner may strike the defenses of the employer, if said employer is self-insured, or of the insurance carrier, if said employer is not self-insured, if said employer or carrier fails to comply with any order of a deputy commissioner within 10 days after such order becomes final.

History.—s. 24, ch. 17481, 1935; CGL 1936 Supp. 5966(24); s. 10, ch. 18413, 1937; s. 7, ch. 28241, 1953; s. 2, ch. 67-554; ss. 13, 17, 35, ch. 69-106; s. 120, ch. 71-355; s. 14, ch. 74-197; s. 23, ch. 78-300; ss. 18, 124, ch. 79-40; ss. 13, 21, ch. 79-312.

[1]Note.—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.25 Procedure in respect to claims and hearing requests.—

(1) Subject to the provisions of s. 440.19, a claim for compensation may be filed with the division at its office in the City of Tallahassee in accordance with rules prescribed by the division at any time after a specific benefit becomes due and is not paid, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect to such claims.

(2) Within 10 days after such claim is filed, the division, in accordance with rules prescribed by it, shall notify the employer and any other person other than the claimant whom the division considers an interested party that a claim has been filed. Such notice may be served personally upon the employer or other person or sent to such employer or person by certified mail.

(3)(a) The division or deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect to the claim, and upon request by any interested party, the deputy commissioner shall order a hearing thereof. An application for a hearing concerning a claim shall state concisely in separate, numbered paragraphs the reasons for

requesting a hearing and the questions at issue or in dispute which the applicant expects the deputy commissioner to hear and determine, with sufficient particularity that the responding or opposing parties may be notified of the purpose of the hearing, including the issues to be heard and determined and the specific benefit which is due and not paid. No request for a hearing filed on behalf of a party represented by an attorney shall be valid and of any force or effect unless there exists at the time of its filing a justifiable controversy determinable by the deputy commissioner. Any application for a hearing not in compliance with this paragraph shall be subject to dismissal upon motion of the division, the deputy commissioner, or any interested party. If a request for a hearing is filed, the deputy commissioner shall hold a hearing within 90 days after it is filed and shall give the claimant and other interested parties at least 15 days' notice of such hearing, served upon the claimant and other interested parties by certified mail.

(b) The hearing shall be held in the county where the injury occurred, if the same occurred in this state, unless otherwise agreed to between the parties and authorized by the deputy commissioner in the county where the injury occurred. If the injury occurred without the state and is one for which compensation is payable under this chapter, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the state which will at the time of forwarding the file for hearing, in the discretion of the division, be the most convenient for a hearing. Subsequent to the forwarding of the file to such county, the parties and the deputy commissioner may agree to transfer such file to a county that is deemed most convenient for a hearing. The hearing shall be conducted by a deputy commissioner who shall, within 30 days after such hearing, unless otherwise agreed to by the parties, determine the dispute in a summary manner. At such hearing, the claimant and employer may each present evidence in respect of such claim and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the deputy commissioner may designate a disinterested doctor to submit a report or to testify in the proceeding, after such doctor has reviewed the medical reports and evidence, examined the claimant, or otherwise made such investigation as appropriate. The report or testimony of any doctor so designated by the deputy commissioner shall be made a part of the record of the proceeding and shall be given the same consideration by the deputy commissioner as is accorded other medical evidence submitted in the proceeding; and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of s. 440.13(3)(a). No deputy commissioner shall make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties.

(c) The order making an award or rejecting the claim, referred to in this chapter as a compensation order, shall set forth the findings of ultimate facts and the mandate, and the order need not include any other reason or justification for such mandate. The compensation order shall be filed in the office of the division at Tallahassee. A copy of such compensation order shall be sent by mail to the parties and attorneys of record at the last known address of each, with the date of mailing noted thereon.

(d) Each deputy commissioner or the [1]Industrial Relations Commission is required to submit a special report to the Division of Workers' Compensation in each contested workers' compensation case in which the case is not determined within 30 days of final hearing or within 180 days of filing an application for review. Said form shall be provided by the division and shall contain the name of the deputy commissioner, if the case is before a deputy commissioner; the attorneys involved; and a brief explanation by the deputy commissioner or the [1]Industrial Relations Commission as to the reason for such a delay in issuing a final order. The Division of Workers' Compensation shall compile these special reports into an annual public report to the Governor, the Secretary of Labor and Employment Security, the Legislature, The Florida Bar, and the appellate district judicial nominating commissions.

(4)(a) The compensation order rendered by the deputy commissioner shall become final 20 days after the date copies of same are mailed to the parties at the last known address of each, unless within said time any interested party shall make and file with the [1]commission or a deputy commissioner an application for a review thereof by the [1]commission in accordance with the provisions of this subsection. However, an employer who has not secured the payment of compensation under this chapter in compliance with s. 440.38 shall, as a condition of filing such application for a review by the [1]commission, file with his application for review a good and sufficient bond, as provided in s. 59.13, conditioned to pay the amount of the award, interest, and costs payable under the terms of the order of the [1]commission, if the application shall be dismissed or the order thereon shall affirm or make an award of benefits in any amount, and upon failure of such employer to file such bond with his application for review the [1]commission shall dismiss the application for review. The application must state concisely and particularly the grounds upon which the appellant relies, and the consideration of the [1]commission thereof will be confined solely to the grounds so presented. A copy of all applications for review shall be served on all interested parties, and proof of service thereof shall accompany all applications when filed.

(b) The appellant shall have prepared, in accordance with the workers' compensation rules of procedure, a record on appeal, certified by the deputy commissioner, which record must be filed with the [1]commission within 45 days from the date of the filing of the application for review, unless the [1]commission, for good cause shown by verified petition presented prior to the expiration of said period, shall extend the time therefor. The appellant shall have a copy of the record served on the opposing party or parties or their counsel, and evidence of such service shall be filed with the record when filed

with the [1]commission. Upon failure of the appellant to file a record with the [1]commission, together with evidence of service of a copy thereof on the opposing party or parties, within the time specified or within such time as allowed by the [1]commission pursuant to petition for an extension of time as aforesaid, the [1]commission shall dismiss the application for review.

(c)1. Within 15 days after the content of the record on appeal has been determined, the deputy commissioner shall serve notice upon the appellant or his attorney of the estimated cost of preparing the record on appeal and necessary copies thereof, and the appellant shall, within 15 days of the date of service, deposit the amount of the estimated cost of preparing the record at the office of the deputy commissioner. If the appellant fails to deposit the amount of costs within the time allotted, the deputy commissioner shall promptly notify the [1]commission of such failure, and the [1]commission shall dismiss the application for review. However, neither the division nor the Special Disability Trust Fund, nor any self-insured state agency, shall be required to make the deposit.

2. An appellant may be relieved in part or in whole from the costs for the preparation of the record on appeal if, within 15 days after the date notice of the estimated costs for the preparation is served, he files with the deputy commissioner a verified petition to be relieved of costs. The verified petition shall contain a detailed and sworn statement of all his assets, liabilities, and income. Appellant's attorney, or the appellant if not represented by an attorney, shall include as a part of the verified petition an affidavit or affirmation that, in his opinion, the application for review was filed in good faith and that the assignment of error contained therein constitutes a probable basis for the [1]commission to find reversible error. A copy of the verified petition shall be served upon the division in Tallahassee and all other interested parties. The deputy commissioner shall promptly conduct a hearing on the verified petition, giving at least 15 days' notice to the appellant, the division, and all other interested parties, which shall all be parties to the proceeding. The deputy commissioner may enter an order without such hearing if no objection is filed by the division or an interested party within 12 days from the date the verified petition is filed. Said proceedings shall be conducted in accordance with this section and the workers' compensation rules of procedure to the extent applicable.

(d) Within 10 days after the appellant has filed his application for review, any other interested party who desires review of any adverse ruling by the deputy commissioner must file his cross-application for review with the [1]commission or a deputy commissioner. The cross-application for review must state concisely and particularly the grounds upon which the cross-appellant relies, and the consideration of the [1]commission thereof will be confined solely to the grounds so presented. A copy of all cross-applications for review shall be served on all interested parties, and proof of service thereof shall accompany all cross-applications when filed.

(e) Unless the application for review is withdrawn with its permission or is dismissed as aforesaid, the [1]commission shall consider the matter upon the record as certified by the deputy commissioner and shall thereafter affirm, reverse, or modify said compensation order or remand the claim for further proceedings before a deputy commissioner who shall proceed as the [1]commission may direct. The order of the [1]commission shall be filed in the office of the [1]commission at Tallahassee, and a copy of such order shall be sent by certified mail to each party at his last known address. The order of the [1]commission shall become final upon expiration of the period within which any interested party may file a petition for writ of certiorari requesting review of such order by the Supreme Court, unless within said time any interested party shall file a petition for writ of certiorari in accordance with s. 440.27.

(f) Beginning on October 1, 1979, procedures with respect to appeals from orders of deputy commissioners shall be governed by rules adopted by the Supreme Court. Such an order shall become final 30 days after mailing of copies of such order to the parties, unless appealed pursuant to such rules. The provisions of paragraphs (a)-(e) shall apply only until September 30, 1979.

(5) An award of compensation for disability may be made after the death of an injured employee.

(6) An injured employee claiming or entitled to compensation shall submit to such physical examination by a duly qualified physician designated or approved by the deputy commissioner as the deputy commissioner may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination. Any interested party shall have the right in any case of death to require an autopsy, the cost thereof to be borne by the party requesting it; and the deputy commissioner shall have authority to order and require an autopsy and may, in his discretion, withhold his findings and award until an autopsy is held.

History.—s. 25, ch. 17481, 1935; CGL 1936 Supp. 5966(25); s. 11, ch. 18413, 1937; s. 7, ch. 20672, 1941; s. 3, ch. 22814, 1945; s. 1, ch. 26967, 1951; s. 8, ch. 28241, 1953; s. 6, ch. 29778, 1955; s. 1, ch. 57-270; s. 2, ch. 59-100; s. 2, ch. 59-142; s. 2, ch. 65-120; s. 1, ch. 65-119; s. 1, ch. 67-374; s. 2, ch. 67-554; ss. 17, 35, ch. 69-106; s. 120, ch. 71-355; s. 1, ch. 74-48; s. 15, ch. 74-197; s. 12, ch. 75-209; ss. 6, 8, ch. 77-290; ss. 8, 23, ch. 78-300; s. 17, ch. 79-7; ss. 19, 124, ch. 79-40; ss. 14, 21, ch. 79-312; s. 180, ch. 79-400.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before the commission to the District Court of Appeals, First District, effective October 1, 1979.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

440.26 Presumptions.—Except as otherwise provided in this chapter, in any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed, in the absence of substantial evidence to the contrary:

(1) That the claim comes within the provisions of this chapter.

(2) That sufficient notice of such claim has been

given.

(3) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

History.—s. 26, ch. 17481, 1935; CGL 1936 Supp. 5966(26); s. 7, ch. 77-290; s. 23, ch. 78-300; ss. 20, 124, ch. 79-40; s. 21, ch. 79-312.

440.27 Review of compensation orders.—

(1) Orders of the [1]commission entered pursuant to s. 440.25 shall be subject to review only by petition for writ of certiorari to the Supreme Court. The petition shall be filed in accordance with rules of procedure prescribed by the Supreme Court of Florida for review of such orders. The division shall be made a party respondent to every such proceeding.

(2) The [1]commission may grant a supersedeas or stay upon petitioner giving a good and sufficient bond, as provided in s. 59.13, conditioned to pay the amount of the award, interest and costs, if the petition shall be denied by the court; provided, however, that if the employer has secured the payment of benefits of this chapter to his employees no bond is required.

History.—s. 27, ch. 17481, 1935; CGL 1936 Supp. 5966(27); s. 12, ch. 18413, 1937; s. 8, ch. 20672, 1941; s. 2, ch. 23908, 1947; s. 10, ch. 26484, 1951; s. 9, ch. 28241, 1953; s. 7, ch. 29778, 1955; s. 2, ch. 57-270; s. 1, ch. 59-142; ss. 17, 35, ch. 69-106; s. 120, ch. 71-355; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

[1]Note.—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before the commission to the District Court of Appeals, First District, effective October 1, 1979.

440.271 Appeal of order of deputy commissioner.—After September 30, 1979, review of any order of a deputy commissioner entered pursuant to this chapter shall be by appeal to the District Court of Appeal, First District. On October 1, 1979, all appeals pending before the Industrial Relations Commission shall be transferred to the District Court of Appeal, First District, and the court shall act on such appeals.

History.—s. 1, ch. 79-312.

440.28 Modification of orders.—Upon a deputy commissioner's own initiative, or upon the application of any party in interest, on the ground of a change in condition or because of a mistake in a determination of fact, the deputy commissioner may, at any time prior to 2 years after the date of the last payment of compensation pursuant to any compensation order, or at any time prior to 2 years after the date copies of an order rejecting a claim are mailed to the parties at the last known address of each, review a compensation case in accordance with the procedure prescribed in respect of claims in s. 440.25 and, in accordance with such section, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and, if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner.

History.—s. 28, ch. 17481, 1935; CGL 1936 Supp. 5966(28); s. 9, ch. 20672, 1941; s. 10, ch. 28241, 1953; s. 119, ch. 71-355; s. 13, ch. 75-209; s. 23, ch. 78-300; ss. 21, 124, ch. 79-40; s. 21, ch. 79-312.

440.29 Procedure before the [1]commission or deputy commissioners.—

(1) In making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct such hearing, in such manner as to best ascertain the rights of the parties. A declaration of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(2) Hearings before the deputy commissioner shall be open to the public and shall be reported, and the division is authorized to contract for the reporting of such hearings. The division shall by rule provide for the preparation of a record of the hearings and other proceedings before deputy commissioners and shall be permitted to charge for transcripts of testimony and copies of any instrument the same fees as are allowed by law to reporters and clerks of courts of this state for like services.

(3) The practice and procedure before the [1]commission and the deputy commissioners shall be governed by rules adopted by the Supreme Court, except to the extent that such rules conflict with the provisions of this chapter.

History.—s. 29, ch. 17481, 1935; CGL 1936 Supp. 5966(29); s. 10, ch. 20672, 1941; s. 8, ch. 29778, 1955; ss. 17, 35, ch. 69-106; s. 16, ch. 74-197; s. 14, ch. 75-209; ss. 9, 23, ch. 78-300; ss. 22, 124, ch. 79-40; s. 21, ch. 79-312.

[1]Note.—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

cf.—s. 28.24 Fees of clerk of circuit court.
s. 29.03 Compensation for services of official court reporters.
s. 696.05 Photographic recording authorized; clerk circuit court.

440.30 Depositions.—Depositions of witnesses or parties, residing within or without the state, may be taken and may be used in connection with proceedings under the Workers' Compensation Law, either upon order of the deputy commissioner or at the instance of any party or prospective party to such proceedings, and either prior to the institution of a claim, if the claimant is represented by an attorney, or after the filing of the claim in the same manner, for the same purposes, including the purposes of discovery, and subject to the same rules; all as now or hereafter prescribed by law or by rules of court governing the taking and use of such depositions in civil actions at law in the circuit courts of this state. Such depositions may be taken before any notary public, court reporter, or deputy, and the fees of the officer taking the same and the fees of the witnesses attending the same, including expert witness fees as provided by law or court rule, shall be the same as in depositions taken for such circuit courts. Such fees may be taxed as costs and recovered by the claimant, if successful in such workers' compensation proceedings. If no claim has been filed, then the carrier or employer taking the deposition shall pay the claim-

ant's attorney a reasonable attorney's fee for attending said deposition.

History.—s. 30, ch. 17481, 1935; CGL 1936 Supp. 5966(30); s. 13, ch. 18413, 1937; s. 1, ch. 28228, 1953; ss. 17, 35, ch. 69-106; s. 17, ch. 74-197; s. 15, ch. 75-209; s. 23, ch. 78-300; ss. 23, 124, ch. 79-40; s. 21, ch. 79-312.

440.31 Witness fees.—Each witness who appears in obedience to a subpoena shall be entitled to the same fees as witnesses in a civil action in the circuit court; however, any expert witness, as defined in Rule 1.390(a) of the Rules of Civil Procedure, who shall have testified in any proceeding under this chapter shall be allowed a witness fee, including the cost of any exhibits used by such witness, in such reasonable amount as the deputy commissioner may determine, not in excess of the rate prevailing in the locality for witness fees for such expert witnesses in workers' compensation proceedings, notwithstanding the limitation provided in s. 92.231.

History.—s. 31, ch. 17481, 1935; CGL 1936 Supp. 5966(31); s. 9, ch. 29778, 1955; s. 2, ch. 67-554; s. 23, ch. 78-300; ss. 24, 124, ch. 79-40; s. 21, ch. 79-312. cf.—s. 92.142 Compensation of witnesses in various courts.

440.32 Cost in proceedings brought without reasonable ground.—If the deputy commissioner, [1]commission, or any court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the cost of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

History.—s. 32, ch. 17481, 1935; CGL 1936 Supp. 5966(32); s. 1, ch. 63-283; ss. 17, 35, ch. 69-106; s. 16, ch. 75-209; s. 23, ch. 78-300; ss. 25, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.33 Powers of deputy commissioners and [1]commission.—

(1) The deputy commissioner or [1]commission may preserve and enforce order during any such proceeding; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; examine witnesses, and do all things conformable to law which may be necessary to enable it effectively to discharge the duties of its office.

(2) If any person in proceedings before the deputy commissioner or [1]commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath or affirmation as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner or [1]commission, as the case may be, shall certify the facts to the court having jurisdiction in the place in which it is sitting which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

History.—s. 33, ch. 17481, 1935; CGL 1936 Supp. 5966(33); ss. 17, 35, ch. 69-106; s. 17, ch. 75-209; s. 23, ch. 78-300; ss. 26, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.34 Attorney's fees; costs; penalty for violations.—

(1) No fee, gratuity, or other consideration shall be paid for services rendered for a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the deputy commissioner, [1]commission, or court having jurisdiction over such proceedings. Except as provided by this subsection, any attorney's fee approved by a deputy commissioner shall be equal to 25 percent of the first $5,000 of the amount of the benefits secured, 20 percent of the next $5,000 of the amount of the benefits secured, and 15 percent of the remaining amount of the benefits secured. However, the deputy commissioner shall consider the following factors in each case and may increase or decrease the attorney's fee if, in his judgment, the circumstances of the particular case warrant such action:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(b) The likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude employment of the lawyer by others or cause antagonisms with other clients.

(c) The fee customarily charged in the locality for similar legal services.

(d) The amount involved in the controversy and the benefits resulting to the claimant.

(e) The time limitation imposed by the claimant or the circumstances.

(f) The nature and length of the professional relationship with the claimant.

(g) The experience, reputation, and ability of the lawyer or lawyers performing services.

(h) The contingency or certainty of a fee.

(2) If the claimant should prevail in any proceedings before a deputy commissioner, [1]commission, or court, there shall be taxed against the employer the reasonable costs of such proceedings, not to include the claimant's attorney's fees. A claimant shall be responsible for the payment of his own attorney's fees, except that a claimant shall be entitled to recover a reasonable attorney's fee from a carrier or employer:

(a) Against whom he successfully asserts a claim for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for disability, permanent impairment, wage-loss, or death benefits, arising out of the same accident; or

(b) In cases where the deputy commissioner issues an order finding that a carrier has acted in bad faith with regard to handling an injured worker's claim and the injured worker has suffered economic loss. For the purposes of this paragraph, "bad faith" means conduct by the carrier in the handling of a claim which amounts to fraud, malice, oppression, or willful, wanton or reckless disregard of the rights of the claimant. Any determination of bad faith shall be made by the deputy commissioner through a sepa-

rate fact-finding proceeding; or

(c) In a proceeding where a carrier or employer denies that an injury occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability.

In the situations set forth in paragraph (b), the payment of such attorney's fees shall not be recouped, directly or indirectly, by any carrier in the rate base, premium, or any rate filing.

(3) In such cases where the claimant is responsible for the payment of his own attorney's fees, such fees shall be a lien upon compensation payable to the claimant, notwithstanding the provisions of s. 440.22.

(4) Any person:

(a) Who receives any fees or other consideration or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the deputy commissioner, the [1]commission, or the court, or

(b) Who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation,

is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 34, ch. 17481, 1935; CGL 1936 Supp. 5966(34), 8135(11); s. 11, ch. 20672, 1941; ss. 17, 35, ch. 69-106; s. 365, ch. 71-136; s. 119, ch. 71-355; s. 18, ch. 75-209; s. 9, ch. 77-290; ss. 10, 23, ch. 78-300; ss. 27, 124, ch. 79-40; ss. 15, 21, ch. 79-312.

[1]Note.—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.35 Record of injury or death.—Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the division may by regulation require, and shall be available to inspection by the division or by any state authority at such time and under such conditions as the division may by regulation prescribe.

History.—s. 35, ch. 17481, 1935; CGL 1936 Supp. 5966(35); ss. 17, 35, ch. 69-106; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.37 Misrepresentation; fraudulent activities; penalties.—

(1) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or denying any benefit or payment under this chapter:

(a) Who presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false or misleading information concerning any fact or thing material to such claim, or

(b) Who prepares or makes any written or oral statement that is intended to be presented to any employer, insurance company, or self-insured program in connection with, or in support of, any claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false or misleading information concerning any fact or thing material to such claim,

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) All claims forms as provided for in this chapter shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information is guilty of a felony of the third degree."

(b)1. Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any person to fraudulently violate any of the provisions of this chapter, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor, or other practitioner is adjudicated guilty of a violation of this subparagraph, the [1]State Board of Medical Examiners as set forth in chapter 458, the [2]State Board of Osteopathic Medical Examiners as set forth in chapter 459, the [3]Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or other practitioner.

2. Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this chapter, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of such hospital by any person in a scheme or conspiracy to fraudulently violate any of the provisions of this chapter. Any hospital administrator or employee who violates this subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this subparagraph, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this chapter is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $5,000 by the licensing agency as set forth in chapter 395.

(c) Any person damaged as a result of a violation

of any provision of this subsection, when there has been a criminal adjudication of guilt, shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney's fees at the trial and appellate courts.

(d) For the purposes of this subsection, the term "statement" includes, but is not limited to, any notice, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor records, X ray, test result, or other evidence of loss, injury, or expense.

(e) The provisions of this subsection shall also apply with respect to any employer, insurer, self-insurer, adjusting firm, or agent or representative thereof who intentionally injures, defrauds, or deceives any claimant with regard to any claim. Such claimant shall have the right to recover the damages provided in this subsection.

(f) It is unlawful for any attorney or other person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims. Any person who violates the provisions of this paragraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court finds probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to the appropriate state attorney a copy of the findings of probable cause and a copy of the report being filed in the matter.

History.—s. 37, ch. 17481, 1935; CGL 1936 Supp. 8135(12); s. 366, ch. 71-136; s. 10, ch. 77-290; ss. 11, 23, ch. 78-300; ss. 28, 124, ch. 79-40; s. 117, ch. 79-164; s. 21, ch. 79-312.

[1]**Note.**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners.

[2]**Note.**—See ch. 79-230, which repealed provisions relating to the State Board of Osteopathic Medical Examiners and created the Board of Osteopathic Medical Examiners.

[3]**Note.**—See ch. 79-211, which repealed provisions relating to the Florida State Board of Chiropractic Examiners and created the Board of Chiropractic.

440.38 Security for compensation; insurance carriers and self-insurers.—

(1) Every employer shall secure the payment of compensation under this chapter:

(a) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state; or

(b) By furnishing satisfactory proof to the division of his financial ability to pay such compensation and receiving an authorization from the division to pay such compensation directly. The division may, as a condition to such authorization, require such employer to deposit in a depository designated by the division either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the division, and subject to such conditions as the division may prescribe, which shall include authorization to the division in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. In addition, the division shall require, as a condition to authorization to self-insure, proof that the employer has provided for competent personnel with which to deliver benefits and to provide a safe working environment. Further, the division shall require such employer to carry reinsurance at levels that will insure the actuarial soundness of such employer in accordance with rules promulgated by the division. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of his own insurance. There is created in the State Treasury a guaranty fund for individual self-insurers authorized under this paragraph, and all such self-insurers, other than individual self-insurers which are public utilities or governmental entities, shall participate in such fund. Said guaranty fund shall operate subject to rules adopted by the division and shall become effective on July 1, 1980.

(2)(a) The division shall adopt rules by which businesses may become qualified to provide underwriting claims-adjusting, loss control, and safety engineering services to self-insurers.

(b) The division shall adopt rules requiring self-insurers to file any reports necessary to fulfill the requirements of this chapter. Any self-insurer who fails to file any report as prescribed by the rules adopted by the division shall be subject to a civil penalty not to exceed $100 for each such failure.

(3)(a) The license of any stock company or mutual company or association or exchange authorized to do insurance business in the state shall for good cause, upon recommendation of the division, be suspended or revoked by the Department of Insurance. No suspension or revocation shall affect the liability of any carrier already incurred.

(b) The division shall suspend or revoke any authorization to a self-insurer for good cause. No suspension or revocation shall affect the liability of any self-insurer already incurred.

(4)(a) No carrier of insurance, including the parties to any mutual, reciprocal, or other association, shall write any compensation insurance under this chapter without a permit from the Department of Insurance. Such permit shall be given, upon application therefor, to any insurance or mutual or reciprocal insurance association upon the said department being satisfied of the solvency of such corporation or association and its ability to perform all its undertakings. The said department may revoke any permit so issued for violation of any provision of this chapter.

(b) No carrier of insurance, including the parties to any mutual, reciprocal, or other association, shall write any compensation insurance under this chapter unless such carrier shall have a claims adjuster, either in-house or under contract, situated within this state.

(c) Any insurer, rating bureau, or agent or other representative or employee of any insurer or rating bureau failing to comply with, or which is guilty of a violation of, any of the provisions of this chapter or of any order or ruling of the Department of Insur-

ance made hereunder is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In addition thereto, the license of any insurer, agent, or broker guilty of such violation may be revoked or suspended by the department.

(5) All insurance carriers authorized to write workers' compensation insurance in this state shall make available, at the option of the employer, an insurance policy containing a coinsurance provision which shall bind the carrier to pay 80 percent, and the employer to pay 20 percent, of the benefits due to an employee for an injury compensable under this chapter, up to the amount of $2,500 or $5,000. One hundred percent of the medical benefits above $2,500 or $5,000, as the case may be, due to an employee for one injury shall be paid by the carrier. Regardless of any coinsurance or deductible amount, the claim shall be paid by the applicable carrier, which shall then be reimbursed by the employer for any coinsurance or deductible amounts paid by the carrier, and the employer shall be liable for such reimbursement, except for any portion of a claim for medical benefits, up to the employer's liability under the coinsurance or deductible provisions. If a claim or a portion of a claim is for medical benefits, the benefits shall be paid by the employer, and the carrier shall act as guarantor therefor. Payments made by an employer pursuant to a coinsurance provision shall be made within the same time periods as those applicable to a carrier. Prior to issuance of any policy not containing a coinsurance provision, the carrier shall obtain from the employer a written rejection of such provision. No insurance carrier shall be required to offer coinsurance to any employer if, as a result of a credit investigation, the carrier determines that the employer is not sufficiently financially stable to be responsible for payment of such coinsurance amounts. The agent's commission shall be computed and paid on the basis of the policy without a coinsurance provision.

(6) The state and its boards, bureaus, departments, and agencies and all of its political subdivisions which employ labor shall be deemed self-insurers under the terms of this chapter, unless they elect to procure and maintain insurance to secure the benefits of this chapter to their employees, and they are hereby authorized to pay the premiums for the said insurance.

History.—s. 38, ch. 17481, 1935; CGL 1936 Supp. 5966(37), 7476(7), 8135(13); s. 13, ch. 22637, 1945; ss. 13, 17, 35, ch. 69-106; s. 367, ch. 71-136; s. 11, ch. 78-95; ss. 12, 23, ch. 78-300; ss. 29, 124, ch. 79-40; ss. 16, 21, ch. 79-312.

cf.—s. 837.012 Perjury not in an official proceeding.
s. 837.02 Perjury in official proceedings.

440.39 Compensation for injuries where third persons are liable.—

(1) If an employee, subject to the provisions of the Workers' Compensation Law, is injured or killed in the course of his employment by the negligence or wrongful act of a third-party tortfeasor, such injured employee or, in the case of his death, his dependents may accept compensation benefits under the provisions of this law, and at the same time such injured employee [1]or his dependents or personal representatives may pursue his remedy by action at law or otherwise against such third-party tortfeasor.

(2) If the employee or his dependents shall accept compensation or other benefits under this law or begin proceedings therefor, the employer or, in the event the employer is insured against liability hereunder then the insurer, shall be subrogated to the rights of the employee or his dependents against such third-party tortfeasor, to the extent of the amount of compensation benefits paid or to be paid as provided by subsection (3).

(3)(a) In all claims or actions at law against a third-party tortfeasor, the employee, or his dependents or those entitled by law to sue in the event he is deceased, shall sue for the employee individually and for the use and benefit of the employer, if a self-insurer, or employer's insurance carrier, in the event compensation benefits are claimed or paid, and such suit may be brought in the name of the employee, or his dependents or those entitled by law to sue in the event he is deceased, as plaintiff or, at the option of such plaintiff, may be brought in the name of such plaintiff and for the use and benefit of the employer or insurance carrier, as the case may be. Upon suit being filed, the employer or the insurance carrier, as the case may be, may file in the suit a notice of payment of compensation and medical benefits to the employee or his dependents, which said notice shall constitute a lien upon any judgment or settlement recovered to the extent that the court may determine to be their pro rata share for compensation and medical benefits paid or to be paid under the provisions of this law. The employer or carrier shall recover from the judgment, after attorney's fees and costs incurred by the employee or dependent in that suit have been deducted, 100 percent of what it has paid and future benefits to be paid, unless the employee or dependent can demonstrate to the court that he did not recover the full value of damages sustained because of comparative negligence or because of limits of insurance coverage and collectibility. The burden of proof will be upon the employee. Such proration shall be made by the judge of the trial court upon application therefor and notice to the adverse party. Notice of suit being filed shall be served upon the employer and compensation carrier and upon all parties to the suit or their attorneys of record by the employee. Notice of payment of compensation benefits shall be served upon the employee and upon all parties to the suit or their attorneys of record by the employer and compensation carrier.

(b) If the employer or insurance carrier has given written notice of his rights of subrogation to the third-party tortfeasor, and, thereafter, settlement of any such claim or action at law is made, either before or after suit is filed, and the parties fail to agree on the proportion to be paid to each, the circuit court of the county in which the cause of action arose shall determine the amount to be paid to each by such third-party tortfeasor in accordance with the provisions of paragraph (a) above.

(4)(a) If the injured employee or his dependents, as the case may be, fail to bring suit against such third-party tortfeasor within 1 year after the cause of action thereof shall have accrued, the employer, if a self-insurer, and if not, the insurance carrier, may, after giving 30 days' notice to the injured employee or his dependents and the injured employee's attorney, if represented by counsel, institute suit against

such third-party tortfeasor, either in his own name or as provided by subsection (3), and, in the event suit is so instituted, shall be subrogated to and entitled to retain from any judgment recovered against, or settlement made with, such third party, the following: All amounts paid as compensation and medical benefits under the provisions of this law and the present value of all future compensation benefits payable, to be reduced to its present value, and to be retained as a trust fund from which future payments of compensation are to be made, together with all court costs, including attorney's fees expended in the prosecution of such suit, to be prorated as provided by subsection (3). The remainder of the moneys derived from such judgment or settlement shall be paid to the employee or his dependents, as the case may be.

(b) If the carrier or employer does not bring suit within 2 years following the accrual of the cause of action against a third-party tortfeasor, the right of action shall revert to the employee or, in the case of his death, those entitled by law to sue, and in such event the provisions of subsection (3) shall apply.

(5) In all cases under subsection (4) involving third-party tortfeasors, where compensation benefits under this law are paid, or are to be paid, settlement either before or after suit is instituted shall not be made except upon agreement of the injured employee or his dependents and the employer or his insurance carrier, as the case may be.

(6) Any amounts recovered under this section by the employer or his insurance carrier shall be credited against the loss-experience of said employer.

History.—s. 39, ch. 17481, 1935; CGL 1936 Supp. 5966(38); s. 14, ch. 18413, 1937; s. 1, ch. 23822, 1947; s. 1, ch. 26546, 1951; s. 1, ch. 59-431; s. 6, ch. 70-148; s. 18, ch. 74-197; s. 11, ch. 77-290; s. 23, ch. 78-300; ss. 30, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—The word "or" was inserted by the editors.

440.40 Compensation notice.—Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the division, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

History.—s. 40, ch. 17481, 1935; CGL 1936 Supp. 5966(39); ss. 17, 35, ch. 69-106; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.41 Substitution of carrier for employer.—In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the division shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier.

(2) Jurisdiction of the employer by the deputy commissioners, the division, the [1]commission, or any court under this chapter shall be jurisdiction of the carrier.

(3) Any requirement by the deputy commissioners, the division, the [1]commission, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

History.—s. 41, ch. 17481, 1935; CGL 1936 Supp. 5966(40); ss. 17, 35, ch. 69-106; s. 19, ch. 75-209; s. 23, ch. 78-300; ss. 31, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.42 Insurance policies; liability.—

(1) Every policy or contract of insurance issued under authority of this chapter shall contain:

(a) A provision to carry out the provisions of s. 440.41; and

(b) A provision that insolvency or bankruptcy of the employer and discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(2) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the division and to the employer in accordance with the provisions of subsection 440.185(7). However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instanter upon filing a notice of cancellation with the division and serving a copy thereof upon the employer in such manner as the division by regulation may prescribe.

(3) When there is any controversy as to which of two or more carriers is liable for the discharge of the obligations and duties of one or more employers with respect to a claim for compensation, remedial treatment, or other benefits under this chapter, the deputy commissioner shall have jurisdiction to adjudicate such controversy; and if one of the carriers voluntarily or in compliance with a compensation order makes payments in discharge of such liability and it is finally determined that another carrier is liable for all or any part of such obligations and duties with respect to such claim, the carrier which has made payments either voluntarily or in compliance with a compensation order shall be entitled to reimbursement from the carrier finally determined liable, and the deputy commissioner shall have jurisdiction to order such reimbursement; however, if the carrier finally determined liable can demonstrate that it has been prejudiced by lack of knowledge or notice of its potential liability, such reimbursement shall

be only with respect to payments made after it had knowledge or notice of its potential liability.

History.—s. 42, ch. 17481, 1935; CGL 1936 Supp. 5966(41); s. 11, ch. 29778, 1955; s. 3, ch. 57-225; s. 3, ch. 59-100; s. 1, ch. 65-204; ss. 17, 35, ch. 69-106; s. 1, ch. 73-185; s. 20, ch. 75-209; s. 23, ch. 78-300; ss. 32, 124, ch. 79-40; s. 21, ch. 79-312.

440.43 Penalty for failure to secure payment of compensation.—Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and upon a complaint of the division being filed in the circuit court of the county in which said employer may be doing business, such employer may be enjoined from employing individuals and from conducting business until such payment for compensation has been secured. However, the employer, upon written notice from the division, shall have 72 hours to secure such compensation prior to the filing of the complaint by the division. This section shall not affect any other liability of the employer under this chapter.

History.—s. 43, ch. 17481, 1935; CGL 1936 Supp. 8135(14); s. 368, ch. 71-136; s. 8, ch. 73-127; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.44 Workers' compensation; staff organization.—

(1) INTERPRETATION OF LAW.—As a guide to the interpretation of this chapter, the Legislature takes due notice of federal social and labor acts and hereby creates an agency to administer such acts passed for the benefit of employees and employers in Florida industry, and desires to meet the requirements of such federal acts wherever not inconsistent with the Constitution and laws of Florida.

(2) INTENT.—It is the intent of the Legislature that the division assume an active and forceful role in its administration of this act so as to ensure that the system operates efficiently and with maximum benefit to both employers and employees.

(3) EXPENDITURES.—The division shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books; for telephone services and WATS lines; for books of reference, periodicals, equipment, and supplies; and for printing and binding as may be necessary in the administration of this chapter. All expenditures of the division in the administration of this chapter shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the division.

(4) MERIT SYSTEM PRINCIPLE OF PERSONNEL ADMINISTRATION.—Subject to the other provisions of this chapter, the division is authorized to appoint, and prescribe the duties and powers of, bureau chiefs, attorneys, accountants, medical advisers, technical assistants, inspectors, claims examiners, and such other employees as may be necessary in the performance of its duties under this chapter.

(5) OFFICE.—The division shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of business under this chapter, at which office its official records and papers shall be kept. The office shall be furnished and equipped by the division. The division, [2]commission, or any [3]judge of industrial claims may hold sessions and conduct hearings at any place within the state.

(6) SEAL.—The division shall have a seal upon which shall be inscribed the words "State of Florida Department of Labor and Employment Security—seal."

(7) DESTRUCTION OF OBSOLETE RECORDS.—The division is expressly authorized to provide by regulation for and to destroy obsolete records of the division and [2]commission.

[1](8) ADVISORY COUNCIL.—The secretary may designate an advisory council to aid the division in formulating policies, discussing problems, and in assuring impartiality and freedom from political influence in the solution of such problems, related to the administration of this chapter or any other law administered by the division. The members of such advisory council shall receive no compensation for such services, but shall be reimbursed for traveling expenses as provided in s. 112.061.

(9) In the exercise of its duties and functions requiring administrative hearings, the division shall proceed in accordance with the Administrative Procedure Act. The authority of the division to issue orders resulting from administrative hearings as provided for in this chapter shall not infringe upon the jurisdiction of the [3]judges of industrial claims.

History.—s. 44, ch. 17481, 1935; CGL 1936 Supp. 5966(42); s. 15, ch. 18413, 1937; s. 1, ch. 20299, 1941; s. 1, ch. 21875, 1943; s. 4, ch. 22814, 1945; s. 1, ch. 23920, 1947; s. 10, ch. 26484, 1951; s. 11, ch. 28241, 1953; s. 24, ch. 57-1; s. 1, ch. 57-785; s. 1, ch. 57-156; s. 1, ch. 63-274; s. 19, ch. 63-400; s. 2, ch. 67-554; ss. 17, 35, ch. 69-106; s. 163, ch. 71-377; ss. 1, 2, ch. 72-143; s. 2, ch. 72-241; s. 1, ch. 73-283; s. 19, ch. 74-197; s. 21, ch. 75-209; s. 3, ch. 75-237; s. 23, ch. 78-300; s. 4, ch. 78-323; s. 18, ch. 79-7; ss. 33, 124, ch. 79-40; ss. 17, 21, ch. 79-312.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before, and all property, leaseholds, equipment, and other assets of, the commission to the District Court of Appeals, First District, effective October 1, 1979.

[3]**Note.**—See s. 35, ch. 79-40, which changed the title of judges of industrial claims to "deputy commissioners."

cf.—s. 113.07 Bonds of officials.

440.442 Code of Judicial Conduct.—[1]Industrial relations commissioners, the Chief Commissioner, and deputy commissioners shall observe and abide by the Code of Judicial Conduct adopted by the Supreme Court of Florida as of July 1, 1978, as well as all amendments thereto that are hereafter adopted by the court. Any material violation of a canon of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of such [1]commissioner, Chief Commissioner, or deputy commissioner by the Governor.

History.—ss. 13, 23, ch. 78-300; ss. 34, 124, ch. 79-40; ss. 18, 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.45 Deputy commissioners; Chief Commissioner.—

(1) The Governor shall appoint as many full-time deputy commissioners as may be necessary to effectually perform the duties prescribed for them under this chapter. The Governor shall initially appoint a deputy commissioner from a list of at least three persons nominated by the appellate district judicial nominating commission for the appellate district in which the deputy commissioner will principally con-

duct hearings. The meetings and determinations of the judicial nominating commission as to the deputy commissioners shall be open to the general public. No person shall be nominated or appointed as a full-time deputy commissioner who has not had 3 years' experience in the practice of law in this state; and no deputy commissioner shall engage in the private practice of law during a term of office. The Governor may appoint any former deputy commissioner to serve as a deputy commissioner pro hac vice to complete the proceedings on any claim with respect to which the deputy commissioner had heard testimony and which remained pending at the time of the expiration of the deputy commissioner's term of office. However, no former deputy commissioner shall be appointed to serve as a deputy commissioner pro hac vice for a period to exceed 60 successive days.

(2) Each full-time deputy commissioner shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of the term of office of the deputy commissioner, the conduct of said deputy commissioner shall be reviewed by the appellate district judicial nominating commission in the appellate district in which the deputy commissioner principally conducts hearings, which commission shall determine whether said deputy commissioner shall be retained in office. A report of the decision shall be furnished to the Governor no later than 6 months prior to the expiration of the term of the deputy commissioner. If the judicial nominating commission votes not to retain the deputy commissioner, the deputy commissioner shall not be reappointed but shall remain in office until a successor is appointed and qualified. If the judicial nominating commission votes to retain the deputy commissioner in office, then the Governor shall reappoint said deputy commissioner for a term of 4 years.

(3) The deputy commissioners shall be within the Department of Labor and Employment Security under the secretary of that department. To assist the secretary in the administration of the deputy commissioners, there shall be created the position of Chief Commissioner within the secretary's office. The Chief Commissioner shall not be subject to the provisions of subsections (1), (2), (4), or (5), but shall be appointed directly by the Governor and shall have had 3 years' experience in the practice of law in this state. The duties of the Chief Commissioner shall include, but not be limited to, the following:

(a) To be responsible for the coordination of the deputy commissioners and to serve as liaison between the deputy commissioners and the Division of Workers' Compensation of the Department of Labor and Employment Security, between the deputy commissioners and the courts, and between all the aforementioned parties and the department.

(b) To serve as a liaison between the deputy commissioners and the division, making certain that all requirements of personnel, office space, equipment, supplies, research material, law books, and court reporters are provided when needed.

(c) To determine the consensus of deputy commissioners as relates to matters of concern to them and to present these views to the division on behalf of the deputy commissioners.

(d) To act as liaison between the courts and the deputy commissioners for the purpose of promoting the workers' compensation jurisprudence and improving the system of disposition of cases at the trial and appellate levels, including, but not limited to, discussions regarding amendments in procedural rules, guidelines for preparation of transcripts on appeal, and dissemination of case law decisions.

(e) To arrange for exchange between the deputy commissioners and the division in matters of mutual interest, including, but not limited to, relations with court reporters, case load distribution, case disposition, needed changes in forms used by the deputy commissioners, and determination of reasons for delays in the issuing of orders.

(f) To serve as liaison with the Division of Workers' Compensation; the Workers' Compensation Section of The Florida Bar; the Workers' Compensation Advisory Council; and the department.

(g) To serve as a "pro hac vice" deputy commissioner in the various parts of the state as determined by temporary changes in case load and as due to annual and sick leave taken.

(h) To assure a blind system of case assignment among deputy commissioners within the various districts and to undertake appropriate measures to keep dockets current for the deputy commissioners.

(i) To be responsible for the training and orientation of new deputy commissioners.

(j) To ensure that administrative matters, including hearing delays, docket scheduling, review of joint petitions after entry by the deputy commissioners, and all matters of case distribution, shall be effectively handled in accordance with this chapter and to report flagrant violations in these matters directly to the secretary and the Governor. In no event shall the Chief Commissioner, in handling these duties, interfere in any way with the judicial discretion of any court, or the quasi-judicial discretion of the deputy commissioners, in the independent decisions on matters before same for decision.

(k) Any and all other matters which he deems necessary for the efficient handling of workers' compensation cases.

(4) Each full-time deputy commissioner shall receive a salary of $4,000 less per year than that paid to a full-time district court of appeal judge, payable out of the fund established in s. 440.50. The Chief Commissioner shall receive a salary of $1,000 more per year than that paid to a full-time deputy commissioner.

(5) The Governor may appoint any attorney who has 3 years' experience in the practice of law in this state to serve as a deputy commissioner pro hac vice in the absence or disqualification of any full-time deputy commissioner or to serve upon a temporary basis as an additional deputy commissioner in any area of the state in which it is determined by the Governor that a need exists therefor; however, no attorney so appointed by the Governor shall serve for a period to exceed 60 successive days.

(6) The division may delegate to its attorneys, examiners, safety representatives, field agents, inspectors, and other legal representatives such pow-

ers and authority as it may deem necessary in the administration of this chapter.

History.—s. 45, ch. 17481, 1935; CGL 1936 Supp. 5966(43); s. 2, ch. 57-245; s. 1, ch. 61-133; s. 1, ch. 63-179; s. 1, ch. 63-275; s. 1, ch. 65-541; s. 1, ch. 67-515; s. 2, ch. 67-554; s. 1, ch. 69-201; ss. 17, 35, ch. 69-106; s. 1, ch. 70-313; s. 1, ch. 71-290; s. 20, ch. 74-197; s. 3, ch. 74-363; s. 22, ch. 75-209; ss. 14, 23, ch. 78-300; ss. 35, 124, ch. 79-40; ss. 19, 21, ch. 79-312.

440.46 Investigations by the division; refusal to admit; penalty.—

(1)(a) The division shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this chapter, and shall make to the Legislature and employers and carriers such recommendations as it may deem proper as to the best means of preventing injuries. In making such studies and investigations, the division is authorized:

1. To cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this chapter, or any agency or department of the state engaged in enforcing any laws to assure safety for employees.

2. To permit any such agency or department to have access to the records of the division.

(b) The division and its authorized representatives shall have the power and authority to enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and making inspections for the proper enforcement of this chapter. Any employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to permit investigation and inspection pursuant to this paragraph shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Should an accidental injury occur to any inspector or employee of the division while engaged in his official duties, the division shall be considered an employer under the provisions of this chapter and shall compensate such injured employee or his dependents in accordance with the provisions hereof.

(3) No other claim on account of such accidental injury may be maintained by any person against any employer who has accepted the terms of this chapter, except as herein provided.

History.—s. 46, ch. 17481, 1935; CGL 1936 Supp. 5966(44); s. 16, ch. 18413, 1937; s. 4, ch. 57-225; s. 3, ch. 57-245; ss. 17, 35, ch. 69-106; s. 369, ch. 71-136; s. 8, ch. 77-320; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.47 Traveling expenses.—The [1]commission, deputy commissioners, and employees of the [1]commission and division shall be reimbursed for traveling expenses as provided in s. 112.061. Such expenses shall be sworn to by the person who incurred the same and shall be allowed and paid as provided in s. 440.50 upon the presentation of vouchers therefor approved by the [1]commission or division, whichever is applicable.

History.—s. 47, ch. 17481, 1935; CGL 1936 Supp. 5966(45); s. 19, ch. 63-400; ss. 17, 35, ch. 69-106; s. 23, ch. 75-209; s. 23, ch. 78-300; ss. 36, 124, ch. 79-40; s. 21, ch. 79-312.

[1]Note.—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission, effective October 1, 1979.

440.48 Annual report.—Annually on or before March 15, the Department of Labor and Employment Security shall make to the Governor a report of the administration of this chapter for the preceding calendar year, including a detailed statement of the receipts of and expenditures from the fund established in s. 440.50, a statement of the causes of the accidents leading to the injuries for which the awards were made, together with such recommendations as the department deems advisable.

History.—s. 48, ch. 17481, 1935; CGL 1936 Supp. 5966(46); s. 12, ch. 20672, 1941; s. 12, ch. 28241, 1953; s. 24, ch. 57-1; ss. 17, 35, ch. 69-106; s. 164, ch. 71-377; s. 23, ch. 78-300; s. 19, ch. 79-7; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.49 Rehabilitation of injured employees; Special Disability Trust Fund.—

(1) REHABILITATION OF INJURED EMPLOYEES.—

(a) When an employee has suffered an injury covered by this chapter and it appears that the injury will preclude the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services. The employer or carrier, at its own expense, shall provide such injured employee with appropriate training and education for suitable gainful employment and may cooperate with federal and state agencies for vocational education and with any public or private agency cooperating with such federal and state agencies in the vocational rehabilitation of such injured employees. For purposes of this section only, "suitable gainful employment" means employment or self-employment which is reasonably attainable in light of the individual's age, education, previous occupation, and injury and which offers an opportunity to restore the individual as soon as practical and as nearly as possible to his average weekly earnings at the time of injury. If such services are not voluntarily offered or accepted, the Division of Workers' Compensation of the Department of Labor and Employment Security, upon application of the employee, employer, or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for the evaluation of the practicality of, the need for, and the kind of service, treatment, or training, necessary and appropriate to restore the employee to suitable gainful employment. On receipt of such report, and after affording the parties an opportunity to be heard, the deputy commissioner may order that the service and treatment recommended in the report, or such other rehabilitation treatment or service deemed necessary, be provided at the expense of the employer or carrier.

(b) The Division of Workers' Compensation shall continuously study the issue of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities and agencies, both public and private.

(c) Prior to adjudicating an injured employee to be permanently and totally disabled, the deputy commissioner shall determine whether there is a reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education.

(d) When it appears that rehabilitation is necessary and desirable to restore the injured employee to

suitable gainful employment, the employee shall be entitled to reasonable and proper rehabilitation services for a period not to exceed 26 weeks, which period may be extended for an additional period not to exceed 26 additional weeks, if such extended period is determined to be necessary and proper by the deputy commissioner. However, no carrier or employer shall be precluded from continuing such rehabilitation beyond such period on a voluntary basis. If rehabilitation requires residence at or near a facility or an institution and away from the employee's customary residence, the reasonable cost of board, lodging, or travel shall be borne by the employer or carrier. Refusal to accept rehabilitation as deemed necessary by the deputy commissioner shall result in a 50 percent reduction in weekly compensation, including wage-loss benefits as determined pursuant to s. 440.15(3)(b), for each week of the period of refusal.

(e) Temporary disability benefits paid pursuant to s. 440.15(2)(a) and (4) shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall include such period as the employee may be receiving training or education under a rehabilitation program pursuant to paragraphs (1)(a) and (d). Notwithstanding s. 440.02(22), the date of maximum medical improvement, for purposes of s. 440.15(3)(b), shall be no earlier than the last day for which such temporary disability benefits are paid.

(f) Any person who offers to secure employment or help or who gives information as to where such employment or help may be secured and who performs such acts exclusively in conjunction with fulfilling his responsibilities under this chapter to rehabilitate injured or disabled individuals shall be exempt from the provisions of chapter 449, relating to private employment agencies.

(2) LIMITATION OF LIABILITY FOR SUBSEQUENT INJURY THROUGH SPECIAL DISABILITY TRUST FUND.—

(a) *Legislative intent.*—It is the purpose of this subsection to encourage the employment of the physically handicapped by protecting employers from excess liability for compensation and medical expense when an injury to a handicapped worker merges with his preexisting permanent physical impairment to cause a greater disability, permanent impairment, or wage loss than would have resulted from the injury alone. The division shall inform all employers of the existence and function of the fund and shall interpret eligibility requirements liberally. However, this subsection shall not be construed to create or provide any benefits for injured employees or their dependents not otherwise provided by this chapter. The entitlement of an injured employee or his dependents to compensation under this chapter shall be determined without regard to this subsection, the provisions of which shall be considered only in determining whether an employer or carrier who has paid compensation under this chapter is entitled to reimbursement from the Special Disability Trust Fund.

(b) *Definitions.*—As used in this subsection:

1. "Permanent physical impairment" means any permanent condition due to previous accident or disease or any congenital condition which is, or is likely to be, a hindrance or obstacle to employment, but not due to the natural aging process.

2. "Merger" describes or means that:

a. Had the permanent physical impairment not existed, the subsequent accident or occupational disease would not have occurred;

b. The permanent disability, permanent impairment, or wage loss resulting from the subsequent accident or occupational disease is materially and substantially greater than that which would have resulted had the permanent physical impairment not existed and the employer has been required to pay, and has paid, permanent total disability, permanent impairment, or wage-loss benefits for that materially and substantially greater disability; or

c. Death would not have been accelerated had the permanent physical impairment not existed.

3. "Excess permanent compensation" means that compensation for permanent impairment, wage-loss benefits, or permanent total disability or death benefits for which the employer or carrier is otherwise entitled to reimbursement from the Special Disability Trust Fund.

(c) *Permanent impairment, wage loss, or permanent total disability after other physical impairment.* —

1. Permanent impairment.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impairment to cause a permanent impairment, the employer shall, in the first instance, pay all benefits provided by this chapter, but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for 60 percent of all impairment benefits which the employer has been required to provide pursuant to s. 440.15(3)(a) as a result of the subsequent accident or occupational disease.

2. Wage loss.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impairment to cause a wage loss, the employer shall, in the first instance, pay all benefits provided by this chapter, but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for 60 percent of all compensation for wage loss which the employer has been required to provide pursuant to s. 440.15(3)(b) during the first 5 years after the date of maximum medical improvement and for 75 percent of all compensation for wage loss which the employer has been required to provide after the 5-year period following the date of maximum medical improvement.

3. Permanent total disability.—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, his employment which merges with the preexisting permanent physical impair-

ment to cause permanent total disability, the employer shall, in the first instance, pay all benefits provided by this chapter, but, subject to the limitations specified in paragraph (f), such employer shall be reimbursed from the Special Disability Trust Fund created by paragraph (h) for all compensation for permanent total disability which is in excess of the first 175 weeks of permanent total disability compensation.

(d) *When death results.*—If death results from the subsequent permanent impairment contemplated in paragraph (c) within 1 year after the subsequent injury, or within 5 years after the subsequent injury when disability has been continuous since the subsequent injury, and it shall be determined that the death resulted from a merger, the employer shall, in the first instance, pay the funeral expenses and the death benefits prescribed by this chapter, but, subject to the limitations specified in paragraph (f), he shall be reimbursed from the Special Disability Trust Fund created by this subsection for the last 75 percent of all compensation allowable and paid for such death and for 75 percent of the amount paid as funeral expenses.

(e) *Reimbursement for compensation paid for temporary disability or medical benefits.*—Subject to the limitations specified in paragraph (f), and when the preexisting permanent physical impairment has contributed to the need, either medically or circumstantially, for temporary disability and remedial treatment, care, and attendance, an employer entitled to reimbursement from the Special Disability Trust Fund for compensation paid for permanent impairment, wage loss, permanent total disability, or death shall be reimbursed from said fund for 50 percent of the first $10,000 paid as compensation for temporary disability and remedial treatment, care, and attendance pursuant to s. 440.13, for the same injury; thereafter, the employer shall be reimbursed from said fund for all sums paid by the employer as compensation for temporary disability and remedial treatment, care, and attendance pursuant to s. 440.13 which are in excess of $10,000.

(f) *Reimbursement limitations.*—

1. No reimbursement shall be allowed under this subsection unless it is established that the employer reached an informed conclusion prior to the occurrence of the subsequent injury or occupational disease that the preexisting physical condition is permanent and is, or is likely to be, a hindrance or obstacle to employment. However, when the employer establishes that he knew of the preexisting permanent physical impairment prior to the subsequent accident or occupational disease, there shall be a conclusive presumption that the employer considered the condition to be permanent and to be, or likely to be, a hindrance or obstacle to employment, when said condition is one of the following:

a. Epilepsy.
b. Diabetes.
c. Cardiac disease.
d. Marie-Strumpell disease.
e. Amputation of foot, leg, arm, or hand.
f. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 75 percent bilaterally.
g. Residual disability from poliomyelitis.
h. Cerebral palsy.
i. Multiple sclerosis.
j. Parkinson's disease.
k. Vascular disorder.
l. Psychoneurotic disability following confinement for treatment in a recognized medical or mental institution for a period in excess of 6 months.
m. Hemophilia.
n. Chronic osteomyelitis.
o. Ankylosis of a major weight-bearing joint.
p. Hyperinsulinism.
q. Muscular dystrophy.
r. Thrombophlebitis.
s. Herniated intervertebral disc.
t. Surgical removal of an intervertebral disc or spinal fusion.
u. Total deafness.
v. Mental retardation, provided the employee's intelligence quotient is such that he falls within the lowest 2 percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.
w. Any permanent physical condition which, prior to the industrial accident or occupational disease, constitutes a 20-percent impairment of a member or of the body as a whole.

2. The Special Disability Trust Fund shall not be liable for any costs, interest, penalties, or attorneys' fees.

3. An employer's or carrier's right to apportionment or deduction pursuant to ss. 440.02(18), 440.15(5)(b), and 440.151(1)(c) shall not preclude reimbursement from said fund, except when the merger comes within the definition of paragraph (b)2.b. and such apportionment or deduction relieves the employer or carrier from providing the materially and substantially greater permanent disability benefits otherwise contemplated in said paragraphs.

(g) *Reimbursement of employer.*—The right to reimbursement as provided in this subsection shall be barred unless written notice of claim of the right to such reimbursement is filed by the employer or carrier entitled to such reimbursement with the division at Tallahassee prior to 60 days after the order awarding the excess permanent compensation with respect to which such reimbursement is claimed becomes final or, if payment of such excess permanent compensation is made by the employer or carrier without an award, prior to 60 days after the date the first payment of excess compensation for the permanent disability was made. The notice of claim shall contain such information as the division by rule may require; and the employer or carrier claiming reimbursement shall furnish such evidence in support of the claim as the division reasonably may require. For notice of claims on the Special Disability Trust Fund filed on or after July 1, 1978, the Special Disability Trust Fund shall, within 120 days of receipt of notice that a carrier has paid, been required to pay, or accepted liability for excess compensation, serve notice of the acceptance of the claim for reimbursement. Failure of the Special Disability Trust Fund to serve the notice shall be deemed a denial by the

Special Disability Trust Fund of the claim for reimbursement. If the Special Disability Trust Fund through its representative denies or controverts the claim, the right to such reimbursement shall be barred unless an application for a hearing thereon is filed with the division at Tallahassee within 60 days after notice to the employer or carrier of such denial or controversion. When such application for a hearing is timely filed, the claim shall be heard and determined in accordance with the procedure prescribed in s. 440.25, to the extent that same is applicable, and in accordance with the workers' compensation rules of procedure. In such proceeding on a claim for reimbursement, the Special Disability Trust Fund shall be made the party respondent, and no findings of fact made with respect to the claim of the injured employee or the dependents for compensation, including any finding made or order entered pursuant to s. 440.20(12), shall be res judicata. The Special Disability Trust Fund shall not be joined or made a party to any controversy or dispute between an employee and the dependents and the employer or between two or more employers or carriers without the written consent of the fund. When it has been determined that an employer or carrier is entitled to reimbursement in any amount, the employer or carrier shall be reimbursed periodically every 6 months from the Special Disability Trust Fund for the compensation and medical benefits paid by the employer or carrier for which same is entitled to reimbursement, upon filing request therefor and submitting evidence of such payment in accordance with rules prescribed by the division.

(h)1. *Special Disability Trust Fund.*—There is established in the State Treasury a special fund to be known as the "Special Disability Trust Fund," which shall be available only for the purposes stated in this subsection, and the assets thereof shall not at any time be appropriated or diverted to any other use or purpose. The Treasurer shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state. The Treasurer is authorized to disburse moneys from such fund only when approved by the division and upon the order of the Comptroller, countersigned by the Governor. The Treasurer shall deposit any moneys paid into such fund into such depository banks as the division may designate and is authorized to invest any portion of the fund which, in the opinion of the division, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the Treasurer shall be collected by him and placed to the credit of such fund.

2. *Payments to Special Disability Trust Fund.*—The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state and the self-insurers under this chapter, commencing with the fiscal year beginning July 1, 1963, which assessments shall become due and be paid on a quarterly basis at the same time and in addition to the assessments provided in s. 440.51. The division shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of $100,000, is equal to the sum of disbursements from the fund during the immediate past 3 calendar years. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and self-insurers. The net premiums collected by the companies on workers' compensation premiums in this state and the amount of premiums a self-insurer, if insured, would have to pay in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each insurance company and self-insurer to the division for the Special Disability Trust Fund, in accordance with such regulations as the division may prescribe. The Treasurer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(i) *Division administration of fund; claims, etc.*—The division shall administer the Special Disability Trust Fund with authority to allow, deny, compromise, controvert, and litigate claims made against it and to designate an attorney to represent it in proceedings involving claims against the fund, including negotiation and consummation of settlements, hearings before deputy commissioners and the [1]commission, and judicial review. Upon the application of the division or any party in interest, the [1]commission may, in accordance with the procedure prescribed in s. 440.25, review orders of deputy commissioners by which the fund may be adversely affected. The division or the attorney designated by it shall be given notice of all hearings and proceedings involving the rights or obligations of such fund and shall have authority to make expenditures for such medical examinations, expert witness fees, depositions, transcripts of testimony, and the like as may be necessary to the proper defense of any claim. The division shall appoint an advisory committee composed of representatives of management, compensation insurance carriers, and self-insurers to aid it in formulating policies with respect to conservation of the fund, who shall serve without compensation for such terms as specified by it, but be reimbursed for traveling expenses as provided in s. 112.061. All expenditures made in connection with conservation of the fund, including the salary of the attorney designated to represent it and necessary travel expenses, shall be allowed and paid from the Special Disability Trust Fund as provided in this subsection upon the presentation of itemized vouchers therefor approved by the division.

(j) *Effective dates.*—The provisions of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupa-

tional disease shall have occurred prior to July 1, 1955; and the provisions of paragraphs (e) and (f) of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to July 1, 1963.

History.—s. 49, ch. 17481, 1935; CGL 1936 Supp. 5966(47); s. 13, ch. 28241, 1953; s. 12, ch. 29778, 1955; s. 1, ch. 59-101; s. 2, ch. 63-235; s. 19, ch. 63-400; s. 2, ch. 67-554; ss. 17, 35, ch. 69-106; s. 21, ch. 74-197; s. 24, ch. 75-209; ss. 151, 152, ch. 77-104; ss. 15, 23, ch. 78-300; ss. 37, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before the commission to the District Court of Appeals, First District, effective October 1, 1979.

440.50 Workers' Compensation Administration Trust Fund.—

(1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(e). Such fund shall be administered by the division. The Treasurer shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state.

(b) The division is authorized to transfer as a loan an amount not in excess of $250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(4), which amount shall be repaid to said special fund in annual payments equal to not less than 10 percent of moneys received for such Special Disability Trust Fund.

(2) The State Treasurer is authorized to disburse moneys from such fund only when approved by the division and upon the order of the Comptroller, countersigned by the Governor. He shall be required to give bond in an amount to be approved by the division conditioned upon the faithful performance of his duty as custodian of such fund.

(3) The State Treasurer shall deposit any moneys paid into such fund into such depository banks as the division may designate and is authorized to invest any portion of the fund which, in the opinion of the division, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the State Treasurer shall be collected by him and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the division and shall be paid into such fund.

History.—s. 50, ch. 17481, 1935; CGL 1936 Supp. 5966(48); s. 13, ch. 29778, 1955; s. 2, ch. 61-119; ss. 17, 35, ch. 69-106; s. 22, ch. 74-197; s. 23, ch. 78-300; ss. 38, 124, ch. 79-40; s. 21, ch. 79-312.

440.51 Expenses of administration.—

(1) The division shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner.

(a) The division shall as soon as practicable after July 1 in each year, determine the expense of administration of this chapter for the preceding fiscal year. The expense of administration for such preceding fiscal year shall be used as the basis for determining the amount to be assessed against each carrier in order to provide for the expenses of the administration of this chapter for the current fiscal year.

(b) The total expenses of administration shall be prorated among the insurance companies writing compensation insurance in the state, and self-insurers. The net premiums collected by the companies and the amount of premiums a self-insurer would have to pay if insured are the basis for computing the amount to be assessed. This amount may be assessed as a specific amount or as a percentage of net premiums payable as the division may direct, provided such amount so assessed shall not exceed 4 percent of such net premiums. The insurance companies may elect to make the payments required under s. 440.15(1)(e) rather than having these payments made by the division. In that event, such payments will be credited to the insurance companies, and the amount due by the insurance company under this section will be reduced accordingly.

(2) The division shall provide by regulation for the collection of the amounts assessed against each carrier. Such amounts shall be paid within 30 days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed for each 30 days the amount so assessed remains unpaid, a civil penalty equal to 10 percent of the amount so unpaid, which shall be collected at the same time and a part of the amount assessed.

(3) If any carrier fails to pay the amounts assessed against him under the provisions of this section within 60 days from the time such notice is served upon him, the Department of Insurance upon being advised by the division may suspend or revoke the authorization to insure compensation in accordance with the procedure in s. [1]440.38(3)(a).

(4) All amounts collected under the provisions of this section shall be paid into the fund established in s. 440.50.

(5) Any amount so assessed against and paid by an insurance carrier shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments, or deposits for workers' compensation insurance on contracts or policies of said insurance carrier.

(6)(a) The division may require from each carrier, at such time and in accordance with such regulations as the division may prescribe, reports in respect to all gross earned premiums and of all payments of compensation made by such carrier during each prior period, and may determine the amounts paid by each carrier and the amounts paid by all carriers during such period.

(b) The division may require from each self-insurer, at such time and in accordance with such regulations as the division may prescribe, reports in respect to wages paid, the amount of premiums such self-insurer would have to pay if insured, and all payments of compensation made by such self-insurer during each prior period, and may determine the amounts paid by each self-insurer and the amounts paid by all self-insurers during such period. For the

purposes of this section the payroll records of each self-insurer shall be open to annual inspection and audit by the division or its authorized representative, during regular business hours; and if any audit of such records of a self-insurer discloses a deficiency in the amounts reported to the division or in the amounts paid to the division by such self-insurer pursuant to this section, the division may assess the cost of such audit against such self-insurer.

(7) The division shall keep accumulated cost records of all injuries occurring within the state coming within the purview of this chapter on a policy and calendar year basis. For the purpose of this chapter, a "calendar year" is defined as the year in which the injury is reported to the division; "policy year" is defined as that calendar year in which the policy becomes effective and the losses under such policy shall be chargeable against the policy year so defined.

(8) The division shall assign an account number to each employer under this chapter and an account number to each insurance carrier authorized to write workers' compensation insurance in the state, and it shall be the duty of the division under the account number so assigned to keep the cost experience of each carrier and the cost experience of each employer under the account number so assigned by calendar and policy year as above defined.

(9) In addition to the above, it shall be the duty of the division to keep the accident experience, as classified by the division, by industry as follows:

(a) Cause of the injury;

(b) Nature of the injury, and

(c) Type of disability.

(10) In every case where the duration of disability exceeds 30 days, the carrier shall establish a sufficient reserve to pay all benefits to which the injured employee, or in case of death, his dependents, may be entitled to under the law. In establishing the reserve, consideration shall be given to the nature of the injury, the probable period of disability, and the estimated cost of medical benefits.

(11) The division shall furnish to any employer or carrier, upon request, its individual experience. The division shall furnish to the Department of Insurance, upon request, the Florida experience as developed under policy year or calendar year.

(12) In addition to any other penalties provided by this law, the failure to submit any report or other information required by this law shall be just cause to suspend the right of a self-insurer to operate as such; or, upon certification by the division to the Department of Insurance that a carrier has failed or refused to furnish such reports shall be just cause for the Department of Insurance to suspend or revoke the license of such carrier.

History.—s. 51, ch. 17481, 1935; CGL 1936 Supp. 5966(49); s. 17, ch. 18413, 1937; s. 1, ch. 24081, 1947; s. 14, ch. 28241, 1953; ss. 14, 15, ch. 29778, 1955; ss. 13, 17, 35, ch. 69-106; s. 23, ch. 74-197; s. 25, ch. 75-209; s. 23, ch. 78-300; ss. 39, 124, ch. 79-40; s. 21, ch. 79-312.

[1]**Note.**—The cross-reference "440.38(3)(a)" was substituted for "440.38(2)" by the editors to conform to renumbering.

440.52 Registration of insurance carriers; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write such compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the division and pay a registration fee of $100. This shall be deposited by the division in the fund created by s. 440.50.

(2) If the division finds, after due notice and a hearing at which the insurance carrier is entitled to be heard in person or by counsel and present evidence, that the insurance carrier has repeatedly failed to comply with its obligations under this chapter, the division may request the Department of Insurance to suspend or revoke the authorization of such insurance carrier to write workers' compensation insurance under this chapter. Such suspension or revocation shall not affect the liability of any such insurance carrier under policies in force prior to the suspension or revocation.

History.—s. 52, ch. 17481, 1935; CGL 1936 Supp. 5966(50); ss. 17, 35, ch. 69-106; s. 1, ch. 70-30; s. 1, ch. 70-439; s. 23, ch. 78-300; ss. 40, 124, ch. 79-40; s. 21, ch. 79-312.

440.53 Effect of unconstitutionality.—If any part of this chapter is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this chapter, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this chapter on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

History.—s. 53, ch. 17481, 1935; CGL 1936 Supp. 5966(51); s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.54 Violation of child labor law.—If the deputy commissioner determines that an injured employee at the time of an accident is a minor employed, permitted, or suffered to work in violation of any of the provisions of the child labor laws of Florida, the employer shall, in addition to the normal compensation and death benefits provided by this chapter, pay such additional compensation as the deputy commissioner may determine according to the circumstances of the case or the seriousness of the violation; however, the total compensation so payable shall not exceed double the amount otherwise payable under this chapter. The employer alone, and not the insurance carrier, shall be liable for the increased compensation or increased death benefits provided for by this section. Any provision in an insurance policy undertaking to protect an employer from such increased liability shall be void.

History.—s. 18, ch. 18413, 1937; CGL 1940 Supp. 5966(54); s. 15, ch. 28241, 1953; ss. 17, 35, ch. 69-106; s. 26, ch. 75-209; s. 23, ch. 78-300; ss. 41, 124, ch. 79-40; s. 21, ch. 79-312.

440.55 Proceedings against state.—Any person entitled to compensation benefits by reason of the injury or death of an employee of the state, its boards, bureaus, departments, agencies, or subdivisions employing labor, may maintain proceedings and actions at law against the state, its boards, bureaus, departments, agencies, and subdivisions, for such benefit, said proceedings and action at law to be

in the same manner as provided herein with respect to other employers.

History.—s. 19, ch. 18413, 1937; CGL 1940 Supp. 5966(55); s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312.

440.56 Safety rules and provisions; penalty.—

(1) Every employer as defined in s. 440.02 shall furnish employment which shall be safe for the employees therein, furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the life, health, and safety of such employees. As used in this section, the terms "safe" and "safety" as applied to any employment or place of employment shall mean such freedom from danger as is reasonably necessary for the protection of the life, health, and safety of employees or the public, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the employer by the provisions of this section or by the division under authority of this section shall not include personal apparel and protective devices that replace personal apparel normally worn by employees during regular working hours.

(2) The division shall have the power, jurisdiction and authority:

(a) To investigate and prescribe what safety devices, safeguards or other means of protection shall be adopted for the prevention of accidents in every employment or place of employment, and to determine what suitable devices, safeguards, or other means of protection for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments, or places of employment, and to make, amend or repeal reasonable rules for the prevention of accidents and the prevention of industrial or occupational diseases.

(b) To ascertain, fix, and order such reasonable standards and rules for the construction, repair and maintenance of places of employment as shall render them safe. Such rules and standards shall be adopted in accordance with chapter 120.

(3) The division and its authorized representatives shall have the power and authority to enter at any reasonable time any place of employment for the purpose of examining any tool, appliance, or machinery used in such employment and of making inspections for the proper enforcement of this section. No employer or owner shall refuse to admit any member of the division or its authorized representatives to any place of employment.

(4) All insurance carriers writing workers' compensation insurance in this state and all employers qualifying as self-insurers under ss. 440.38 and 440.57 shall provide safety consultations to each of their policyholders requesting such consultations. All such carriers and self-insurers shall inform their policyholders of the availability of such consultations and shall report annually on their safety programs and consultations to the division in such form and at such time as the division shall prescribe. The division shall be responsible for approving all safety programs. The division shall aid all insurance carriers and self-insurers in establishing their safety programs by setting out guidelines in an appropriate format. In addition, the division may approve a safety program submitted to it by a carrier or self-insurer.

(5) If any employer violates or fails or refuses to comply with any reasonable rule adopted by the division, in accordance with chapter 120, for the prevention of accidents or industrial or occupational diseases or any lawful order of the division in connection with the provisions of this section or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division pursuant to this section for the prevention of accidents or industrial or occupational diseases, after the employer has been given reasonable notice in writing by the division or its authorized representative, not less than 15 days prior thereto, of the specific violation, omission, failure, or refusal charged by the division, or its authorized representative, the division, after notice and hearing in accordance with chapter 120, may assess against such employer a civil penalty of not less than $20 nor more than $100. Each day such violation, omission, failure, or refusal continues after the employer has been given notice thereof in writing as herein provided shall be deemed a continuing violation, and the penalty may not exceed $1,000. The hearing shall be held in the county where the violation, omission, failure, or refusal is alleged to have occurred, unless otherwise agreed to by the employer and authorized by the division.

(6) In estimating the amounts necessary for the administration of this chapter, in accordance with s. 440.51, the division shall also include estimates of the amounts necessary for the administration of this section which shall be made in the manner set forth in s. 440.51; and such amounts as may be needed to administer this section shall be disbursed from the fund established pursuant to s. 440.50 in the manner therein provided. If this subsection or the application of such funds to the administration of this section be declared invalid for any reason, the validity of ss. 440.50 and 440.51 as applied to the provisions of this chapter other than this section shall not be affected thereby.

(7) The division shall appoint and fix the salary of a full-time administrator of industrial safety, who shall be appointed in accordance with the provisions of s. 440.44(4); however, no person shall be appointed to such position unless he either has a degree from a recognized college of engineering and the equivalent of 8 full years' experience in safety engineering or has had the equivalent of 10 full years' experience in safety engineering. It shall be the duty of the administrator of industrial safety, under the direction and supervision of the division, to enforce the safety provisions of this chapter and all rules and regulations adopted by the division pursuant to this section.

(8) The division shall cooperate with the Federal Government so that duplicate inspections will be avoided yet assure safe places of employment for the citizens of this state.

History.—s. 20, ch. 18413, 1937; CGL 1940 Supp. 5966(56); s. 2, ch. 24081, 1947; s. 11, ch. 25035, 1949; s. 16, ch. 29778, 1955; ss. 2, 3, ch. 57-293; ss. 1-3, ch. 61-428; s. 30, ch. 63-512; s. 1, ch. 67-554; s. 1, ch. 69-267; ss. 4, 17, 35, ch.

69-106; s. 3, ch. 70-148; s. 1, ch. 70-439; s. 2, ch. 72-243; ss. 27, 30, ch. 75-209; s. 11, ch. 78-95; s. 23, ch. 78-300; ss. 42, 124, ch. 79-40; ss. 20, 21, ch. 79-312.

440.57 Pooling liabilities.—

(1) The division shall adopt rules permitting two or more employers to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as a group self-insurer's fund, which shall be classified as a self-insurer, and each employer member of such approved group shall be known as a group self-insurer's fund member and shall be classified as a self-insurer as defined in this chapter. The agreement entered into under this section may provide that the pool shall be liable for 80 percent, and the employer member shall be liable for 20 percent, of the medical benefits due any employee for an injury compensable under this chapter up to the amount of $5,000. One hundred percent of the medical benefits above $5,000 due to an employee for one injury shall be paid by the pool. The agreement may also provide that each employer member shall be responsible for the first $100 of medical benefits due each of its employees for each injury. The claim shall be paid by the pool, regardless of its size, which shall be reimbursed by the employer for any amounts required to be paid by the employer under the agreement.

(2) The division shall adopt rules:

(a) Requiring monetary reserves to be maintained by such self-insurers to insure their financial solvency; and

(b) Governing their organization and operation to assure compliance with such requirements.

(3) The division shall promulgate rules implementing the reserve requirements in accordance with accepted actuarial techniques.

(4) Any self-insurer established under this section, except for self-insurers which are state or local governmental entities, shall be required to carry reinsurance in accordance with rules promulgated by the division.

(5) The division may impose civil penalties not to exceed $100 per occurrence for violations of the provisions of this chapter or rules adopted pursuant hereto.

History.—s. 20½, ch. 18413, 1937; CGL 1940 Supp. 5966(57); ss. 17, 35, ch. 69-106; ss. 16, 23, ch. 78-300; ss. 43, 124, ch. 79-40; s. 21, ch. 79-312.

440.58 Self-insurer members; payment of delinquent premiums and assessments.—Upon petition of the trustees of the following self-insurers groups: Printing Industry Associates, Allied Gasoline Retailers Association, Florida Plumbing and Mechanical Contractors, Florida State Retailers Association, Automotive Industries of Florida, Florida Nurserymen and Growers Association, Florida Pest Control Association, Florida Wholesalers Association, Florida Electrical Contractors, Florida Home Builders, Florida Restaurant Association, and Florida Nursing Home Association, who entered into agreements with Robert F. Coleman of Florida, Inc., as servicing agent, or any other self-insurers groups similarly situated, the division shall enter its order requiring the employer members and former members of said groups liable therefor to pay all delinquent premiums and all necessary assessments, such payments to be paid to the division and by it disbursed to said trustees to be used for the payment of workers' compensation claims and related compensation expenses.

History.—s. 2, ch. 67-606; ss. 17, 35, ch. 69-106; s. 23, ch. 78-300; ss. 44, 124, ch. 79-40; s. 21, ch. 79-312.

440.59 Risk management report.—The Division of Workers' Compensation of the Department of Labor and Employment Security shall complete on a quarterly basis an analysis of the previous quarter's injuries which resulted in workers' compensation claims. The analysis shall be broken down by risk classification, shall show for each such risk classification the frequency and severity for the various types of injury, and shall include an analysis of the causes of such injuries. The division shall distribute to each employer and self-insurer in the state covered by the Workers' Compensation Law the data relevant to its work force. The report shall also be distributed to the insurers authorized to write workers' compensation insurance in the state.

History.—ss. 17, 23, ch. 78-300; s. 20, ch. 79-7; ss. 45, 124, ch. 79-40; s. 21, ch. 79-312.

440.60 Application of laws.—

(1) Chapter 79-40, Laws of Florida, shall apply to all claims for injury arising out of accidents occurring on or after August 1, 1979.

(2) Sections 6-20 of chapter 79-312, Laws of Florida, shall apply to all claims for injury arising out of accidents occurring on or after August 1, 1979.

History.—s. 127, ch. 79-40; ss. 23, 25, ch. 79-312.

CHAPTER 441

EMPLOYEES TRUST BENEFIT PLANS

441.01 Trust for employees.—A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit sharing plan, for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund so held in trust, shall not be deemed to be invalid as violating any existing law against perpetuities or suspension of the power of alienation of title to property; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created.

History.—s. 1, ch. 29948, 1955.

441.02 Trust for self-employed individuals and others.—No trust created under a retirement plan for which provision has been made under the laws of the United States exempting such trust from federal income tax shall be deemed to be invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created, may be permitted to accumulate the income until such time as such income shall become distributable to the beneficiary or beneficiaries under the terms of the trust and may according to its terms be made irrevocable and the interests of its beneficiary or beneficiaries therein may be made nontransferable by assignment or otherwise.

History.—s. 2, ch. 29948, 1955.

CHAPTER 443

UNEMPLOYMENT COMPENSATION

443.01 Short title.—This chapter shall be known and may be cited as the "Unemployment Compensation Law."

History.—s. 2, ch. 18402, 1937; CGL 1940 Supp. 4151(488).

443.02 Declaration of public policy.—As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during the periods of employment from which benefits may be paid for periods of unemployment thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, subject, however, to the specific provisions of this chapter.

History.—s. 1, ch. 18402, 1937; CGL 1940 Supp. 4151(489); s. 1, ch. 20685, 1941.

443.03 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(1) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year.

(2) "Benefits" means the money payable to an individual, as provided in this chapter, with respect to his unemployment.

(3) "Benefit year," with respect to any individual, means the 1-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter, the 1-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits, after the termination of his last preceding benefit year. Any claim for benefits made in accordance with s. 443.07(2) shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work in accordance with the provision of s. 443.05(1)(e) and is unemployed as defined in paragraph (12)(a) of this section at the time of the filing of such claim. Provided, however, that the division may in its discretion provide by regulation for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry when and if it has been determined by the division, after notice to the industry and to the workers in such industry and an opportunity to be heard in the matter, that such groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(4) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, and December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1938, or the equivalent thereof as the division may by regulation prescribe.

(5) "Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(a) The term "employment" shall include any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, including service in interstate commerce, by:

1. Any officer of a corporation.

2. Any individual who, under the usual common law rules applicable in determining the employer-

employee relationship, has the status of an employee.

3. Any individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services for his principal.

b. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subparagraph (a)3., the term "employment" shall include services described in a. and b. above and performed after December 31, 1971, only if:

(I) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(II) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(III) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(b) The term "employment" shall include:

1. Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state, provided such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(7) of that act and is not excluded from "employment" under paragraph (d) of this subsection.

a. "Institution of higher education," for the purposes of this section, means an educational institution which:

(I) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(II) Is legally authorized in this state to provide a program of education beyond high school;

(III) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(IV) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state and recognized as such by this state are institutions of higher education for purposes of this section.

b. "Hospital" means an institution which has been licensed, certified, or approved by the Department of Health and Rehabilitative Services as a hospital.

2. Service performed after December 31, 1971, and prior to January 1, 1978, in the employ of this state or any of its wholly owned instrumentalities, provided such service is excluded from "employment" as defined in s. 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under paragraph (d) of this subsection.

3. Service performed after December 31, 1973, and prior to January 1, 1978, in the employ of any political subdivision of this state or any instrumentality thereof, provided such service is excluded from "employment" as defined in s. 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under paragraph (d) of this subsection.

4. Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities, any instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other states or political subdivisions, provided such service is excluded from "employment" as defined in s. 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under paragraph (d) of this subsection.

(c) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the following conditions are met:

1. The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and

2. The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(d) For the purposes of paragraphs (b) and (c), the term "employment" does not apply to service performed:

1. In the employ of:

a. A church or convention or association of churches.

b. An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

3. Prior to January 1, 1978, in the employ of a nonprofit educational institution which is not an in-

stitution of higher education and which would otherwise be employment as defined in paragraph (c) of this subsection.

4. After December 1, 1971, in the employ of a governmental entity referred to in subparagraph (b)2., and after December 31, 1973, in the employ of a governmental entity referred to in subparagraph (b)3., and after December 31, 1977, in the employ of a governmental entity referred to in subparagraph (b)4., if such service is performed by an individual in the exercise of duties:

a. As an elected official.

b. As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.

c. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

d. In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.

5. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

6. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training, except that this subparagraph does not apply to unemployment work-relief or work-training programs for which unemployment compensation coverage is required under a federal law, rule, or regulation.

7. Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December 31, 1977, by an inmate of a custodial or penal institution.

(e) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

1. The service is localized in this state; or

2. The service is not localized in any state, but some of the service is performed in this state and

a. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state, or

b. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(f) Services not covered under subparagraph (e)2. of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(g) Service shall be deemed to be localized within a state if:

1. The service is performed entirely within such state; or

2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, it is temporary or transitory in nature or consists of isolated transactions.

(h) The term "employment" shall include services covered by an arrangement pursuant to s. 443.18 between the division and the agency charged with the administration of any other state or Federal Unemployment Compensation Law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, if the division has approved an election of the employing unit for which such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(i)1. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada and in the case of the Virgin Islands, after December 31, 1971, and before January 1 of the year following the year in which the United States Secretary of Labor approves the Virgin Islands' unemployment compensation law for the first time under s. 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraphs (b) or (c) of this subsection or the parallel provisions of another state's law), if:

a. The employer's principal place of business in the United States is located in this state.

b. The employer has no place of business in the United States, but:

(I) The employer is an individual who is a resident of this state.

(II) The employer is a corporation which is organized under the laws of this state.

(III) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

c. None of the criteria of subparagraphs 1. and 2. of this paragraph is met, but the employer has elected coverage in this state, or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

2. An "American employer," for purposes of this paragraph, means:

a. An individual who is a resident of the United States.

b. A partnership, if two-thirds or more of the partners are residents of the United States.

c. A trust, if all of the trustees are residents of the United States.

d. A corporation organized under the laws of the

United States or of any state.

3. The term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and, effective 1 day after the United States Secretary of Labor approves its unemployment compensation law for the first time under s. 3304(a) of the Internal Revenue Code of 1954, the term shall include the Virgin Islands.

(j)1. The term "employment" shall also include all service performed by an officer or member of a crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, provided that the operating office, from which the operations of such vessel or aircraft operating within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

2. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

3. The term "American aircraft" means an aircraft registered under the laws of the United States.

(k) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this act.

(l) The term "employment" shall not include:

1. Service performed by an individual in agricultural labor, except as provided in paragraph (n) of this subsection; however, the provisions of paragraph (n) of this subsection shall not reduce the coverage provided under sub-sub-subparagraph d.(III) of this subparagraph. For purposes of this subparagraph, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated service performed after December 31, 1971:

a. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

c. In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. s. 114j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

d.(I) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(II) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in sub-sub-subparagraph (I), but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

(III) The provisions of sub-sub-subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with grading, packing, packaging, or processing fresh citrus fruits.

e. On a farm operated for profit if such service is not in the course of the employer's trade or business.

f. As used in this paragraph, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

2. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (o) of this subsection.

3. Casual labor not in the course of the employer's trade or business. For the purposes of this subsection "casual labor" shall mean labor which is occasional, incidental, or irregular, not exceeding 200 man-hours in total duration. Duration shall mean the period of time from the commencement to the completion of the particular job or project; however, services performed by an employee for his employer during a period of 1 calendar month or any 2 consecutive calendar months shall be deemed to be casual labor only if such service is performed on not more than 10 calendar days, whether or not such days are consecutive. If any of the services of an individual on a particular labor project are not casual labor as defined, then none of the services of such individual on such job or project shall be deemed casual labor. "Not in the course of the employer's trade or business" shall mean that which does not promote or advance the trade or business of the employer. In order for services to be exempt under this subsection, such services shall constitute casual labor, as defined, and not in the course of the employer's trade or business, as defined.

4. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

5. Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except:

a. Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes.

b. Service performed on, or in connection with, a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

6. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother.

7. Service performed in the employ of the United States Government or of an instrumentality of the United States which is:

a. Wholly or partially owned by the United States.

b. Exempt from the tax imposed by s. 3301 of the Internal Revenue Code by virtue of any provision of federal law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption; except that to the extent that the Congress shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state shall not be certified for any year by the Secretary of Labor under s. 3304 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in s. 443.15(6) with respect to contributions erroneously collected.

8. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b) of this subsection, and any service performed in the employ of any instrumentality of one or more state or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

9. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c) of this subsection.

10. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

11.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s. 501(a) of the Internal Revenue Code (other than an organization described in s. 401(a)), or under s. 521, if the remuneration for such service is less than $50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

12. Services performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative).

13. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

14. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.

15. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

16. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

17. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or dis-

tribution to any point for subsequent delivery or distribution.

18. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

19. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its education activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

20. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(m) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all of the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subparagraph 9. of paragraph (l).

(n) The term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor as defined in subparagraph (1)1. of this subsection, when:

1. Such service is performed for a person who:

a. During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subparagraph 2. of this paragraph).

b. For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subparagraph 2. of this paragraph) 10 or more individuals, regardless of whether they were employed at the same moment of time.

2. Such service is performed in agricultural labor if performed after December 31, 1979, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to ss. 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. Service performed in agricultural labor by an alien individual as described in this subparagraph shall not be considered employment if such service is performed prior to January 1, 1980.

3. Such service is performed by any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person.

a. For purposes of this subparagraph, a crew member shall be treated as an employee of the crew leader:

(I) If the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

(II) If such individual is not an employee of such other person within the meaning of paragraph (5)(a).

b. For the purposes of this subparagraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under sub-subparagraph a.:

(I) Such other person and not the crew leader shall be treated as the employer of such individual; and

(II) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on the behalf of such other person) for the service in agricultural labor performed for such other person.

c. For the purposes of this subparagraph, the term "crew leader" means an individual who:

(I) Furnishes individuals to perform service in agricultural labor for any other person;

(II) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(III) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(o) The term "employment" shall include domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more after December 31, 1977, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(6) "Employing unit" means: Any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trus-

tee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(b) All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

(c) Any person who is an officer of a corporation and who performs services for such corporation within this state, whether or not such services are continuous, shall be deemed an employee of the corporation during all of each week of his tenure of office, regardless of whether or not he is compensated for such services. Services shall be presumed to have been rendered the corporation in cases where such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(7) "Employer" means:

(a) Any employing unit which, after December 31, 1971:

1. In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1500 or more; or

2. For any portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day).

(b) Any employing unit for which service in employment, as defined in paragraph (5)(b), is performed, except as provided in paragraph (e) of this subsection.

(c) Any employing unit for which service in employment, as defined in paragraph (5)(c), is performed after December 31, 1971, except as provided in paragraph (e) of this subsection.

(d)1. Any employing unit for which agricultural labor, as defined in paragraph (5)(n), is performed after December 31, 1977.

2. Any employing unit for which domestic service in employment, as defined in paragraph (5)(o), is performed after December 31, 1977.

(e)1. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (a), (b), (c), or (d)1. of this subsection, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

2. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (a), (b), (c), or (d)2. of this subsection, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined to be an employer of agricultural labor, the employing unit shall be determined an employer for the purposes of paragraph (a) of this subsection.

(f) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter or which acquired a part of the organization, trade, or business of another which at the time of such acquisition was an employer subject to this chapter, provided such other would have been an employer under paragraph (a) of this subsection if such part had constituted its entire organization, trade, or business.

(g) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, if the employment record of the predecessor prior to such acquisition together with the employment record of such individual or employing unit subsequent to such acquisition, both within the same calendar year, would be sufficient to render an employing unit subject to this chapter as an employer under paragraph (a) of this subsection.

(h) Any employing unit not an employer by reason of any other paragraph of this subsection:

1. For which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

2. Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act, to be an "employer" under this chapter.

(i) Any employing unit which has become an employer under paragraphs (a), (b), (c), (d), (e), (f), (g), or (h) of this subsection, and has not ceased to be an employer subject to this chapter, as provided in s. 443.09.

(j) For the effective period of its election, any other employing unit which has elected to become subject to this chapter.

(k) Any employing unit which fails to keep the records of employment required by this chapter and by the regulations of the division shall be presumed to be an employer liable for the payment of contributions pursuant to the provisions of this chapter, regardless of the number of individuals employed by such employing unit. However, the division shall make written demand that such employing unit keep and maintain required payroll records, and such demand shall have been made not less than 6 months before assessing contributions against any employing unit determined to have become an "em-

ployer" solely by reason of this paragraph.

For purposes of this subsection, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed 1 calendar week, and the days beginning January 1, another such week.

(8) "Fund" means the Unemployment Compensation Trust Fund created by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(9) "Contributions" means the money payments to the Unemployment Compensation Trust Fund, required by this chapter.

(10) "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(11) "State" includes the states of the United States, the District of Columbia, Canada, the Commonwealth of Puerto Rico, and, effective 1 day after the United States Secretary of Labor approves the unemployment compensation law of the Virgin Islands for the first time under s. 3304(a) of the Internal Revenue Code of 1954, the Virgin Islands.

(12) "Unemployment":

(a) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or "partially unemployed" in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The division shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the division deems necessary.

(b) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the division may by regulations otherwise prescribe.

(13) "Wages":

(a) "Wages" means all remuneration paid for services from whatever source, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" shall not include:

1. That part of remuneration which, after remuneration equal to $4,200 prior to January 1, 1978, and $6,000 after December 31, 1977, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax, under a federal law imposing the tax, against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, the term "employment" shall include services constituting employment under any employment security law of another state or of the Federal Government.

2. The amount of any payment, with respect to services performed, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of:

a. Retirement.

b. Sickness or accident disability.

c. Medical and hospitalization expenses in connection with sickness or accident disability.

d. Death, provided the individual in its employ:

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit; and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit.

3. The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under s. 3101 of the Federal Internal Revenue Code with respect to services performed after June 30, 1941.

(14) "Week" means such period of 7 consecutive days as the division may by regulation prescribe. The division may by regulation prescribe that a week shall be deemed to be "in," "within," or "during," that benefit year which includes the greater part of such week.

(15) "Insured work" means employment for employers.

(16)(a) "Commission" means the Unemployment Appeals Commission of the Department of Labor and Employment Security.

(b) "Division" means the Division of Employment Security of the Department of Labor and Employment Security.

(17) "Educational institution" means an institution (except an institution of higher education as defined in paragraph (5)(b)):

(a) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of, an instructor or teacher;

(b) Which is approved, licensed, or issued a permit to operate as a school by the Department of Education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school; and

(c) Which offers courses of study or training which are academic, technical, trade, or preparation

for gainful employment in a recognized occupation.

(18) "Reimbursable employer" means an employer who is liable for payments in lieu of contributions as required by this chapter.

History.—s. 3, ch. 18402, 1937; s. 1, ch. 19637, 1939; CGL 1940 Supp. 4151(490); s. 3, ch. 20685, 1941; s. 1, ch. 21983, 1943; s. 7, ch. 22858, 1945; s. 1, ch. 24085, 1947; s. 10, ch. 26484, 1951; s. 1, ch. 26878, 1951; ss. 1, 2, ch. 26879, 1951; ss. 1, 2, ch. 28242, 1953; ss. 1, 2, chs. 29771, 29772, 1955; ss. 1-3, ch. 57-228; ss. 1, 2, ch. 61-228; s. 2, ch. 61-119; s. 1, ch. 61-132; s. 1, ch. 63-56; ss. 1, 2, ch. 63-155; s. 1, ch. 65-196; ss. 17, 35, ch. 69-106; ss. 1-3, ch. 71-225; s. 1, ch. 71-226; s. 165, ch. 71-377; s. 2, ch. 73-283; s. 117, ch. 73-333; s. 1, ch. 74-198; s. 1, ch. 75-39; s. 19, ch. 77-121; s. 1, ch. 77-262; s. 1, ch. 77-393; s. 1, ch. 77-399; s. 3, ch. 78-386; s. 21, ch. 79-7; s. 181, ch. 79-400.

443.04 Payment of benefits.—

(1) MANNER OF PAYMENT.—On and after January 1, 1939, benefits shall become payable from the fund. All benefits shall be paid through claims offices in accordance with such regulations as the division may prescribe. However, each claimant shall report in person to a claims office to certify for benefits which are paid and shall continue to report at least biweekly to receive unemployment benefits and to attest to the fact that he is able and available for work, has not refused suitable work, is seeking work, and, if he has worked, to report earnings from such work, except in a case in which he has returned to work, in which case the last benefits check can be mailed on request of the claimant. The mailing of unemployment benefits to a claimant is specifically prohibited, except as provided in this subsection and in cases of interstate claims and checks claimants do not pick up on a designated day from the claims office. In accordance with rules promulgated under chapter 120, the division shall prescribe the criteria and procedures for mailing checks to claimants who fail to pick them up on the designated day from the claims office. Nothing in this subsection shall be construed to prohibit the division from instituting experimental and limited projects whereby claims checks are mailed; however, the division shall not implement such projects on a statewide basis until a report has been made to the Legislature, and the Legislature has approved such implementation.

(2) WEEKLY BENEFIT AMOUNT.—

(a) An individual's "weekly benefit amount" shall be an amount equal to one-half of his average weekly wage, but not less than $10 or more than $95. Such weekly benefit amount, if not a multiple of $1, shall be rounded off to the next higher multiple of $1. The provisions of this subsection apply only to benefit years beginning on and after July 1, 1979; however, no individual currently eligible for benefits shall be redetermined ineligible pursuant to this section.

(b) The average weekly wages of such individual shall be computed by dividing his total base period wages by the number of weeks in such base period in which he was paid wages for insured work. However, any individual shall be deemed to have been paid wages in the total number of weeks in his base period indicated in the reports submitted to the division by his base period employers but not more than 13 weeks in any calendar quarter.

(c) The provisions of this subsection as herein amended apply only to benefit years beginning on and after July 1, 1975; provided, that no individual currently eligible for benefits shall be redetermined ineligible pursuant to this section.

(3) WEEKLY BENEFIT FOR UNEMPLOYMENT.—

(a) *Total.*—Each eligible individual who is totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount.

(b) *Partial.*—Each eligible individual who is partially unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit less that part of the wages (if any) payable to him with respect to such week which is in excess of $5. Such benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(4) DURATION OF BENEFITS.—

(a)1. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to the product of his weekly benefit amount and one-half the number of weeks in his base period in which he was paid wages for insured work; provided, that such total amount of benefits, if not a multiple of $1 shall be rounded off to the next higher multiple of $1.

2. For the purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of this chapter with respect to becoming an employer.

3. The provisions of this subsection as herein amended apply only to the benefit years beginning after June 30, 1960.

(b) If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to employment benefits only shall be determined in such manner as may by regulations be prescribed. Such regulations, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals.

(5) EXTENDED BENEFITS.—

(a) *Definitions.*—As used in this subsection, unless the context clearly requires otherwise:

1. "Extended benefit period" means a period which:

a. Begins with the third week after whichever of the following weeks occurs first:

(I) A week for which there is a national "on" indicator; or

(II) A week for which there is a state "on" indicator; and

b. Ends with either of the following weeks, whichever occurs later:

(I) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(II) The 13th consecutive week of such period.

However, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state, and no

extended benefit period may become effective in this state prior to January 1, 1972.

2. With respect to weeks beginning after December 31, 1976, there is a "national 'on' indicator" for a week if, for the period consisting of such week and the 12 weeks immediately preceding it, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded 4.5 percent. The rate of insured unemployment, for the purposes of this subparagraph, shall be determined by the United States Secretary of Labor by reference to the average monthly covered employment for the first 4 of the most recent 6 calendar quarters ending before the close of such period.

3. With respect to weeks beginning after December 31, 1976, there is a "national 'off' indicator" for a week if, for the period consisting of such week and the 12 weeks immediately preceding it, the rate of insured unemployment (seasonally adjusted) for all states was less than 4.5 percent. The rate of insured unemployment, for the purposes of this subparagraph, shall be determined by the United States Secretary of Labor by reference to the average monthly covered employment for the first 4 of the most recent 6 calendar quarters ending before the close of such period.

4. There is a "state 'on' indicator" for a week if the rate of insured unemployment (not seasonally adjusted) under the state law, for the period consisting of such week and the 12 weeks immediately preceding it:

a. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

b. Equaled or exceeded 4 percent.

With respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this paragraph as if subparagraph 4. did not contain sub-subparagraph a. thereof and the figure "4" contained in sub-subparagraph b. thereof were "5"; except that, notwithstanding any provision of this paragraph, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

5. There is a "state 'off' indicator" for a week if, for the period consisting of such week and the immediately preceding 12 weeks, either sub-subparagraph a. or b. of subparagraph 4. was not satisfied.

6. "Rate of insured unemployment," for purposes of subparagraphs 4. and 5. of this paragraph, means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the United States Secretary of Labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

7. "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

8. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this subsection for weeks of unemployment in his eligibility period.

9. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

10. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week. For the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages paid for insured work that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

b. His benefit year having expired prior to such week, has been paid no, or insufficient, wages for insured work on the basis of which he could establish a new benefit year that would include such week; and

c.(I) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(II) Has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee, except that the reference in this sub-sub-subparagraph to the Virgin Islands shall be inapplicable effective on the day after the day on which the United States Secretary of Labor approves, under s. 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the secretary by the Virgin Islands for approval.

11. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under s. 3304 of the Internal Revenue Code of 1954.

(b) *Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.*—Except when the result would be inconsistent with the other provisions of this subsection,

as provided in the regulations of the division, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits. Such extended benefits shall be charged to the experience rating accounts of employers to the extent the share of such extended benefits paid from this state's unemployment compensation trust fund is not eligible for reimbursement from federal sources.

(c) *Eligibility requirements for extended benefits.*—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to such week:

1. He is an "exhaustee" as defined in subparagraph (a)10.

2. He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) *Weekly extended benefit amount.*—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than 1 weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.

(e) *Total extended benefit amount.*—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; or

2. Thirteen times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(f) *Beginning and termination of extended benefit period.*—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the division shall make an appropriate public announcement.

(g) *Computations.*—Computations required by the provisions of paragraph (a)6. shall be made by the division, in accordance with regulations prescribed by the United States Secretary of Labor.

History.—s. 4, ch. 18402, 1937; s. 2, ch. 19637, 1939; CGL 1940 Supp. 4151(491); s. 4, ch. 20685, 1941; s. 2, ch. 21983, 1943; s. 1, ch. 23919, 1947; ss. 1-3, ch. 26801, 1951; s. 1, ch. 29695, 1955; s. 1, ch. 57-247; s. 1, ch. 57-795; ss. 1, 2, ch. 59-55; s. 1, ch. 61-173; s. 1, ch. 67-250; ss. 17, 35, ch. 69-106; ss. 1-3, ch. 70-166; s. 4, ch. 71-225; s. 1, ch. 71-247; s. 1, ch. 72-155; s. 2, ch. 74-198; s. 1, ch. 75-121; s. 2, ch. 77-262; s. 2, ch. 77-399; s. 1, ch. 79-293; s. 182, ch. 79-400.

443.05 Benefit eligibility conditions.—

(1) An unemployed individual shall be eligible to receive benefits with respect to any week only as the division finds that:

(a) He has made a claim for benefits with respect to such week in accordance with such regulations as the [1][division] may prescribe.

(b) He has registered for work at, and thereafter continued to report at the division, which shall be responsible for notification of the Florida State Employment Service in accordance with such regulations as the division may prescribe; except that the division may, by regulation not inconsistent with the purposes of this law, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs; but no such regulation shall conflict with s. 443.04(1).

(c)1. He is able to work and is available for work.

2. Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the division, nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the division by reason of the application of provisions in subparagraph 1. of this paragraph relating to availability for work, or the provisions of s. 443.06(2) relating to failure to apply for, or a refusal to accept, suitable work.

(d) He has been unemployed for a waiting period of 1 week. No week shall be counted as a week of unemployment for the purposes of this subsection:

1. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits.

2. If benefits have been paid with respect thereto.

3. Unless the individual was eligible for benefits with respect thereto as provided in this section and s. 443.06 except for the requirements of this subsection and of s. 443.06(5).

(e) He has been paid wages for insured work equal to 20 times his average weekly wages during his base period or, for claims filed on or after July 1, 1977, but prior to November 30, 1977, he has been paid wages for insured work equal to 10 times his average weekly wages during his base period, except that no unemployed individual shall be eligible to receive benefits if his average weekly wage is less than $20.

(2) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service, whether or not in "employment" as defined in s. 443.03(5), and earned remuneration for such service in an amount equal to not less than 3 times his weekly benefit amount as determined for his current benefit year.

(3) Benefits based on service in employment defined in s. 443.03(5)(b) and (c) shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(a) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall not be paid based on services in an instructional, research, or principal administrative capacity for an educational institution or an institution of higher education for any week of unemployment commencing during the period between 2 successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the

individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms, and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution or institution of higher education in the second of such academic years or terms.

(b) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall not be based on services in any other capacity for an educational institution (other than an institution of higher education as defined in s. 443.03(5)(b)) to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of the academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of the academic years or terms.

(c) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs any services described in paragraph (a) or paragraph (b) in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform any such service in the period immediately following such vacation period or holiday recess.

(4) In the event of national emergency, in the course of which the Federal Emergency Unemployment Payment Plan is, at the request of the Governor, invoked for all or any part of the state, such plan shall supersede the procedures prescribed by this chapter, and by regulations thereunder, and the division shall act as the Florida agency for the United States Department of Labor in the administration of such plan.

(5) Benefits shall not be paid to any individual on the basis of any service, substantially all of which consists of participating in sports or athletic events or training, or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such service in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(6) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services, the term "previously uncovered services" means services:

(a) Which were not employment as defined in this chapter prior to January 1, 1978, and were not services covered pursuant to s. 443.09(3) at any time during the 1-year period ending December 31, 1975; and

(b) Which are:

1. Agricultural labor or domestic service as defined in s. 443.03(5); or

2. Services performed by an employee of this state or a political subdivision thereof, as provided in s. 443.03(5)(b), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in s. 443.03(5).

(7) Benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in subsection (6), shall not be charged to the employer or the employer's experience rating account, to the extent that such individual would not have been eligible to receive such compensation had the state not provided for payment of compensation on the basis of such previously uncovered services, and provided benefits shall be paid for such previously uncovered service only to the extent that the division determines the unemployment compensation fund may be reimbursed for such benefits pursuant to s. 121 of Pub. L. No. 94-566.

History.—s. 5, ch. 18402, 1937; s. 3, ch. 19637, 1939; CGL 1940 Supp. 4151(492); s. 5, ch. 20685, 1941; s. 3, ch. 21983, 1943; s. 3, ch. 26879, 1951; s. 3, ch. 29771, 1955; s. 2, ch. 57-247; s. 3, ch. 59-55; s. 2, ch. 61-132; ss. 17, 35, ch. 69-106; s. 5, ch. 71-225; s. 2, ch. 75-39; s. 3, ch. 77-262; s. 3, ch. 77-399; s. 1, ch. 77-420; s. 2, ch. 78-386.

[1]**Note.**—Bracketed word was substituted by the editors for the word "commission" to conform to ch. 69-106, the Reorganization Act of 1969. See s. 17(4) and (8). The bracketed substitution reflects the fact that administrative functions formerly attributed to the Florida Industrial Commission are now performed by the division.

443.06 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1) For the week in which he has voluntarily left his employment without good cause attributable to his employer or in which he has been discharged by his employing unit for misconduct connected with his work, if so found by the division.

(a) Disqualification for voluntarily quitting shall continue for the full period of unemployment next ensuing after he has left his work voluntarily without good cause and until such individual has become reemployed and has earned wages equal to or in excess of 17 times his weekly benefit amount; good cause as used in this subsection shall include only such cause as is attributable to the employer or consists of illness or disability of the individual requiring separation from his employment. An individual shall not be disqualified under this subsection for voluntarily leaving temporary employment to return immediately when called to employment by the permanent employer who temporarily terminated his employment within the previous 6 calendar months.

(b) Disqualification for being discharged for misconduct connected with his work shall continue for the full period of unemployment next ensuing after having been discharged and until such individual has become reemployed and has earned wages not less than 17 times his weekly benefit amount and for not more than 52 weeks which immediately follow such week, as determined by the division in each case according to the circumstances in each case or the seriousness of the misconduct, pursuant to rules of the division enacted for determinations of disqualification for benefits for misconduct.

(2) If the division finds that the individual has failed without good cause either to apply for available suitable work when so directed by the division or employment office, or to accept suitable work when

offered to him, or to return to his customary self-employment when so directed by the division, such disqualification shall continue for the week in which such failure occurred and for not more than 5 weeks immediately following such week, or a reduction by not more than 3 weeks from the duration of benefits, as determined by the division in each case. However, disqualification under this subsection shall continue for the full period of unemployment next ensuing after he has failed without good cause either to apply for available suitable work, or to accept suitable work, or to return to his customary self-employment, pursuant to this subsection, and until such individual has become reemployed and has earned wages equal to or in excess of 17 times his weekly benefit amount. The division shall by rule provide criteria for determining the suitability of work, as used in this section. The division in developing such rules shall consider the duration of a claimant's unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 25 weeks of benefits in a single year, suitable work shall be a job which pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

(a) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

3. If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(3) For any week with respect to which he is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice;

(b)1. Compensation for temporary partial disability, temporary total disability or permanent total disability under the workers' compensation law of any state or under a similar law of the United States.

2. Provided, that if the remuneration referred to in paragraphs (a) and (b) of this subsection is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(4) For any week with respect to which the division finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the division that:

(a) He is not participating in or financing, or directly interested in the labor dispute which is in active progress; provided, however, that the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this section; and

(b) He does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs any of whom are participating in, or financing, or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, or are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; for the purposes of this subsection, an unemployment compensation law of the United States is any law of the United States which provides for payment of any type and in any amounts for periods of unemployment due to lack of work; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(6) For a period of not to exceed 1 year from the date of the discovery by the division of the making of any false or fraudulent representation for the purpose of obtaining benefits contrary to the provisions of this chapter, constituting a violation within the intent of s. 443.22 hereof; provided, that any such disqualification may be appealed from in the same manner as from any other disqualification imposed hereunder; and provided further that a conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.22 herein shall be conclusive upon the appeals referee and the commission of the making of such false or fraudulent representation for which disqualification is imposed hereunder.

(7) If the division finds that the individual is an alien, unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of s. 203(a)(7) or s. 212(d)(5) of the Immigration and Nationality Act), provided that any modifications to the provisions of s. 3304(a)(14) of the Federal Unemployment Tax Act, as provided by Pub. L. No. 94-566, which specify other conditions or other effective dates than those stated herein for the denial of benefits based on services performed by aliens, and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be

deemed applicable under the provisions of this section, provided:

(a) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits; and

(b) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(c) If the division finds that said individual has refused without good cause an offer of resettlement or relocation, which offer provides for suitable employment for such individual notwithstanding the distance of such relocation, resettlement, or employment from the current location of such individual in this state, such disqualification shall continue for the week in which such failure occurred and for not more than 17 weeks immediately following such week, or a reduction by not more than 5 weeks from the duration of benefits, as determined by the division in each case.

(8) For any week with respect to which he has received, or is eligible to receive, from a base period employing unit, benefits from a retirement, pension, or annuity program embodied in a union contract or either a public or private employee benefit program, notwithstanding that the source of the contribution of any moneys to the respective program was the employer or employee or both. However, for any week in which benefits from a retirement, pension, or annuity program as referred to in this subsection are less than the weekly benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the benefits from the retirement, pension, or annuity program, prorated to a weekly basis. For the purpose of this subsection, benefits from the United States Social Security Act, a disability benefit program, a supplemental unemployment benefit program, or any other program not specifically designated either in the union contract or a company benefit program as being retirement, pension, or annuity benefits shall not be disqualifying.

(9) For purposes of this section, misconduct includes, but is not limited to, the following, which shall not be construed in pari materia with each other:

(a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

(10) If the individual was terminated from his employment for violation of any criminal law punishable by imprisonment, or for any dishonest act, in connection with his employment, as follows:

(a) If the division or the Unemployment Appeals Commission finds that the individual was terminated from his employment for violation of any criminal law punishable by imprisonment in connection with his work, and the individual has been found guilty of the offense, has made an admission of guilt in a court of law, or has entered a plea of no contest, the individual shall not be entitled to unemployment compensation for up to 52 weeks, pursuant to rules adopted by the division, and until he becomes reemployed and earns 10 times his weekly benefit amount. If, prior to an adjudication of guilt, an admission of guilt, or a plea of no contest, the employer can show before a hearing examiner or appeals referee that the arrest was due to a crime against the employer or the employer's business and, after considering all the evidence, the hearing examiner or appeals referee finds misconduct in connection with the individual's work, the individual shall not be entitled to unemployment compensation.

(b) If the division or the Unemployment Appeals Commission finds that the individual was terminated from employment for any dishonest act in connection with his work, the individual shall not be entitled to unemployment compensation for up to 52 weeks, pursuant to rules adopted by the division, and until he becomes reemployed and earns 10 times his weekly benefit amount. In addition, should the employer terminate an individual as a result of a dishonest act in connection with his employment and the hearing examiner or appeals referee finds misconduct in connection with his work, the individual shall not be entitled to unemployment compensation.

With respect to an individual so disqualified for benefits, the account of the terminating employer, if such employer is in the base period, shall be noncharged at the time the disqualification is imposed.

History.—s. 6, ch. 18402, 1937; s. 4, ch. 19637, 1939; CGL 1940 Supp. 4151(493); s. 6, ch. 20685, 1941; s. 4, ch. 21983, 1943; s. 1, ch. 24083, 1947; s. 3, ch. 28242, 1953; s. 1, ch. 63-327; s. 1, ch. 63-157; s. 1, ch. 65-45; s. 1, ch. 65-114; s. 1, ch. 65-115; s. 1, ch. 65-244; s. 1, ch. 65-411; ss. 17, 35, ch. 69-106; s. 1, ch. 72-190; s. 4, ch. 77-262; s. 4, ch. 77-399; s. 1, ch. 77-424; s. 1, ch. 78-386; s. 22, ch. 79-7; s. 74, ch. 79-40; s. 2, ch. 79-293; s. 2, ch. 79-308; s. 183, ch. 79-400.

443.07 Procedure concerning claims.—

(1) POSTING OF INFORMATION.—Each employer shall post and maintain in places readily accessible to individuals in his employ printed statements concerning benefit rights, claims for benefits and such other matters relating to the administration of this chapter as the division may by regulation prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the division may by regulations prescribe. Such printed statements and other materials shall be supplied by the division to each employer without cost to the employer.

(2) FILING OF CLAIM.—Claims for benefits shall be made in accordance with such regulations as the division may prescribe.

(3) DETERMINATION.—

(a) *In general.*—An initial determination upon a claim filed pursuant to subsection (2) shall be made promptly by an examiner designated by the division and shall include a statement as to whether and in what amount claimant is entitled to benefits and, in

the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under s. 443.05(1)(e), and if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to a benefit year. The claimant, his most recent employing unit, and all employers whose accounts would be charged with benefits pursuant to such determination shall be promptly notified of such initial determination, and such determination shall be final unless within 20 days after the mailing of such notices to the parties' last known addresses, or in the absence of such mailing, within 20 days after the delivery of such notice, appeal or written request for reconsideration is filed by the claimant or other party entitled to such notice.

(b) *Determinations in labor dispute cases.*—Whenever any claim involves the application of the provisions of s. 443.06(4), the examiner handling the claim shall, if so directed by the division, promptly transmit such claim to a special examiner designated by the division to make a determination upon the issues involved under that subsection or upon such claims. Such special examiner shall make the determination thereon after such investigation as he deems necessary, and after affording the parties entitled to notice an opportunity for a fair hearing in accordance with the provisions of this section with respect to hearings and determinations of appeals referees. The parties shall be promptly notified of the determination, together with the reason therefor, and such determination shall be deemed to be the final decision on the claim, unless within 20 days after the mailing of notices to the parties' last known addresses, or, in the absence of such mailing, within 20 days after the delivery of such notice, appeal is filed with the commission or notice of review is entered by that body.

(c) *Redeterminations.*—

1. The division may reconsider a determination whenever it finds that an error has occurred in connection therewith, or whenever new evidence or information pertinent to such determination has been discovered subsequent to any previous determination or redetermination. No such redetermination shall be made after 1 year from the date the claim was filed, unless it appears that the disqualification imposed by s. 443.06(6) is applicable, in which case the redetermination may be made at any time within 2 years from the date of the making of such false or fraudulent representation. Notice of redetermination shall be promptly given to the claimant and to any employers entitled to notice thereof in the manner prescribed in this section with respect to notice of an initial determination. If the amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection (4) of this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the division may reconsider its determination in any case in which the final decision has been rendered by an appeals referee, the commission, or a court, and may apply to the body or court which rendered such final decision to issue a revised decision.

2. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal unless withdrawn shall be treated as an appeal from such redetermination.

(d) *Notice of determination or redetermination pursuant to s. 443.06.*—Notice of any determination or redetermination which involves the application of the provisions of s. 443.06, together with the reasons therefor, shall be promptly given to the claimant and to any employer entitled to notice thereof, such notice to be given in the manner provided in this subsection, provided that the division shall by regulation prescribe the manner and procedure pursuant to which employers within the base period of a claimant may become entitled to such notice.

(4) APPEALS.—

(a) *Appeals referees.*—The division shall appoint one or more impartial salaried appeals referees selected in accordance with s. 443.12(4) to hear and decide appealed or disputed claims. Such appeals referees shall have such qualifications as may be established by the merit system council upon the advice and consent of the division. No person shall participate on behalf of the division as an appeals referee in any case in which he is an interested party. The division may designate alternates to serve in the absence or disqualification of any appeals referee upon a temporary basis and pro hac vice which alternate shall be possessed of the same qualifications required of appeals referees. The division shall provide the commission and the appeals referees with proper facilities and assistance for the execution of their functions.

(b) *Filing and hearing.*—

1. The claimant or any other party entitled to notice of a determination as herein provided may file an appeal from such determination with an appeals referee within 20 days after the date of mailing of the notice to his last known address or, if such notice is not mailed, within 20 days after the date of delivery of such notice.

2. Unless the appeal is withdrawn with his permission or is removed to the commission, the appeals referee, after mailing all parties a notice of hearing at least 14 days prior to the date of hearing, shall affirm, modify, or reverse such determination; provided, however, that whenever an appeal involves a question as to whether services were performed by claimant in employment or for an employer, the referee shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the division, both of whom shall thenceforth be parties to the proceeding.

3. The parties shall be promptly notified of such referee's decision and such decisions shall be final unless, within 20 days after the date of mailing of notice thereof to the party's last known address or,

in the absence of such mailing, within 20 days after the delivery of such notice, further review is initiated pursuant to paragraph (c).

(c) *Review by commission.*—The commission may, on its own motion, within the time specified in paragraph (b), initiate a review of the decision of an appeals referee or determination of a special examiner or may allow an appeal from such decision on application filed within such time by the division or by any party entitled to notice of such decision. An appeal filed by any such party shall be allowed as of right if the examiner's determination was not affirmed by the appeals referee. Upon review on its own motion or upon appeal, the commission may on the basis of the evidence previously submitted in such case, or upon the basis of such additional evidence as it may direct be taken, affirm, modify, or reverse the findings and conclusions of the appeals referee. The commission may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. Any proceeding so removed to the commission prior to the completion shall be heard by the commission in accordance with the requirement of this subsection with respect to proceedings before an appeals referee. Upon denial by the commission of an application for appeal from the decision of an appeals referee, the decision of the appeals referee shall be deemed to be a decision of the commission within the meaning of this paragraph for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the commission, except that the time for initiating such review shall run from the date of notice of the order of the commission denying the application for appeal.

(d) *Procedure.*—The manner in which appealed claims shall be presented shall be in accordance with rules prescribed by the commission. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the division, and fees of witnesses subpoenaed on behalf of the division or any claimant shall be deemed part of the expense of administering this chapter.

(e) *Judicial review.*—Orders of the commission entered pursuant to paragraph (c) of this subsection shall be subject to review only by notice of appeal in the district court of appeal in the appellate district in which the issues involved were decided by an appeals referee, and the commission shall be made a party respondent to every such proceeding, notwithstanding any provision to the contrary in chapter 120. The division shall have the right to initiate judicial review of orders in the same manner and to the same extent as any other party.

(5) PAYMENT OF BENEFITS.—

(a) Benefits shall be promptly paid in accordance with a determination or redetermination regardless of any appeal or pending appeal. However, any employer who, pursuant to the provisions of s. 443.08(4), (5), or (6), is liable for reimbursement payments in lieu of contributions for the payment of such benefits shall be notified, at the address on file with the Division of Employment Security, as to the initial determination of the claim, and the employer shall be given 10 days to respond, prior to the payment of the benefits to the employee.

(b) If a determination allowing benefits is affirmed in any amount by an appeals referee, or is so affirmed by the commission or if a decision of an appeals referee allowing benefits is affirmed in any amount by the commission, such benefits shall be promptly paid regardless of any further appeal, and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by any court. However, if such decision is finally reversed, no employer liable for contributions under the contributory system of financing unemployment compensation benefits shall be charged with benefits so paid pursuant to the erroneous determination and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

(c) That portion of paragraph (b) relating to charging an employer liable for contributions shall not be applicable to employers using the reimbursable method of financing benefit payments.

(6) RECOVERY AND RECOUPMENT.—

(a) Any person who, by reason of his fraud has received any sum as benefits under this chapter to which he was not entitled shall be liable to repay such sum to the division for and on behalf of the trust fund, or, in the discretion of the division, to have such sum deducted from future benefits payable to him under this chapter, provided a finding of the existence of such fraud has been made by a redetermination or decision pursuant to this section within 2 years from the commission of such fraud, and provided no such recovery or recoupment of such sum may be effected after 5 years from the date of such redetermination or decision.

(b) If any person, other than by reason of his fraud, has received any sum as benefits under this chapter to which, under a redetermination or decision pursuant to this section, he has been found not entitled, he shall be liable to repay such sum to the division for and on behalf of the trust fund or, in the discretion of the division, shall have such sum deducted from any future benefits payable to him under this chapter. No such recovery or recoupment of such sum may be effected after 2 years from the date of such redetermination or decision.

(c) No recoupment from future benefits shall be had if such sum was received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience.

(d) In any case in which under this section a claimant is liable to repay to the division any sum for the fund, such sum shall be collectible without interest by a deduction from benefits pursuant to a redetermination as above provided, or by civil action in the name of the division.

History.—s. 7, ch. 18402, 1937; CGL 1940 Supp. 4151(494); s. 7, ch. 20685, 1941; s. 1, ch. 21982, 1943; s. 2, ch. 24083, 1947; s. 10, ch. 26484, 1951; s. 4, ch. 26879, 1951; s. 4, ch. 28242, 1953; ss. 1-4, ch. 29769, 1955; s. 1, ch. 57-268; s. 3, ch. 61-132; ss. 17, 35, ch. 69-106; s. 1, ch. 70-87; s. 1, ch. 72-154; s. 11, ch. 78-95; s. 4, ch. 78-386; s. 23, ch. 79-7; s. 3, ch. 79-308; s. 184, ch. 79-400.

443.08 Contributions.—

(1) WHEN PAYABLE.—Contributions shall accrue and become payable by each employer for each calendar quarter in which he is subject to this chapter, with respect to wages paid during such calendar

quarter for employment. Such contributions shall become due and be paid by each employer to the division for the fund, in accordance with such regulations as the division may prescribe. However, nothing in this subsection shall be construed to prohibit the division from adopting rules to allow, on a limited basis, at the request of the employer, certain employers to pay contributions or report wages at intervals other than quarterly when such payment or reporting is to the advantage of the division and the employers; provided that such interval for payment of contributions or report of wages shall not be less than quarterly. Contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(2) RATES.—Each employer is required to pay contributions equal to the following percentages of wages paid by him with respect to employment:

(a) Each employer whose employment record has been chargeable with benefit payments for less than 12 calendar quarters shall pay contributions at the rate of 2.7 percent with respect to wages paid on or before December 31, 1971, and at the rate of 1 percent with respect to wages paid on or after January 1, 1972, and at the rate of 2.7 percent with respect to wages paid on or after January 1, 1978, except that no employer whose tax rate is the 1 percent initial rate shall have such rate increased without having the tax rate computed as provided in paragraph (3)(b).

(b) Each employer whose employment record has been chargeable with benefit payments for at least 12 calendar quarters shall pay contributions at the rate of 2.7 percent with respect to employment after December 31, 1937, except as otherwise determined by experience rating provisions of this chapter. For the purposes of this section the total wages on which contributions have been paid by a single employer or his predecessor to an individual in any state within a single calendar year shall be counted to determine whether more remuneration than constitutes "wages" as defined by s. 443.03(13)(b)1. has been paid to such individual by such employer or his predecessor in 1 calendar year.

(c)1. Should the Congress either amend or repeal the Wagner-Peyser Act, the Federal Unemployment Tax Act, the Social Security Act or subtitle C of the Internal Revenue Code, or any act or acts supplemental to or in lieu thereof, or any part or parts of either or all of said laws, or should either or all of said laws, or any part or parts thereof, be held invalid, to the end and with such effect that appropriations of funds by the said Congress and grants thereof to Florida for the payment of costs of administration of the division become no longer available for such purposes, or should employers in Florida subject to the payment of tax under the Federal Unemployment Tax Act be granted full credit upon such a tax for contributions or taxes paid to the Unemployment Compensation Trust Fund, then in such case, beginning with the effective date of such change in liability for payment of such federal tax, and for each year thereafter, the standard contribution rate under this chapter shall be 3 percent per annum of each such employer's payroll subject to contributions. With respect to each such employer having a reduced rate of contribution for such year pursuant to terms of subsection (3) hereof, to the rate of contribution, as determined for such year in which such change occurs, shall be added three-tenths of 1 percent.

2. The amount of the excess of tax for which such employer is or may become liable, by reason of this subsection, over the amount which such employer would pay or become liable for except for the provisions of this subsection, shall be paid and transferred into the Employment Security Administration Trust Fund to be disbursed and paid out under the same conditions and for the same purposes as are other moneys provided to be paid into such fund; provided, that if the division shall determine that as of January 1 of any year, there is an excess in said fund over the moneys and funds required to be disbursed therefrom for the purposes thereof for such year, then, and in such cases an amount equal to such excess, as determined by the division, shall be transferred to and become a part of the Unemployment Compensation Trust Fund, and such funds shall be deemed to be and are hereby appropriated for the purposes set out in this chapter.

(d) In the event that the Federal Unemployment Tax Act is amended to permit credit against such tax in excess of 2.7 percent with respect to any calendar year, payment of the amount of contributions necessary to qualify an employer for such additional credit shall be deemed to be required under this chapter.

(3) CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(a) The benefit payments made to any eligible individual shall be charged to the employment record of each employer who paid such individual wages equal to $100 or more within the base period of said individual in the proportion to which wages paid by each such employer to such individual within the base period bears to total wages paid by all such employers to such individual within the base period. Provided, that no benefit charges shall be made to the employment record of any employer who has furnished part-time work to an individual who, because of loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished part-time work by such employer on substantially the same basis and in substantially the same amount as has been made available to such worker during his base period, whether the employments were simultaneous or successive. Provided, further, that benefit payments will not be charged to the accounts of employers when such employers have furnished the division with such notices regarding separations of individuals from work and the refusal of individuals to accept offers of suitable work as are required by the provisions of this chapter and the regulations of the division, if one or more of the following conditions are found to be applicable:

1. When an individual has left his job without good cause attributable to his employer or has been discharged by his employer for misconduct connected with his work, no benefits subsequently paid to

him on the basis of wages paid to such individual by such employer prior to such separation shall be charged to such employer's account.

2. Benefits which are paid to any individual subsequent to the refusal without good cause by such individual of an offer of suitable employment from an employer will not be charged to the account of such employer when all or any part of such benefits are upon the basis of wages paid to such individual by such employer prior to the refusal by such individual to accept such offer of suitable work. (The division shall determine with respect to the payment of all benefits whether this proviso shall be applied without regard to whether a disqualification pursuant to the provisions of s. 443.06 has or may be invoked against a claimant or claimants for benefits.)

(b)1. On and after January 1, 1958, the division shall, notwithstanding the provisions of paragraph (d) of this subsection, compute a benefit ratio for each employer not previously eligible therefor whose unemployment record has been chargeable with benefit payments for at least 12 calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments chargeable to his employment record during the 12 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of his annual payrolls (as defined in paragraph (f) of this subsection) for the first 12 of the 13 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such benefit ratio shall be computed to the fifth decimal place, and rounded to the fourth decimal place, and shall be applicable only for the remainder of the calendar year in which it becomes effective, after which the benefit ratio of such employer shall be computed as provided in subparagraph 2. hereof. Variation from the standard rate of contribution shall be assigned on a quarterly basis to such employers eligible therefor in like manner as assignments made for a calendar year under paragraph (e) of this subsection.

2. The division shall, for each calendar year, compute a benefit ratio for each employer whose employment record has been chargeable with benefit payments for at least 3 calendar years immediately preceding the calendar year for which the benefit ratio is computed. An employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments chargeable to his employment record during the 3-year period ending December 31 of the preceding calendar year by the total of his annual payrolls (as defined in paragraph (f) of this subsection) for the 3-year period ending September 30 of the preceding calendar year. Such benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.

3. On and after January 1, 1978, the division shall compute a benefit ratio for each employer not previously eligible therefor whose initial tax rate is 2.7 percent and whose unemployment has been chargeable with benefit payments for at least 8 calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments charged to his employment record during the 8 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of his annual payrolls (as defined in paragraph (f) of this subsection) for the first 8 of the 9 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place and shall be applicable for the remainder of the calendar year. The employer will next be rated on an annual basis using up to 12 calendar quarters of benefits charged and up to 12 calendar quarters of annual payrolls. Such employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments charged to his employment record by the total of his annual payrolls, as defined in paragraph (f), for the quarters used in his first computation plus the subsequent quarters reported through September 30 of the prior year. Each year thereafter the rate will be computed as provided in subparagraph 2. Variation from the standard rate of contribution shall be assigned on a quarterly basis to such employers eligible therefor in like manner as assignments made for a calendar year under paragraph (e) of this subsection.

(c) The standard rate of contributions payable by each employer shall be 2.7 percent.

(d) Employers shall be eligible for rate variations from the standard rate of contributions, as hereinafter described, in any calendar year, only if their employment records have been chargeable with benefit payments throughout the 3 consecutive calendar years ending on December 31, of the preceding calendar year.

(e)1. Variations from the standard rate of contributions shall be assigned with respect to each calendar year to employers eligible therefor. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors provided for in sub-subparagraphs a.-c. will be added to the benefit ratio. This addition will be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor as defined below. The sum of these adjustment factors provided for in sub-subparagraphs a.-c. will first be algebraically summed. The sum of these adjustment factors will then be divided by a gross benefit ratio to be determined as follows: Total benefit payments for the previous 3 calendar years charged to employers eligible to be assigned a contribution rate different from the standard rate minus excess payments for the same period divided by taxable payroll entering into the computation of individual benefit ratios for the current calendar year. The ratio of the sum of the adjustment factors provided for in sub-subparagraphs a.-c. to the gross benefit ratio will be multiplied by each individual benefit ratio below the maximum tax rate to obtain variable adjustment factors; except that in any instance in which the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum tax rate, the variable adjustment factor will be reduced so that the sum equals the maximum tax rate. The variable

adjustment factor of each such employer will be multiplied by his taxable payroll entering into the computation of his benefit ratio. The sum of these products will be divided by the taxable payroll of such employers that entered into the computation of their benefit ratios. The resulting ratio will be subtracted from the sum of the adjustment factors provided for in sub-subparagraphs a.-c. to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor will be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor will be added to the variable adjustment factor and benefit ratio of each employer and the sum rounded to 3 decimal places to obtain each employer's contribution rate; however, at no time shall an employer's contribution rate be rounded to less than 0.1 percent.

a. An adjustment factor for noncharge benefits will be computed to the fifth decimal place, and rounded to the fourth decimal place, by dividing the amount of benefit payments noncharged in the 3 preceding calendar years by the taxable payroll of employers eligible to be considered for assignment of a contribution rate different from the standard rate that have a benefit ratio for the current year less than the maximum contribution rate, except that in computing the adjustment factor for 1964 the 2 preceding calendar years of noncharged benefits will be used. The taxable payroll of such employers will be the taxable payrolls for the 3 years ending September 30 of the preceding calendar year that had been reported to the division by December 31 of the same calendar year except that in computing the adjustment factor for 1964 the 2 preceding years of taxable payrolls will be used. Noncharge benefits for the purpose of this section shall be defined as benefit payments to an individual which were paid from the Unemployment Compensation Trust Fund but which were not charged to the unemployment record of any employer.

b. An excess payments adjustment factor will be computed to the fifth decimal place, and rounded to the fourth decimal place, by dividing the total excess payments during the 3 preceding calendar years by the taxable payroll of employers eligible to be considered for assignment of a contribution rate different from the standard rate that have a benefit ratio for the current year less than the maximum contribution rate, except that in computing the adjustment factor for 1964 the 2 preceding years' excess payments will be used. The taxable payroll of such employers will be the same as used in computing the noncharge adjustment factor as described in sub-subparagraph (3)(e)1.a. Excess payments for the purpose of this section shall be defined as the amount of benefit payments charged to the employment record of an employer during the 3 preceding calendar years less the product of the maximum contribution rate and his taxable payroll for the 3 years ending September 30 of the preceding calendar year that had been reported to the division by December 31 of the same calendar year, except that in computing excess payments for use in 1964 contribution rate determination the 2 preceding years will be used. Total excess payments shall be defined as the sum of the individual employer excess payments for those employers that were eligible to be considered for assignment of a contribution rate different from the standard rate.

c. If the balance in the Unemployment Compensation Trust Fund as of December 31 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of that calendar year, a positive adjustment factor will be computed. Such adjustment factor shall be computed annually to the fifth decimal place, and rounded to the fourth decimal place, by dividing the sum of the total taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of such calendar year into a sum equal to one-fourth of the difference between the amount in the fund as of December 31 of such preceding calendar year and the sum of 5 percent of the total taxable payrolls for that year. Such adjustment factor will remain in effect in subsequent years until a balance in the Unemployment Compensation Trust Fund as of December 31 of the year immediately preceding the effective date of such contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of that calendar year. If the balance in the Unemployment Compensation Trust Fund as of December 31 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of that calendar year, a negative adjustment factor will be computed. Such adjustment factor shall be computed annually to the fifth decimal place, and rounded to the fourth decimal place, by dividing the sum of the total taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of such calendar year into a sum equal to one-fourth of the difference between the amount in the fund as of December 31 of such preceding calendar year and 5 percent of the total taxable payrolls of such year. Such adjustment factor will remain in effect in subsequent years until the balance in the Unemployment Compensation Trust Fund as of December 31 of the year immediately preceding the effective date of such contribution rate is less than 5 percent but more than 4 percent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the division by December 31 of that calendar year. In determining if a positive or a negative adjustment factor shall be applicable to contributions payable for the calendar quarters in the years 1973, 1974, and 1975, the taxable payrolls for the year ending September 30, 1972, shall be reduced by 30 percent prior to any computation applicable to contributions payable for calendar quarters in 1973; the taxable payrolls for the year ending September 30, 1973, shall be reduced by 20 percent prior to any computation applicable to contributions payable for calendar quarters in 1974; and the taxable payrolls for the year ending

September 30, 1974, shall be reduced by 10 percent prior to any computation applicable to contributions payable for calendar quarters in 1975.

d. The maximum contribution rate that can be assigned to any employer shall be 2.9 percent with respect to the calendar year 1963, 3.5 percent with respect to the calendar year 1964, 4 percent with respect to the calendar year 1965, and 4.5 percent with respect to the calendar year 1966 and subsequent calendar years.

2. In the event of the transfer of employment records to an employing unit pursuant to paragraph (g) which, prior to such transfer, was an "employer," the division shall recompute a benefit ratio for the successor employer on the basis of the combined employment records and reassign an appropriate contribution rate to such successor employer as of the beginning of the calendar quarter immediately following the effective date of such transfer of employment records.

(f) As used in subparagraph (b)2., the term "annual payroll" means the total amount of wages for insured employment paid by an employer during the 12-month period ending on September 30 of any calendar year with respect to which contributions have been paid on or before the date on which they became due and payable; and as used in subparagraph (b)1., the term "annual payroll" means the total amount of wages for insured employment paid by an employer during a period of 4 consecutive calendar quarters with respect to which contributions have been paid on or before the date on which they become due and payable. Provided, that where no contributions are payable for a calendar quarter, the term "annual payroll" as used in paragraph (b) shall include only wages paid during such quarter with respect to which contribution and wage reports have been submitted to the division on or before the date on which they became due.

(g)1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, shall be deemed to be a single employer and shall be considered as one employer with a continuous employment record if the division finds that the successor employer continues to carry on the employing enterprises of the predecessor employer or employers and that the successor employer has paid all contributions required of and due from the predecessor employer or employers and has assumed liability for all contributions that may become due from the predecessor employer or employers. As used in this paragraph, "contributions" means all indebtedness to the division, including, but not limited to, interest, penalty, collection fee, and service fee. A successor that is already an employer has 30 days from the date of the official notification of liability by succession to accept the transfer of the predecessor's or predecessors' employment record or records. If the predecessor or predecessors have unpaid contributions or outstanding quarterly reports, the successor has 30 days from the date of the notice listing the total amount due to pay the total amount with certified funds. After the total indebtedness has been paid, the employment record or records of the predecessor or predecessors will be transferred to the successor.

2. Whether or not there is a transfer of employment record as contemplated in this paragraph, the predecessor shall in the event he again employs persons be treated as an employer without previous employment record, or, if his coverage has been terminated as provided in s. 443.09, as a new employing unit.

3. The division may provide by regulation for partial transfer of experience rating where an employer has transferred at any time an identifiable and segregable portion of his payrolls and business to a successor employing unit. As a condition of such partial transfer of experience, the regulations shall require an application by the successor, agreement by predecessor, and such evidence as the division may prescribe of the experience and payrolls attributable to the transferred portion up to the date of transfer. The regulations shall provide that the successor employing unit, if not already an employer, shall become an employer as of the date of the transfer and that the experience of the transferred portion of the predecessor's account shall be removed from the experience-rating record of the predecessor, and for each calendar year following the date of the transfer of the employment record on the books of the division, the division shall compute the rate of contribution payable by the successor on the basis of his experience, if any, combined with the experience of the portion of the record transferred. The regulation may also provide what rates shall be payable by the predecessor and successor employers for the period between the date of the transfer of the employment record of the transferred unit on the books of the division and the first day of the next calendar year.

(h) No reduction below the standard contribution rate shall be allowed an employer under the provisions of this section unless:

1. All contributions, interest, and penalties incurred by such employer with respect to wages paid by him in all previous calendar quarters, except the 4 calendar quarters immediately preceding the calendar quarter or calendar year for which the benefit ratio is computed, have been paid; and

2. The employer entitled thereto shall have at least one "annual payroll" as defined in paragraph (f) and unless such employer is eligible for additional credit under the provisions of the Federal Unemployment Tax Act; and in the event the Federal Unemployment Tax Act shall be revised, amended, or repealed, this section shall be applicable only to the extent that additional credit may be allowed against the payment of the tax imposed by said Federal Unemployment Tax Act.

(i) The division:

1. Shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such determination shall become conclusive and binding upon the employer unless within 15 days after the mailing of notice thereof to his last known address, or, in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination setting forth his reasons

therefor. No employer shall be allowed, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to s. 443.07, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and then only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings provided for in this chapter in which the character of such services was determined.

2. Shall, upon the discovery of an error in computation, reconsider any prior determination or redetermination of contribution rate after the 15-day period has expired, and issue a revised notice of contribution rate as so redetermined. Such redetermination shall be subject to review, and become conclusive and binding in absence thereof, in the same manner as the determination provided in subparagraph 1. No such reconsideration shall be made after the March 31 immediately following the calendar year with respect to which the contribution rate is applicable, nor shall interest accrue on any additional contributions found to be due until 30 days after the employer is mailed notice of his revised contribution rate.

3. The division may provide by regulation for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the division may prescribe, shall become conclusive and binding upon the employer for all purposes of this chapter. Such redetermination, and the division's finding of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the division in proceedings to redetermine the contribution rate of an employer.

(j)1. If the division finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or of the United Nations after June 30, 1950, such employer's experience-rating record shall not be terminated; and, if the business is resumed within 2 years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's experience shall be deemed to have been continuous throughout such period. The benefit ratio of any such employer for the calendar year in which he resumed business and the 3 calendar years immediately following shall be a percentage equal to the total of his benefit charges (including charges of benefits paid to any individual during the period the employer was in the Armed Forces based upon wages paid by him prior to his entrance into such forces) for the 3 most recently completed calendar years divided by that part of his total payroll, with respect to which contributions have been paid to the division, for the 3 most recent calendar years during the whole of which, respectively, such employer has been in business.

2. Provided, that no cash refund shall be made with respect to any adjustment required hereunder, but such refund shall be made by credit memorandum only.

(k) This subsection shall apply only to employers who are liable for contributions under the contributory system of financing unemployment compensation benefits. This subsection shall not in any way be construed to apply to employers who are liable for payments in lieu of contributions as provided in subsections (4) and (5).

(l) The provisions of subsection (2) and of this subsection shall not be applicable to employers using the reimbursable method of financing benefit payments.

(4) FINANCING BENEFITS PAID TO EMPLOYEES OF NONPROFIT ORGANIZATIONS.—Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a nonprofit organization is an organization or group of organizations described in s. 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under s. 501(a) of such code.

(a) *Liability for contributions and election of reimbursement.*—Any nonprofit organization which, pursuant to s. 443.03(7)(c) or s. 443.09(3)(a) is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of subsection (1), unless it elects, in accordance with this paragraph, to pay to the division for the Unemployment Compensation Trust Fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

1. Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than 2 calendar years beginning with January 1, 1972, provided it files with the division a written notice of its election within the 30-day period immediately following such date.

2. Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for not less than the period beginning with the date on which such subjectivity begins and ending at the end of the next calendar year by filing a written notice of its election with the division not later than 30 days immediately following the date of the determination of such subjectivity.

3. Any nonprofit organization which makes an election in accordance with subparagraphs 1. or 2. of this paragraph will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

4. Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

5. The division, in accordance with such regulations as the division may prescribe, shall notify each nonprofit organization of any determination of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of s. 443.15(2)(b).

(b) *Reimbursement payments.*—Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph.

1. At the end of each calendar quarter or at the end of any other period as determined by the division, the division shall bill each nonprofit organization, or group of such organizations, which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

2. Payment of any bill rendered under subparagraph 1. shall be made not later than 30 days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph 4.

3. Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

4. The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the division, setting forth the grounds for such application. The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files its protest thereof, setting forth the grounds for the appeal. Proceedings on such protest shall be in accordance with the provisions of s. 443.15(2), relating to protests of assessments.

5. Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to s. 443.15(1), apply to past due contributions.

6. Each employer who is liable for payments in lieu of contributions shall be charged his proportionate share of benefits, and the Unemployment Compensation Trust Fund shall be reimbursed in full.

(c) *Authority to terminate elections.*—If any nonprofit organization is delinquent in making payments in lieu of contributions as required under paragraph (b) of this subsection, the division may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.

(d) *Allocations of benefit costs.*—Each employer that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph 1. or subparagraph 2.

1. Proportionate allocation when fewer than all base-period employers are liable for reimbursement. —If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

2. Proportionate allocation when all base-period employers are liable for reimbursement.—If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(e) *Group accounts.*—Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of paragraph (a) and s. 443.09(3), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph. Upon its approval of the application, the division shall establish a group account for such employers effective as of the beginning of the calendar year in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than 2 calendar years and thereafter until terminated at the discretion of the division or upon

application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The division shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE.—Benefits paid to employees of this state or any instrumentality of this state, or to employees of any political subdivision of this state, or any instrumentality thereof, based upon service defined in s. 443.03(5)(b), shall be financed in accordance with this subsection.

(a)1. Unless an election is made as provided in paragraph (c), the state or any political subdivision of the state shall pay into the Unemployment Compensation Trust Fund an amount equivalent to the amount of regular and extended benefits paid to individuals, based on wages paid by the state or the political subdivision for service defined in s. 443.03(5)(b).

2. Should any state agency become more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, the Division of Employment Security shall certify to the Comptroller the amount due and the Comptroller shall, upon approval after a hearing by the [1]Department of Administration, transfer the amount due to the Unemployment Compensation Trust Fund from the funds of such agency that may legally be utilized for such purpose. In the event any political subdivision of the state or any instrumentality thereof becomes more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, then, upon request by the Division of Employment Security after a hearing, the Department of Revenue or the Department of Banking and Finance, as the case may be, shall deduct the amount owed by the political subdivision or instrumentality from any funds to be distributed by it to the county, city, special district, or consolidated form of government for further distribution to the trust fund in accordance with this chapter. Should any employer for whom the city or county tax collector collects taxes fail to make the reimbursements to the Unemployment Compensation Trust Fund required by this chapter, the tax collector after a hearing, at the request of the Division of Employment Security and upon receipt of a certificate showing the amount owed by the employer, shall deduct the amount so certified from any taxes collected for the employer and remit same to the Department of Labor and Employment Security for further distribution to the trust fund in accordance with this chapter. This subparagraph shall not apply to those amounts due for benefits paid prior to October 1, 1979. This subparagraph shall not apply to amounts owed by a political subdivision for benefits erroneously paid where the claimant is required to repay to the division under s. 443.07(6)(a) or (b) any sum as benefits received.

(b) The provisions of paragraphs (b), (d), and (e) of subsection (4), relating to reimbursement payments, allocation of benefit costs, and group accounts with respect to nonprofit organizations, shall be applicable also, to the extent allowed by federal law, with respect to the duties of this state or any political subdivision of this state as an "employer" by reason of s. 443.03(7)(b).

(c) Any employer subject to the provisions of this subsection may elect the contribution financing method as provided by law in lieu of the reimbursement financing method provided in paragraphs (a) and (b) of this subsection.

(d) Upon establishing a financing method as provided by this subsection, such financing method shall be applicable for not less than 2 calendar years. Nothing herein shall be construed to prevent an employer subject to the provisions of this subsection from electing to change its method of financing after completing 2 calendar years under another financing method, so long as such new election is timely filed.

(6) PUBLIC EMPLOYERS UNEMPLOYMENT COMPENSATION BENEFIT ACCOUNT.—

(a) There is established a Public Employers Unemployment Compensation Benefit Account which will be maintained with separate accounting as a part of the Florida Unemployment Compensation Trust Fund. All benefits paid to public employees shall be charged to the Public Employers Unemployment Compensation Benefit Account.

(b) Governmental entities subject to the Florida Unemployment Compensation Law under s. 443.03(5)(b) who exercise the option to elect the contributory system of financing unemployment compensation benefits shall have their accounts maintained and shall be subject to the provisions of s. 443.08(1), (2), and (3), except that:

1. The term "taxable wages" shall mean total gross wages.

2. The initial contribution rate shall be 0.25 percent.

3. Any election by an employer to be taxed under this subsection shall be effective January 1 and shall be taxed at the initial rate. Effective January 1 of the following year, the rate shall be computed based on 2 calendar quarters of chargeability and payroll; effective January 1 of the second year after such election, based on 6 quarters of chargeability and payroll; and January 1 of the third year after such election, on 10 quarters of chargeability and payrolls. Each January 1 thereafter, the tax rates shall be computed based on 12 quarters of chargeability and payroll.

4. An employer electing to be taxed under the provisions of this subsection shall make such election not later than 30 days prior to January 1 of the

year for which the election is to be effective. Upon electing this financing method, such method shall be applicable for not less than 2 years.

5. Any election under this subsection may be terminated by filing with the division, not later than 30 days prior to January 1, a written notice of termination.

History.—s. 8, ch. 18402, 1937; s. 5, ch. 19637, 1939; CGL 1940 Supp. 4151(495); s. 8, ch. 20685, 1941; s. 1, ch. 21981, 1943; s. 1, ch. 22946, 1945; s. 1, ch. 23918, 1947; s. 11, ch. 25035, 1949; ss. 5, 6, ch. 26879, 1951; s. 1, ch. 26958, 1951; ss. 2-4, ch. 26878, 1951; ss. 5-9, ch. 28242, 1953; s. 4, ch. 29771, 1955; ss. 1-3, ch. 29817, 1955; s. 3, ch. 57-247; s. 2, ch. 57-268; ss. 1, 2, ch. 59-98; s. 2, ch. 61-119; s. 4, ch. 61-132; s. 1, ch. 63-154; s. 1, ch. 63-137; s. 1, ch. 65-243; s. 1, ch. 65-25; s. 1, ch. 67-225; s. 1, ch. 67-244; ss. 17, 35, ch. 69-106; s. 1, ch. 70-296; s. 1, ch. 70-439; s. 6, ch. 71-225; ss. 1-3, ch. 71-227; s. 2, ch. 72-155; s. 118, ch. 73-333; s. 3, ch. 74-198; ss. 5, 7, ch. 77-262; s. 2, ch. 77-393; s. 5, ch. 77-399; s. 11, ch. 78-95; s. 2, ch. 78-295; s. 5, ch. 78-386; s. 3, ch. 79-293; s. 4, ch. 79-308; s. 1, ch. 79-355; s. 185, ch. 79-400.

[1]**Note.**—See ch. 79-190, which reorganized the Department of Administration and transferred many of its powers and duties elsewhere.

443.09 Employing units affected.—

(1) PERIODS OF LIABILITY.—

(a) Any employing unit which is or becomes an employer subject to this chapter as defined in s. 443.03(7)(a), (b), (c), (d), or (e) within any calendar year shall be subject to this chapter during the whole of such calendar year.

(b) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of s. 443.03(7)(f) shall be subject to this chapter only during its operation of the business acquired.

(c) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of s. 443.03(7)(g) shall be subject to this chapter only with respect to employment occurring subsequent to the date of such acquisition.

(2) TERMINATION OF COVERAGE.—

(a) *General.*—Except as otherwise provided in this section, an employing unit shall cease to be an employer subject to this chapter as of January 1 of any calendar year only if it files with the division, by April 30 of the year for which termination is requested, a written application for termination of coverage and the division finds that the employing unit, in the preceding calendar year, did not meet the requirements of an employer, as defined in s. 443.03(7)(a), (d), or (e). However, the above prescribed time limitation for the filing of such written application may be waived by the division in cases where such time limitation had expired prior to the establishment in the records of the division of the liability of such employing unit. For the purposes of this subsection the two or more employing units mentioned in s. 443.03(7)(f), (g), and (i) shall be treated as a single employing unit.

(b) *Nonprofit organizations.*—Except as otherwise provided in subsection (4), an employing unit subject to this chapter by reason of s. 443.03(5)(c) shall cease to be an employer so subject as of January 1 of any calendar year only if it files with the division, by April 30 of the year for which termination is requested, a written application for termination of coverage and the division finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this chapter. The timely filing of application may be waived as provided in (a).

(c) *State and political subdivisions.*—The state and any political subdivision of the state shall remain an employer subject to this chapter for the duration of any employment defined in s. 443.03(5)(b), and shall cease being so subject only pursuant to subsection (4) of this section.

(3) ELECTIVE COVERAGE.—

(a) *General.*—An employing unit, not otherwise subject to this chapter, which files with the division its written election to become an employer subject hereto for not less than 1 calendar year, shall, with written approval of such election by the division, become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to the first calendar year of its election only if, by April 30 of such subsequent year, such employing unit has filed with the division a written notice to that effect. However, at the expiration of the calendar year of such election the division may reconsider such voluntary election of coverage and may in its discretion notify such employer that such employer will not be carried upon the records of the division as an employer, and thereupon such employer shall cease to be an employer under the provisions of this chapter as of January 1 of the year next succeeding the last calendar year during which it was an employer under this chapter.

(b) *State and political subdivision.*—Any employing unit, including this state or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more of its political subdivisions, for which services that do not constitute employment as defined in this chapter are performed may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than one calendar year. Upon written approval of such election by the division, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such calendar year only if, by April 30 of such subsequent year, such employing unit has filed with the division a written notice to that effect.

(c) *Certain services for political subdivisions.*—

1. Any political subdivision of this state may elect to cover under this chapter, for not less than one calendar year, service performed by employees in all of the hospitals and institutions of higher education, as defined in s. 443.03(5)(b), operated by such political subdivision. Election is to be made by filing with the division a notice of such election at least 30 days prior to the effective date of such election. The election may exclude any services described in s. 443.03(5)(d). Any political subdivision electing coverage under this paragraph shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in s. 443.08(4)(b) and (d).

2. The provisions in s. 443.05(4) with respect to

benefit rights based on service for nonprofit organizations and state hospitals and institutions of higher education shall be applicable also to service covered by an election under this section.

3. The amounts required to be paid in lieu of contributions by any political subdivision under this paragraph shall be billed and payment made as provided in s. 443.08(4)(b) with respect to similar payments by nonprofit organizations.

4. An election under this paragraph may be terminated after not less than 1 calendar year of coverage by filing with the division written notice not later than 30 days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of January 1 of the next ensuing calendar year with respect to services performed after that date.

(4) INACTIVE EMPLOYERS.—Notwithstanding the other provisions of this section, if the division finds that an employer has become inactive and has ceased to be an employing unit as defined by this chapter for a complete calendar year the division may automatically terminate the account of such employer as of January 1 of any year following a complete calendar year in which such employer has ceased to be an employing unit, and thereupon such employer shall cease to be an employer subject to the provisions of this chapter.

History.—s. 9, ch. 18402, 1937; CGL 1940 Supp. 4151(496); s. 9, ch. 20685, 1941; s. 2, ch. 21982, 1943; ss. 7, 8, ch. 26879, 1951; s. 10, ch. 28242, 1953; s. 5, ch. 29771, 1955; s. 5, ch. 61-132; ss. 2, 3, ch. 65-114; ss. 17, 35, ch. 69-106; s. 7, ch. 71-225; s. 6, ch. 77-262; s. 118, ch. 79-164; s. 5, ch. 79-308.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

443.10 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is hereby established as a special fund separate and apart from all public moneys or funds of this state, an Unemployment Compensation Trust Fund, which shall be administered by the division exclusively for the purposes of this chapter. This fund shall consist of:

(a) All contributions collected under this chapter;

(b) Interest earned upon any moneys in the fund;

(c) Any property or securities acquired through the use of moneys belonging to the fund;

(d) All earnings of such property or securities; and

(e) All money credited to this state's account in the Unemployment Compensation Trust Fund pursuant to s. 903 of the Social Security Act as amended.

All moneys in the fund shall be mingled and undivided.

(2) The State Treasurer shall be the ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the division. All payments from the fund shall be approved by the division or by a duly authorized agent and shall be made by the Treasurer upon warrants issued by the Comptroller and countersigned by the Governor except as hereinafter provided. The Treasurer shall maintain within the fund three separate accounts:

(a) A clearing account;

(b) An Unemployment Compensation Trust Fund account; and

(c) A benefit account.

All moneys payable to the fund, including moneys received from the United States as reimbursement for extended benefits paid by the division, upon receipt thereof by the division, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to s. 443.15 may be paid from the clearing account upon warrants issued by the Comptroller as above set forth. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the Unemployment Compensation Trust Fund established and maintained pursuant to s. 904 of the Social Security Act, as amended, any provisions of the law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the Unemployment Compensation Trust Fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. If any warrant issued against the clearing account or the benefit account is not presented for payment within 1 year after issuance thereof, the Comptroller shall cancel the same and credit without restriction the amount of such warrant to the account upon which it is drawn. When the payee or person entitled to any warrant so canceled requests payment thereof, the Comptroller, upon direction of the division, shall issue a new warrant therefor, to be paid out of the account against which the canceled warrant had been drawn. The Treasurer shall be liable on his official bond for the faithful performance of his duties as custodian of the fund.

(3) Moneys shall be requisitioned from the state's account in the Unemployment Compensation Trust Fund solely for the payment of benefits and extended benefits and in accordance with regulations prescribed by the [1][division], except that money credited to this state's account pursuant to s. 903 of the Social Security Act as amended shall be used exclusively as provided in subsection (5). The division, through the Treasurer, shall from time to time requisition from the Unemployment Compensation Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits and extended benefits for a reasonable future period. Upon receipt thereof the Treasurer shall deposit such moneys in the benefit account in the State Treasury and warrants for the payment of benefits and extended benefits shall be drawn by the Comptroller upon the order of the division against such benefit account. All warrants for benefits and extended benefits shall be payable directly to the ultimate beneficiary. Expenditures of such moneys in the benefit account and refunds from

the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the Comptroller and the countersignature of the Governor as above set forth. Any balance of moneys requisitioned from the Unemployment Compensation Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and extended benefits during succeeding periods, or, in the discretion of the division, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this state's account in the Unemployment Compensation Trust Fund, as provided in subsection (2) of this section.

(4) The provisions of subsections (1), (2), and (3), to the extent that they relate to the Unemployment Compensation Trust Fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such Unemployment Compensation Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Compensation Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Trust Fund of this state shall be transferred to the Treasurer of the Unemployment Compensation Trust Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the division in accordance with the provisions of this chapter; provided that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States or of the state. Provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Trust Fund only under the direction of the division.

(5) MONEY CREDITED UNDER SECTION 903 OF THE SOCIAL SECURITY ACT.—

(a) Money credited to the account of this state in the Unemployment Compensation Trust Fund by the Secretary of the Treasury of the United States pursuant to s. 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this law. Such money may be requisitioned pursuant to subsection (3) for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this law but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

1. Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

2. Limits the period within which such money may be obligated to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

3. Limits the amount which may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to s. 903 of the Social Security Act during the same 12-month period and the 14 preceding 12-month periods, exceeds the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such 15 12-month periods.

(b) Amounts credited to this state's account in the Unemployment Compensation Trust Fund under s. 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a 12-month period specified herein may be charged against any amount credited during such a 12-month period earlier than the fourteenth preceding such period. Any amount credited to the state's account under s. 903 which has been appropriated for expenses of administration, whether or not withdrawn from the Unemployment Compensation Trust Fund, shall be excluded from the Unemployment Compensation Trust Fund balance for the purposes of s. 443.08(3).

(c) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the Employment Security Administration Trust Fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Trust Fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Compensation Trust Fund.

History.—s. 10, ch. 18402, 1937; s. 6, ch. 19637, 1939; CGL 1940 Supp. 4151(497); s. 1, ch. 24084, 1947; s. 11, ch. 25035, 1949; s. 6, ch. 29771, 1955; ss. 1-3, ch. 59-99; s. 2, ch. 61-119; s. 6, ch. 61-132; s. 1, ch. 61-172; ss. 1, 2, ch. 63-276; ss. 1-3, ch. 65-114; ss. 17, 35, ch. 69-106; ss. 1-3, ch. 70-265; s. 1, ch. 70-315; ss. 8, 9, ch. 71-225; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 119, ch. 79-164.

[1]**Note.**—Bracketed word was substituted by the editors for the word "commission" to conform to ch. 69-106, the Reorganization Act of 1969. See s. 17(4) and (8). The bracketed substitution reflects the fact that administrative functions formerly attributed to the Florida Industrial Commission are now performed by the division.

443.11 Administrative organization.—

(1) BUREAUS.—

(a) There are hereby created and established in the Division of Employment Security two coordinate bureaus, the Bureau of Employment Services, established pursuant to s. 443.13, and a Bureau of Unemployment Compensation. Each bureau shall be a separate administrative unit and shall be responsible for the discharge of its distinctive functions except

insofar as the division may find that such division is impracticable. Each bureau shall pay its proportionate part of the administrative costs for the division.

(b) The director of the division and each of the members of the commission shall receive their salaries from the trust fund created by s. 443.14(1).

(2) OBSOLETE RECORDS.—The division is expressly authorized to provide by regulation for the destruction of obsolete records of the division.

(3) ADVANCES.—The division is authorized and directed to apply for an advance to the State Unemployment Compensation Trust Fund and to accept responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the Social Security Act as amended, in order to secure to this state and its citizens the advantages available under the provisions of said Title XII of the Social Security Act.

History.—s. 11, ch. 18402, 1937; s. 7, ch. 19637, 1939; CGL 1940 Supp. 4151(498); s. 10, ch. 20685, 1941; s. 3, ch. 21982, 1943; s. 2, ch. 22946, 1945; s. 1, ch. 24094, s. 2, ch. 24084, 1947; s. 11, ch. 28242, 1953; s. 7, ch. 29771, 1955; s. 1, ch. 57-786; s. 1, ch. 61-139; s. 7, ch. 61-132; s. 2, ch. 61-119; s. 19, ch. 63-400; s. 166, ch. 71-377; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 24, ch. 79-7.

443.12 Division and commission; powers and duties; rules and regulations; advisory council; records and reports; cooperation, etc.—

(1) POWERS AND DUTIES OF DIVISION.—It shall be the duty of the division to administer this chapter; and it shall have power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. The division shall determine its own organization and methods of procedure in accordance with the provisions of this chapter. Not later than March 15 of each year, the division, through the Department of Labor and Employment Security, shall submit to the Governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendment to this chapter as it deems proper.

(2) RULES AND REGULATIONS; DIVISION, SEAL.—

(a) The division shall have the power and authority to adopt, amend, or rescind such rules and regulations as are necessary for the administration of this chapter.

(b) The division shall have an official seal, which shall be judicially noticed.

(3) PUBLICATION OF ACTS AND RULES AND REGULATIONS.—The division shall cause to be printed and distributed to the public the text of this chapter, the regulations and rules adopted by the [1][division], the division's annual report to the Governor, and any other matter the division deems relevant and suitable, and shall furnish this information to any person upon application therefor. However, no pamphlet, rules, circulars or reports required by this chapter shall contain any matter except the actual data necessary to complete same or the actual language of the said rule or regulation, together with proper notices thereof.

(4) PERSONNEL.—Subject to chapter 110 and the other provisions of this chapter, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such employees, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such person such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder; the cost of such bonds shall be paid from the Employment Security Administration Trust Fund.

[2](5) ADVISORY COUNCIL.—The division shall appoint a state Unemployment Insurance Advisory Council, composed of men and women, including an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the division may designate. Such council shall aid the division in reviewing the unemployment insurance program as to its content, adequacy and effectiveness and make recommendations for its improvement. Members of the Unemployment Insurance Advisory Council shall serve without compensation, but shall be reimbursed for any travel and subsistence expense incurred, in accordance with the travel and subsistence regulations applicable to employees of the division. The advisory council shall meet as frequently as the division deems necessary, but not less than twice each year. The advisory council shall make reports of its meetings, which shall include a record of its discussions and its recommendations. The division shall make such reports available to any interested persons or groups.

(6) EMPLOYMENT STABILIZATION.—The division with the advice and aid of advisory councils shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of the unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(7) RECORDS AND REPORTS.—Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Such records shall be open to inspection and be subject to being copied by the division at any reasonable time and as often as may be necessary. The division or an appeals referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, deemed necessary for the effective administration of this chapter. Information thus obtained, or obtained from any individual pursuant to the administration of this chapter, shall, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending, be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance

of their public duties), in any manner revealing the individual's or employing unit's identity, but any claimant (or his legal representative) at a hearing before an appeals referee or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission or any employee of the division who violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Provided, however, the division may furnish to any employer copies of any report previously submitted by such employer, upon the request of such employer, and the division is authorized to charge therefor such reasonable fee as the division may by regulations prescribe not to exceed the actual reasonable cost of the preparation of such copies. Fees received by the division for copies as herein provided shall be deposited to the credit of the Employment Security Administration Trust Fund.

(8) OATHS AND WITNESSES.—In the discharge of the duties imposed by this chapter, the division, the appeals referees, the members of the commission and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the administration of this chapter.

(9) SUBPOENAS.—In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, or transacts business, upon application by the division, the commission, an appeals referee, or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the division, the commission, an appeals referee, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching on the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the division, the commission, an appeals referee, or any duly authorized representative of any of them, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day such violation continues shall be a separate offense.

(10) PROTECTION AGAINST SELF-INCRIMINATION.—No person shall be excused from attending and testifying, or from producing books, papers, correspondence, memoranda, and other records before the division, the commission, an appeals referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the division, the commission, or any appeals referee, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(11) STATE-FEDERAL COOPERATION.—

(a)1. In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970, or other federal manpower acts.

2. In the administration of the provisions in s. 443.04(5), which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the division shall take such action as may be necessary to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the Federal Act.

3. The division shall comply with the regulations of the United States Department of Labor relating to the receipt or expenditure by this state of moneys granted under any of such acts and shall make such reports, in such form and containing such information, as the United States Department of Labor may from time to time require, and shall comply with such provisions as the United States Department of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(b) The division may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

(c) The division shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs. The division may make, and may cooperate with other appropriate agencies in making, studies as to the practicability and probable cost of possible new state-administered social security programs, and the relative desirability of state, rather than federal, action in any such field.

(12) DISCLOSURE OF INFORMATION.—Sub-

ject to such restrictions as the [1][division] may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the division shall furnish any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The division may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in s. 3305(c) of the Federal Internal Revenue Code.

History.—s. 12, ch. 18402, 1937; CGL 1940 Supp. 4151(499), 8135(40), 8135(41); s. 11, ch. 20685, 1941; s. 4, ch. 21982, 1943; s. 1, ch. 22832, 1945; s. 3, ch. 24084, 1947; ss. 8, 9, ch. 29771, 1955; s. 1, ch. 57-269; s. 2, ch. 61-119; s. 19, ch. 63-400; ss. 10, 17, 35, ch. 69-106; s. 370, ch. 71-136; ss. 10, 11, ch. 71-225; s. 167, ch. 71-377; s. 4, ch. 74-198; s. 11, ch. 78-95; s. 18, ch. 78-300; ss. 3, 4, ch. 78-323; s. 25, ch. 79-7; s. 75, ch. 79-40; s. 6, ch. 79-308.

[1]**Note.**—Bracketed word was substituted by the editors for the word "commission" to conform to ch. 69-106, the Reorganization Act of 1969. See s. 17(4) and (8). The bracketed substitution reflects the fact that administrative functions formerly attributed to the Florida Industrial Commission are now performed by the division.

[2]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this paragraph prior to that date.

cf.—s. 113.07 Bonds of officials.

443.13 State Employment Service.—

(1) The Florida State Employment Service is hereby established in the division. The division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such duties as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933 (48 Stat. 113; 29 U.S.C. s. 49(c)), as amended. It shall be the duty of the division to cooperate with any official or agency of the United States having power or duties under the provisions of the Act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this state, in conformity with s. 4 of said act, and this state will observe and comply with the requirements thereof. The Division of Employment Security of the Department of Labor and Employment Security is hereby designated and constituted the agency of this state for the purpose of said act. The division is authorized and directed to appoint sufficient employees to carry out the purposes of this section. The division may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance, and use of free employment service facilities.

(2) FINANCING.—All moneys received by this state under the said Act of Congress, as amended, shall be paid into the Employment Security Administration Trust Fund, and said moneys are hereby made available to the division to be expended as provided by this chapter and by said Act of Congress. For the purpose of establishing and maintaining free public employment offices, the division is authorized to enter into agreements with the Railroad Retirement Board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the division may accept moneys, services, or quarters as a contribution to the Employment Security Administration Trust Fund.

History.—s. 13, ch. 18402, 1937; s. 8, ch. 19637, 1939; CGL 1940 Supp. 4151(500); s. 12, ch. 20685, 1941; s. 2, ch. 61-119; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 26, ch. 79-7.

443.14 Employment Security Administration Trust Fund; appropriation; reimbursement.—

(1) EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is hereby created in the State Treasury a special fund to be known as "the Employment Security Administration Trust Fund." All moneys which are deposited or paid into this fund shall be continuously available to the division for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in ss. 443.12 and 443.13 except money received pursuant to s. 443.10(5)(c) shall be expended solely for the purposes and in the amounts found necessary by the authorized cooperating federal agencies for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Trust Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to s. 443.10(5)(c) shall remain part of the Unemployment Compensation Trust Fund and shall be used only in accordance with the conditions specified in s. 443.10(5). All mon-

eys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Such moneys shall be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary law of the state and collateral pledged shall be maintained in a separate custody account. All payments from the Employment Security Administration Trust Fund shall be approved by the division or by a duly authorized agent and shall be made by the Treasurer upon warrants issued by the Comptroller and countersigned by the Governor. Any balances in this fund shall not lapse at any time, but shall be continuously available to the division for expenditure consistent with this chapter. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Trust Fund provided for under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Trust Fund shall be deposited in said fund.

(2) SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is hereby created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Trust Fund," into which shall be deposited or transferred all interest on contributions, penalties, and fines or fees collected under this chapter. Interest on contributions, penalties, and fines or fees deposited during any calendar quarter in the clearing account in the Unemployment Compensation Trust Fund shall, as soon as practicable after the close of such calendar quarter and upon certification of the division, be transferred to the Special Employment Security Administration Trust Fund; however, there shall be withheld from any such transfer the amount certified by the division to be required under this chapter to pay refunds of interest on contributions, penalties, and fines or fees collected after June 30, 1947, and erroneously deposited into the clearing account in the Unemployment Compensation Trust Fund. Such amounts of interest and penalties so certified for transfer shall be deemed to have been erroneously deposited in the clearing account and the transfer thereof to the Special Employment Security Administration Trust Fund shall be deemed to be a refund of such erroneous deposits. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Said moneys shall not be expended or be available for expenditure in any manner which would permit their substitution for, or permit a corresponding reduction in, federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Unemployment Compensation Law. But nothing in this section shall prevent said moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this fund, with the approval of the Executive Office of the Governor, shall be used by the division for the payment of costs of administration which are found not to have been properly and validly chargeable against funds obtained from federal sources. All moneys in the Special Employment Security Administration Trust Fund shall be continuously available to the division for expenditure in accordance with the provisions of this chapter and shall not lapse at any time. All payments from the Special Employment Security Administration Trust Fund shall be approved by the division or by a duly authorized agent thereof and shall be made by the Treasurer upon warrants issued by the Comptroller and countersigned by the Governor. The moneys in this fund are hereby specifically made available to replace, as contemplated by subsection (3), expenditures from the Employment Security Administration Trust Fund, established by subsection (1), which have been found by the Bureau of Employment Security, or other authorized federal agency or authority, because of any action or contingency, to have been lost or improperly expended. The Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Trust Fund.

(3) REIMBURSEMENT OF FUND.—If any moneys received after June 30, 1941, from the Bureau of Employment Security under Title III of the Social Security Act, or any unencumbered balances in the Employment Security Administration Trust Fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, after reasonable notice and opportunity for hearing, are found by the Bureau of Employment Security, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Bureau of Employment Security for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purposes from the general funds of this state to the Employment Security Administration Trust Fund for expenditure as provided in subsection (1). Upon receipt of notice of such a finding by the Bureau of Employment Security, the division shall promptly report the amount required for such replacement to the Governor and the Governor shall at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

(4) EXEMPTION OF FUND FROM CERTAIN LAWS.—The Special Employment Security Administration Trust Fund provided for in subsection (2) is

hereby exempt from the application of any laws of the Legislature of 1949, other than this subsection, and specifically from the application or effect by the continuing appropriations law.

History.—s. 14, ch. 18402, 1937; s. 9, ch. 19637, 1939; CGL 1940 Supp. 4151(501); s. 13, ch. 20685, 1941; s. 4, ch. 24084, 1947; s. 1, ch. 25206, 1949; s. 11, ch. 25035, 1949; ss. 10, 11, ch. 29771, 1955; s. 4, ch. 59-99; s. 2, ch. 61-119; ss. 17, 31, 35, ch. 69-106; s. 1, ch. 71-215; s. 139, ch. 79-190.

443.15 Collection of contributions.—

(1) PAST DUE CONTRIBUTIONS.—

(a) *Interest.*—Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of 0.5 percent per month from and after such date until payment plus accrued interest is received by the division. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Trust Fund.

(b) *Penalty for delinquent reports.—*

1. Any employing unit which fails to file any reports required by the division in the administration of this chapter, in accordance with regulations adopted by the [1][division], shall pay to the division with respect to each such report the sum of $5 for each 30 days or fraction thereof that such employing unit is delinquent, unless the division finds that such employing unit has or had good reason for failure to file such report or reports.

2. Sums collected as penalties under the provisions of subparagraph 1. shall be deposited by the division in the Special Employment Security Administration Trust Fund.

(2) REPORTS, CONTRIBUTIONS, APPEALS.—

(a) *Failure to make reports and pay contributions; duty and power of division.*—If any employing unit determined by the division to be an employer subject to the provisions of this chapter fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the [1][division], for the purpose of determining the amount of contributions due by said employer under this chapter, or if any such report which has been filed is deemed by the division to be incorrect or insufficient, and such employer after having been given written notice, by registered or certified mail, by the division to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within 15 days after the date of the mailing of such notice, the division may:

1. Determine the amount of contributions due from such employer on the basis of such information as may be readily available to it, which said determination shall be deemed to be prima facie correct;

2. Assess such employer with the amount of contributions so determined; and

3. Immediately give written notice by registered or certified mail to such employer of such determination and assessment including penalties as provided in this chapter, if any, added and assessed, demanding payment of same together with interest as herein provided on the amount of contributions from the date when same were due and payable.

Such determination and assessment shall be final at the expiration of 15 days from the date of the mailing of such written notice thereof demanding payment unless such employer shall have filed with the division a written protest and petition for hearing specifying the objections thereto. Upon receipt of such petition within the 15 days allowed the division shall fix the time and place for a hearing and shall notify the petitioner thereof. The division by regulation may appoint special deputies with full power to hold hearings hereunder, and to submit their findings together with a transcript of the proceedings before them and their recommendations to the division for its final decision and determination. Special deputies shall be subject to the prohibition on ex parte communications as provided in s. 120.66. At any hearing held before the division or its special deputy, as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect. However, at such hearing the petitioner shall be required to show wherein that it is incorrect or else file full and complete corrected reports. Evidence may also be submitted at such hearing to rebut the determination by the division that the petitioner is an employer under the provisions of this chapter, and upon evidence taken before it or upon the transcript submitted to it with the findings and recommendation of its special deputy the division may set aside its determination that the petitioner is an employer under the provisions of this chapter or may reaffirm such determination. The amounts assessed pursuant to a final determination by the division hereunder together with interest and penalties shall be paid within 15 days after notice of such final decision and assessment and demand for payment thereof by the division shall have been mailed to such employer, unless judicial review is instituted in cases of status determinations. Amounts due when the status of the employer is in dispute shall be payable within 15 days of the entry of an order by the court affirming such determination. However, any determination by the division that an employing unit is not an employer under the provisions of this chapter shall not affect the benefit rights of any individual as determined by an appeals referee or the commission, under the provisions of this chapter, unless such individual shall have been made a party to the proceedings before the division, or unless such determination of the commission or appeals referee shall not have become final or the employing unit and the division shall not have been made parties to the proceedings before the appeals referee or the commission.

(b) *Appeals.*—Subject to the foregoing provisions of this subsection, the [1][division] shall by regulation prescribe the manner pursuant to which an employing unit which has been determined to be an "employer" may file an appeal and be afforded an opportunity for a hearing on such determination.

(3) COLLECTION PROCEEDINGS.—

(a) *Lien for payment of contributions.—*

1. There is hereby created a lien in favor of the division upon all the property both real and personal of any employer who shall become liable for the payment of any contribution levied and imposed upon it by this law for the amount of the contributions due and payable under the provisions hereof, together with interest, costs and penalties; and if any contribution imposed by this chapter or any portion of such contribution or interest or penalty be not paid within 60 days after the same becomes delinquent

the division may thereafter issue a notice of lien under its official seal, which notice of lien may be filed in the office of the clerk of the circuit court of any county in which the delinquent employer owns property or has conducted business, and which notice of lien shall set forth the periods for which the contributions, interest or penalties are demanded and the amounts thereof, copy of which notice of lien shall be mailed to the employer at his last known address by registered mail. Provided, that notice of lien may be issued and recorded at the expiration of 15 days from the date assessment becomes final under the provisions of subsection (2). Upon presentation of said notice of lien the clerk of the circuit court shall record same in a book maintained by him for that purpose, and thereupon the amount of said notice of lien, together with the cost of recording and interest accruing upon the contribution amount, shall become a lien upon the title to and interest, whether legal or equitable, in any real property, chattels real, or personal property of such employer against whom such notice of lien is issued, in the same manner as a judgment of the circuit court duly docketed in the office of such circuit court clerk with execution duly issued thereon and in the hands of the sheriff for levy; and such lien shall be prior, preferred and superior to all mortgages or other liens filed, recorded, or acquired subsequent to the time such notice of lien shall have been filed. Upon the payment of the amounts due thereunder, or upon determination by the division that such notice of lien was erroneously issued, the same may be satisfied of record by the division by an acknowledgment under the seal of the division that such lien has been fully satisfied. Such satisfaction need not be acknowledged before any notary or other public officer and the seal of the division together with the signature of the director shall be conclusive evidence of the satisfaction of said lien, which satisfaction shall be recorded by the clerk of the circuit court who shall receive fees for such services as may be fixed by law for the recording of instruments generally.

2. The division may thereafter issue a warrant directed to all and singular sheriffs in the State of Florida, commanding them to levy upon and sell any real or personal property of the employer liable for any amount under this law within their respective jurisdictions, for the payment of the amount thereof, with the added penalties, interest and the costs of executing the warrant, together with costs of the clerk of the circuit court in recording and docketing the notice of lien, and to return such warrant to the division and to pay to it the money collected by virtue thereof; such warrant shall issue and be enforced for all amounts due the division as of the date of issuance thereof, together with interest accruing on the contribution amount due from said employer to the date of payment at the rate provided herein; provided, that in the event of sale of any assets of the employer, priorities under said warrant shall be determined in accordance with the priority established by the notice or notices of lien filed by the division and recorded by the clerk of the circuit court. The sheriff shall proceed upon said warrant in all respects with like effect and in the same manner prescribed by law in respect to executions issued out of the office of the clerk of the circuit court upon judgments of the circuit court and the sheriff shall be entitled to the same fees for his services in executing the warrant as under a writ of execution out of the circuit court, said fees to be collected in the same manner.

(b) *Injunction—procedures to contest warrants after issuance.*—No writ of injunction or restraining order to stay the execution of such warrant shall issue until a bill praying therefor shall have been filed and reasonable notice of hearing of motion for such injunction has previously been served on the division, nor unless the party applying therefor shall have previously tendered and paid into the custody of the court the full amount of contributions, interests, costs and penalties claimed in such warrant or entered into and filed in said court a bond with two or more good and sufficient sureties approved by the court in a sum at least double the amount of such contributions, interests, costs and penalties, payable to the division, and conditioned to pay the amount of such warrant, interest thereon, and such damages as may be occasioned by the wrongful issuing of said injunction, if the said injunction shall be dissolved, or the bill upon which it may be granted be dismissed. Only one surety shall be required when such bond is executed by a lawfully authorized surety company as surety thereon.

(c) *Attachment and garnishment.*—Upon the filing of notice of lien as provided in subparagraph (a)1., the division shall be entitled to remedy by attachment or garnishment as provided in chapters 76 and 77, as for a debt due and upon application by the division such writs shall issue out of the office of the clerk of the circuit court as upon a judgment of the circuit court duly docketed and recorded, and such writs shall be made returnable to the circuit court. Provided, however, that no bond shall be required of the division as a condition precedent to the issuance of said writs of attachment or garnishment. Issues raised under proceedings by attachment or garnishment shall be tried by the circuit court as upon a judgment thereof in the manner provided in chapters 76 and 77. Provided, further, that said notice of lien filed by the division shall be of full force and effect for the purposes of all remedies provided for in this chapter until satisfied as provided in this chapter, and no revival by scire facias or other proceedings shall be necessary prior to the pursuit of any remedy herein provided for, and proceedings authorized as upon a judgment of the circuit court shall not be construed as making of said lien a judgment of the circuit court upon a debt for any purpose except as herein specifically set forth as procedural remedies only.

(d) *Third-party claims.*—Upon any levy made by the sheriff under the authority of a writ of attachment or garnishment as provided in paragraph (c) third-party claims to property involved shall be tried by the circuit court as upon a judgment thereof and all proceedings shall be authorized on such third party claims as provided in ss. 56.16, 56.20, 76.21 and 77.16.

(e) *Proceedings supplementary to execution.*—At any time after a warrant provided for in subparagraph (a)2. shall have been in the hands of any sher-

iff of this state and returned unsatisfied the division may make and file an affidavit in the circuit court affirming such fact and also that said warrant is valid and outstanding and also stating the residence of the party or parties against whom the warrant has been issued, and the division shall thereupon be entitled to have other and further proceedings in the circuit court as upon a judgment thereof as provided in s. 56.29.

(f) *Photostats.*—In any proceedings in any court under this chapter photostats of original records or microfilm copies of records of the Division of Employment Security or the commission shall be primary evidence in lieu of the originals of said records or of the documents which have been transcribed into such records.

(g) *Jeopardy assessment and warrant.*—If the division has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay it may assess such contributions immediately, together with interest or penalties when due, whether or not contributions accrued have become due, and may immediately issue a notice of lien and jeopardy warrant upon which proceedings may be had as herein provided for notice of lien and warrant of the division. Within 15 days from the mailing of such notice of lien by registered mail the employer against whom such notice of lien and warrant is issued may protest the issuance thereof in the same manner provided in paragraph (a) and further proceedings shall be had upon said protest as therein provided. Such protest shall not operate as a supersedeas or stay of enforcement proceedings until and unless the employer shall have filed with the sheriff seeking to enforce the warrant of the division a good and sufficient surety bond in twice the amount demanded by said notice of lien or warrant conditioned upon payment of the amount subsequently found to be due from the employer to the division by final determination of the division upon protest of assessment. Said jeopardy warrant and notice of lien shall be satisfied by the division in the manner heretofore provided upon payment of the amount finally determined to be due from said employer. In the event enforcement of said jeopardy warrant is not superseded as hereinabove provided the employer shall be entitled to a refund from the fund of all amounts paid as contributions in excess of the amount finally determined to be due by said employer upon application being made as provided in this chapter.

(4) MISCELLANEOUS PROVISIONS FOR ENFORCEMENT OF COLLECTION OF CONTRIBUTIONS.—

(a) Independently of all other remedies and proceedings authorized by this law for the enforcement of and the collection of contributions hereby levied, a right of action by suit in the name of the division is hereby created. Suit may be maintained and prosecuted, and all proceedings taken, to the same effect and extent as for the enforcement of a right of action for debt or assumpsit, and any and all remedies available in such actions including attachment and garnishment shall be available to the division for the collection of any contribution accruing hereunder; provided that the division shall not be required to post bond in any such action or proceedings; and providing further that nothing herein contained shall be construed as making of said contributions a debt or demand unenforceable against homestead property provided by Article X of the Constitution of the State, the above remedies being procedural only.

(b) Any employer failing to make return or to pay the contributions levied under this chapter, and who has not ceased to be an employer as provided in s. 443.09 hereof, may be enjoined from employing individuals in employment as defined in this chapter upon the complaint of the division in the circuit court of the county in which said employer may be doing business; and such employer so failing to make return or to pay contributions levied hereunder shall be enjoined from employing individuals in employment until such return shall have been made and the contributions shown to be due thereunder paid to the division.

(c) The division or any agent or employee whom it may designate shall have the power to administer an oath to any person in respect to any return or report required by this law or by the rules and regulations of the [1][division] and such oath made before the division or any authorized agent or employee shall have the same efficacy as an oath made before any judicial officer or notary public of the state.

(d) Civil actions brought under this chapter to collect contributions and interest thereon or any proceeding had herein for the collection of contributions from an employer shall be heard by the court having jurisdiction thereof at the earliest possible date and shall be entitled to preference upon the calendar of said court over all other civil actions except petitions for judicial review of claims for benefits arising under this chapter and cases arising under the Workers' Compensation Law of this state.

(e) The division is hereby authorized to commence action in any other state by and in the name of the division to collect unemployment compensation contributions, penalties and interest legally due this state. The officials of other states which extend a like comity to this state are authorized to sue for the collection of such contributions, interest and penalties in the courts of this state. The courts of this state shall recognize and enforce liability for such contributions, interest, and penalties imposed by other states which extend a like comity to this state.

(f) The collection of any contribution, interest and penalty otherwise due under this chapter shall not be enforceable by civil action, warrant, claim or other means unless within 5 years from the date upon which such contribution, interest and penalty became due and payable as provided by law and by regulations of the [1][division], a notice of lien with respect to such contribution, interest and penalty was filed for record with a clerk of a circuit court as provided in subsection (3).

(5) PRIORITIES UNDER LEGAL DISSOLUTION OR DISTRIBUTIONS.—In the event of any distribution of any employer's assets pursuant to an order of any court under the laws of this state, including any receiverships, assignment for benefit of creditors, adjudicated insolvency, composition, administration of estates of decedents, or any other similar proceeding, contributions then or thereafter

due shall be paid in full prior to all other claims except claims for wages of not more than $250 to each claimant, earned within 6 months of the commencement of the proceeding, and on a parity with all other tax claims wherever such tax claims shall have been given priority. In the administration of the estate of any decedent the filing of notice of lien shall be deemed a proceeding required upon protest of the claim filed by the division for contributions due under this chapter and such claim shall be allowed by the circuit judge. Provided, however, that the personal representative of the decedent may by petition to the circuit court object to the validity of the claim of the division and proceedings shall be had in the circuit court for the determination of the validity of the claim of the division, and, provided further, that the bond of the personal representative shall not be discharged until such claim is finally determined by the circuit court, and where no bond has been given by the personal representative none of the assets of said estate shall be distributed until such final determination by the circuit court; and, provided, further, that upon distribution of the assets of the estate of any decedent the claim of the division shall have priority established in paragraph (1)(e) class five of s. 733.20, subject to the above limitations with reference to wages. In the event of any employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in s. 64B of that act (U.S.C. Title II, s. 104(b), as amended).

(6) REFUNDS.—If not later than 4 years after the date of payment of any amount as contributions, interest or penalties, an employing unit who has paid such contributions, interest or penalties shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the division shall determine that such contributions or interest or penalties or any portion thereof was erroneously collected, the division shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payment by him, or if such adjustment cannot be made, the division shall refund said amount, without interest, from the fund. For like cause, and within the same period, adjustment or refund may be made on the division's own initiative. Provided, however, that nothing in this chapter shall be construed to authorize a refund of contributions which were properly paid in accordance with the provisions of this chapter at the time of such payment, except as required by s. 443.03(5)(l)7.; provided further that refunds under this subsection and under s. 443.03(5)(l)7. may be paid from either the clearing account or the benefit account of the Unemployment Compensation Trust Fund and from the Special Employment Security Administration Trust Fund with respect to interest or penalties which have been previously paid into such fund, provisions of s. 443.10(2) to the contrary notwithstanding.

History.—s. 15, ch. 18402, 1937; s. 10, ch. 19637, 1939; CGL 1940 Supp. 4151(502); s. 14, ch. 20685, 1941; s. 5, ch. 21982, 1943; s. 5, ch. 24084, 1947; s. 11, ch. 25035, 1949; s. 9, ch. 26879, 1951; s. 12, ch. 28242, 1953; s. 12, ch. 29771, 1955; s. 3, ch. 57-268; s. 24, ch. 57-1; s. 2, ch. 61-119; s. 3, ch. 61-228; s. 4, ch. 65-114; ss. 17, 35, ch. 69-106; s. 11, ch. 71-225; s. 1, ch. 73-283; s. 26, ch. 73-334; s. 1, ch. 77-174; s. 11, ch. 78-95; s. 27, ch. 79-7; s. 76, ch. 79-40.

[1]**Note.**—Bracketed word was substituted by the editors for the word "commission" to conform to ch. 69-106, the Reorganization Act of 1969. See s. 17(4) and (8). The bracketed substitution reflects the fact that administrative functions formerly attributed to the Florida Industrial Commission are now performed by the division.

443.16 Waiver of rights; fees; privileged communications.—

(1) WAIVER OF RIGHTS VOID.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of any employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) FEES.—

(a) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or division or their representatives, or by any court or any officer thereof, except as hereinafter provided. Any individual claiming benefits in any proceeding before the commission or division, or representatives of either, or a court may be represented by counsel or duly authorized agent, but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission or division or by the court.

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida shall be entitled to counsel fees payable by the division as fixed by the court in either of the following cases:

1. Where petition for review or appeal is initiated by any party to such proceeding other than the claimant, or

2. Where such petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than did the decision under review or from which appeal was taken.

(c) Attorneys' fees awarded under this section shall be paid by the division out of employment security administration funds as a part of the costs of administration of this chapter and may be paid directly to the attorney for the claimant in a lump sum.

(d) Any person, firm or corporation who or which seeks or receives any remuneration or gratuity for any services rendered on behalf of a claimant, except as allowed by this section and in an amount approved by the division or commission or by a court, shall be guilty of a misdemeanor. Any person, firm or corporation who or which shall solicit the business of appearing on behalf of a claimant, or shall make it a business to solicit employment for another in connection with any claim for benefits under this chapter, shall be guilty of a misdemeanor of the sec-

ond degree, punishable as provided in s. 775.082 or s. 775.083.

(3) PRIVILEGED COMMUNICATIONS.—All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the division or any of its agents, representatives or employees which shall have been written, sent, delivered, or made in connection with the requirements and administration of this chapter, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of the state.

History.—s. 16, ch. 18402, 1937; s. 11, ch. 19637, 1939; CGL 1940 Supp. 4151(503), 8135(42)-(44); s. 15, ch. 20685, 1941; s. 10, ch. 26879, 1951; s. 4, ch. 57-268; ss. 17, 35, ch. 69-106; s. 371, ch. 71-136; s. 28, ch. 79-7; s. 186, ch. 79-400.

443.17 Benefits not alienable.—Benefits due under this chapter shall not be assigned, pledged, encumbered, released, or commuted and shall, except as otherwise provided in this chapter, be exempt from all claims of creditors and from levy, execution or attachment, or other remedy for recovery or collection of a debt, which exemption may not be waived.

History.—s. 17, ch. 18402, 1937; CGL 1940 Supp. 4151(504).

443.18 Reciprocal arrangements.—

(1)(a) The division is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individuals in more than one state shall be deemed to be services performed entirely within any one of the states:

1. In which any part of such individual's service is performed, or
2. In which such individual has his residence, or
3. In which the employing unit maintains a place of business,

provided there is in effect as to such services an election, approved by the agency charged with the administration of such state's Unemployment Compensation Law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(b) The division shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states, which are approved by the United States Secretary of Labor, in consultation with the state unemployment compensation agencies, as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

1. Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and
2. Avoiding the duplicate use of wages and employment by reason of such combining.

(c) Contributions due under this chapter with respect to wages for insured work shall for the purposes of ss. 443.08 and 443.15 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the division finds will be fair and reasonable as to all affected interests.

(2) The division is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection (1).

(3) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The division is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law.

(4) To the extent permissible under the laws and Constitution of the United States, the division is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of the state or under a similar law of such government.

History.—s. 19, ch. 18402, 1937; s. 12, ch. 19637, 1939; CGL 1940 Supp. 4151(505); s. 17, ch. 20685, 1941; s. 6, ch. 24084, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 29768, 1955; ss. 17, 35, ch. 69-106; s. 13, ch. 71-225; s. 119, ch. 73-333.

443.19 Unemployment Compensation Trust Fund to be sole source of benefits; nonliability of state.—The Unemployment Compensation Trust Fund established by this chapter shall be the sole and exclusive source for the payment of benefits payable hereunder, and such benefits shall be deemed to be due and payable only to the extent that contributions, with increments thereon, actually collected and credited to the fund and not otherwise appropriated or allocated, are available therefor. The state undertakes the administration of such fund without any liability on the part of the state beyond the amount of moneys received from the said Bureau of Employment Security or other federal agency.

History.—s. 23, ch. 18402, 1937; CGL 1940 Supp. 4151(506); s. 13, ch. 29771,

1955; s. 2, ch. 61-119.

443.20 Rule of liberal construction.—This chapter shall be liberally construed to accomplish its purpose to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment. The Legislature hereby declares its intention to provide for carrying out the purposes of this chapter in cooperation with the appropriate agencies of other states and of the federal government, as part of a nationwide employment security program, and particularly to provide for meeting the requirements of Title III, the requirements of the Federal Unemployment Tax Act, and the Act of Congress approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" (the Wagner-Peyser Act), each as amended, in order to secure for this state and the citizens thereof the grants and privileges available thereunder; all doubts as to the proper construction of any provision of this chapter shall be resolved in favor of conformity with such requirements.

History.—s. 23½, ch. 18402, 1937; CGL 1940 Supp. 4151(488), 4151(507); s. 2, ch. 20685, 1941; s. 14, ch. 29771, 1955.

443.21 Saving clause.—The Legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto, shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

History.—s. 20, ch. 18402, 1937; CGL 1940 Supp. 4151(508).

443.22 Penalties.—

(1) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any benefits or other payment under this chapter or under an employment security law of any other state, of the Federal Government, or of a foreign government, either for himself or for any other person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit or any officer or agent of any employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any employing unit or any officer or agent of any employing unit or any other person who fails to furnish any reports required hereunder, or to produce or permit the inspection of or copying of records as required hereunder, or who fails or refuses, within 6 months after written demand therefor by the division, to keep and maintain the payroll records required by this chapter and by the regulations of the division, or who willfully fails or refuses to make any contribution or other payment required from an employing unit under this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who shall willfully violate any provision of this chapter or any order, rule or regulation hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed hereunder nor provided by any other applicable statute, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) In any prosecution or action under the provisions of this section, the signature of a person on a document, letter, or other writing shall constitute prima facie evidence of such person's identity if the following conditions exist:

(a) The person gives his name, residence address, home telephone number, present or former place of employment, sex, date of birth, social security number, height, weight, and race.

(b) The signature of such person is witnessed by an agent or employee of the division at the time the document, letter, or other writing is filed.

History.—s. 18, ch. 18402, 1937; CGL 1940 Supp. 4151(510), 8135(45), (46), (47); s. 16, ch. 20685, 1941; s. 11, ch. 26879, 1951; s. 1, ch. 29770, 1955; ss. 17, 35, ch. 69-106; s. 372, ch. 71-136; s. 2, ch. 75-121; s. 1, ch. 78-295; s. 7, ch. 79-308.

CHAPTER 446

APPRENTICES

446.011 Declaration of legislative intent.—

(1) It is the intent of the State of Florida to provide educational opportunities for its young people so that they can be trained for trades, occupations, and professions suited to their abilities. It is the intent of this act to promote the mode of training known as apprenticeship in occupations throughout industry in Florida that require physical manipulative skills. By broadening job training opportunities and providing for increased coordination between public school academic programs, vocational programs, and registered apprenticeship programs, Florida's young people will benefit from the valuable training opportunities developed when on-the-job training is combined with academic-related classroom experiences. This act is intended to develop the apparent potentials in apprenticeship training by assisting in the establishment of preapprenticeship programs in the public school system and elsewhere and by expanding presently registered programs as well as promoting new registered programs in jobs that lend themselves to apprenticeship training.

(2) It is the intent of the Legislature that the Division of Labor of the Department of Labor and Employment Security shall have responsibility for the development of the apprenticeship and preapprenticeship uniform minimum standards for the apprenticeable trades and that the Division of Vocational Education of the Department of Education shall have responsibility for assisting district school boards and community college boards of trustees in developing preapprenticeship programs in compliance with the standards established by the Division of Labor.

(3) It is the further intent of this act that the Division of Labor shall ensure quality training through the adoption and enforcement of uniform minimum standards and that the Bureau of Apprenticeship of the Division of Labor shall promote, register, monitor, and service apprenticeship and training programs and ensure that such programs adhere to the standards.

History.—s. 1, ch. 23934, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 28037, 1953; s. 1, ch. 63-153; ss. 17, 35, ch. 69-106; s. 1, ch. 72-113; s. 53, ch. 73-338; s. 29, ch. 79-7; s. 1, ch. 79-397.

Note.—Former s. 446.06.

446.021 Definitions.—As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Preapprentice" means any person 16 years of age or over engaged in any course of instruction in the public school system or elsewhere, which course is registered as a preapprenticeship program with the Division of Labor of the Department of Labor and Employment Security.

(2) "Apprentice" means a person at least 16 years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of journeymen craftsmen, which training should be combined with properly coordinated studies of related technical and supplementary subjects, and who has entered into a written agreement, hereinafter called an apprentice agreement, with a registered apprenticeship sponsor who may be either an employer, an association of employers, or a local joint apprenticeship committee.

(3) "Trainee" means a person at least 16 years of age who is engaged in learning a specific skill, trade, or occupation within a formalized, on-the-job training program.

(4) "Journeyman" means a person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation.

(5) "Preapprenticeship program" means an organized course of instruction in the public school system or elsewhere which course is designed to prepare a person 16 years of age or older to become an apprentice and which course is approved by and registered with the Bureau of Apprenticeship of the Division of Labor and sponsored by a registered apprenticeship program.

(6) "Apprenticeship program" means an organized course of instruction, registered and approved by the bureau, which course shall contain all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices including such matters as the requirements for a written apprenticeship agreement.

(7) "On-the-job training program" means a formalized system of job processes which may be augmented by related instruction that provides the experience and knowledge necessary to meet the training objective of learning a specific skill, trade, or occupation. Such training program shall be at least 6 months and not more than 2 years in duration and shall be registered with the bureau.

(8) "Uniform minimum preapprenticeship standards" means the minimum requirements established uniformly for each craft under which a preapprenticeship program is administered and includes standards of admission, training goals, training objectives, curriculum outlines, objective standards to measure successful completion of the preap-

prenticeship program, and the percentage of credit that may be given to preapprenticeship graduates upon acceptance into the apprenticeship program.

(9) "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical subjects related to a specific trade or occupation.

(10) "Cancellation" means the deregistration of an apprenticeship program or the termination of an apprenticeship agreement.

(11) "Jurisdiction" means the specific geographical area for which a particular program is registered.

(12) "Division" means the Division of Labor of the Department of Labor and Employment Security.

(13) "Director" means the director of the Division of Labor.

(14) "Bureau" means the Bureau of Apprenticeship of the Division of Labor.

(15) "Chief" means the chief of the Bureau of Apprenticeship.

History.—s. 2, ch. 23934, 1947; s. 1, ch. 63-153; s. 2, ch. 72-113; s. 54, ch. 73-338; s. 30, ch. 79-7; s. 2, ch. 79-397.

Note.—Former s. 446.07.

[1]446.031 Apprenticeship council; general duties of division.—

(1) There is created a State Apprenticeship Council, advisory to the Division of Labor of the Department of Labor and Employment Security, to be composed of 12 members. The Director of the Division of Labor shall be ex officio chairman of the council except that he shall have voting power in cases of tie votes. The administrator of industrial education of the Department of Education shall be appointed a nonvoting member of the council. In addition thereto, the Governor shall appoint five representatives each from employer and employee organizations, respectively, representing industries having registered apprenticeship programs or in which a need for apprenticeship programs has been demonstrated, whose terms shall run concurrently with the Governor's. Each member of the council shall serve without pay, but shall be allowed necessary expenses, in accordance with state law, incurred in connection with the performance of his official duties.

(2) The Division of Labor shall establish uniform minimum standards and policies governing apprentice programs and agreements. Such standards and policies shall govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice with respect to, but not limited to, such matters as ratios of apprentices to journeymen, safety, related instruction, and on-the-job training. The division may adopt rules as necessary to carry out such standards and policies. The council shall meet at the call of the chairman, but no less often than three times per year.

History.—s. 3, ch. 23934, 1947; s. 2, ch. 28037, 1953; s. 1, ch. 63-153; ss. 15, 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 55, ch. 73-338; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 31, ch. 79-7; ss. 3, 11, ch. 79-397.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 11, ch. 79-397, provides that, if this section is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that s. 3, ch. 79-397, shall also be repealed on the same date as is therein provided.

Note.—Former s. 446.08.

446.041 Apprenticeship program, duties of bureau and division.—

(1) BUREAU OF APPRENTICESHIP.—There is created and established within the Division of Labor of the Department of Labor and Employment Security a Bureau of Apprenticeship.

(2) DUTIES OF THE BUREAU OF APPRENTICESHIP.—The Bureau of Apprenticeship shall be administered by a full-time chief who may exercise all powers, duties, and functions vested in the division and bureau by this chapter, except that this provision shall not be construed as a limitation on the authority of the division director, and provided further that all rulemaking and administrative hearing authority shall vest solely with the division. It is the intent of this chapter that the Bureau of Apprenticeship shall directly supervise all apprenticeship programs which are registered with the bureau. To effectuate this intent, the bureau shall:

(a) Administer the provisions of this chapter.

(b) Administer the standards established by the division.

(c) Register in accordance with this chapter any apprenticeship or preapprenticeship program, regardless of affiliation, which meets standards established by the division.

(d) Investigate complaints concerning the failure of any registered program to meet the standards established by the division.

(e) Cancel the registration of any program which fails to comply with the standards and policies of the division, or which unreasonably fails or refuses to cooperate with the bureau in monitoring and enforcing compliance with such standards.

(f) Issue to each registered apprentice, upon completion of training, a certificate of completion.

(g) Develop and encourage apprenticeship programs.

(h) Cooperate with and assist local apprenticeship sponsors in the development of their apprenticeship standards and training requirements.

(i) Cooperate with and assist the Division of Vocational Education of the Department of Education and appropriate vocational education institutions in the development of viable apprenticeship and preapprenticeship programs.

(j) Encourage registered apprenticeship programs to grant consideration and credit to individuals completing registered preapprenticeship programs.

(k) Monitor registered apprenticeship programs to ensure that they are being operated in compliance with all applicable standards.

History.—s. 4, ch. 23934, 1947; s. 3, ch. 28037, 1953; s. 1, ch. 63-153; s. 19, ch. 63-400; ss. 17, 35, ch. 69-106; s. 168, ch. 71-377; s. 3, ch. 72-113; s. 1, ch. 73-283; s. 56, ch. 73-338; s. 1, ch. 77-174; s. 11, ch. 78-95; s. 32, ch. 79-7; s. 4, ch. 79-397.

Note.—Former s. 446.09.

446.051 Related instruction.—

(1) The administration and supervision of related and supplemental instruction for apprentices, coordination of such instruction with job experiences, and selection and training of teachers and coordinators for such instruction, all as approved by the registered program sponsor, shall be the responsibility of the appropriate vocational education institution.

(2) The appropriate vocational education institution shall be encouraged to cooperate with and assist in providing to any registered program sponsor facilities, equipment and supplies, and instructors' salaries for the performance of related and supplemental instruction associated with the registered program.

History.—s. 5, ch. 23934, 1947; s. 4, ch. 28037, 1953; s. 1, ch. 63-153; ss. 15, 17, 35, ch. 69-106; s. 5, ch. 79-397.
Note.—Former s. 446.10.

446.052 Preapprenticeship program.—

(1) There is created and established a preapprenticeship education program, as defined in s. 446.021.

(2) The Division of Vocational Education of the Department of Education, under regulations established by the State Board of Education, is authorized to administer the provisions of this chapter that relate to preapprenticeship programs in cooperation with district school boards and community college boards of trustees. District school boards, community college boards of trustees, and registered program sponsors shall cooperate in developing and establishing programs that include vocational instruction and general education courses required to obtain a high school diploma.

(3) The Division of Vocational Education, the district school boards, the community college boards of trustees, and the Division of Labor shall work together with existing registered apprenticeship programs so that individuals completing such preapprenticeship programs may be able to receive credit towards completing a registered apprenticeship program.

(4) Veterans who have received discharges other than dishonorable discharges may, if qualified, receive the same priorities given to registered preapprentices.

History.—s. 4, ch. 72-113; s. 57, ch. 73-338; s. 6, ch. 79-397.

446.061 Expenditures.—The Division of Labor shall make necessary expenditures from the appropriation provided by law for personal services, travel, printing, equipment, office space, and supplies as provided by law.

History.—s. 6, ch. 23934, 1947; s. 24, ch. 57-1; s. 1, ch. 63-153; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.
Note.—Former s. 446.11.

446.071 Apprenticeship sponsors.—

(1) One or more local apprenticeship sponsors shall be approved in any trade or group of trades by the Bureau of Apprenticeship, upon a determination of need, provided the apprenticeship sponsor meets all of the standards established by the Division of Labor. Need refers to the need of Florida residents for apprenticeship training. In the absence of proof to the contrary, it shall be presumed that there is need for apprenticeship and preapprenticeship training in each county in this state.

(2) A local apprenticeship sponsor may be a committee, a group of employers, an employer, or a group of employees, or any combination thereof.

(3) The division and bureau shall have authority to grant variances from the standards upon a showing of good cause for such variance by program sponsors in nonconstruction trades. The purpose of this provision is to recognize the unique and varying training requirements in nontraditional apprenticeable occupations and to authorize the d bureau to adapt the standards to the ne programs.

History.—s. 7, ch. 23934, 1947; s. 1, ch. 63-153; ss. 17, 35, c 72-113; s. 58, ch. 73-338; s. 1, ch. 77-183; s. 7, ch. 79-397.
Note.—Former s. 446.12.

446.075 Federal and state coopera Division of Labor of the Department o Employment Security is authorized to m ter into contracts with the United Sta ment of Labor, and to assume such oth and duties as are necessary for the divis as registration agent for federal appren istration purposes, except that the divisi enforce any federal apprenticeship requ less the division first adopts said requi rule. All rules promulgated and ad hearings afforded by the division becaus tion shall be in accordance with the req chapter 120.

History.—s. 1, ch. 77-182; s. 33, ch. 79-7; s. 8, ch. 79-397.

446.081 Limitation.—

(1) Nothing in this chapter or in an agreement approved under this chapte ate to invalidate any apprenticeship pro collective agreement between employ ployees setting up higher apprenticeshi

(2) No person shall institute any a enforcement of any apprentice agreer damages for the breach of any appre ment, made under this chapter, unless have exhausted all administrative rem ed by this section.

(3) Any person aggrieved by any d or act of the Bureau of Apprenticeship therefrom to the Division of Labor.

History.—s. 8, ch. 23934, 1947; s. 5, ch. 28037, 1953; s. 1, 69-267; s. 1, ch. 73-283; s. 120, ch. 73-333; s. 1, ch. 77-174;
Note.—Former s. 446.13.

446.091 On-the-job training pr provisions of this chapter relating to ap and preapprenticeship, including, but n programs, agreements, standards, ad procedures, definitions, expenditures, l tees, council, powers and duties, limit ances, ratios of apprentices and job tra neymen on state, county and municip and functions of the Division of Labor propriately adapted and made applica gram of on-the-job training hereby a persons other than apprentices.

History.—s. 2, ch. 63-153; ss. 17, 35, ch. 69-106; s. 1, c 73-338; s. 1, ch. 77-174.

446.092 Criteria for apprentices tions.—An apprenticeable occupation trade which possesses all of the followi istics:

(1) It is customarily learned in a through a structured, systematic progr job, supervised training.

(2) It is commonly recognized throu dustry, or recognized with a positive changing technology, or recommended da Apprenticeship Council.

(3) It involves manual, mechanical

ivision and
eds of such

h. 69-106; s. 5, ch.

ation.—The
Labor and
ake and en-
tes Depart-
er functions
ion to serve
iceship reg-
on shall not
irement un-
rement as a
ministrative
e of this sec-
irements of

y apprentice
r shall oper-
vision in any
ers and em-
p standards.
ction for the
ment, or for
ntice agree-
he shall first
edies provid-

termination
may appeal

ch. 63-153; s. 1, ch.
s. 11, ch. 78-95.

ogram.—All
prenticeship
ot limited to,
ministration,
ocal commit-
ations, griev-
inees to jour-
al contracts,
, shall be ap-
ble to a pro-
uthorized for

h. 73-283; s. 59, ch.

hip occupa-
is a skilled
ng character-

practical way
am of on-the-

ghout the in-
view towards
by the Flori-

, or technical

quire a minimum of
ing, which hours are
t related instruction.
uction to supplement
ction may be given in
ondence courses.
ent of skill sufficient-
occupations through-
estricted application
ny one company.
of the following cate-

ilar occupations in

utific vocations for
customarily require

**r ratios of appren-
n on state, county,**

slative intent of this
e furtherance of la-
uard the welfare of
d the application of
he inclusion thereof
ntracts; and to bring
the formulation of
job training.
in this section:
ne State of Florida
ts, administrative
the state, including
substantially all of
the state or by any
gencies, or instru-

" means any coun-
unicipality in the
lities of such coun-
ly included are air-
l authorities, and

ntract to be per-
or services entered
municipality or by
ring for such work
ans, or guarantees
unicipality.
contractor or sub-
well as a primary
ss otherwise speci-

INEE EMPLOY-
following contract
a state, county, or
$25,000, and each
oncerned shall in-
heir inclusion, in
s section shall ap-
n, repair, or main-
, and bridges.

rformance of the
r trainees in each

occupation at least equal to the whole number obtained, disregarding any remainder, by dividing 5 into the average number of journeymen in that occupation to be employed in the performance of the contract.

2. That he will, when feasible and except when the number of apprentices or trainees to be hired is fewer than four, assure that 25 percent of such apprentices or trainees are in their first year of training. Feasibility here involves a consideration of the availability of training opportunities for first-year apprentices or trainees, the hazardous nature of the work for beginning workers, and excessive unemployment of apprentices or trainees in their second or subsequent years of training.

3. That, during the performance of the contract, he will employ the number of apprentices or trainees necessary to meet requirements of subparagraphs 1. and 2. However, on-the-job training programs shall only be established in nonapprenticeable trades or occupations to meet the requirements of this section.

(b) The contractor agrees to return records of employment by trade of the number of apprentices or trainees, the number of apprentices or trainees by first year of training, and the number of journeymen and the wages paid, and hours of work of, such persons on a form as prescribed by the Bureau of Apprenticeship of the Division of Labor at 3-month intervals. Submission of duplicate copies of forms submitted to the United States Department of Labor shall be sufficient compliance with the provisions of this section.

(c) The contractor agrees to supply to the Bureau of Apprenticeship of the Division of Labor, at 3-month intervals, a statement describing steps taken toward making a diligent effort and containing a breakdown by craft of hours worked and wages paid for first-year apprentices or trainees, other apprentices or trainees, and journeymen.

(d) The contractor agrees to insert in any subcontract under this contract the requirements contained in this section. The term "contractor," as used in such clauses and any subcontract, shall mean the subcontractor.

(4) DILIGENT EFFORT.—If a contractor is unable after a diligent effort to employ the requisite ratio of apprentices to journeymen as required by paragraph (3)(a), he shall make application to the Bureau of Apprenticeship for a certification of his diligent efforts. A contractor who, prior to his failure to employ the requisite number of apprentices and trainees, secures such a certification which is not subsequently revoked shall be deemed to have satisfied the requirements of paragraph (3)(a) and shall not be subject to the civil penalty provided in subsection (6). Before issuing the certification, the bureau shall determine that either:

(a) The contractor will employ on his project a number of apprentices or trainees by craft as required by the contract clauses at least equal to the ratio established in accordance with subparagraph (3)(a)1.; or

(b) The contractor will employ, on all his public work combined in the labor market area of this project, an average number of apprentices or trainees by craft or occupation as required by the contract

clauses at least equal to the ratio established in accordance with subparagraph (3)(a)1.; or

(c)1. Before commencement of work on the project, the contractor, if covered by a collective bargaining agreement, gave written notice to all joint apprenticeship committees and to the Bureau of Apprenticeship, or, if not covered by a collective bargaining agreement, gave written notice to the Bureau of Apprenticeship and to all nonjoint apprenticeship sponsors in the labor market area.

2. The notice included at least the contractor's name and address, the job site address, the value of the contract, the expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with subparagraph (3)(a)1.

(5) REVOCATION OF CERTIFICATE.—Failure by the contractor to employ all qualified applicants referred to him from registered apprenticeship or on-the-job training programs, at least up to the number of such apprentices and trainees required by the applicable provision of subparagraph (3)(a)1., shall result in revocation of the certificate by the bureau. This section shall not limit the contractor from exercising its usual method of selection of employees.

(6) CIVIL PENALTY; CONTRACTOR.—The Division of Labor shall assess a civil penalty against any contractor who breaches the terms of the contract clauses required by this section to be contained in that contract or enters into a contract with any other contractor, any state agency, county, or municipality not containing the contract clauses required by this section. Such civil penalty shall not exceed an amount equal to 5 percent of the value of such contract and shall be paid into the General Revenue Fund.

History.—s. 6, ch. 72-113; s. 1, ch. 73-283; s. 60, ch. 73-338; s. 1, ch. 75-287; s. 1, ch. 76-184; s. 1, ch. 78-313; s. 34, ch. 79-7; s. 10, ch. 79-397; s. 187, ch. 79-400.

CHAPTER 447

LABOR ORGANIZATIONS

PART I GENERAL PROVISIONS (ss. 447.01-447.17)

PART II PUBLIC EMPLOYEES (ss. 447.201-447.609)

PART I

GENERAL PROVISIONS

447.01 Regulating labor unions; state policy.—

(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.

History.—s. 1, ch. 21968, 1943.
Note.—Former s. 481.01.
cf.—s. 447.15 Railway workers excepted.

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

(1) The term "labor organization" means any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state, provided that an employee organization, as defined in s. 447.203(11), shall be included in this definition at such time as it seeks to register pursuant to s. 447.305.

(2) The term "business agent" means any person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

(a) The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or

(b) Soliciting or receiving from any employer any right or privilege for employees.

(3) The term "division" means the Division of Labor of the Department of Labor and Employment Security.

History.—s. 2, ch. 21968, 1943; s. 1, ch. 65-396; s. 1, ch. 77-84; s. 35, ch. 79-7; s. 1, ch. 79-89; s. 188, ch. 79-400.
Note.—Former s. 481.02.

447.03 Employees' right of self-organization.—Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

History.—s. 3, ch. 21968, 1943; s. 1, ch. 74-10.
Note.—Former s. 481.03.

447.04 Business agents; licenses, permits, etc.—

(1) No person shall be granted a license or a permit to act as a business agent in the state:

(a) Who is not a citizen of the United States.

(b) Who has been convicted of a felony and has not had his civil rights restored.

(c) Who is not a person of good moral character.

(2)(a) Every person desiring to act as a business agent in this state shall, before doing so, obtain a license or permit by filing an application under oath therefor with the Division of Labor of the Department of Labor and Employment Security, accompanied by a fee of $25 and a full set of fingerprints of the applicant taken by a law enforcement agency qualified to take fingerprints. There shall accompany the application a statement signed by the president and the secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The division shall hold such application on file for a period of 30 days, during which time any person may file objections to the issuing of such license or permit.

(b) The division may also conduct an independent investigation of the applicant and, if objections are filed, it may hold, or cause to be held, a hearing in accordance with the requirements of chapter 120.

The objectors and the applicant shall be permitted to attend said hearing and present evidence.

(3) After the expiration of the 30-day period, regardless of whether or not any objections have been filed, the division shall review the application, together with all information that it may have, including, but not limited to, any objections that may have been filed to such application, any information that may have been obtained pursuant to an independent investigation, and the results of any hearing on the application. If the division shall, from a review of the information, find that the applicant is qualified, pursuant to the terms of this chapter, it shall issue such license or permit, and said license or permit shall run for the calendar year for which issued, unless sooner surrendered, suspended, or revoked.

(4) Licenses and permits shall expire at midnight, December 31, but may be renewed by the division on a form prescribed by it; however, if any such license or permit has been surrendered, suspended, or revoked during the year, then such applicant must go through the same formalities as a new applicant.

(5) Grounds for denial, suspension, or revocation of licenses and permits shall include false application.

History.—s. 4, ch. 21968, 1943; s. 1, ch. 26762, 1951; ss. 1, 2, ch. 61-120; ss. 1, 2, ch. 63-139; s. 2, ch. 65-396; ss. 16, 35, ch. 69-106; s. 169, ch. 71-377; s. 153, ch. 77-104; s. 1, ch. 77-116; s. 1, ch. 77-184; s. 1, ch. 77-343; s. 36, ch. 79-7.
Note.—Former s. 481.04.
cf.—s. 455.10 Restrictions on requirement of citizenship.

447.041 Hearings.—

(1) Any person or labor organization denied a license, permit, or registration shall be afforded the opportunity for a hearing by the division in accordance with the requirements of chapter 120.

(2) The division may, pursuant to the requirements of chapter 120, suspend or revoke the license or permit of any business agent or the registration of any labor organization for the violation of any provision of this chapter.

History.—s. 4, ch. 77-184.

447.045 Information confidential.—Neither the division nor any investigator or employee of the division shall divulge in any manner the information obtained pursuant to the processing of applicant fingerprint cards.

History.—s. 2, ch. 77-184.

447.05 Initiation fees; limitation.—Labor unions or labor organizations shall not charge an initiation fee in excess of the sum of $15; provided, that initiation fees in effect on January 1st, 1940, may be continued.

History.—s. 5, ch. 21968, 1943.
Note.—Former s. 481.05.

447.06 Registration of labor organizations required.—

(1) Every labor organization operating in the state shall make a report under oath, in writing, to the Division of Labor of the Department of Labor and Employment Security annually, on or before December 31. Such report shall be filed by the secretary or business agent of such labor organization, shall be in such form as the division may prescribe, and shall show the following facts:

(a) The name of the labor organization;

(b) The location of its office; and

(c) The name and address of the president, secretary, treasurer, and business agent.

(2) At the time of filing such report, it shall be the duty of every such labor organization to pay the division an annual fee therefor in the sum of $1.

History.—s. 6, ch. 21968, 1943; ss. 16, 35, ch. 69-106; s. 153, ch. 77-104; s. 6, ch. 77-110; s. 3, ch. 77-184; s. 37, ch. 79-7.
Note.—Former s. 481.06.

447.07 Records and accounts required to be kept.—It shall be the duty of any and all labor organizations in this state to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor organization shall be entitled at all reasonable times to inspect the books, records and accounts of such labor organization.

History.—s. 7, ch. 21968, 1943.
Note.—Former s. 481.07.

447.08 Rights of members in armed forces.— Any employee who is a member of any labor organization who, because of services with the Armed Forces of the United States, during time of war or national emergency, has been unable to pay any dues, assessments or sums levied by any labor organization, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any labor organization to which he belonged.

History.—s. 8, ch. 21968, 1943.
Note.—Former s. 481.08.

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without

authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) To seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in s. 447.03; to coerce or intimidate any elected or appointed public official; or to intimidate the family, picket the domicile, or injure the person or property of such employee or public official, or his family.

(12) To picket beyond the area of the industry or employment within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

(14) To solicit advertising in the name of a labor organization without the written permission of such organization.

(15) To undertake through the medium of a card, circular, pamphlet, newspaper or any other medium whatsoever, or by any holding out to the public as officially representing a labor organization without the written authority or contract with such labor organization. Any publication claiming endorsement by a labor organization shall list in such publication the name and address of the organization or organizations endorsing same.

History.—s. 9, ch. 21968, 1943; s. 1, ch. 65-355; s. 2, ch. 77-343.
Note.—Former s. 481.09.

447.11 Actions and suits; labor organizations as parties.—Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only of such labor organization.

History.—s. 11, ch. 21968, 1943.
Note.—Former s. 481.11.
cf.—s. 48.141 Process, service.

447.12 Fees for registration.—All fees collected by the Division of Labor of the Department of Labor and Employment Security hereunder shall be paid to the State Treasurer and credited to the General Revenue Fund.

History.—s. 12, ch. 21968, 1943; ss. 16, 35, ch. 69-106; s. 153, ch. 77-104; s. 6, ch. 77-110; s. 5, ch. 77-184; s. 38, ch. 79-7.
Note.—Former s. 481.12.

447.13 Right to strike preserved.—Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.

History.—s. 13, ch. 21968, 1943.
Note.—Former s. 481.13.
cf.—ss. 453.05, 453.13 Work stoppage on public utilities.

447.14 Penalties.—Any person or labor organization who shall violate any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 14, ch. 21968, 1943; s. 373, ch. 71-136; s. 3, ch. 77-343.
Note.—Former s. 481.14.

447.15 Federal regulations recognized.—All railway labor organizations and members thereof shall be exempt from all of the provisions of this chapter as long as they are regulated by Act of Congress.

History.—s. 15, ch. 21968, 1943.
Note.—Former s. 481.15.

447.16 Applicability of chapter when effective.—Any labor business agent licensed on July 1, 1965, may renew such license each year on forms provided by the Division of Labor of the Department of Labor and Employment Security without submitting fingerprints so long as such license or permit has not expired, been surrendered, suspended or revoked. The fingerprinting requirements of this act shall become effective for new applicants for labor business agent license immediately upon this act becoming a law.

History.—s. 3, ch. 65-396; ss. 16, 35, ch. 69-106; s. 153, ch. 77-104; s. 6, ch. 77-110; s. 39, ch. 79-7.

447.17 Civil remedy; injunctive relief.—

(1) Any person who may be denied employment or discriminated against in his employment on account of membership or nonmembership in any labor union or labor organization shall be entitled to recover from the discriminating employer, other person, firm, corporation, labor union, labor organization, or association, acting separately or in concert, in the courts of this state, such damages as he may have sustained and the costs of suit, including reasonable attorney's fees. If such employer, other person, firm, corporation, labor union, labor organization, or association acted willfully and with malice or reckless indifference to the rights of others, punitive damages may be assessed against such employer, other person, firm, corporation, labor union, labor organization, or association.

(2) Any person sustaining injury as a result of any violation or threatened violation of the provisions of this section shall be entitled to injunctive relief against any and all violators or persons threatening violation.

(3) The remedy and relief provided for by this section shall not be available to public employees as defined in part II of this chapter.

History.—s. 2, ch. 74-100; s. 1, ch. 77-174; s. 4, ch. 77-343.

PART II

PUBLIC EMPLOYEES

447.201 Statement of policy.—It is declared that the public policy of the state, and the purpose of this part, is to provide statutory implementation of s. 6, Art. I of the State Constitution, with respect to public employees; to promote harmonious and cooperative relationships between government and its employees, both collectively and individually; and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. It is the intent of the Legislature that nothing herein shall be construed either to encourage or discourage organization of public employees. These policies are best effectuated by:

(1) Granting to public employees the right of organization and representation;

(2) Requiring the state, local governments, and other political subdivisions to negotiate with bargaining agents duly certified to represent public employees;

(3) Creating a Public Employees Relations Commission to assist in resolving disputes between public employees and public employers; and

(4) Recognizing the constitutional prohibition against strikes by public employees and providing remedies for violations of such prohibition.

History.—s. 3, ch. 74-100; s. 5, ch. 77-343.

447.203 Definitions.—As used in this part:

(1) "Commission" means the Public Employees Relations Commission created by s. 447.205.

[1](2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees, the Governor shall be deemed to be the public employer, and the Board of Regents shall be deemed to be the public employer with respect to faculty and administrative and professional employees and for all other public employees within the state university system not otherwise determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind.

(3) "Public employee" means any person employed by a public employer except:

(a) Those persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.

(b) Those persons holding positions by appointment or employment in the organized militia.

(c) Those individuals acting as negotiating representatives for employer authorities.

(d) Those persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.

(e) Those persons holding positions of employment with the Florida Legislature.

(f) Those persons who have been convicted of a crime and are inmates confined to institutions within the state.

(4) "Managerial employees" are those employees who:

(a) Perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies:

1. They formulate or assist in formulating policies which are applicable to bargaining unit employees.

2. They may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations.

3. They have a role in the administration of agreements resulting from collective bargaining negotiations.

4. They have a significant role in personnel administration.

5. They have a significant role in employee relations.

6. They are included in the definition of administrative personnel contained in s. 228.041(10).

7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.

(b) Serve as police chiefs, fire chiefs, or directors of public safety of any police, fire, or public safety department. Other police officers, as defined in s. 943.10(1), and firefighters, as defined in s. 633.30(1), may be determined by the commission to be managerial employees of such departments. In making such determinations, the commission shall consider, in addition to the criteria established in paragraph (a), the paramilitary organizational structure of the department involved.

However, in determining whether an individual is a managerial employee pursuant to either paragraph (a) or paragraph (b), above, the commission may consider historic relationships of the employee to the public employer and to coemployees.

(5) "Confidential employees" are persons who act in a confidential capacity to assist or aid managerial employees as defined in subsection (4).

(6) "Strike" means the concerted failure of employees to report for duty; the concerted absence of employees from their positions; the concerted stoppage of work by employees; the concerted submission of resignations by employees; the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer for the purpose of inducing, influencing, condoning, or coercing a change in the terms and conditions of employment or the rights, privileges, or obligations of public employment, or participating in a deliberate and concerted course of conduct which adversely affects the services of the public employer; the concerted failure of employees to report for work after the expiration of a collective bargaining agreement; and picketing in furtherance of a work stoppage. The term "strike" shall also mean any overt preparation, including, but not limited to, the establishment of strike funds with regard to the above-listed activities.

(7) "Strike funds" are any appropriations by an employee organization which are established to directly or indirectly aid any employee or employee organization to participate in a strike in the state.

(8) "Bargaining unit" means either that unit determined by the commission, that unit determined through local regulations promulgated pursuant to s. 447.603, or that unit determined by the public employer and the public employee organization and approved by the commission to be appropriate for the purposes of collective bargaining. However, no bargaining unit shall be defined as appropriate which includes employees of two employers that are not departments or divisions of the state, a county, a municipality, or other political entity.

(9) "Chief executive officer" for the state shall mean the Governor and for other public employers shall mean the person, whether elected or appointed, who is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer.

(10) "Legislative body" means the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of the community college.

(11) "Employee organization" or "organization" means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.

(12) "Bargaining agent" means the employee organization which has been certified by the commission as representing the employees in the bargaining unit, as provided in s. 447.307, or its representative.

(13) "Professional employee" means:

(a) Any employee engaged in work in any two or more of the following categories:

1. Work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;

2. Work involving the consistent exercise of discretion and judgment in its performance;

3. Work of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

4. Work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental or physical processes.

(b) Any employee who:

1. Has completed the course of specialized intellectual instruction and study described in subparagraph 4. of paragraph (a); and

2. Is performing related work under supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(14) "Collective bargaining" means the performance of the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment, except that neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this part.

(15) "Membership dues deduction" means the practice of a public employer of deducting dues and uniform assessments from the salary or wages of a public employee. Such term also means the practice of a public employer of transmitting the sums so deducted to such employee organization.

(16) "Civil service" means any career, civil, or merit system used by any public employer.

(17) "Good faith bargaining" shall mean, but not be limited to, the willingness of both parties to meet at reasonable times and places, as mutually agreed upon, in order to discuss issues which are proper subjects of bargaining, with the intent of reaching a common accord. It shall include an obligation for both parties to participate actively in the negotiations with an open mind and a sincere desire, as well as making a sincere effort, to resolve differences and come to an agreement. In determining whether a party failed to bargain in good faith, the commission shall consider the total conduct of the parties during negotiations as well as the specific incidents of alleged bad faith. Incidents indicative of bad faith shall include, but not be limited to, the following occurrences:

(a) Failure to meet at reasonable times and places with representatives of the other party for the purpose of negotiations.

(b) Placing unreasonable restrictions on the other party as a prerequisite to meeting.

(c) Failure to discuss bargainable issues.

(d) Refusing, upon reasonable written request, to provide public information, excluding work products as defined in s. 447.605.

(e) Refusing to negotiate because of an unwanted person on the opposing negotiating team.

(f) Negotiating directly with employees rather than with their certified bargaining agent.

(g) Refusing to reduce a total agreement to writing.

(18) "Student representative" means the representative selected by each community college student government association and the council of student body presidents. Each representative may be present at all negotiating sessions which take place between the appropriate public employer and an exclusive bargaining agent. Said representative shall be enrolled as a student with at least 8 credit hours in the respective community college or in the state university system during his term as student representative.

History.—s. 3, ch. 74-100; s. 1, ch. 76-39; s. 1, ch. 76-214; s. 1, ch. 76-269; s. 1, ch. 77-174; s. 6, ch. 77-343; s. 1, ch. 79-100; s. 118, ch. 79-222.

[1]**Note.**—Subsection (2) was amended by s. 118, ch. 79-222, effective July 1, 1980, to read:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees, the Governor shall be deemed to be the public employer, and the Board of Regents shall be deemed to be the public employer with respect to faculty and administrative and professional employees and for all other public employees within the state university system not otherwise determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees, except that such faculty and administrative and professional employees and all other such employees shall have the right, in elections to be conducted at each university by the commission pursuant to its rules, to elect not to participate in collective bargaining. In the event that a majority of such voting employees at any university elect not to participate in collective bargaining, they shall be removed from the Board of Regents bargaining unit. If, thereafter, by election conducted by the commission pursuant to its rules, a majority of such voting employees elect to participate in collective bargaining, they shall be included again in the Board of Regents bargaining unit for such purpose. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind.

447.205 Public Employees Relations Commission.—

(1) There is hereby created within the Department of Labor and Employment Security the Public Employees Relations Commission, hereinafter referred to as the "commission." The commission shall be composed of a chairman and two full-time members to be appointed by the Governor, subject to confirmation by the Senate, from persons representative of the public, known for their objective and independent judgment, who shall not be employed by, or hold any commission with, any governmental unit in the state or any employee organization, as defined in this part, while in said office. In no event shall more than one appointee be a person who, on account of previous vocation, employment, or affiliation, is, or has been, classified as a representative of employers; and in no event shall more than one such appointee be a person who, on account of previous vocation, employment, or affiliation, is, or has been, classified as a representative of employees or employee organizations. The commissioners shall devote full time to commission duties and shall not engage in any other business, vocation, or employment while in said office. The term of office shall be 4 years, except that, beginning January 1, 1980, the chairman shall be appointed for a term of 4 years, one commissioner for a term of 1 year, and one commissioner for a term of 2 years. In the event of a vacancy prior to the expiration of a term of office, an appointment shall be made for the unexpired term of that office. The chairman shall be responsible for the administrative functions of the commission and shall have the authority to employ such personnel as may be necessary to carry out the provisions of this part. Once appointed, the chairman shall serve as chairman for the duration of his term. Nothing contained herein shall prohibit a chairman or commissioner from serving multiple terms.

(2) The chairman and the other commissioners shall be paid annual salaries to be fixed by law. Such salaries shall be paid in equal monthly installments. All commissioners shall be reimbursed for expenses, as provided in s. 112.061.

(3) The commission, in the performance of its powers and duties under part II of this chapter, shall not be subject to control, supervision, or direction by the Department of Labor and Employment Security.

(4) The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(5) The commission shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, furniture, equipment, and supplies, and for printing and binding, as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the commission shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman.

(6) The commission may, in its discretion, charge

for publications, subscriptions, and copies of records and documents. Such funds shall be deposited in a trust fund to be established by the commission and shall be used to help defray the cost of providing such publications, subscriptions, and copies of records and documents.

(7) The commission shall maintain and keep open during reasonable business hours an office, which shall be provided in the capitol center for the transaction of its business, at which its official records and papers shall be kept. The commission may hold sessions and conduct hearings at any place within the state.

(8) The commission shall have a seal for authentication of its orders and proceedings, upon which shall be inscribed the words "State of Florida—Public Employees Relations Commission—Seal", and it shall be judicially noticed.

(9) The commission is expressly authorized to provide by rule for, and to destroy, obsolete records of the commission.

(10) The deliberations of the commission in any proceeding before it shall be exempt from the provisions of chapter 286. However, any hearing held or oral argument heard by the commission pursuant to chapter 120 or chapter 447 shall be open to the public. All draft orders developed in preparation for, or preliminary to, the issuance of a final written order shall be exempt from the provisions of chapter 119.

History.—s. 3, ch. 74-100; s. 7, ch. 77-343; s. 40, ch. 79-7; s. 1, ch. 79-85; s. 189, ch. 79-400.

447.207 Commission; powers and duties.—

(1) The commission shall, in accordance with chapter 120, adopt, promulgate, amend, or rescind such rules and regulations as it deems necessary and administratively feasible to carry out the provisions of this part.

(2) To accomplish the objectives and carry out the duties prescribed by this part, the commission may preserve and enforce order during any proceeding; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses; or issue subpoenas for, and compel the production of, books, papers, records, documents, and other evidence. However, in the absence of extraordinary circumstances, no subpoena shall issue which commands the attendance or testimony of any commissioner or any commission employee at a commission proceeding with respect to the performance of official or assigned duties, or the production of books, papers, records, or documents of the commission which have been prepared during the performance of such duties.

(3) If any person:

(a) Misbehaves during a proceeding or so near the place thereof as to obstruct the same;

(b) Neglects to produce, after having been ordered to do so, any pertinent book, paper, record, or document; or

(c) Refuses or fails to appear after having been subpoenaed or, upon appearing, refuses to take oath or affirmation as a witness or, after having taken the oath, refuses to be examined according to law,

the commission shall certify the facts to the circuit court having jurisdiction in the county where the proceeding is taking place, which shall thereupon in a summary manner hear the evidence as to the acts complained of and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or order of, or in the presence of, the court.

(4) Any subpoena, notice of hearing, or other process or notice of the commission issued under the provisions of this part shall be served personally or by certified mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service, and a returned post-office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this part shall be served in the county wherein the persons required to be served reside or may be found.

(5) The commission shall adopt rules as to the qualifications of persons who may serve as mediators and special masters and shall maintain lists of such qualified persons who are not employees of the commission. The commission may initiate dispute resolution procedures by special masters, pursuant to the provisions of this part.

(6) Pursuant to its established procedures, the commission shall resolve questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining, expeditiously process charges of unfair labor practices and violations of s. 447.505 by public employees, and resolve such other questions and controversies as it may be authorized herein to undertake. The petitioner, charging party, respondent, and any intervenors shall be the adversary parties before the commission in any adjudicatory proceeding conducted pursuant to this part. Any commission statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to s. 447.307 or s. 447.503 shall not constitute a rule within the meaning of s. 120.52(14).

(7) The commission shall provide by rule a procedure for the filing and prompt disposition of petitions for a declaratory statement as to the applicability of any statutory provision or any rule or order of the commission. Such rule or rules shall provide for, but not be limited to, an expeditious disposition of petitions posing questions relating to potential unfair labor practices. Commission disposition of a petition shall be final agency action and shall not constitute a rule as defined in s. 120.52(14).

History.—s. 3, ch. 74-100; s. 8, ch. 77-343; s. 2, ch. 79-85; s. 190, ch. 79-400.
cf.—s. 1.01 defines "registered mail" as including certified mail.

447.209 Public employer's rights.—It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization

and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

History.—s. 3, ch. 74-100.

447.301 Public employees' rights; organization and representation.—

(1) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

(2) Public employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment, excluding any provisions of the Florida Statutes or appropriate ordinances relating to retirement. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.

(3) Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.

(4) Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his own grievances, in person or by legal counsel, to his public employer and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.

(5) In negotiations over the terms and conditions of service and other matters affecting the working environment of employees, or the learning environment of students, in institutions of higher education, one student representative selected by the council of student body presidents may, at his discretion, be present at all negotiating sessions which take place between the Board of Regents and the bargaining agent for an employee bargaining unit. In the case of community colleges, the student government association of each college shall establish procedures for the selection of, and shall select, a student representative to be present, at his discretion, at negotiations between the bargaining agent of the employees and the board of trustees. Each student representative shall have access to all written draft agreements and all other written documents pertaining to negotiations exchanged by the appropriate public employer and the bargaining agent, including a copy of any prepared written transcripts of any negotiating session. Each student representative shall have the right at reasonable times during the negotiating session to comment to the parties and to the public upon the impact of proposed agreements on the educational environment of students. Each student representative shall have the right to be accompanied by alternates or aides, not to exceed a combined total of two in number. Each student representative shall be obligated to participate in good faith during all negotiations and shall be subject to the rules and regulations of the Public Employees Relations Commission. The student representatives shall have neither voting nor veto power in any negotiation, action, or agreement. The state or any branch, agency, division, agent, or institution of the state shall not expend any moneys from any source for the payment of reimbursement for travel expenses or per diem to aides, alternates, or student representatives participating in, observing, or contributing to, any negotiating sessions between the bargaining parties; however, this limitation shall not apply to the use of student activity fees for the reimbursement of travel expenses and per diem to the university student representative, aides, or alternates participating in the aforementioned negotiations between the Board of Regents and the bargaining agent for an employee bargaining unit.

History.—s. 3, ch. 74-100; s. 9, ch. 77-343; s. 191, ch. 79-400.

447.303 Dues; deduction and collection.— Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments. However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked pursuant to s. 447.507, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.

History.—s. 3, ch. 74-100; s. 10, ch. 77-343.

447.305 Registration of employee organization.—

(1) Every employee organization seeking to become a certified bargaining agent for public employees shall register with the commission pursuant to the procedures set forth in s. 120.60 prior to requesting recognition by a public employer for purposes of collective bargaining and prior to submitting a petition to the commission requesting certification as an exclusive bargaining agent. Further, if such employee organization is not registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent. The application for registration required by this section shall be under oath and in such form as the commission may prescribe and shall include:

(a) The name and address of the organization and of any parent organization or organization with which it is affiliated.

(b) The names and addresses of the principal officers and all representatives of the organization.

(c) The amount of the initiation fee and of the monthly dues which members must pay.

(d) The current annual financial statement of the organization.

(e) The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.

(f) A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin.

(g) A copy of the current constitution and bylaws of the employee organization.

(h) A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption of a rule by the commission, a state or national affiliate or parent organization of any registering labor organization may annually submit a copy of its current constitution and bylaws.

(2) A registration granted to an employee organization pursuant to the provisions of this section shall run for 1 year from the date of issuance. A registration shall be renewed annually by filing application for renewal under oath with the commission, which application shall reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration shall include a current annual financial report, signed by its president and treasurer or corresponding principal officers, containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as the commission may prescribe:

(a) Assets and liabilities at the beginning and end of the fiscal year;

(b) Receipts of any kind and the sources thereof;

(c) Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such employee organization and any other employee organization affiliated with it or with which it is affiliated or which is affiliated with the same national or international employee organization;

(d) Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(e) Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.

(3) A registration fee shall accompany each application filed with the commission. The amount charged for an application for registration or renewal of registration shall not exceed $15. All such money collected by the commission shall be deposited in the General Revenue Fund.

(4) Notification of registrations and renewals of registration shall be furnished at regular intervals by the commission to the Division of Labor of the Department of Labor and Employment Security.

(5) Every employee organization shall keep accurate accounts of its income and expenses, which accounts shall be open for inspection at all reasonable times by any member of the organization or by the commission.

History.—s. 3, ch. 74-100; s. 11, ch. 77-343; s. 2, ch. 79-89.

447.307 Certification of employee organization.—

(1)(a) Any employee organization which is designated or selected by a majority of public employees in an appropriate unit as their representative for purposes of collective bargaining shall request recognition by the public employer. The public employer shall, if satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, recognize the employee organization as the collective bargaining representative of employees in the designated unit. Upon recognition by a public employer, the employee organization shall immediately petition the commission for certification. The commission shall review only the appropriateness of the unit proposed by the employee organization. If the unit is appropriate according to the criteria used in this part, the commission shall immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate according to the criteria used in this part, the commission may dismiss the petition.

(b) Whenever a public employer recognizes an employee organization on the basis of majority status and on the basis of appropriateness in accordance with subparagraph (4)(f)5. of this section, the commission shall, in the absence of inclusion of a prohibited category of employees or violation of s. 447.501, certify the proposed unit.

(2) If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the commission for certification as the bargaining agent for a proposed bargaining unit. The petition shall be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented for purposes of collective bargaining by the petitioning employee organization. Once a petition for certification has been filed by an employee organization, any registered employee organization desiring placement on the ballot in any election to be conducted pursuant to this section may be permitted by the commission to intervene in the proceeding upon motion accompanied by dated statements signed by at least 10 percent of the employees in the proposed unit, indicating that such employees desire to be represented for the purposes of collective bargaining by the moving employee organization. Any employee, employer, or employee organization having sufficient reason to

believe any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation or are otherwise invalid shall be given a reasonable opportunity to verify and challenge the signatures appearing on the petition.

(3)(a) The commission or one of its designated agents shall investigate the petition to determine its sufficiency; if it has reasonable cause to believe that the petition is sufficient, the commission shall provide for an appropriate hearing upon due notice. Such a hearing may be conducted by an agent of the commission. If the commission finds the petition to be insufficient, it may dismiss the petition. If the commission finds upon the record of the hearing that the petition is sufficient, it shall immediately:

1. Define the proposed bargaining unit and determine which public employees shall be qualified and entitled to vote at any election held by the commission.

2. Identify the public employer or employers for purposes of collective bargaining with the bargaining agent.

3. Order an election by secret ballot, the cost of said election and any required run-off election to be borne equally by the parties, except as the commission may provide by rule. The commission's order assessing costs of an election may be enforced pursuant to the provisions of this part.

(b) When an employee organization is selected by a majority of the employees voting in an election, the commission shall certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.

(c) In any election in which none of the choices on the ballot receives the vote of a majority of the employees voting, a runoff election shall be held according to rules promulgated by the commission.

(d) No petition may be filed seeking an election in any appropriate bargaining unit to determine the exclusive bargaining agent if a representation election has been conducted within the preceding 12-month period. Furthermore, if a valid collective bargaining agreement covering any of the employees in a proposed unit is in effect, a petition for certification may be filed with the commission only during the period extending from 150 days to 90 days immediately preceding the expiration date of said agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.

(4) In defining a proposed bargaining unit, the commission shall take into consideration:

(a) The principles of efficient administration of government.

(b) The number of employee organizations with which the employer might have to negotiate.

(c) The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public.

(d) The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate.

(e) The organizational structure of the public employer.

(f) Community of interest among the employees to be included in the unit, considering:

1. The manner in which wages and other terms of employment are determined.

2. The method by which jobs and salary classifications are determined.

3. The interdependence of jobs and interchange of employees.

4. The desires of the employees.

5. The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship.

(g) The statutory authority of the public employer to administer a classification and pay plan.

(h) Such other factors and policies as the commission may deem appropriate.

However, no unit shall be established or approved for purposes of collective bargaining which includes both professional and nonprofessional employees unless a majority of each group votes for inclusion in such unit.

History.—s. 3, ch. 74-100; s. 12, ch. 77-343; s. 2, ch. 79-100.

447.308 Revocation of certification of employee organization.—

(1) Any employee or group of employees which no longer desires to be represented by the certified bargaining agent may file with the commission a petition to revoke certification. The petition shall be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented for purposes of collective bargaining by the certified bargaining agent. The time of filing said petition shall be governed by the provisions of s. 447.307(3)(d) relating to petitions for certification. Any employee or employee organization having sufficient reason to believe any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation or are otherwise invalid shall be given a reasonable opportunity to verify and challenge the signatures appearing on the petition. The commission or one of its designated agents shall investigate the petition to determine its sufficiency. If the commission finds the petition to be insufficient, it may dismiss the petition. If the commission finds that the petition is sufficient, it shall immediately:

(a) Identify the bargaining unit and determine which public employees shall be qualified and entitled to vote in the election held by the commission.

(b) Identify the public employer or employers.

(c) Order an election by secret ballot, the cost of said election to be borne equally by the parties, except as the commission may provide by rule. The commission's order assessing costs of an election may be enforced pursuant to the provisions of this part.

(2) If a majority of the employees voting in such election vote against the continuation of representation by the certified bargaining agent, the certification of the employee organization as the exclusive bargaining agent for the employees in the bargaining unit shall be revoked.

(3) If a majority of the employees voting in such election do not vote against the continuation of representation by the certified bargaining agent, the certification of the employee organization as the exclusive bargaining agent for the employees in the unit shall be retained by the organization.

History.—s. 2, ch. 79-100.

447.309 Collective bargaining; approval or rejection.—

(1) After an employee organization has been certified pursuant to the provisions of this part, the bargaining agent for the organization and the chief executive officer of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit. The chief executive officer or his representative and the bargaining agent or its representative shall meet at reasonable times and bargain in good faith. In conducting negotiations with the bargaining agent, the chief executive officer or his representative shall consult with, and attempt to represent the views of, the legislative body of the public employer. Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and such agreement shall be signed by the chief executive officer and the bargaining agent. Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until such agreement has been ratified by the public employer and by public employees who are members of the bargaining unit, subject to the provisions of subsections (2) and (3). However, with respect to statewide bargaining units, any agreement signed by the Governor and the bargaining agent for such a unit shall not be binding until approved by the public employees who are members of the bargaining unit, subject to the provisions of subsections (2) and (3).

(2) Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.

(3) If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.

(4) If the agreement is not ratified by the public employer or is not approved by a majority vote of employees voting in the unit, in accordance with procedures adopted by the commission, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.

(5) Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided for in any Florida statute or appropriate ordinances relating to retirement and in applicable merit and civil service rules and regulations.

History.—s. 3, ch. 74-100; s. 13, ch. 77-343.

447.401 Grievance procedures.—Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties. However, an arbiter or other neutral shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee organization is certified as the bargaining agent of a unit, the grievance procedure then in existence may be the subject of collective bargaining, and any agreement which is reached shall supersede the previously existing procedure. All public employees shall have the right to a fair and equitable grievance procedure, administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization. A career service employee shall have the option of utilizing the civil service appeal procedure or a grievance procedure established under this section, but such employee cannot use both a civil service appeal and a grievance procedure.

History.—s. 3, ch. 74-100; s. 1, ch. 74-378; s. 14, ch. 77-343.

447.403 Resolution of impasses.—

(1) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have occurred when one of the parties so declares in writing to the other party and to the commission. When an impasse occurs, the public employer or the bargaining agent, or both parties acting jointly, may appoint, or secure the appointment of, a mediator to assist in the resolution of the impasse.

(2) If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to, a special master

acceptable to both parties. If the parties are unable to agree on the appointment of a special master, the commission shall appoint, in its discretion, a qualified special master. Nothing in this section shall preclude the parties from using the services of a mediator at any time during the conduct of collective bargaining.

(3) The special master shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. The hearings shall be held at times, dates, and places to be established by the special master in accordance with rules promulgated by the commission. The special master shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on his own behalf. Within 15 calendar days after the close of the final hearing, the special master shall transmit his recommended decision to the commission which shall, within 5 working days after receipt thereof, transmit the recommended decision to the representatives of both parties. Such recommended decision shall be discussed by the parties and shall be deemed approved by both parties unless either party, by written notice filed with the commission within 20 calendar days after the date the commission mailed the special master's recommended decision to the parties, rejects the recommended decision. The written notice shall include a statement of the cause for rejection and shall be served upon the other party.

(4) In the event that either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special master:

(a) The chief executive officer of the governmental entity involved shall, within 10 days after rejection of the recommended decision of the special master, submit to the legislative body of the governmental entity involved a copy of the findings of fact and recommended decision of the special master, together with the chief executive officer's recommendations for settling the dispute; (The chief executive officer shall also transmit his recommendations to the employee organization; if the dispute involves employees for whom the Board of Regents is the public employer, the Governor may also submit recommendations for settling the dispute to the legislative body.)

(b) The employee organization shall submit its recommendations for settling the dispute to such legislative body and to the chief executive officer;

(c) The legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the recommended decision of the special master; and

(d) Thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

History.—s. 3, ch. 74-100; s. 15, ch. 77-343; s. 192, ch. 79-400.

447.405 Factors to be considered by the special master.—The special master shall conduct the hearings and render his recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special master in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

(a) Hazards of employment.
(b) Physical qualifications.
(c) Educational qualifications.
(d) Intellectual qualifications.
(e) Job training and skills.
(f) Retirement plans.
(g) Sick leave.
(h) Job security.

(5) Availability of funds.

History.—s. 3, ch. 74-100; s. 16, ch. 77-343.

447.407 Compensation of mediator and special master; expenses.—The compensation of the mediator and special master, and all stenographic and other expenses, shall be borne equally by the parties.

History.—s. 3, ch. 74-100; s. 17, ch. 77-343.

447.409 Records.—All records which are relevant to, or have a bearing upon, any issue or issues raised by the proceedings conducted by the special master shall be made available to the special master by a request in writing to any of the parties to the impasse proceedings. Notice of such request shall be furnished to all parties. Any such records which are made available to the special master shall also be made available to any other party to the impasse proceedings, upon written request.

History.—s. 3, ch. 74-100; s. 18, ch. 77-343.

447.501 Unfair labor practices.—

(1) Public employers or their agents or representatives are prohibited from:

(a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.

(b) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment.

(c) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit.

(d) Discharging or discriminating against a public employee because he has filed charges or given

testimony under this part.

(e) Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization or contributing financial support to such an organization.

(f) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the certified bargaining agent for the public employee or the employee involved.

(2) A public employee organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:

(a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part or interfering with, restraining, or coercing managerial employees by reason of their performance of job duties or other activities undertaken in the interests of the public employer.

(b) Causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or nonmembership in an employee organization or attempting to cause the public employer to violate any of the provisions of this part.

(c) Refusing to bargain collectively or failing to bargain collectively in good faith with a public employer.

(d) Discriminating against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceedings provided for in this part.

(e) Participating in a strike against the public employer by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the penalties provided in this part.

(f) Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students or students in institutions of higher learning.

(3) Notwithstanding the provisions of subsections (1) and (2), the parties' rights of free speech shall not be infringed, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair employment practice or of any other violation of this part, if such expression contains no promise of benefits or threat of reprisal or force.

History.—s. 3, ch. 74-100; s. 1, ch. 77-174.

447.503 Charges of unfair labor practices.—It is the intent of the Legislature that the commission act as expeditiously as possible to settle disputes regarding alleged unfair labor practices. To this end, violations of the provisions of s. 447.501 shall be remedied by the commission in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section shall govern:

(1) A proceeding to remedy a violation of the provisions of s. 447.501 shall be initiated by the filing of a charge with the commission by an employer, employee, or employee organization, or any combination thereof. Such a charge shall contain a clear and concise statement of facts constituting the alleged unfair labor practice, including the names of all individuals involved in the alleged unfair labor practice, specific reference to the provisions of s. 447.501 alleged to have been violated, and such other relevant information as the commission may by rule require or allow. Service of the charge shall be made upon each named respondent at the time of filing with the commission. The charge must be accompanied by sworn statements and documentary evidence sufficient to establish a prima facie violation of the applicable unfair labor practice provision. Such supporting evidence is not to be attached to the charge and is to be furnished only to the commission.

(2) The commission, or any agent designated by it for such purpose, shall thereupon review the charge to determine its sufficiency.

(a) If upon review it is determined that the charge is insufficient, the commission or its designated agent may issue a summary dismissal of the charge. A charging party whose charge is dismissed by a designated agent may appeal the dismissal to the commission within 20 days after the date of issuance of the dismissal. If the commission finds the charge to be sufficient, it shall reinstate the charge.

(b) If upon review it is determined that the charge is sufficient, the commission shall notify the parties. Each respondent so charged shall thereupon file an answer to the charge with the commission, and serve a copy upon the charging party, no more than 20 days after service of notification of the sufficiency of the charge, unless otherwise allowed by the commission. The commission, in its discretion, may allow a charge or answer to be amended at any time. The commission may also, in its discretion, allow other interested parties to intervene in the proceeding.

(c) Upon completion of the review, the evidence filed with the commission in support of the charge shall be made available upon request in accordance with the provisions of chapter 119.

(3) Whenever a charging party alleges that a respondent has engaged in unfair labor practices and that the charging party will suffer substantial and irreparable injury if he is not granted temporary relief, the commission may petition the circuit court for appropriate injunctive relief pending the final adjudication by the commission with respect to such matter. Upon the filing of any such petition, the court shall cause notice thereof to be served upon the parties and, thereupon, shall have jurisdiction to grant such temporary relief or restraining order as it deems just and proper.

(4) The commission may issue prehearing orders requiring the parties to provide written statements of relevant issues of fact and law and such other information as the commission may require to expedite the resolution of the case. Such orders may further direct the parties to identify witnesses, exchange intended exhibits and documentary evidence, and appear at a conference before the commission or a member thereof, or a designated hearing officer, for the purpose of handling such matters as will aid the commission in expeditiously resolving the case before it.

(5) Whenever the proceeding involves a disputed

issue of material fact and an evidentiary hearing is to be conducted:

(a) The commission shall issue and serve upon all parties a notice of hearing before an assigned hearing officer at a time and place specified therein. Such notice shall be issued at least 14 days prior to the scheduled hearing.

(b) The evidentiary hearing shall be conducted by a hearing officer designated by the commission. Said hearing officer may be the commission itself, a member of the commission, or an agent designated by the commission for such purpose, provided that such agent shall be an employee of the commission and a member of The Florida Bar.

(c) Not later than 45 days after the close of the evidentiary hearing, unless extended by the commission with the consent of all parties, the hearing officer shall submit to the commission and to all parties a recommended order which shall include findings of fact and recommended rulings on procedural matters. The recommended order may also include recommended conclusions of law if requested by the commission.

(d) If the hearing was held before the commission or a member of the commission, the commission may elect to issue a final order which is in compliance with s. 120.58(1)(e) and s. 120.59.

(6)(a) If, upon consideration of the record in the case, the commission finds that an unfair labor practice has been committed, it shall issue and cause to be served an order requiring the appropriate party or parties to cease and desist from the unfair labor practice and take such positive action, including reinstatement of employees with or without back pay, as will best implement the general policies expressed in this part. However, no order of the commission shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. The order may further require the party or parties to make periodic reports showing the extent to which it has complied with the order. If, upon consideration of the record in the case, the commission finds that an unfair labor practice has not been or is not being committed, it shall issue an order dismissing the case.

(b) If the commission determines that the alleged unfair labor practice occurred more than 6 months prior to the filing of the charge, the commission shall issue an order dismissing the case, unless the person filing the charge was prevented from doing so by reason of service in the Armed Forces, in which case the 6-month period shall run from the date of the person's discharge.

(c) The commission may award to the prevailing party all or part of the costs of litigation, reasonable attorney's fees, and expert witness fees whenever the commission determines that such an award is appropriate.

(d) Final orders of the commission issued pursuant to this section shall be enforced pursuant to the provisions of s. 447.5035 and shall be reviewed pursuant to the provisions of s. 447.504.

History.—s. 3, ch. 74-100; s. 154, ch. 77-104; s. 1, ch. 77-174; s. 19, ch. 77-343; s. 1, ch. 79-295.

447.5035 Enforcement of commission orders.—In case of any failure by any employer, employee, or employee organization to comply with any order of the commission, upon application of the commission or, notwithstanding the provisions of s. 120.69(1)(b)1., upon application of any person who is a resident of the state and who is substantially interested in such order, any circuit court of this state shall have jurisdiction to enforce the order pursuant to the provisions of s. 120.69. However, if one or more petitions for enforcement and a notice of appeal involving the same agency action are pending at the same time, the district court of appeal considering the notice of appeal shall order all such actions transferred to and consolidated in the district court of appeal. If a petition for enforcement is filed after the time for filing notice of appeal has expired, the respondent may assert as a defense only that the agency action was not intended to apply to respondent or that respondent has complied with the agency action. Petitions for enforcement filed under this part shall be heard expeditiously by the circuit court to which presented and shall take precedence over all other civil matters except prior matters of the same character.

History.—s. 2, ch. 79-295.

447.504 Judicial review.—

(1) The district courts of appeal are empowered, upon the filing of appropriate notices of appeal, to review final orders of the commission pursuant to s. 120.68. A copy of the notice of appeal shall be filed with the commission. The record in the proceeding, certified by the commission, shall be filed with the court in accordance with the Florida Appellate Rules.

(2) Upon the filing of a notice of appeal, the appropriate district court of appeal shall thereupon have jurisdiction of the proceeding and may grant such temporary or permanent relief or restraining order as it deems just and proper and may enforce, modify, affirm, or set aside, in whole or in part, the order of the commission. The findings of the commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(3) The court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees whenever the court determines that such an award is appropriate. However, no such costs or fees shall be assessed against the commission in any appeal from an order issued by the commission in an adjudicatory proceeding between adversary parties conducted pursuant to this part.

(4) The commencement of proceedings under this section shall not, unless specifically ordered by the district court of appeal, operate as a stay of the commission's order.

(5) Appeals filed under this part shall be heard expeditiously by the district court of appeal to which presented and shall take precedence over all other civil matters except prior matters of the same character.

History.—s. 3, ch. 74-100; s. 20, ch. 77-343; s. 3, ch. 79-295.

447.505 Strikes prohibited.—No public employee or employee organization may participate in a strike against a public employer by instigating or supporting, in any manner, a strike. Any violation of this section shall subject the violator to the penalties provided in this part.

History.—s. 3, ch. 74-100.

447.507 Violation of strike prohibition; penalties.—

(1) Circuit courts having jurisdiction of the parties are vested with the authority to hear and determine all actions alleging violations of s. 447.505. Suits to enjoin violations of s. 447.505 will have priority over all matters on the court's docket except other emergency matters.

(2) If a public employee, a group of employees, an employee organization, or any officer, agent, or representative of any employee organization engages in a strike in violation of s. 447.505, either the commission or any public employer whose employees are involved or whose employees may be affected by the strike may file suit to enjoin the strike in the circuit court having proper jurisdiction and proper venue of such actions under the Florida Rules of Civil Procedure and Florida Statutes. The circuit court shall conduct a hearing, with notice to the commission and to all interested parties, at the earliest practicable time. If the plaintiff makes a prima facie showing that a violation of s. 447.505 is in progress or that there is a clear, real, and present danger that such a strike is about to commence, the circuit court shall issue a temporary injunction enjoining the strike. Upon final hearing, the circuit court shall either make the injunction permanent or dissolve it.

(3) If an injunction to enjoin a strike issued pursuant to this section is not promptly complied with, on the application of the plaintiff, the circuit court shall immediately initiate contempt proceedings against those who appear to be in violation. An employee organization found to be in contempt of court for violating an injunction against a strike shall be fined an amount deemed appropriate by the court. In determining the appropriate fine, the court shall objectively consider the extent of lost services and the particular nature and position of the employee group in violation. In no event shall the fine exceed $5,000. Each officer, agent, or representative of an employee organization found to be in contempt of court for violating an injunction against a strike shall be fined not less than $50 nor more than $100 for each calendar day that the violation is in progress.

(4) An employee organization shall be liable for any damages which might be suffered by a public employer as a result of a violation of the provisions of s. 447.505 by the employee organization or its representatives, officers, or agents. The circuit court having jurisdiction over such actions is empowered to enforce judgments against employee organizations, as defined in this part, by attachment or garnishment of union initiation fees or dues which are to be deducted or checked off by public employers. No action shall be maintained pursuant to this subsection until all proceedings which were pending before the commission at the time of the strike or which were initiated within 30 days of the strike have been finally adjudicated or otherwise disposed of. In determining the amount of damages, if any, to be awarded to the public employer, the trier of fact shall take into consideration any action or inaction by the public employer or its agents that provoked or tended to provoke the strike by the public employees. The trier of fact shall also take into consideration any damages that might have been recovered by the public employer under subparagraph (6)(a)4.

(5) If the commission, after a hearing on notice conducted according to rules promulgated by the commission, determines that an employee has violated s. 447.505, it may order the termination of his employment by the public employer. Notwithstanding any other provision of law, a person knowingly violating the provision of said section may, subsequent to such violation, be appointed, reappointed, employed, or reemployed as a public employee, but only upon the following conditions:

(a) Such person shall be on probation for a period of 6 months following his appointment, reappointment, employment, or reemployment, during which period he shall serve without tenure. During this period, the person may be discharged only upon a showing of just cause.

(b) His compensation may in no event exceed that received by him immediately prior to the time of the violation.

(c) The compensation of the person may not be increased until after the expiration of 1 year from such appointment, reappointment, employment, or reemployment.

(6)(a) If the commission determines that an employee organization has violated s. 447.505, it may:

1. Issue cease and desist orders as necessary to insure compliance with its order.

2. Suspend or revoke the certification of the employee organization as the bargaining agent of such employee unit.

3. Revoke the right of dues deduction and collection previously granted to said employee organization pursuant to s. 447.303.

4. Fine the organization up to $20,000 for each calendar day of such violation or determine the approximate cost to the public due to each calendar day of the strike and fine the organization an amount equal to such cost, notwithstanding the fact that the fine may exceed $20,000 for each such calendar day. The fines so collected shall immediately accrue to the public employer and shall be used by him to replace those services denied the public as a result of the strike. In determining the amount of damages, if any, to be awarded to the public employer, the commission shall take into consideration any action or inaction by the public employer or its agents that provoked, or tended to provoke, the strike by the public employees.

(b) An organization determined to be in violation of s. 447.505 shall not be certified until 1 year from the date of final payment of any fine against it.

History.—s. 3, ch. 74-100; s. 1, ch. 77-174; s. 21, ch. 77-343; s. 4, ch. 79-295.

447.509 Other unlawful acts.—

(1) Employee organizations, their members, agents, or representatives, or any persons acting on their behalf are hereby prohibited from:

(a) Soliciting public employees during working hours of any employee who is involved in the solicitation.

(b) Distributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations. This section shall not be construed to prohibit the distribution of literature during the employee's lunch hour or in such areas not specifically devoted to the performance of the employee's official duties.

(c) Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.

(2) No employee organization shall directly or indirectly pay any fines or penalties assessed against individuals pursuant to the provisions of this part.

(3) The circuit courts of this state shall have jurisdiction to enforce the provisions of this section by injunction and contempt proceedings, if necessary. A public employee who is convicted of a violation of any provision of this section may be discharged or otherwise disciplined by his public employer, notwithstanding further provisions of law, and notwithstanding the provisions of any collective bargaining agreement.

History.—s. 3, ch. 74-100.

447.51 Violations not a ground for municipal recall.—Any violation of this part (Labor Organizations; Public Employees) shall not subject any person to municipal recall and shall not be considered as grounds for municipal recall.

History.—s. 2, ch. 77-279.

447.601 Merit or civil service system; applicability.—The provisions of this part shall not be construed to repeal, amend, or modify the provisions of any law or ordinance establishing a merit or civil service system for public employees or the rules and regulations adopted pursuant thereto or to prohibit or hinder the establishment of other such personnel systems unless the provisions of such merit or civil service system laws or ordinances or rules and regulations adopted pursuant thereto are in conflict with the provisions of this part, in which event such laws, ordinances, or rules and regulations shall not apply, except as provided in s. 447.301(4).

History.—s. 3, ch. 74-100; s. 120, ch. 79-164.

447.603 Local option.—Any district school board or political subdivision, other than the state or a state public authority, may elect to adopt, by ordinance, resolution, or charter amendment, its own provisions and procedures in lieu of the requirement of this part, provided such provisions and procedures effectively secure to public employees substantially equivalent rights and procedures as set forth in this part. Prior to such provisions and procedures becoming law, the public employer shall apply to the commission for review and approval as to whether local provisions or procedures, or both, are substantially equivalent to the provisions and procedures set forth in this part. All public employee agreements now in existence shall remain in effect until their expiration. However, on and after July 1, 1977, no district school board or political subdivision which has not filed an application for approval of local provisions or procedures by the commission on or before June 1, 1977, shall be permitted to adopt the local option provided in this section.

History.—s. 3, ch. 74-100; s. 1, ch. 77-174; s. 22, ch. 77-343; s. 121, ch. 79-164.

447.605 Public meetings and records law; exemptions and compliance.—

(1) All discussions between the chief executive officer of the public employer, or his representative, and the legislative body or the public employer relative to collective bargaining shall be exempt from s. 286.011.

(2) The collective bargaining negotiations between a chief executive officer, or his representative, and a bargaining agent shall be in compliance with s. 286.011.

(3) All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be exempt from chapter 119.

History.—s. 3, ch. 74-100; s. 23, ch. 77-343.

447.607 Commission rules; powers retained by the Legislature.—The Legislature shall retain the right to approve, amend, or rescind all rules promulgated by the commission pursuant to this part. In the absence of legislative action to the contrary, all rules shall have full force and effect.

History.—s. 5, ch. 74-100; s. 52, ch. 78-95.

447.609 Representation in proceedings.—Any full-time employee or officer of any public employer or employee organization may represent his employer or any member of a bargaining unit in any proceeding authorized in this part, excluding the representation of any person or public employer in a court of law by a person who is not a licensed attorney.

History.—s. 24, ch. 77-343.

CHAPTER 448

GENERAL LABOR REGULATIONS

448.01 Ten hours of labor a legal day's work; extra pay.—

(1) Ten hours of labor shall be a legal day's work, and when any person employed to perform manual labor of any kind by the day, week, month or year renders 10 hours of labor, he shall be considered to have performed a legal day's work, unless a written contract has been signed by the person so employed and the employer, requiring a less or greater number of hours of labor to be performed daily.

(2) Unless such written contract has been made, the person employed shall be entitled to extra pay for all work performed by the requirement of his employer in excess of 10 hours' labor daily.

History.—ss. 1-3, ch. 1988, 1874; RS 2117, 2118; GS 2641, 2642; RGS 4016, 4017; CGL 5939, 5940.
cf.—s. 450.081 Hours of work in child labor law.

448.03 Threatening to discharge employee to compel him to trade with any particular firm or person; penalty.—Any person or persons, firm, joint stock company, association or corporation organized, chartered or incorporated by and under the laws of this state, either as owner or lessee, having persons in their service as employees, who shall discharge any employee or threaten to discharge any employee in their service for trading or dealing, or for not trading or dealing as a customer or patron with any particular merchant or other person or class of persons in any business calling, or shall notify any employee either by general or special notice, directly or indirectly, secretly or openly given, not to trade or deal as a customer or patron with any particular merchant or person or class of persons in any business or calling, under penalty of being discharged from the service of such person, firm, joint stock company, corporation or association shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 5015, 1901; GS 3233; RGS 5066; CGL 7168; s. 374, ch. 71-136.

448.04 Penalty for officer or agent violating the preceding section.—Any person acting as an officer or agent of any firm, joint stock company, association or corporation of the kind and character as described in s. 448.03 or for any one of them, who makes or executes any notice, order or threat of the kind therein mentioned and forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5015, 1901; GS 3234; RGS 5067; CGL 7169; s. 375, ch. 71-136.

448.045 Wrongful combinations against workmen.—If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation; or if any person shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any workman in any firm or corporation, or to prevent any person from procuring work in such firm or corporation, such persons so combining shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 4144, 1893; GS 3515; RGS 5401; CGL 7542; s. 983, ch. 71-136.
Note.—Former s. 833.02.
cf.—Ch. 544 Combinations against Florida meats.

448.05 Seats to be furnished for employees in stores; penalty.—If any merchant, storekeeper, employer of male or female clerks, salesmen, cash boys or cash girls, or other assistants, in mercantile or other business pursuits, requiring such employees to stand or walk during their active duties, neglect to furnish at his own cost or expense suitable chairs, stools or sliding seats attached to the counters or walls, for the use of such employees when not engaged in their active work, and not required to be on their feet in the proper performance of their several duties; or refuse to permit their said employees to make reasonable use of said seats during business hours, for purposes of necessary rest, and when such use will not interfere with humane or reasonable requirements of their employment, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170; s. 376, ch. 71-136.

448.06 Labor problems; mediation and conciliation service; purpose; appointment of mediator and other personnel; appropriation.—

(1) There is hereby created and established a voluntary mediation and conciliation service, the objec-

tive of which is the prevention and amicable settlement of labor problems. Such service shall be under the jurisdiction of the Governor who is authorized to appoint, prescribe the duties, title, and fix the salary of one full-time mediator or conciliator and such additional personnel as, in the discretion of the governor, may be required.

(2) The Governor, by and through the mediation and conciliation service, is hereby authorized and directed to promote, assist, and encourage the maintenance of mutually satisfactory employer-employee relationships within the state, and, upon requests of any bona fide party to a labor dispute or in the event of an existing or imminent work stoppage, to proffer services and assistance to both parties in an effort to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues which precipitated or culminated in or which threaten to precipitate or culminate in such labor dispute.

(3) The Governor, by and through the mediation and conciliation service and with the cooperation of other departments under his jurisdiction, shall gather and analyze statistical information relating to labor and industrial relations within the state and in comparison with other states, and make reports and recommendations to the Legislature.

(4) No employee of the mediation and conciliation service, or any other person authorized by the Governor to engage in the performance of duties prescribed by this section, shall be compelled to disclose to any administrative or judicial tribunal any information relating to or acquired from private employers, employees, or their representatives in the course of official conciliation and mediation activities under the provisions of this section, nor shall any reports, minutes, written communications or other documents or copies of documents, and the above-named employees pertaining to such private information be subject to subpoena; and all reports, minutes, written communications, oral conversations, other documents or copies of documents, and the above-named employees, and any other information obtained directly or indirectly in the performance of this service of mediation or conciliation shall be deemed privileged matter and subject to the complete immunities thereby.

(5) The Governor shall include in his legislative budget request the estimated amounts needed for the purpose of effectively carrying out the provisions of this section and the Legislature shall appropriate such amounts as it deems necessary for this purpose. All appropriations for this purpose shall be used at the direction and discretion of the Governor.

History.—ss. 1-4, 6, ch. 57-306; s. 1, ch. 61-29; s. 1, ch. 73-305.

448.07 Wage rate discrimination based on sex prohibited.—

(1) DEFINITIONS.—As used in this section, unless the context or subject matter clearly requires otherwise, the following terms shall have the meanings as defined in this section:

(a) "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions or instrumentalities of subdivisions.

(b) "Employer" means any person who employs two or more employees.

(c) "Wages" means and includes all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash.

(d) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on time spent in the performance of such services, on the number of operations accomplished, or on the quality produced or handled.

(e) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid an employee pursuant to subsection (3).

(2) DISCRIMINATION ON BASIS OF SEX PROHIBITED.—

(a) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort and responsibility, and which are performed under similar working conditions, except when such payment is made pursuant to:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or
4. A differential based on any reasonable factor other than sex when exercised in good faith.

(b) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of the provisions of this section.

(3) CIVIL ACTION FOR "UNPAID WAGES."—Any employer or person who violates the provisions of this section shall be liable to the employee for the amount of the difference between the amount the said employee was paid and the amount he should have been paid under this section. Nothing in this section shall allow a claimant to recover more than an amount equal to his unpaid wages while so employed for 1 year prior to the filing of his claim. An action to recover such liability may be maintained in any court of competent jurisdiction by the aggrieved employee within 6 months after termination of employment. The court in such action may award to the prevailing party costs of the action and a reasonable attorney's fee.

(4) Nothing in this section shall be applicable to any employer subject to the Federal Fair Labor Standards Act of 1938, as amended.

History.—ss. 1-4, ch. 69-5.

448.075 Employment discrimination on basis of sickle-cell trait prohibited.—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment solely because such person has the sickle-cell trait.

History.—s. 3, ch. 78-35.

448.076 Mandatory screening or testing for sickle-cell trait prohibited.—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private

entity shall require screening or testing for the sickle-cell trait as a condition for employment, for admission into any state educational institution or state-chartered private educational institution, or for becoming eligible for adoption if otherwise eligible for adoption under the laws of this state.

History.—s. 4, ch. 78-35.
Note.—Also published at ss. 228.201 and 63.043.

448.08 Attorney's fees for successful litigants in actions for unpaid wages.—The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee.

History.—s. 1, ch. 78-327.

448.09 Unauthorized aliens; employment prohibited.—

(1) It shall be unlawful for any person knowingly to employ, hire, recruit, or refer, either for himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.

(2) The first violation of subsection (1) shall be a noncriminal violation as defined in s. 775.08(3) and, upon conviction, shall be punishable as provided in s. 775.082(5) by a civil fine of not more than $500, regardless of the number of aliens with respect to whom the violation occurred.

(3) Any person who has been previously convicted for a violation of subsection (1) and who thereafter violates subsection (1), shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien.

History.—ss. 1-3, ch. 77-250; s. 193, ch. 79-400.

CHAPTER 449

PRIVATE EMPLOYMENT AGENCIES

[1]**449.01 Definitions.**—When appearing in this law or in any rule or regulation adopted pursuant thereto the following words shall mean:

(1) "Private employment agency"—any person, firm or corporation, who for hire or for profit, shall undertake to secure employment or help, or through the medium of a card, circular, pamphlet, or other medium whatsoever, or through the display of a sign or bulletin, or by any other holding out to the public, offers to secure employment or help, or give information as to where employment or help may be secured.

(2) "General employment agency"—the business of conducting an agency, bureau, office or any place restricted to the purpose of procuring, offering, promising or attempting to provide employment for persons who want employment in any occupation except in the theatrical or entertainment field.

(3) "Model agency"—the business of conducting an agency, bureau, office or any other place restricted to the purpose of procuring, offering, promising or attempting to provide engagements for models who demonstrate or display a product, such exhibitions not to be in the entertainment or theatrical field or to include vocal participation by the model.

(4) "Nurses registry"—any business restricted to the conducting of an agency, bureau, office or any other place for the purpose of procuring, offering, promising or attempting to provide employment or engagements for nurses of any kind; or any place used as a lodging house for nurses, the keeper of which receives telephone calls or messages of any kind relative to the employment of such nurses and transmits such messages or calls to a nurse lodging in his or her house.

(5) "Domestic help agency"—any business restricted to the conducting of any agency, bureau, office or any other place for the purpose of procuring, offering, promising or attempting to provide employment by placement of domestic help in private homes.

(6) "Baby sitter agency"—any business restricted to the conducting of an agency, bureau, office or any other place for the purpose of placement of baby sitters in private homes.

(7) "Theatrical employment agency"—any business restricted to the conducting of an agency, bureau, office or other place for the purpose of procuring, offering, promising or attempting to provide engagements for persons who want employment in, including but not limited to, the following occupations: circus, vaudeville, theatrical and other entertainment type performances, or of giving information as to where such engagement may be procured or provided, whether such business is conducted in a building, on the street, or elsewhere.

(8) "Agent"—any partner in a partnership, member of a firm, or officer of a corporation, whose partnership, firm or corporation holds a private employment agency license. Also any individual who is the sole owner of a private employment agency.

(9) "Agency employee"—manager, placement clerk, interview clerk, or solicitor of a private employment agency.

(10) "Fee"—in addition to its ordinary and accepted meaning, means money or promise to pay money. The term fee means and includes the excess of money received by any private employment agent over what he has paid for transportation, transfer of baggage, or lodging for any applicant for employment. The term fee as used in this chapter also means and includes the difference between the amount of money received by any person, who furnishes employees or performers for any entertainment, exhibition or performance, and the amount paid by the said person receiving said amount of money to the employees or performers whom he hires to give such entertainment, exhibition or performance.

(11) "Privilege"—the furnishing of food, supplies, tools, or shelter to contract laborers, commonly known as commissary privileges.

(12) "Theatrical engagement"—any engagement or employment of a person as an actor, performer, or entertainer in a circus, vaudeville, theatrical or any other entertainment exhibition or performance.

(13) "Emergency engagement"—any engagement that is to be performed within 24 hours of the time such application was made by an employer.

(14) "Permanent employment"—any employment or engagement not specified as temporary.

(15) "Temporary employment"—any employment or engagement specified and agreed upon by all parties involved as temporary at the time of acceptance.

(16) "Department"—The Department of State.

(17) "Convalescent sitters agency"—Any business restricted to the conducting of an agency, bureau, office, or any other place whatsoever, operated for the purpose of the placement of convalescent sitters and companion sitters in private homes, nursing homes, and hospitals where permitted. Nothing herein shall be construed to authorize any licensee to carry on or perform any of the services authorized under chapter 464 as it relates to professional nursing and practical nursing.

History.—s. 1, ch. 24080, 1947; s. 1, ch. 61-421; s. 1, ch. 63-205; ss. 10, 35, ch. 69-106; s. 1, ch. 70-298; s. 170, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.015 Exemption from chapter.—The provisions of this chapter shall not apply to any person, firm, or corporation engaged in business as a management consultant who acts solely on behalf of, and is compensated solely by, employers to identify, appraise, or recommend persons for management positions, provided the minimum first-year starting salary for each such position is not less than $20,000 per year.

History.—s. 1, ch. 75-214; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.02 Duties of the department; authority to issue and revoke license; issuance of rules and regulations.—

(1) The department is hereby vested with the power, jurisdiction and authority to issue and revoke licenses to employment agencies, agents or agency employees, to deny such applicants a license, to suspend the license for a reasonable period, or assess a civil penalty against any licensee in an amount not to exceed the annual license fee, when it is satisfied that said party has:

(a) Obtained or attempted to obtain any license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the department.

(b) Violated any of the provisions of this chapter or any lawful rules or regulations of the department.

(c) Been guilty of a crime against the laws of this or any other state, or government involving moral turpitude or dishonest dealings;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to his damage or injury, where such statements, descriptions, or promises purport to be made or to be performed by the employment agent, if the agent then knew, or by the exercise of reasonable care and inquiry, could have known, of the falsity of said statements, descriptions or promises;

(e) Knowingly committed, or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relying upon the work, representation, or conduct of the employment agent shall act or have acted to his injury or damage.

(f) Failed or refused upon demand, to disclose any information within his knowledge, or to produce any document, book or record in his possession for inspection to the department or any authorized agent thereof, acting within the jurisdiction or by authority of law.

(g) Established his agency in, or in connection with any place where intoxicating liquors are sold; or, in or in connection with any place where gambling is permitted; or, in, or in connection with any place of amusement kept for immoral purposes.

(h) Charged, collected or received a greater compensation for any service performed by him than is specified in his schedule of fees, charges and commissions previously filed with the department.

(i) Failed to supervise any agency for which any agent's license has been issued.

(2) The department shall have the power, jurisdiction and authority to promulgate reasonable rules and regulations for its own government and in the exercise of its powers hereunder and for the conduct of the business of employment agencies, not in conflict with the constitution and laws of the United States or of this state and may amend same at its pleasure.

History.—s. 2, ch. 24080, 1947; s. 1, ch. 25265, 1949; s. 10, ch. 26484, 1951; s. 1, ch. 29943, 1955; s. 2, ch. 61-421; s. 2, ch. 63-205; ss. 1, 4, ch. 67-450; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.021 License requirements.—

(1) No person, firm, or corporation shall open, keep, or carry on any employment agency in the state unless he shall first procure a license therefor from the department. Each person or partner or, in the case of corporations, each corporate officer must qualify separately and be licensed as an agent for carrying on the business of a private employment agency as provided by this chapter. However, theatrical agencies, model agencies, nurses registry, convalescent sitters agencies, and baby sitter agencies will not be required to have agents' licenses, and domestic help agencies owned by an individual which have no agency employees will not be required to have an agent's license. When a partnership consists of a husband and wife, said husband and wife are considered as one for licensing purposes, and one agent fee shall cover both partners.

(2) Each application for a license shall be accompanied by an application fee of $25 to cover costs. This fee shall not be rebatable.

History.—s. 3, ch. 63-205; ss. 10, 35, ch. 69-106; s. 2, ch. 70-298; s. 1, ch. 70-439; s. 2, ch. 75-214; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.022 License; fees; renewals.—

(1) All licenses issued to private employment agencies shall be of one of the following categories: general employment agency; model agency; nurses registry; convalescent sitters agency; domestic help agency; baby sitter agency; or theatrical agency.

Agencies licensed for each particular category shall be confined to the activities as set forth in the definitions set out in s. 449.01.

(2)(a) The annual license fee for each agency shall be as follows:

1. General employment agency, $100;
2. Model agency, $100;
3. Nurses registry, $100;
4. Convalescent sitters agency, $100;
5. Domestic help agency, $100;
6. Baby sitter agency, $50;
7. Theatrical employment agency, $100.

(b) The annual license fee for an agent is $100.

(c) Charitable agencies operated exclusively by and for the benefit of any religious, charitable, or benevolent organization shall be entitled to a license without paying license fees therefor if all other requirements are met.

(3) All licenses issued by the department shall expire on December 31, of the year in which said licenses are issued. Every person actively engaged in business as an employment agency in the state who fails to renew such license by the expiration date thereof, shall be automatically suspended from the right to engage in such business for which he was previously licensed, until said license is renewed. License for the next succeeding year shall be issued upon written request on the form prescribed by the department, and it shall be accompanied by the required fee. When made in proper form, such request shall not be denied or unreasonably delayed.

(4) Where one or more individuals, on the basis of whose qualifications an agency license under this chapter has been obtained, ceases to be connected with the licensed business for any reason whatsoever, the agency business may be carried on for a temporary period not to exceed thirty days, under such terms and conditions as the department shall provide by regulation, for the orderly closing of the business or the replacement and qualifying of a new partner or corporate officer. The licensee's good standing under this chapter shall be contingent upon the department's approval of any such new partner or corporate officer.

(5) The licensed agent or agents shall at all times be responsible for the good conduct in the business of each employee, including managers, and shall before employing any manager, employment clerk, counselor or solicitor become responsible for making application for license for same.

(6) No license shall be valid to protect any business transacted at any place or under any name other than that designated in the license, unless consent is first obtained from the department, and unless the written consent of the surety or sureties on the bond to such transfer or change of name is filed with the original bond, required to be filed by s. 449.03, and unless the license is returned to the department for the recording thereon of such changes. A charge of $10 shall be made by the department for the recording of authorization for each such change of name or change of location.

(7) No license issued under this chapter shall be assignable, nor shall the department authorize the use of any name by an agency which is so similar to that of a public officer or agency, or that used by any other licensee, that the public may be confused or misled thereby.

(8) Each agency shall be under the supervision of a licensed agent. Each applicant for an agency license shall submit proof satisfactory to the department that the agent shall supervise and is capable of supervising the agency named in the application for agency license.

History.—s. 4, ch. 63-205; s. 1, ch. 65-282; s. 3, ch. 67-450; ss. 10, 35, ch. 69-106; s. 3, ch. 70-298; s. 3, ch. 75-214; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.023 Qualification for agent and agency license.—

(1) All agency and agent licensees shall be competent, honest, truthful, trustworthy, of good character and bear a reputation for fair dealing. Each such person must also have had 3 years' experience as an employment clerk in this state or the equivalent thereof in related fields, which experience must have been continuous and immediately preceding the date of such application or in lieu of the required experience must have been a previously licensed owner or operator of an employment agency in this state.

(2) In addition to the foregoing qualifications, each application shall show whether or not the applicant, any member of the applying partnership, or any officer of an applying corporation is financially interested in any other business of like nature and if so, specifying such interest or interests.

(3) Notwithstanding any other provision of this chapter, an applicant for a license as a convalescent sitter agency may have had 3 years' experience in fields related to the license, 1 year being within this state, in lieu of 3 years' experience as an employment clerk.

History.—s. 5, ch. 63-205; s. 4, ch. 70-298; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]449.024 Agency employee licenses; qualifications; fees.—

(1) Every person shall, before being employed as a manager, placement clerk, interview clerk, or solicitor, hereinafter called agency employees, by any private employment agency, make application to the department for a license as such. All who receive such licenses shall be honest, trustworthy, of good character and bear a reputation for fair dealing. No such person shall be employed by any private employment agency before application is made for license. If the department declines to issue license or revokes it after issuance, the employment of such person shall be terminated. Every person licensed as a manager shall have had, in addition to the qualifications of this subsection, 1 year's experience as an agency employee, or the equivalent thereof in related fields.

(2) Every private employment agency shall be under the direct management of a manager or licensed agent.

(3) Annual fee for the manager's license shall be $50 and for other agency employees $10.

(4) Each agency shall upon the employment or termination of employment of an agency employee report it immediately to the department. During the period of employment of any licensed agency employee, the license of said employee shall be on the premises and readily accessible.

(5) No agency employee license is valid to do business except as an employee of a licensed agency nor does such license authorize the licensee to use any fictitious or assumed name unless such person qualifies under the fictitious name statute.

History.—s. 6, ch. 63-205; (5)n. s. 2, ch. 65-282; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.025 Fees to be charged by agencies; rates; display.—Each applicant for an agency license shall file with the application a schedule for fees, charges and commissions which he intends to charge and collect for his services, which must be approved by the department before license is issued. Such schedule of fees, charges and commissions may thereafter be changed only by filing with the department an amended or supplemental schedule, showing such changes at least 15 days before the change is to become effective. Such schedule of fees to be charged shall be posted in a conspicuous place in each room of such agency and such schedule of fees shall be printed in not less than a 30-point bold faced type, except that agencies which use written contracts containing fee schedules shall not be required to post such schedules.

History.—s. 7, ch. 63-205; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.026 License; content; posting.—

(1) The agency license issued pursuant to this chapter shall be for the calendar year in which issued, and shall be in such form as may be determined by the department, but shall at least specify the name under which the applicant is to operate, the address of the place of business, the date on which said license will expire, the full name and titles of the persons who submitted agent license applications, and the number of the license.

(2) The agent license, manager license, and agency employee license, issued pursuant to this chapter, shall be for the calendar year in which issued, and shall be in such form as may be determined by the department, but shall at least specify the applicant's name, the date on which such license will expire, and the number of the license.

(3) The agency license shall at all times be displayed conspicuously in the place of business in such manner as to be open to the view of the public and subject to the inspection of all duly authorized officers of the state and county. Upon failure to do so, the licensee shall be subject to the payment of another license fee for engaging in the business for which such license is required to be obtained.

(4) In event the licensee desires to cancel any license issued pursuant to the provisions of this chapter he shall notify the department, and upon approval of the department, said licensee shall forthwith return to the department the license so canceled. No license fee shall be refunded upon cancellation of any license.

History.—s. 3, ch. 65-282; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.03 Bond required.—There shall be filed for each agency license a bond in the form of a surety, by a reputable company engaged in the bonding business, authorized to do business in the state, in due form to the Governor of the state, for the penal sum of $3,000 with one or more sureties, to be approved by the department, and conditioned that the applicant conform to and not violate any of the duties, terms, conditions, provisions or requirements of this chapter. If any person shall be aggrieved by the misconduct of any such licensed agency, such person may maintain an action in his own name upon the bond of said employment agency, in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same upon the bond of such licensed agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist.

History.—s. 3, ch. 24080, 1947; s. 2, ch. 25265, 1949; ss. 10, 35, ch. 69-106; s. 4, ch. 75-214; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.04 Records required to be kept.—It shall be the duty of every such licensed agency to keep on file all applications of every accepted applicant for employment, name and address of applicant to whom employment is offered or promised, name and address of the person to whom the applicant is sent for employment, the amount of the fee received, and the number of the receipt. No such licensed agency, or its employees, shall knowingly make any false entry in applicant files or receipt files. Each individual card or document in said files shall be preserved and not destroyed for a period of 3 years from date of last entry thereon. Every employment agent shall keep true and accurate work records containing such information as this chapter provides and as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department may require monthly reports from each licensed agency, stating number of applicants and number of placements handled for the month. Such number of placements shall be broken down in the following classifications: clerical, industrial, hotel and restaurant, and domestic. Forms for such reports shall be furnished by the department. The department shall furnish each licensed agency a statistical report combining the above information from all agencies with same information from files of the Florida state employment services of the Division of Employment Security of the Department of Labor and Employment Security.

History.—s. 4, ch. 24080, 1947; s. 3, ch. 25265, 1949; ss. 10, 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 41, ch. 79-7.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.05 Registration fees, when permitted; investigation; revocation of permit; referral.—

(1) No such licensed agency shall charge a registration fee without having first obtained a permit to charge such registration fee from the department. Any such licensed person desiring to charge such registration fee shall make application in writing to the department, and shall set out in the application the type of applicants from whom it is intended to accept a registration fee, the amount of the fee to be charged, and shall furnish any other information on the subject that the department may deem necessary to enable it to determine whether permit shall be granted.

(2) The department may make investigation, upon receipt of the application, as to the truthfulness of said application and the necessity of the charge of a registration fee; and if it is shown that the applicant's method of doing business is of such a nature that a permit to charge a registration fee is necessary, and that the record of the applicant's past method of charging a registration fee has been reasonable and fair, then the department may grant a permit to such applicant, which permit shall remain in force until revoked for cause. No permit shall be granted until after 10 days from the date of filing of the application.

(3) When a permit is granted such licensed agency may charge a registration fee not to exceed $2. In all cases a complete record of all such registration fees and references of applicants shall be kept on file. For such registration fee a receipt shall be given to said applicant for help or employment, and shall state therein the name of such applicant, date and amount of payment, the character of position or help applied for, and the name and address of such agency. If no position has been furnished by said licensed agency to the said applicant, then said registration fee shall be returned to the said applicant on demand after 30 days and within 6 months from date of the receipt thereof, less the amount that has been actually expended by said licensed agency in checking the references of said applicant, and an itemized amount of such expenditures shall be presented to said applicant on request at the time of returning the unused portion of such registration fee.

(4) Any such permit granted by the department may be revoked by it, in the same manner as prescribed herein for the revocation of licenses.

(5) No such licensed agency shall, as a condition to registering or obtaining employment for any applicant, require such applicant to subscribe to any publication, post card service, advertisement, or resume service. Each licensed agency shall be permitted to accept an advance fee in the form of a deposit. All such advance deposit fees taken, shall be deposited in the escrow account. No funds are to be withdrawn from the escrow account by the agency before the date of the applicant's acceptance of employment. Whenever an applicant fails to secure or refuses to accept a position furnished by the agency no fee shall have been earned, and any advance fee on deposit with the escrow agent shall be refunded in full to the applicant within three business days after request. If an applicant accepts a position through the efforts of the licensed agency and fails to report for work at the prescribed time, or quits, then said applicant shall owe the licensed agency the full placement fee for the said job and shall forfeit the total amount deposited with the licensed agency. In the event the applicant has an advance fee on deposit with the licensed agency of an amount exceeding the total fee of said position, then such overpayment of fee shall be refunded to the applicant within 3 days after request.

(6) Each applicant sent to an employer for an interview shall be furnished with a referral card containing the following information: The name and address of the employer doing the interviewing, the position for which the applicant is being interviewed, the salary offered, who is paying the cost of transportation for the interview, and a space must be provided whereby the interviewer can sign his or her name, after noting thereon whether the applicant has been engaged.

(7) In addition to the receipt herein provided to be given for a registration fee, it shall be the duty of such licensed agency to give to every applicant for employment or help from whom other fee or fees shall be received, an additional receipt in which shall be stated the name of the applicant, the amount of the fee, date of payment. All such receipts shall be in duplicate, numbered consecutively, shall contain the name and address of such agency. The duplicate receipt shall be kept on file in the agency for at least 1 year from date thereof.

(8) If the employer pays the fee, and the employee fails to remain in the position for the period of 14 days, such licensee shall refund to the employer all fees, less an amount equal to 25 percent of the total fee, within 3 days after said licensed agency has been notified of the employee's failure to remain in the employment.

(9) If the applicant is discharged at any time within 30 calendar days for any reason other than intoxication, dishonesty, unexcused tardiness, unexcused absenteeism, insubordination, misrepresentation of abilities, education or skills, or otherwise fails to remain in the position for a period of 30 calendar days through no fault of his own, such licensed agency shall refund to the employee all fees paid to said agency, less an amount equal to 25 percent of the total fee. All refunds shall be in cash or negotiable check and shall be made within 3 days of the time such licensed agency has been notified of the employee's failure to remain in the employment.

History.—s. 5, ch. 24080, 1947; s. 4, ch. 25265, 1949; s. 8, ch. 63-205; s. 2, ch. 67-450; s. 32, ch. 69-353; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-122.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.06 Attempts to induce employees to leave employment or to obtain their discharge.—No such licensed agent shall by himself or by his employees, solicit, persuade or induce any employee to leave any employment in which said licensed agency or his agent has placed said employee; nor shall any such licensed agent, or any of his employees, solicit, persuade or induce any employer to discharge any employee; nor shall any such licensed agent or his

employees divide, or offer to divide, or share, directly or indirectly, any fee, charge or compensation received or to be received from any employee, with any employer or person in any way connected with the business thereof.

History.—s. 6, ch. 24080, 1947; s. 5, ch. 25265, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.07 Contract or railroad laborers; statements required.—

(1) Whenever such licensed agent, or anyone acting for him agrees to send one or more persons to work as contract or railroad laborers, outside the city in which such agency is located, the said licensed agency shall give to each of such laborers, in a language with which such laborers are familiar, a statement containing the following items: "Name and nature of the work to be performed," "Wages offered," "Destination of the person employed," "Terms of transportation and probable duration of the employment," and duplicate of such a statement shall be kept on file in the office of such licensed agency sending out such laborers.

(2) No such licensed agency or its employees shall send any applicant to any place where a strike, a lockout or other labor dispute is in active progress, without first notifying the applicant of such conditions, and shall, in addition thereto, enter a complete statement of such facts upon the receipt given to such applicant.

History.—s. 7, ch. 24080, 1947; s. 6, ch. 25265, 1949; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.08 Theatrical employment agency; regulation, etc.—

(1) Any such licensed agency conducting a theatrical employment agency, before making any engagement except an emergency engagement for an employee with any employer, shall prepare and file in such agency a written statement verified by such licensed agent, setting forth how long said employer has been engaged in the theatrical business, whether or not such employer, while financially interested in a theatrical business, has failed to pay salaries, or "left stranded" any company, group or employees during the 2 years preceding the date of application; and further, shall set forth the names of at least two persons as references. If such employer is a corporation, such statement shall set forth the names of the officers and directors thereof, the length of time such corporation or any of its officers have been engaged in the theatrical business, and the amount of the paid up capital stock.

(2) If the employer conducts a cabaret or night club, the agent shall include in such statement the name and address of the owner or owners, and whether they have failed to pay salaries to employees at any time within the past 2 years. If any allegation in such written verified statement is made upon information or belief, the person verifying this statement shall set forth the sources of his information or belief. Such statements so on file shall be kept for at least 1 year and exhibited to every employee whose services are sought by any such employers.

(3) If any cabaret or night club employs entertainers through any source other than from a Florida licensed theatrical employment agency, said cabaret or night club shall file with the department a sworn statement containing the information required above to be filed in said agency, together with a certified copy of the contract for such entertainment. The department may, if it believes there is a doubt as to the financial stability of such employer or that there is a possibility of leaving stranded any entertainer, require a bond approved by the department to assure the payment of salaries, performance of contract and compliance with this chapter.

(4) Every such licensed agency conducting a theatrical employment agency who shall procure for or offer to an applicant a theatrical engagement, or any kind of employment as an entertainer, shall have executed in quadruplicate a contract containing the name and address of the applicant, the name and address of the employer and that of the employment agency acting for such employer, in employing or furnishing such applicant for employment, the character of the entertainment to be given, or services to be rendered, the number of performances to be given per day or per week, by whom the transportation, if any, is to be paid, and if it is to be paid by the applicant, either the cost of the transportation between the places where said entertainment or services are to be given or rendered, or the average cost of such transportation. Said contract shall state from whom said applicant is to receive his or her salary, the amount of salary promised, and the gross commissions or fees to be paid by said applicant and to whom such gross commissions or fees are to be paid. The original contract shall be given to the employer, the duplicate contract shall be given to the employee, the triplicate contract shall be kept on file in the office of the agency for a period of 1 year, and the fourth copy filed with the department.

History.—s. 8, ch. 24080, 1947; s. 7, ch. 25265, 1949; s. 4, ch. 65-282; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.09 Nurses registry; requirements.—

(1) Every such licensed person conducting a nurses registry shall cause every applicant for employment to fill out an application form giving the following information: The name and address and qualifications of such applicant, the names and places of the hospitals wherein the applicant has studied or has been employed, the length of time of service therein, or other experience in nursing, if not in a hospital, and whether such applicant is a graduate, trained, certified, registered, undergraduate or practical nurse or a trained attendant. There shall be stated on such form the number and date of the certificate issued to such nurse or trained attendant. Such application form shall be kept on file in the office of the registry and shall be open to the inspection of the department.

(2) Every such licensed person conducting a nurses registry shall give to every applicant, to whom a position is offered a card or printed paper in which shall be stated the amount of the fee, or com-

missions to be charged by such licensed person for the services in obtaining the position for said applicant for employment.

History.—s. 9, ch. 24080, 1947; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.10 Moral requirements; penalties.—

(1) No such licensed person shall send or cause to be sent any female help, servants, inmate, or performer, to enter any questionable place, or place of bad repute, house of ill-fame or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution or gambling house, the character of which such licensed person knows either actually or by repute.

(2) No such licensed person shall permit questionable characters, prostitutes, gamblers, intoxicated persons, or procurers to frequent such agency.

(3) No such licensed person shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatsoever, excepting, however, employment may be given minors where such employment does not violate statutes affecting child labor law. For the violation of any of the provisions of this section, the offender shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and the court may, in addition, revoke the license of such offender.

History.—s. 10, ch. 24080, 1947; s. 377, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—Ch. 450, part I Child labor law.

[1]449.11 Collection and deposit of moneys; appropriation.—All moneys required to be paid under this chapter shall be collected by the department and deposited in the general revenue fund. The legislature shall appropriate such amounts as it deems necessary for the purpose of administering the provisions of this chapter.

History.—s. 11, ch. 24080, 1947; s. 82, ch. 26869, 1951; s. 1, ch. 61-37; s. 3, ch. 61-421; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.13 Revocation of license.—When a written complaint is filed with the department against a licensed employment agency, charging said licensee with any act prohibited by this chapter, the department shall conduct an investigation and if from such investigation it shall appear to the department that there is ground for revocation of license, the department shall determine, pursuant to chapter 120, whether or not the license of the accused shall be revoked.

History.—s. 13, ch. 24080, 1947; s. 4, ch. 61-421; s. 31, ch. 63-512; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 55, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.14 Additional remedy to control unlawful practice.—As an alternative, supplemental and additional remedy, in cases of unlawful practices, the department may, not withstanding the procedure prescribed in s. 449.13, apply directly to the circuit court of the county wherein the person proceeded against resides, or where any of the unlawful practices, as set out in this chapter, are being committed, for an injunction restraining such person from operating as an employment agent. The court may, in its discretion, grant a temporary injunction restraining the defendant from operating as an employment agency pending the outcome of said cause, and upon final hearing, permanently enjoin him from further operation as an employment agent. The department shall not be required to give any bond in any proceeding hereunder.

History.—s. 14, ch. 24080, 1947; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.141 Legal representative, Department of Legal Affairs.—The Department of Legal Affairs shall be attorney for the Department of State in the enforcement of this chapter and shall conduct any investigations incident to its legal responsibility.

History.—s. 6, ch. 65-282; ss. 10, 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.15 When application license may be denied.—

(1) The department may deny any application for license for applicant's failure to meet any qualification or requirement prescribed in this chapter, or for any cause which, if applicant were already licensed hereunder, would be ground for revocation of such license.

(2) No fee shall be refunded to any applicant until after denial of application becomes final by reason of applicant's right to appeal having expired. Refunds shall be made without interest.

History.—s. 15, ch. 24080, 1947; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 55, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]449.16 Penalties.—

(1) Any person violating any of the provisions of this chapter without intent to defraud shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person violating any of the provisions of this chapter by scheme, trick, false advertising, false statements of any kind, or by willful misrepresentation causes an applicant to be sent or directed to any fictitious job or position, or so induces an applicant to register for employment and act to his disadvantage, shall upon conviction be deemed guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The penalties herein provided shall extend to the person or persons, firm or corporation causing, directing or permitting such activity as well as to the actual violators.

History.—s. 16, ch. 24080, 1947; s. 10, ch. 63-205; s. 378, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**449.17 Appointment of advisory council.**—The Department of State may designate an advisory council to be composed of six members. Said advisory council shall insofar as possible be geographically distributed and representative of the various segments of the private employment agency business. The council shall organize, elect a chairman, and thereafter meet upon call of the chairman through the office of the department. The council shall counsel and advise with the Department of State and make recommendations relative to the operation and regulation of the private employment agency program of the Department of State and of the industry. The council members are to serve without pay except that they may be reimbursed for travel to and from officially called meetings at regular state travel and per diem rates.

History.—s. 5, ch. 65-282; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 450

MINORITY LABOR GROUPS

PART I CHILD LABOR (ss. 450.012-450.161)

PART II MIGRANT LABOR (ss. 450.181-450.261)

PART III FARM LABOR REGISTRATION (ss. 450.27-450.38)

PART IV RURAL MANPOWER SERVICES (ss. 450.40-450.44)

PART V EMPLOYMENT AND TRAINING PROGRAMS FOR ECONOMICALLY DISADVANTAGED, UNEMPLOYED, AND UNDEREMPLOYED PERSONS (ss. 450.50-450.55)

PART I

CHILD LABOR

450.012 Definitions.—For the purpose of this chapter the word, phrase, or term:

(1) "Farm work" includes all agricultural labor performed upon farms in the employ of a bona fide farmer or association of farmers. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, ranches, nurseries, and orchards.

(2) "Street trades" means:

(a) The selling, offering for sale, soliciting for, collecting for, displaying, or distributing any newspapers, magazines, periodicals, or peanuts, or

(b) Polishing shoes,

on any street or other public place or from house to house.

History.—s. 1, ch. 75-195.

450.021 Minimum age; general.—

(1) Minors of any age may be employed:

(a) As pages in the Florida Legislature.

(b) By motion-picture studios, television studios, and legitimate theaters as prescribed in s. 450.132.

(c) In domestic or farm work in connection with their own homes and directly for their own parents during the hours public schools are not in session.

(d) In domestic or farm work in connection with their own homes and directly for their own parents during the hours when the public schools are in session, provided the minors have been issued valid employment certificates in compliance with the provisions of this act.

(2) No person 9 years of age or younger shall engage in street trades.

(3) Except as provided in subsection (1), no person 11 years of age or younger shall be employed, permitted, or suffered to work in any gainful occupation at any time.

(4) No person 17 years old or younger, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted, or suffered to work in any place where alcoholic beverages are sold at retail, except as provided in s. 562.13.

History.—s. 1, ch. 28240, 1953; s. 2, ch. 57-224; s. 1, ch. 75-195; s. 1, ch. 77-174.

450.061 Hazardous occupations prohibited.—

(1) No minor 15 years of age or younger, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted or suffered to work in the following occupations:

(a) In connection with power-driven machinery, except power mowers with cutting blades 40 inches or less;

(b) Mines or quarries;

(c) The manufacture, transportation or use of explosive or highly inflammable substances;

(d) Sawmills or logging operations;

(e) On any scaffolding;

(f) In heavy work in the building trades;

(g) In the operation of a motor vehicle, except a motorscooter which he is licensed to operate, except that 14- and 15-year-old workers may drive farm tractors in the course of their farmwork under the close supervision of their parents on a family-operated farm, and except that qualified 14- and15-year-old workers may drive tractors in the course of their farmwork under the close supervision of the farm operator. "Qualified," as used herein, means having completed a training course in tractor operation sponsored by a recognized agricultural or vocational agency, as evidenced by duly executed certificate, such certificate to be filed with the farm operator for the duration of the employment;

(h) In oiling, cleaning or wiping machinery or shafting or applying belts to pulleys;

(i) In repairing of elevators or other hoisting apparatus;

(j) In operating meat-grinding machines, dough brakes, or mixing machines in bakeries, or cracker-making machinery;

(k) In the operation of emery or polishing wheels;

(l) In the operation of punch presses or stamping machines;

(m) In the manufacture of paints, colors, white lead, dangerous or poisonous dyes or in preparing compositions in which dangerous leads or acids are used;

(n) In the operation of power-driven laundry or dry cleaning machinery; or any similar power-driven machinery;

(o) At spray painting;

(p) Spraying of insecticides or other toxic substances determined to be poisonous to human beings through skin contact or inhalation;

(q) Alligator wrestling work in connection with snake pits, or similar hazardous activities;

(r) The manufacture, transportation or use of radioactive materials.

(2) No minor under 18 years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted, or suffered to work in any place of employment or at any occupation hazardous or injurious to the life, health, safety, or welfare of such minor, as such places of employment or occupations may be determined and declared by the Division of Labor of the Department of Labor and Employment Security to be hazardous and injurious to the life, health, safety, or welfare of such minor.

History.—s. 1, ch. 28240, 1953; s. 5, ch. 57-224; ss. 4, 5, ch. 61-182; s. 1, ch. 63-82; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 2, ch. 75-195; s. 1, ch. 77-174; s. 11, ch. 78-95; s. 42, ch. 79-7.

450.081 Hours of work in certain occupations.—

(1) No minor 15 years of age or younger shall be employed, permitted, or suffered to work in any gainful occupation for more than 6 consecutive days in any 1 week or more than 40 hours in any 1 week or more than 10 hours in any 1 day, nor shall any minor 15 years of age or younger be so employed, permitted, or suffered to work before 6:30 a.m. or after 9 p.m., except that minors who have reached the age of 14 may work until 11 p.m. when no school is scheduled for the following day. No minor 16 or 17 years of age shall be so employed, permitted, or suffered to work before 5 a.m. or after 11 p.m., or 1 a.m. on days preceding a nonschool day; however, the Division of Labor may, in its discretion, extend the hours of employment of minors 16 and 17 years of age if, after investigation, the division is satisfied that the employment in which the minor is to be employed is not detrimental to his health or welfare. On any day when school is in session, no minor 15 years of age or younger who is not enrolled in a vocational education program shall be gainfully employed for more than 4 hours, unless there is no session of school on the following day.

(2) No minor under 18 shall be employed, permitted or suffered to work for more than 5 hours continuously without an interval of at least 30 minutes for a lunch period and for the purposes of this law no period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

(3) The presence of any minor in any place of employment during working hours shall be prima facie evidence of his employment therein.

(4) This section shall not apply to the work of minors in domestic service in private homes, farmwork, pages in the Florida Legislature, or street trades, except that no one 15 years of age or younger shall engage in street trades between the hours of 9 p.m. and 5 a.m.

History.—s. 1, ch. 28240, 1953; (1) s. 6, ch. 57-224; s. 24, ch. 57-1; s. 6, ch. 61-182; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 2, ch. 75-195.

450.101 Copies of chapter to be posted in certain places.—

(1) Every employer shall post and keep conspicuously posted in or about the premises wherein any minor under 16 years of age is employed, permitted or suffered to work, a printed abstract of this law and a list of occupations prohibited to minors under 16 years of age, to be furnished by the Division of Labor, and a schedule of hours showing the maximum number of hours minors under 16 years of age shall be required or permitted to work during each day of the week, the total hours per week, the time of commencing and stopping work each day and the amount of time allowed for daily meal periods. If more than one schedule of hours is in operation at a particular place of employment, the posted schedule shall contain the names of minors under 16 years of age working on each shift and shall clearly indicate the hours required of each minor under this age, or group of such minors. The schedule shall be on a form approved and furnished by the division and shall remain the property of said division. The employment of a minor under 16 years of age for a longer time in any day or at any other time than as stated in said schedule shall be deemed a violation of s. 450.081. The presence of any minor under 16 years of age in any place of employment at other hours than stated in the schedule applying to him shall constitute prima facie evidence of violation of said s. 450.081.

(2) Every employer shall keep a time record in a form approved by the division which shall state the name and address of each minor under 18 years of age employed, the number of hours worked by said minor on each day of the week, the hours of beginning and ending such work, the hours of beginning and ending meal periods, and the amount of wages paid. This record shall be kept on file for at least 4 years after the entry of the record and shall be open to the inspection of the division or its agents.

History.—s. 1, ch. 28240, 1953; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

450.111 Employment certificates.—

(1) No minor 15 years of age or younger shall be employed, permitted, or suffered to work in any gainful occupation during the hours when the public schools are in session, unless the person, firm, corporation, association, individual, or partnership employing such minor shall receive and keep on file at the place of the minor's employment an employment certificate which shall be issued as provided by ss. 232.07 and 450.161.

(2) No minor 15 years of age or younger shall be employed, permitted, or suffered to work in any gainful occupation, except in domestic service in private homes, in farmwork, or in the street trades during the hours when the public schools are not in session, unless the person, firm, corporation, association, individual, or partnership employing such minor shall receive and keep on file at the place of the minor's employment a special certificate of employment during vacation or out-of-school hours which shall be issued as provided in s. 232.07.

(3) No minor 16 or 17 years of age shall be employed, permitted, or suffered to work in any gainful occupation, except in domestic service in private homes, in farmwork, or in street trades unless the person, firm, corporation, association, individual, or partnership employing such minor shall keep on file at the place of the minor's employment an age certificate as provided in s. 232.08.

(4) The employer shall, during the period of the minor's employment, keep the employment certificate, special employment certificate, or age certificate on file at the place of employment and accessible to the Division of Labor or its agent, to any attendance assistant or to any other person authorized to enforce the provisions of laws relating to the issuance of such certificates.

(5) When any minor 17 years of age or younger is barred from available employment by any other provision of this chapter and it is shown to the satisfaction of the division that it is in the best interest of the minor to be employed or that it is necessary for such minor to work in such employment to support or assist in supporting himself or his family in order to avoid extreme hardship, or it is recommended by a court having jurisdiction of such minor that it is for the best interest of the minor to work in such employment, the division may, subject to such conditions, limitations, and restrictions as it may determine appropriate, waive any provision of this chapter which may be necessary in order to permit such minor to work in such employment; provided that no such waiver may be granted to permit any person to work in any place of employment or at any occupation which the division deems would be hazardous or injurious to the life, health, safety, morals or welfare of such person, and provided further that no such waiver may be granted to permit any person 15 years of age or younger to work in any employment prohibited under the provisions of subsection 450.021(4). The division shall by regulation prescribe the manner of making application for such waiver, the procedure for consideration and determination thereof, and the form and content of certificates of waiver, one copy of which shall be sent to the superintendent of schools of the district in which the minor has or will obtain his employment certificate, special certificate of employment, or age certificate, as required by law.

(6) The provisions of this section shall not apply to minors 16 or 17 years of age who are married or to pages of the Florida Legislature.

History.—s. 1, ch. 28240, s. 1, ch. 28249, 1953; ss. 8, 9, ch. 57-224; ss. 15, 17, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-283; s. 26, ch. 73-334; s. 2, ch. 75-195.

450.121 Enforcement of Child Labor Law.—

(1) The Division of Labor shall administer this chapter. It shall employ such help as shall be necessary to effectuate the purposes of this chapter, all of whom shall be employed in accordance with the merit system of the division.

(2) It shall be the duty of the division and its agents and all sheriffs or other law enforcement officers of the state or of any municipality of the state to enforce the provisions of this law, to make complaints against persons violating its provisions and to prosecute violations of the same. The said division and its agents shall have authority to enter and inspect at any time any place or establishment covered by this law and to have access to employment certificates, special certificates of employment during vacation or out-of-school hours, and age certificates kept on file by the employer and such other records as may aid in the enforcement of this law. Attendance assistants employed pursuant to s. 232.17, shall report to the division all violations of the Child Labor Law that may come to their knowledge.

(3) It shall be the duty of any magistrate of any court in the state to issue warrants and try cases made within the limit of any city over which such magistrate has jurisdiction in connection with the violation of this law.

(4) Grand juries shall have inquisitorial powers to investigate violations of this chapter; also, county court judges and judges of the circuit courts shall specially charge the grand jury, at the beginning of each term of the court, to investigate violations of this chapter.

History.—s. 1, ch. 28240, 1953; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 121, ch. 73-333; s. 26, ch. 73-334; s. 1, ch. 77-119; s. 1, ch. 77-174.

450.132 Employment of children by motion picture and television studios; rules and regulations; procedure, etc.—

(1) Children within the protection of our child labor statutes may, notwithstanding such statutes, be employed by motion picture studios, television studios and legitimate theaters, in the production of motion pictures, legitimate plays and television shows, in any work not determined by the Division of Labor to be hazardous, or detrimental to their health, morals, education or welfare.

(2) The Division of Labor shall, as soon as convenient, and after such investigation as to said division may seem necessary or advisable, determine what work, in connection with the production of motion pictures, legitimate plays and television shows, is not hazardous, or detrimental to the health, morals, education or welfare of children within the purview and protection of our child labor laws. When so adopted such rules and regulations shall have the force and effect of law in this state.

(3) Motion picture studios, legitimate theaters and television studios wishing to qualify for the employment of children in work not hazardous or detrimental to their health, morals or education, shall make application to the division for a permit qualifying them to employ children in the production of motion pictures and television shows. The form and contents thereof shall be prescribed by the said division.

(4) Motion picture studios, legitimate theaters,

and television studios desiring to employ children shall file with the division, on forms to be prescribed by the said division, applications requesting that named children be certified as eligible for employment in the motion picture, legitimate theater, and television industries. Upon the filing of such application the said division shall investigate the age, school record, and attendance and the health of the children named and whether or not employment of the child named in the production of motion pictures, legitimate plays, and television shows would be detrimental to it. Upon completion of the investigation, the division shall issue certificates of identification of those children who satisfactorily meet the requirements of its rules and regulations and the statutes of this state. The division shall place upon an eligibility list the names of the children to whom certificates of identification are issued and it shall be presumed that any child for whom such a certificate of identification may be issued is eligible for employment, unless such certificate be revoked or suspended by the division for cause.

(5) Any duly qualified motion picture studio, legitimate theater, or television studio may employ any child holding a certificate of identification, as aforesaid; provided, however, that if any studio or theater employing a child causes, permits or suffers it to be placed under conditions which are dangerous to the life or limb or injurious or detrimental to the health or morals or education of the child, the right of that studio or theater and its representatives and agents to employ children as provided herein shall stand revoked, unless otherwise ordered by the division, and the person responsible for such unlawful employment shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any motion picture studio, legitimate theater, or television studio and its agents employing children hereunder are required to notify the division, showing the date of the commencement of work, the number of days worked, the location of the work and the date of termination.

(7) The time spent by children in rehearsals and in learning or practicing any of the arts, such as singing and dancing, for or under the direction of a motion picture studio, legitimate theater, or television studio, shall be counted as work time when such learning or practicing is connected with or is in contemplation of particular pictures or shows.

History.—s. 1, ch. 65-486; ss. 17, 35, ch. 69-106; s. 379, ch. 71-136; s. 1, ch. 73-283; s. 1, ch. 77-174.

450.141 Employing minor children in violation of law; penalty.—Whoever violates any provisions of this law, or employs or permits or suffers any minor to be employed or to work in violation of this law, or of any order issued under the provisions of this law, or obstructs persons authorized under this law in the inspection of places of employment, and whoever, having under his control any minor, permits him to be employed or to work in violation of this law, shall for such offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day during which any violation of this law continues shall constitute a separate and distinct offense, and the employment of any minor in violation of the law shall, with respect to each minor so employed, constitute a separate and distinct offense.

History.—s. 1, ch. 28240, 1953; s. 380, ch. 71-136.

450.151 Hiring and employing; penalty.—

(1) Whoever takes, receives, hires, employs, uses, exhibits, or in any manner or under any pretense sells, apprentices, gives away, lets out, or otherwise disposes of to any person any child 17 years of age or younger for any obscene, indecent, or immoral purpose, or for the production of any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor, or causes, procures, or encourages any child to engage therein, or has in custody any such child for any of these purposes, or for or in any business, exhibition, or vocation injurious to the health or dangerous to the life or limbs of such child, or causes or procures or encourages any such child to engage therein, or causes or permits any such child to suffer, or inflicts upon it unjustifiable physical pain or mental suffering, or willfully causes or permits the life of any such child to be endangered or its health to be injured, or such child to be placed in such situation that its life may be endangered or its health injured, or has in custody any such child for any of the purposes aforesaid, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) As used in this section:

(a) "Sexual conduct" means acts of masturbation; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast or any act or conduct which constitutes the commission of sexual battery or suggests that such crime is being or will be committed.

(b) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(c) "Sadomasochistic abuse" means the flagellation or torture by or upon a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

History.—s. 1, ch. 28240, 1953; s. 381, ch. 71-136; 2, ch. 75-195; s. 1, ch. 77-174; s. 2, ch. 78-326.

450.161 Chapter not to affect vocational education of children; other exceptions.—Nothing in this chapter shall prevent minors of any age from receiving vocational education furnished by the United States, this state, or any county or other political subdivision of this state and duly approved by the Department of Education or other duly constituted authority, nor any apprentice indentured under a plan approved by the Division of Labor, or to prevent the employment of any minor 14 years of age or older when such employment is authorized as an integral part of, or supplement to, such a course in vocational education and is authorized by regula-

tions of the district school board of the district in which such minor is employed, provided the employment is in compliance with the provisions of ss. 450.021(4) and 450.061.

History.—s. 1, ch. 28240, 1953; s. 7, ch. 61-182; ss. 15, 17, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-283; s. 2, ch. 75-195.

PART II

MIGRANT LABOR

450.181 Definitions.—As used in part II, unless the context clearly requires a different meaning:

(1) "Migrant labor camp" means those migrant labor camps as defined in s. 381.422(1).

(2) "Office" means the Executive Office of the Governor.

(3) The term "migrant laborer" has the same meaning as migrant farm workers as defined in s. 316.003(62).

History.—s. 18, ch. 69-106; s. 155, ch. 77-104; s. 140, ch. 79-190.

450.191 Executive Office of the Governor; powers and duties.—

(1) The Executive Office of the Governor is authorized and directed to:

(a) Advise and consult with employers of migrant workers as to the ways and means of improving living conditions of seasonal workers;

(b) Cooperate with the Department of Health and Rehabilitative Services in establishing minimum standards of preventive and curative health and of housing and sanitation in migrant labor camps and in making surveys to determine the adequacy of preventive and curative health services available to occupants of migrant labor camps;

(c) Provide coordination for the enforcement of ss. 381.422-381.482;

(d) Cooperate with the other departments of government in coordinating all applicable labor laws, including, but not limited to, those relating to private employment agencies, child labor, wage payments, wage claims, and crew leaders;

(e) Cooperate with the Department of Education to provide educational facilities for the children of migrant laborers;

(f) Cooperate with the Department of Highway Safety and Motor Vehicles to establish minimum standards for the transporting of migrant laborers;

(g) Cooperate with the Department of Agriculture and Consumer Services to conduct an education program for employers of migrant laborers pertaining to the standards, methods, and objectives of the [1]division;

(h) Cooperate with the Department of Health and Rehabilitative Services in coordinating all public assistance programs as they may apply to migrant laborers;

(i) Coordinate all federal, state, and local programs pertaining to migrant laborers;

(j) Cooperate with the farm labor office of the Florida state employment service in the recruitment and referral of migrant laborers and other persons for the planting, cultivation, and harvesting of agricultural crops in Florida.

(2) The office shall arrange, through the Department of Health and Rehabilitative Services, for the provision of the supplementary services set forth in subsection (1)(b) to the extent of available appropriations. Such services may be provided through the use of one or more traveling dispensaries, or by contract with physicians, dentists, hospitals, or clinics, or in such manner as may be recommended by the Department of Health and Rehabilitative Services.

History.—s. 18, ch. 69-106; s. 155, ch. 77-104; s. 141, ch. 79-190.

[1]Note.—See s. 4, ch. 79-190, which transferred the migrant labor section of the Department of Community Affairs and all powers, duties, and functions of the department under this section to the Executive Office of the Governor.

450.201 Legislative commission on migrant labor created; membership; filling vacancies.— There is created a permanent joint committee of the Florida Legislature to be known as the legislative Commission on Migrant Labor, to be composed of three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House. One member from each house shall be a member of the minority party. Any vacancy in the commission shall be filled by the respective presiding officer from the membership of the legislative body from which the vacancy occurred. However, a member who ceases to be a member of the legislative body from which appointed shall continue to be a member of the commission until the next succeeding regular session of the Legislature, at which the commission shall render its report to the legislature.

History.—s. 1, ch. 70-131.

450.211 Advisory committee; membership.— The Legislative Commission on Migrant Labor is authorized and directed to establish an advisory committee which shall conform in its operations with the provisions for advisory committees appointed by standing committees contained in s. 11.144 and which shall contain the following membership:

(1) One member representing the Department of Community Affairs;

(2) One member representing the Department of Health and Rehabilitative Services;

(3) One member representing the Department of Agriculture and Consumer Services;

(4) One member representing the Department of Education;

(5) One member representing the Florida Farm Bureau Federation;

(6) One member representing the Florida State Federated Labor Council;

(7) One member representing the Florida Fruit and Vegetable Association;

(8) One member representing the Citrus Industrial Council;

(9) One member representing the Florida Sugar Cane League;

(10) One member representing the Florida Department of Commerce;

(11) Not less than two or more than four other persons selected and appointed by the commission.

History.—s. 2, ch. 70-131.

450.221 Duties and authority.—

(1) The duties and authority of the Legislative Commission on Migrant Labor shall be:

(a) To maintain a continuing consultative examination and supervision of the migrant labor programs relating to living conditions; health, housing, and sanitation; labor laws; education; transportation safety; public assistance; and the coordination of federal, state, and local programs administered by agencies of the executive branch of Florida government;

(b) To cooperate with the executive branch of state government in developing improvements in existing programs in order to discover and establish better coordination of migrant labor programs;

(c) To cooperate with commissions, agencies, and committees of other states having similar responsibilities, including participation in the Interstate Compact on Migrant Labor hereinafter authorized; and

(d) In cooperation with commissions, agencies, and committees of other states having similar responsibilities, to develop and enter into agreements for the establishment of cooperative arrangements whereby migrant labor programs shall have a continuing administration, application, and effectiveness from state to state.

(2) It is intended that the commission shall develop plans relative to particular migrant programs, and ultimately a comprehensive plan, which will permit the operation in this state, and cooperatively in participating states, of concerted action on problems relating to migrant labor, with the ultimate purpose of improving the conditions for migrant labor and of the reduction of problems relating thereto.

History.—s. 3, ch. 70-131.

450.231 Annual reports to legislature.—The commission shall report its findings, recommendations, and proposed legislation to each regular session of the legislature.

History.—s. 4, ch. 70-131.

450.241 Commission; compensation.—Members of the commission shall serve without compensation, but shall receive reimbursement for travel expenses and per diem as provided in s. 112.061. Expenses of the commission shall be authorized expenditures of the legislature. The commission is authorized to apply for, receive, and expend, independently of its legislative budget, such grants, gifts, bequests, and donations as may be available to it, provided they are reported to the legislature at its succeeding regular session.

History.—s. 5, ch. 70-131.

450.251 Interstate Compact on Migrant Labor.—The Governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of the United States, and the legislature hereby signifies in advance its approval and ratification of such compact:

INTERSTATE MIGRANT LABOR COMPACT

MEMBER JURISDICTION.—The compact for migrant labor is entered into with all jurisdictions legally joining therein and enacted into law in the following form:

INTERSTATE MIGRANT LABOR COMPACT

ARTICLE I

PURPOSE AND POLICY.—

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding of migrant labor programs among executive, legislative, and local government bodies and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization, and recommendation of public policy alternatives in a continuing effort to meet the problems arising from the interstate flow of migrant labor.

3. Provide a clearinghouse of information on matters relating to migrant labor problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both governmental and lay groups in the field may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy for migrant labor.

4. Facilitate the improvement of state and local programs, so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advancement, and provides means whereby the party states can coordinate programs, devise agreements for consistent application of programs, and increase the effectiveness of programs.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement, and administration of migrant labor programs in a manner which will accord with the needs and advantages of diversity among localities and states.

C. Further, it is the policy of this compact that the party states recognize that each of them has an interest in the quality of the programs offered in each of the other states, as well as in the excellence of its own programs, because of the highly mobile character of the migrant labor force as a group, and because the products and services contributing to the health, welfare, and economic advancement of each state are supplied in part by persons working in this group.

ARTICLE II

STATE DEFINED.—

As used in this compact, "state" means a state, territory, or possession of the United States, District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

THE COMMISSION.—

A. The interstate migrant labor commission, hereinafter called "the commission," is hereby established. The commission shall consist of five members representing each party state. One of such members representing each state shall be the governor or his representative; one shall be a member of the upper house of the state legislature, appointed by the presiding officer thereof; one shall be a member of the lower house of the state legislature, appointed by the presiding officer; and two shall be appointed by the governor, one of whom may be a local government official from an area of the state concerned with migrant labor problems. The guiding principle for the composition of the membership of the commission shall be that the members, by virtue of their training, experience, knowledge, or affiliations be in a position collectively to reflect broadly the interests of the state and local government in migrant labor affairs.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be taken only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to subcommittees appointed for specific purposes.

C. The commission shall elect annually from among its members a chairman, who shall be a governor or member of a party state legislature, a vice-chairman, and treasurer.

D. The commission shall appoint an executive director who shall serve at the pleasure of the commission. The executive director together with the treasurer and other officers of the commission shall be bonded in the amount as the commission determines. The executive director shall serve as secretary.

E. The executive director shall have the authority to direct the staff to comply with those goals established by the commission in both the compact and the bylaws of the commission. The executive director and the staff may be furnished by the council of state governments, serving the goals of the commission and any related activities of the council of state governments. In such case the commission shall reimburse the council of state governments for all reasonable charges for the services provided. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency or from any person, firm, association, foundation, or corporation, and may utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F. of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed, and the identity of the donor or lender.

H. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

I. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

POWERS.—

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Through the available facilities of party states, collect, correlate, analyze, and interpret information and data concerning migrant labor problems and resources available for solving such problems.

2. Encourage and foster research in all aspects of migrant labor, with special reference to the desirable organization, administration, and methods to be employed in meeting the needs of such labor.

3. Develop proposals for adequate financing of programs as a whole at each of many levels.

4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources available from party states and any other reasonably associated agencies, associations, or institutions, public or private.

5. Formulate suggested policies and plans for the improvement of migrant labor programs as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Cooperate with commissions, agencies, and committees of other states having similar responsibilities, specifically party states of this compact.

7. Establish cooperative arrangements among party states whereby migrant labor programs shall have a continuing administration, application, and

effectiveness from state to state.

8. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V

COOPERATION WITH FEDERAL GOVERNMENT.—

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed five representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common policies on migrant labor of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI

COMMITTEES.—

A. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

B. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII

FINANCE.—

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimate expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation request under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III, G. of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except when the commission makes use of funds available to it pursuant to Article III, G. hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII

ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL.—

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor" as used in this compact shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least five eligible party jurisdictions shall be required.

C. Adoptions of the compact may be either by enactment or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until the next succeeding December 31. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, in accordance with paragraph C. of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY.—

A. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state

or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

COMMISSION BYLAWS.—

B. Pursuant to Paragraph I. of Article III, of this compact, the commission shall file a copy of its bylaws and any amendment thereto with the governor.

History.—s. 6, ch. 70-131.

450.261 Interstate Migrant Labor Commission; Florida membership.—In selecting the Florida membership of the Interstate Migrant Labor Commission, the Governor may designate the Secretary of the Department of Community Affairs as his representative. The two legislative members shall be chosen from among the members of the Legislative Commission on Migrant Labor, and at least one of the two members appointed by the Governor shall be chosen from among the members of its advisory committee.

History.—s. 7, ch. 70-131.

PART III

FARM LABOR REGISTRATION

[1]**450.27 Short title.**—This part III of chapter 450 may be cited as the Farm Labor Registration Law.

History.—s. 1, ch. 71-234; s. 1, ch. 77-25.

[1]Note.—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

450.271 State administration of the Federal Farm Labor Contractor Registration Act of 1963, as amended.—The Department of Labor and Employment Security may enter into agreements with the Secretary of Labor of the United States to authorize the department to administer within the state the provisions of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

History.—s. 2, ch. 77-25; s. 43, ch. 79-7.

[1]**450.28 Definitions.**—

(1) "Farm labor contractor" means:

(a) Any person who, for a fee or other valuable consideration, recruits, transports into or within the state, supplies, or hires at any one time in any calendar year 10 or more farm workers to work for, or under the direction, supervision, or control of, a third person; or

(b) Any person who recruits, transports into or within the state, supplies, or hires at any one time in any calendar year 10 or more farm workers and who, for a fee or other valuable consideration, directs, supervises, or controls all or any part of the work of such workers.

(2) "Farm Labor and Rural Manpower Section" means the Farm Labor and Rural Manpower Section of the Bureau of Rural Manpower Services of the Division of Employment Security of the Department of Labor and Employment Security.

History.—s. 2, ch. 71-234; s. 1, ch. 77-25; s. 156, ch. 77-104; s. 44, ch. 79-7.

[1]Note.—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.29 Exclusions.**—This part does not apply to any person who is the owner or lessee of a farm or who is the owner or lessee of a packinghouse or food processing plant and who employs workers in planting, cultivating, harvesting, or preparing agricultural products for delivery to such packinghouse or food processing plant.

History.—s. 3, ch. 71-234; s. 1, ch. 77-25.

[1]Note.—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.30 Requirement of certificate of registration.**—

(1) No person shall act as a farm labor contractor until a certificate of registration has been issued to him by the administrator of the Farm Labor and Rural Manpower Section and unless such certificate is in full force and effect and is in his possession.

(2) No certificate of registration may be transferred or assigned.

(3) Unless sooner revoked, each certificate of registration shall run to and include December 31 next following the date of issuance and may be renewed each year upon application on a form prescribed by the Farm Labor and Rural Manpower Section.

History.—s. 4, ch. 71-234; s. 2, ch. 71-977; s. 1, ch. 77-25.

[1]Note.—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.31 Issuance of certificate of registration.**—The administrator of the Farm Labor and Rural Manpower Section shall not issue to any person a certificate of registration as a farm labor contractor, nor shall he renew such certificate, until:

(1) Such person has executed a written application therefor in a form and pursuant to regulations prescribed by the administrator of the Farm Labor and Rural Manpower Section and has submitted such information as said administrator may prescribe.

(2) The administrator of the Farm Labor and Rural Manpower Section is satisfied that the applicant complies with rules and regulations promulgated by him.

(3) Such person pays to the Farm Labor and Rural Manpower Section a registration fee of $25 at the time the certificate or the renewal is issued. Fees collected by the Farm Labor and Rural Manpower Section under this subsection shall be deposited in the State Treasury into the Crew Chief Registration Trust Fund which is hereby created and shall be utilized for administration of this part.

History.—s. 5, ch. 71-234; s. 1, ch. 71-977; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]450.32 Revocation, suspension, and refusal to renew certificate of registration.—

(1) The administrator of the Farm Labor and Rural Manpower Section may revoke, suspend, or refuse to renew any certificate of registration when it is shown that the farm labor contractor has:

(a) Violated or failed to comply with any provision of this part or the rules and regulations promulgated pursuant to s. 450.36.

(b) Made any misrepresentation or false statement in his application for certificate of registration.

(c) Given false or misleading information concerning terms, conditions, or existence of employment to persons who are recruited or hired to work on a farm.

(2) The revocation, suspension of, or refusal to renew any permit hereunder will not render any then current and valid contract invalid nor affect the terms of such contract for the duration of the growing season then in progress.

History.—s. 6, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]450.33 Duties of farm labor contractor.—Every farm labor contractor must:

(1) Carry his certificate of registration with him at all times and exhibit the same to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing and, upon request, to persons designated by the administrator of the Farm Labor and Rural Manpower Section.

(2) Promptly when due, pay or distribute to the individuals entitled thereto all moneys or other things of value entrusted to the registrant by any third person for such purpose.

(3) Comply on his part with the terms and provisions of all legal and valid agreements and contracts entered into between the registrant in his capacity as a farm labor contractor and third persons.

(4) Have displayed prominently at the site where the work is to be performed and on all vehicles used by the registrant for the transportation of employees:

(a) A copy of his application for a certificate of registration; and

(b) A written statement in English, and in Spanish when any employee is Spanish-speaking, showing the rate of compensation he receives from the grower with whom he has contracted and the rate of compensation he is paying to his employees for services rendered to, for, or under the control of such grower.

(5) Take out a policy of insurance with any insurance carrier which insures said registrant against liability for damage to persons or property arising out of the operation or ownership of any vehicle or vehicles for the transportation of individuals in connection with his business, activities, or operations as a farm labor contractor. In no event shall the amount of such liability insurance be less than that required by the provisions of the financial responsibility law of the state.

(6) Maintain such records as may be designated by the Farm Labor and Rural Manpower Section.

(7) Semimonthly, or at the time of each payment of wages, furnish each of the workers employed by him, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from such wages.

(8) File, within such time as the administrator of the Farm Labor and Rural Manpower Section may prescribe, a set of his fingerprints.

(9) Produce evidence to the administrator of the Farm Labor and Rural Manpower Section that each vehicle he uses for the transportation of employees has been inspected in accordance with the provisions of the safety equipment inspection law of Florida and has been found to comply with the standards and requirements thereof or, in lieu thereof, bears a valid inspection sticker showing that the vehicle has passed the inspection in the state in which the vehicle is registered.

History.—s. 7, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]450.34 Prohibited acts of farm labor contractor.—No licensee shall:

(1) Make any misrepresentation or false statement in his application for a certificate of registration.

(2) Make or cause to be made to any person any false, fraudulent, or misleading representation, or publish or circulate, or cause to be published or circulated, any false, fraudulent, or misleading information concerning the terms, conditions, or existence of employment at any place or places, by any person or persons, or of any individual or individuals.

History.—s. 8, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce

of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.35 Certain contracts prohibited.**—It is unlawful for any person to contract for the employment of farm workers with any farm labor contractor as defined in this act until said labor contractor shall display to him a current certificate of registration issued by the Farm Labor and Rural Manpower Section pursuant to the requirements of this part.

History.—s. 9, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.36 Rules and regulations.**—The administrator of the Farm Labor and Rural Manpower Section may promulgate rules and regulations necessary to enforce and administer this part.

History.—s. 10, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.37 Cooperation with federal agencies.**—The administrator of the Farm Labor and Rural Manpower Section shall, whenever appropriate, cooperate with federal agencies.

History.—s. 11, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

[1]**450.38 Penalties.**—Any person who violates the provisions of ss. 450.33 and 450.35 of this part is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 12A, ch. 71-234; s. 1, ch. 77-25.

[1]**Note.**—Section 1, ch. 77-25, Laws of Florida, provides that this section is repealed when an agreement is made between the Department of Commerce of the state and the Secretary of Labor of the United States which shall provide that the Department of Commerce shall have the authority to administer registration, certification, compliance, and enforcement of the Federal Farm Labor Contractor Registration Act of 1963, as amended.

PART IV

RURAL MANPOWER SERVICES

450.40 Short title.—This part shall be cited as the "Rural Manpower Services Act."

History.—s. 1, ch. 72-398.

450.41 Legislative intent.—In order that the state may achieve its full economic and social potential, consideration must be given to rural manpower training and development to enable its rural citizens as well as urban citizens to develop their maximum capacities and participate productively in our society. It is, therefore, the policy of the state to make available those services needed to assist individuals and communities in rural areas to improve their quality of life. It is with a great sense of urgency that a rural manpower services program is established within the Division of Employment Security of the Department of Labor and Employment Security to provide equal access to all manpower training programs available to rural as well as urban areas.

History.—s. 2, ch. 72-398; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 45, ch. 79-7.

450.42 General purpose.—A trained labor force is an essential ingredient for industrial as well as agricultural growth. Therefore, it shall be the general responsibility of the rural manpower services program to provide rural business and potential rural businesses with the employment and manpower training services and resources necessary to train and retain Florida's rural work force.

History.—s. 3, ch. 72-398.

450.43 Scope and coverage.—The scope of the area to be covered by the rural manpower services program will include all counties of the state not classified as standard metropolitan statistical areas (SMSA) by the United States Department of Labor Manpower Administration. Florida's designated SMSA labor areas include: Broward, Dade, Duval, Escambia, Hillsborough, Pinellas, Leon, Orange, and Palm Beach Counties.

History.—s. 4, ch. 72-398.

450.44 Duties of rural manpower services program.—It shall be the direct responsibility of the rural manpower services program to promote and deliver all employment and manpower services and resources to the rural undeveloped and underdeveloped counties of the state in an effort to:

(1) Slow down out-migration of untrained rural residents to the state's overcrowded large metropolitan centers.

(2) Assist the department's Economic Development Division in attracting light, pollution-free industry to the rural counties.

(3) Improve the economic status of the impoverished rural residents.

(4) Provide present and new industry with the manpower training resources necessary for them to train the untrained rural work force toward gainful employment.

(5) Develop rural manpower programs which will be evaluated, planned, and implemented through communications and planning with appropriate:

(a) Departments of state and federal governments.

(b) Divisions, bureaus, or sections of the department of commerce.

(c) Agencies and organizations of the public and private sectors at the state, regional, and local levels.

History.—s. 5, ch. 72-398; s. 1, ch. 73-283; s. 1, ch. 77-174.

PART V

EMPLOYMENT AND TRAINING PROGRAMS FOR ECONOMICALLY DISADVANTAGED, UNEMPLOYED, AND UNDEREMPLOYED PERSONS

[1]450.50 Short title.—This part shall be known and may be cited as the "State Employment and Training Act."

History.—s. 1, ch. 74-165; s. 1, ch. 75-210; s. 4, ch. 78-323; ss. 1, 8, ch. 79-261.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 8, ch. 79-261, provides that, if s. 450.50 is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this section, as amended by ch. 79-261, shall also be repealed as therein provided.

Note.—Former s. 13.998.

[1]450.51 Definitions.—When used in this part:

(1) "CETA" means the Comprehensive Employment and Training Act amendments of 1978 and regulations promulgated thereunder.

(2) "State Employment and Training Council" means the council as established in s. 450.52.

(3) "Balance of the State Prime Sponsor Advisory Council" means the council as established in s. 450.53.

(4) "State prime sponsor" means the chief elected official of the state, the Governor, who is responsible for implementing those titles and sections of the Comprehensive Employment and Training Act amendments of 1978, reserved for the state, both statewide and in the balance of the state.

(5) "Balance of the state" means those counties in the state for which the Governor is responsible, as defined in Title I of the Comprehensive Employment and Training Act amendments of 1978.

(6) "Balance of the state planning districts" are composed of the counties as grouped by the Director of the Division of Employment and Training which fall within the balance of the state and are not part of a local prime sponsor or consortium as defined in Title I of the Comprehensive Employment and Training Act amendments of 1978.

(7) "Balance of the state prime sponsor district advisory boards" means those boards as established in s. 450.53.

(8) "Prime sponsor" means any unit of general purpose government or combination of units of general purpose government designated by the United States Government as the recipient of manpower funds under Title I, s. 101 of the Comprehensive Employment and Training Act amendments of 1978.

History.—s. 1, ch. 74-165; s. 2, ch. 75-210; s. 4, ch. 78-323; s. 57, ch. 79-190; ss. 1, 8, ch. 79-261.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 8, ch. 79-261, provides that, if s. 450.51 is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this section, as amended by ch. 79-261, shall also be repealed as therein provided.

Note.—Former s. 13.9981.

[1]450.52 State Employment and Training Council.—

(1) There is established within the Department of Labor and Employment Security the State Employment and Training Council, hereinafter referred to as the "council."

(2) The council and chairperson shall be appointed by the Governor according to the provisions of CETA.

(3) It shall be the duty of the council to carry out all functions and responsibilities required of it in CETA.

History.—s. 1, ch. 74-165; s. 3, ch. 75-210; s. 6, ch. 77-104; s. 4, ch. 78-323; s. 1, ch. 79-7; ss. 1, 8, ch. 79-261.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 8, ch. 79-261, provides that, if s. 450.52 is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this section, as amended by ch. 79-261, shall also be repealed as therein provided.

Note.—Former s. 13.9982.

[1]450.53 Balance of the State Prime Sponsor Advisory Council and district advisory boards; membership; duties.—

(1) There is established in the Department of Labor and Employment Security the Balance of the State Prime Sponsor Advisory Council which shall be appointed by the Governor according to the provisions of CETA.

(2) The council shall carry out the duties as required of it under CETA.

(3) Within each balance of the state planning district there is created a district advisory board, which shall be appointed and constituted and shall function as required by CETA.

History.—s. 5, ch. 75-210; s. 4, ch. 78-323; s. 2, ch. 79-7; ss. 3, 8, ch. 79-261.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 8, ch. 79-261, provides that, if s. 450.53 is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this section, as amended by ch. 79-261, shall also be repealed as therein provided.

Note.—Former s. 13.9988.

[1]450.54 Balance of the State Private Industry Council.—

(1) There is established a Balance of the State Private Industry Council. The council shall be appointed by the Governor according to the provisions of CETA and shall perform such responsibilities as specified by CETA.

(2) The council shall participate with the balance of the state prime sponsor in the development and implementation of programs designed to utilize private industry in providing employment and training programs for economically disadvantaged persons.

History.—s. 4, ch. 79-261.

[1]Note.—Section 9, ch. 79-261 provides that, in accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, this section, as created by ch. 79-261, shall be repealed on October 1, 1981, and the Balance of the State Private Industry Council shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

450.55 Administration.—

(1) The Division of Employment and Training of the Department of Labor and Employment Security shall staff the state prime sponsor, the State Employment and Training Council, the Balance of the State Prime Sponsor Advisory Council, the Balance

of the State Private Industry Council, and any other boards or councils required to be established by the state prime sponsor under CETA.

(2) The Division of Employment and Training shall be responsible for carrying out the duties and responsibilities assigned to the state prime sponsor under CETA, with the advice of its councils.

(3) The Director of the Division of Employment and Training shall supervise the division and have the authority, upon delegation from the Secretary of Labor and Employment Security, to sign contracts on behalf of the state prime sponsor with program operators contracting with the state under the Comprehensive Employment and Training Act amendments of 1978.

(4) The director of the Division of Employment and Training shall have the authority, upon delegation from the Secretary of Labor and Employment Security, to make rules for the administration of this part and the administration of the Comprehensive Employment and Training Act amendments of 1978.

(5) The Division of Employment and Training may assume such duties delegated to it by the United States Government and its agencies for the purpose of obtaining federal funding for carrying out the purposes of CETA in this state.

History.—s. 5, ch. 75-210; s. 3, ch. 79-261.
Note.—Former s. 13.9989.

CHAPTER 452

BONDS OF EMPLOYEES OF COMMON CARRIERS

452.01 Common carrier not to require employee to furnish surety bond of certain company.—No common carrier authorized to do business in this state, when requiring of an employee that he give it a bond or undertaking of any nature whatsoever, shall require such employee to have such bond or undertaking executed as a surety by any particular person, or by any one or more of any number of such persons, named by such common carrier; and no such common carrier shall reject any such bond or undertaking for any reason other than the financial insufficiency of such bond or undertaking.

History.—s. 1, ch. 6519, 1913; RGS 4041; CGL 5963.
cf.—s. 1.01 "Person" defined.

452.02 Foreign corporations as surety.—No common carrier authorized to do business in this state, when requiring of any employee that he give it a bond or undertaking of any nature whatsoever, shall require as surety thereon any person not a resident of this state; nor shall such common carrier accept as such surety any company, corporation, or association unless the same is a corporation duly organized under the laws of Florida, or who shall have designated an agent residing within this state upon whom service of legal process against it may be had as provided by law for foreign corporations doing business in this state, and shall also have in this state a general office where it shall require that every such bond or undertaking shall be approved, and canceled, and where a complete record thereof shall be kept.

History.—s. 2, ch. 6519, 1913; RGS 4042; CGL 5964.

452.03 Bond to cover definite term; cancellation; proviso.—Every bond or undertaking of any nature whatsoever given by an employee of any common carrier authorized to do business in this state shall be made to cover a definite term; and no such bond or undertaking shall be canceled without the consent of all parties thereto, except for a breach of one or more of the conditions thereof. Any such employee who shall have given any such bond or undertaking may, upon breach of any of the conditions thereof by the other party thereto, cancel the same by giving the surety or sureties thereon and the common carrier for the benefit of whom the same shall have been made, at least 10 days' notice in writing, setting out in full the reason for canceling the same, said notice to be signed by such employee and sworn to by him in this state before any officer authorized to administer oaths. Any such notice to a company, corporation, or association may be served by leaving the same with any person upon whom service of legal process upon such company, corporation, or association may be had. Any surety of any such bond or undertaking may, upon the breach of any of the conditions thereof by the common carrier and employee for whom the same shall have been made, cancel the same by giving such employee at least 10 days' notice in writing, setting out in full the reason for canceling the same, the said notice to be signed by an agent or manager of such surety, then a resident of this state and then authorized to approve or disapprove similar bonds or undertakings for such surety, and to be sworn to by the person signing the same in this state before an officer authorized to administer oaths; provided, that nothing herein shall affect any right of action accruing to any person upon the breach of a contract.

History.—s. 3, ch. 6519, 1913; RGS 4043; CGL 5965.

452.04 Bonds violating chapter void.—Any bond, contract, or undertaking made in violation of the provisions of this chapter shall be void.

History.—s. 4, ch. 6519, 1913; RGS 4044; CGL 5966.

452.05 Violation of regulations as to employment bonds; penalty.—Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 6519, 1913; RGS 5672; CGL 7877; s. 382, ch. 71-136.

CHAPTER 453

PUBLIC UTILITY ARBITRATION

453.01 Declaration of policy.—That it is hereby declared to be the public policy of the State of Florida that it is necessary and essential in the public interest to facilitate the prompt, peaceful, and just settlement of labor disputes between public utility employers and their employees which cause or threaten to cause an interruption in the supply of services necessary to the health, safety, and well-being of the citizens of Florida, and to that end to encourage the making and maintaining of agreements concerning wages, hours, and other conditions of employment through collective bargaining between public utility employers and their employees, and to provide settlement procedures for labor disputes between public utility employers and their employees in cases where the collective bargaining process has reached an impasse and stalemate, and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of a public utility service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service.

History.—s. 1, ch. 23911, 1947.
cf.—Ch. 447 Labor organizations.

453.02 Definitions.—

(1) The term "public utility employer" means an employer engaged in the business of rendering electric power, light, heat, gas, water, communication, or transportation services to the public in this state.

(2) The term "collective bargaining" means collective bargaining of or similar to the kind provided for by the federal law known as the National Labor Relations Act and as interpreted by decisions of the Supreme Court of the United States arising under said last-mentioned act.

History.—s. 2, ch. 23911, 1947.
cf.—s. 453.17 Publicly owned utilities excepted.

453.03 Duty to make effort to settle labor disputes.—It shall be the duty of public utility employers and their employees in public utility operations to exert every reasonable effort to settle such labor disputes by the making of agreements through collective bargaining between the parties, and by the maintaining thereof when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.

History.—s. 3, ch. 23911, 1947.

453.04 Petition for and appointment of conciliator.—If in any case of a labor dispute between a public utility employer and its employees, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employees are unable to effect a settlement thereof, then either party to the dispute may petition the Governor of the State of Florida to appoint a conciliator. The party filing such a petition shall serve a true copy thereof upon the other party or parties to such labor dispute. Service shall be made by delivering such a copy (a) in the case of public utility employer, to one of its officers or a member of its collective bargaining committee and (b) in the case of a labor organization, a labor union, or a group of employees in the process of organizing, to one of the officers, business agents, organizers, or collective bargaining committeemen of such organization, union or group. In case service cannot be so made within 24 hours after the time of the actual receipt of the petition by the Governor, then such service shall be effected by mailing (registered mail—return receipt requested) such a copy to the last known principal post-office address or box of the party entitled to receive the same. In event such acceptance or delivery of such mailing is refused, then such service shall be fully and sufficiently effected by the immediate posting of a true copy of the petition on the bulletin board of at least one major place of employment of employees involved in such labor dispute. The party effecting such service shall make and file with the Governor a certificate setting forth the time and date of such service and the manner in which it was so effected. Upon the filing of such petition, the Governor shall consider the same, and if he deems advisable shall order a hearing thereon, and if in his opinion the collective bargaining process, notwithstanding good faith efforts on part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of the supply of a service on which the community affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service, the Governor shall appoint a conciliator to attempt to effect the settlement of such dispute. Such conciliator shall be allowed reasonable compensation for

his services and for his necessary expenses, in an amount to be fixed by the Governor, such compensation and expenses to be shared equally by the parties to the dispute.

History.—s. 4, ch. 23911, 1947.

453.05 Work interruption; prohibited.—The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of such dispute. From and after the filing of a petition with the Governor as provided for in s. 453.04, and until and unless the Governor shall determine that the failure to settle the dispute with respect to which such petition relates would not cause severe hardship to be inflicted on a substantial number of persons, there shall be no interruption of work and no strikes or slowdowns by the employees, and there shall be no lockout or other work stoppage by the employer, until such time as all procedure provided for by this chapter has been exhausted or during the effective period of any order issued by a board of arbitration pursuant to the provisions of this chapter.

History.—s. 5, ch. 23911, 1947.
cf.—s. 447.13 Right to strike preserved.

453.06 Inability to effect settlement; appointment of board of arbitration; compensation and expenses.—If the conciliator so named is unable to effect a settlement of such dispute within a 30-day period after his appointment, he shall report such fact to the Governor; and the Governor may allow such conciliator up to an additional 15 days in which to attempt to effect a settlement of such dispute and make report to the Governor; and the Governor, if he believes that a continuation of the dispute will cause or is likely to cause the interruption of the supply of a service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service, shall appoint a board of arbitration to hear and determine such dispute. The board of arbitration shall consist of one public member chosen by the Governor, and one member designated in writing by each of the parties to the dispute. If either party to the dispute shall fail or refuse to designate its member within 1 week after appointment of the public member, the Governor shall appoint such member in the same manner as the public member is appointed. A new board shall be chosen by the Governor for each separate dispute; but the same board may hear any number of issues or grievances which are involved at the same time in any dispute between the same employer and his employees. The public member of such board of arbitration shall be allowed reasonable compensation for his services and shall be reimbursed for traveling expenses as provided in s. 112.061, in an amount to be fixed by the Governor, and such compensation of such board of arbitration shall be shared equally by the parties to the dispute.

History.—s. 6, ch. 23911, 1947; s. 19, ch. 63-400.

453.07 Arbitration board; hearings.—The board of arbitration shall promptly hold hearings and shall have the power to administer oaths and compel the attendance of witnesses and the furnishing by the parties of such information as may be necessary to a determination of the issue or issues in dispute. Both parties to the dispute shall have the opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the board shall deem relevant to the issue or issues in controversy.

History.—s. 7, ch. 23911, 1947.

453.08 Finding and order of board.—It shall be the duty of the board to make written findings of fact, and to promulgate a written decision and order upon the issue or issues presented in each case. In making such findings the board shall consider only, and be bound only, by the evidence submitted. When a valid contract is in effect defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the board shall have power only to determine the proper interpretation and application of the contract provisions which are involved. Where wage rates or other conditions of employment under a proposed new or proposed amended contract are in dispute, the board shall establish rates of pay and conditions of employment which are comparable to the prevailing wage rates paid and conditions of employment maintained by the same or similar public utility employers, if any, in the same labor market area, and if none, in adjoining labor market areas within the state, and if none, in adjoining labor market areas in states bordering on this state, and which in addition thereto bear a generally comparable relationship to wage rates paid and conditions of employment maintained by all other employers in the same labor market area. The board shall determine in each case, based upon the evidence presented and received by the board, what constitutes in that case the labor market area involved. The board may establish separate schedules of wage rates and separate conditions of employment in each labor market area. In establishing wage rates, the board shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacations, holiday, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment by the employees.

History.—s. 8, ch. 23911, 1947.

453.09 Time within which to make findings; majority decision; recording; finality of order.—The board of arbitration shall hand down its findings, decision and order (hereinafter referred to as its order) within 60 days after its appointment; provided, however, that the Governor may for good cause extend said period for not to exceed an additional 30 days. If all three members of the board do not agree, the order of the majority shall constitute the order of the board. The board shall furnish to each of the parties a copy of its order. A certified copy thereof shall be filed in the office of the Clerk of the Circuit Court of the county wherein the dispute arose or in the office of the Clerk of the Circuit Court of any county where the employer operates or maintains an office or place of business. Unless such order is reversed upon a petition for review filed

pursuant to the provisions of s. 453.10, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between, the parties from the date such order is filed with the Clerk of the Circuit Court, as aforesaid, and shall continue effective for 1 year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the board relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the Governor appointed a conciliator in such dispute.

History.—s. 9, ch. 23911, 1947.

453.10 Review of order; by Circuit Court.—Either party to the dispute may within the time provided by the Florida Appellate Rules petition the Circuit Court of any county, in which the employer operates or has an office or place of business, for a review of such order on the ground (a) that the parties were not given reasonable opportunity to be heard, or (b) that the board of arbitration exceeded its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion, or other unlawful means or methods. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the Circuit Court, without the intervention of a jury, shall hear the evidence adduced by both parties with respect to the issue raised by such petition and may reverse said order only if he finds that (a) one of the parties was not given reasonable opportunity to be heard, or (b) that the board of arbitration exceeds its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion, or other unlawful means or methods. The decision of the Judge of the Circuit Court shall be final, unless an appeal is taken to the Supreme Court as hereinafter provided. If the court reverses said order for one of the reasons stated herein, and no appeal is taken to the Supreme Court, the clerk of said court shall certify the court's decision to the Governor, who may either attempt further conciliation or may appoint another board of arbitration, as hereinabove provided for, in the event that the parties do not prefer first to engage in further collective bargaining in an attempt to settle such dispute.

History.—s. 10, ch. 23911, 1947; s. 1, ch. 69-267.

453.11 Appeal to Supreme Court.—Any interested party may appeal to the Supreme Court from the decision of the Judge of the Circuit Court within the same period of time and following the same procedure as used in appeals from the order of the board of arbitration to the Circuit Court. The Supreme Court shall give precedence to the hearing of such appeals because of the public interest involved. If the Supreme Court reverses said order, then its order shall be certified to the Governor in the same manner as above provided in case of reversal by the Circuit Court.

History.—s. 10, ch. 23911, 1947.

453.12 Penalty for violation by an individual.—Any violation of this chapter by any member of a group of employees acting in concert, or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 23911, 1947; s. 383, ch. 71-136.

453.13 Penalty for lockout strike or work stoppage.—Any lockout engaged in by any utility, or any strike or work stoppage engaged in by any labor organization or labor union or any concerted or simultaneous action on the part of a substantial number of the members of any labor organization or labor union, which shall result in an interruption in or suspension of operation of any utility in violation of this chapter, shall subject such utility, or labor organization or labor union to a penalty not to exceed $10,000 per day for each day that such interruption or suspension of operation shall continue. Such penalty shall be to the state and recoverable by it in any appropriate legal action. All legal proceedings under this section against corporations or unincorporated bodies to recover any such penalty or penalties may be instituted and conducted according to the provisions of general law applicable to suits or actions against such corporations or bodies.

History.—s. 12, ch. 23911, 1947.

cf.—s. 447.13 Right to strike.

s. 453.17 Inapplicable to publicly owned utilities.

453.14 Action for injunction.—Any person adversely affected by reason of any violation of the provisions of this chapter may file an action in the Circuit Court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this chapter.

History.—s. 13, ch. 23911, 1947.

453.15 Rights of immunities of individual employees; intent of law.—Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or by agreement with others. No court shall have power to issue any process to compel an individual employee to render labor or service or to remain at his place of employment without his consent. It is the intent of this chapter only to forbid employees to leave their employment in concert or to cause a work slowdown or stoppage in concert, and to forbid an employer to lock out his employees, in any case where the resultant interruption of public service would cause hardship to a substantial number of persons.

History.—s. 14, ch. 23911, 1947.

453.16 National Railway Labor Act not affected.—Nothing in this chapter shall apply to any

utility to which the National Railway Labor Act is applicable.

History.—s. 15, ch. 23911, 1947.

453.17 Publicly owned and operated utilities excepted.—Nothing in this chapter shall apply to any utility owned and operated by a municipality, county, or other governmental unit.

History.—s. 15a, ch. 23911, 1947.

453.18 Short title.—This chapter may be cited as "Public Utility Arbitration Law."

History.—s. 19, ch. 23911, 1947.

TITLE XXXI

REGULATION OF PROFESSIONS AND OCCUPATIONS

CHAPTER 454

ATTORNEYS-AT-LAW

454.021 Attorneys; admission to practice law; supreme court to govern and regulate.—

(1) Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.

(2) The Supreme Court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.

History.—ss. 1, 2, and 7, ch. 29796, 1955; s. 10, ch. 61-530.

454.11 Powers of attorneys.—Every attorney duly admitted or authorized to practice in this state shall have the right to appear before any court of the state, or any public board, committee, or officer in the interest of any client, and may appear as amicus curiae when so permitted. All attorneys shall be deemed officers of the court for the administration of justice, and amenable to the rules and discipline of the court in all matters of order or procedure not in conflict with the constitution or laws of this state.

History.—s. 11, ch. 10175, 1925; CGL 4189; s. 7, ch. 22858, 1945.

454.17 Attorneys may administer oaths in open court.—Attorneys authorized to practice law in this state may administer oaths in open court, in the presence of the presiding judge or justice thereof, and any person swearing falsely under an oath so administered shall be liable to the penalty prescribed for perjury.

History.—s. 17, ch. 10175, 1925; CGL 4195.

454.18 Officers not allowed to practice.—No sheriff or clerk of any court, or deputy of either, shall practice in this state, nor shall any person not of good moral character, or who has been convicted of an infamous crime be entitled to practice. But no person shall be denied the right to practice on account of sex, race, or color. And any person, whether an attorney or not, or whether within the exceptions mentioned above or not, may conduct his own cause in any court of this state, or before any public board, committee, or officer, subject to the lawful rules and discipline of such court, board, committee, or officer.

History.—s. 18, ch. 10175, 1925; CGL 4196.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

454.19 Certain partnerships prohibited.—No judge of a court of this state who is permitted by the constitution and laws to practice law shall form any partnership with the prosecuting attorney of such court or become a partner in any firm in which he is a partner. No attorney who may be a law partner with any judge of any court who is permitted by law to practice law shall be allowed to practice before the court of which his partner is judge.

History.—s. 19, ch. 10175, 1925; CGL 4197; s. 1, ch. 77-119.

454.20 Attorneys not to be sureties.—No attorney shall become surety on the official bond of any state, county, or municipal officer of this state, nor surety on any bond of a client in judicial proceedings.

History.—s. 20, ch. 10175, 1925; CGL 4198.

454.23 Penalties.—Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself out to the public as qualified to practice in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he is qualified, or recognized by law as qualified, to act as a lawyer in this state, and any person entitled to practice who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 21, ch. 10175, 1925; CGL 8133; s. 384, ch. 71-136; s. 1, ch. 74-128.

454.31 Practice while disbarred or suspended prohibited.—Any person who has been disbarred and who has not been lawfully reinstated or is under suspension from the practice of law by any Circuit Court of the state or by the Supreme Court of the state who shall either directly or indirectly

practice law in any manner or hold himself out as an attorney-at-law or qualified to practice law shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 18006, 1937; CGL 1940 Supp. 8133(2); s. 385, ch. 71-136.

454.32 Aiding or assisting disbarred or suspended attorney prohibited.—Any attorney-at-law licensed to practice in the courts of the state who either directly or indirectly aids or assists any person in carrying on the practice of law, either directly or indirectly in any manner whatsoever who has been disbarred or is under the suspension, as provided in s. 454.31, from the practice of law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall also be subject to disbarment.

History.—s. 2, ch. 18006, 1937; CGL 1940 Supp. 8133(3); s. 386, ch. 71-136.

CHAPTER 455

REGULATION OF PROFESSIONS AND OCCUPATIONS; GENERAL PROVISIONS

PART I GENERAL PROVISIONS (ss. 455.01-455.11)

PART II REGULATION BY DEPARTMENT OF PROFESSIONAL REGULATION (ss. 455.201-455.242)

PART I

GENERAL PROVISIONS

455.01 Administrative boards defined.—The term "administrative board" relates to minor regulatory boards created by the state, including the following:

(1) Department of Professional Regulation.

(2) Bureau of Electronic Repair Dealer Registration, chapter 468.

(3) Florida State Advisory Council of Speech Pathology and Audiology, chapter 468.

(4) Such other minor regulatory boards as may be created by legislative act.

History.—s. 1, ch. 21885, 1943; s. 1, ch. 28215, 1953; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 27, ch. 67-248; s. 3, ch. 67-409; s. 1, ch. 67-596; s. 121, ch. 71-355; s. 122, ch. 73-333; s. 5, ch. 79-36; s. 123, ch. 79-164.
Note.—Former s. 485.01.

455.02 Members of Armed Forces in good standing with administrative boards.—Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of his becoming such a member, was in good standing with any administrative board of the state and was entitled to practice or engage in his profession or vocation in the state shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his part to be performed, as long as he is a member of the Armed Forces of the United States on active duty and for a period of 6 months after his discharge from active duty as a member of the Armed Forces of the United States.

History.—s. 2, ch. 21885, 1943; s. 5, ch. 79-36.
Note.—Former s. 485.02.

455.10 Restriction on requirement of citizenship.—No person shall be disqualified from practicing an occupation or profession regulated by the state solely because he is not a United States citizen.

History.—ss. 1-3, ch. 72-125; s. 1, ch. 74-37; s. 1, ch. 77-174; s. 5, ch. 79-36.
Note.—Former s. 455.012.

455.11 Qualification of immigrants for examination to practice a licensed profession or occupation.—

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for professional or occupational licensure, which shall be administered in the English language unless 15 or more such applicants request that said reexamination be administered in their native tongue. In the event that such reexamination is administered in a foreign language, the full cost to the board or commission of preparing and administering same shall be borne by said applicants.

(3) Each board and commission within the Department of Professional Regulation shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.—ss. 1, 3, ch. 77-255; s. 5, ch. 79-36; s. 194, ch. 79-400.
Note.—Former s. 455.016.

PART II

REGULATION BY DEPARTMENT OF PROFESSIONAL REGULATION

455.201 Professions and occupations regulated by Department of Professional Regulation; legislative intent.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from licensing.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) The boards listed in s. 20.30(4) shall not create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. No board shall take any action which tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(4) It is the further legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the Department of Professional Regulation shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law and, accordingly, the term "profession" shall also mean "occupation."

History.—s. 1, ch. 76-28; s. 5, ch. 79-36; s. 122, ch. 79-164.
Note.—Former s. 455.001.

455.203 Department of Professional Regulation; powers and duties.—The Department of Professional Regulation shall:

(1) Mail an application for renewal to each licensee every 2 years, and each licensee shall be required to renew his license every 2 years.

(2) Appoint the executive director of each board within the department, subject to the approval of the board.

(3) With the advice of the boards, submit a biennial budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules which relate to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt all rules necessary to administer this chapter.

(6) Establish by rules procedures by which the department shall use the expert or technical advice of the board for the purposes of investigation, inspection, evaluation of applications, and other duties of the department.

(7) Require all proceedings of any board or panel thereof within the department and all formal or informal proceedings conducted by the department or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Ensure that investigators and inspectors working on behalf of the department are generally knowledgeable in the profession which they investigate or inspect.

History.—s. 5, ch. 79-36.

455.205 Contacting boards through department.—Each board may be contacted through the headquarters of the Department of Professional Regulation in the City of Tallahassee or at any regional office of the department.

History.—s. 30, ch. 69-106; s. 2, ch. 77-115; s. 5, ch. 79-36.
Note.—Former s. 455.004.

455.207 Boards; organization; meetings; compensation and travel expenses.—

(1) Each board within the Department of Professional Regulation shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a chairman and vice chairman.

(3) The board shall hold such meetings during the year as it may deem necessary, one of which shall be the annual meeting. The chairman or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of business by the board. Unless otherwise provided by law, 51 percent or more of the members of the board shall constitute a quorum.

(4) A board member shall be compensated $50 for each day he attends an official meeting of the board, unless otherwise provided by law, and shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the secretary.

History.—s. 5, ch. 79-36.

455.209 Accountability and liability of board members.—

(1) Each board member shall be accountable to the Governor for the proper performance of his duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by him or by the secretary concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony.

[1](2) Each board member shall be exempt from civil liability for any act or omission when acting in his official capacity and the department or the Department of Legal Affairs in any action against any

board or member of a board arising from any such act or omission.

History.—s. 5, ch. 79-36.

[1]Note.—As enacted. See also Conference Committee Amendment 1 to C.S. for S.B. 727, Senate Journal 1979, pp. 328 and 333.

455.211 Board rules; final agency action; challenges.—

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board pursuant to ss. 120.54 and 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the hearing officer, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary or the board shall be a substantially interested party for purposes of s. 120.54(5). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

History.—s. 5, ch. 79-36.

455.213 General licensing provisions.—

(1) Any person desiring to be licensed shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department.

(2) Upon receipt of the license fee, the department shall issue a license to any person certified by the appropriate board as having met the licensure requirements imposed by law or rule.

(3) When any hearing officer conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the hearing officer shall submit his recommended order to the Department of Professional Regulation which shall thereupon issue a final order. The applicant for licensure may appeal the final order of the department in accordance with the provisions of chapter 120.

(4) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

History.—s. 5, ch. 79-36.

455.215 Board intervention in licensing proceedings.—In any proceeding regarding the issuance of a license to an applicant, the appropriate board may intervene in such proceeding on behalf of either the applicant or the department.

History.—s. 5, ch. 79-36.

455.217 Examinations.—

(1) The Division of Administrative Services of the department shall provide services for the preparation and administration of all examinations.

(a) The division shall ensure that the examinations adequately and reliably measure an applicant's ability to practice the profession regulated by the department and shall seek the advice of the appropriate board in the preparation and administration of the examinations. After an examination has been administered, the board may reject any question which does not reliably measure the general areas of competency specified in the board's rules. The department shall use professional testing services to prepare, administer, grade, and evaluate the examinations, when such services are available and approved by the board.

(b) To the extent not otherwise specified by statute, the board shall by rule specify the general areas of competency to be covered by each examination, the relative weight to be assigned in grading each area tested, and the score necessary to achieve a passing grade. If a practical examination is deemed to be necessary, the rules shall specify the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade.

(c) The department shall use any national examination which is available and which is approved by the board. The department may delegate to the board the duty to provide and administer the examination.

(2) The board shall make rules providing for reexamination of any applicants who have failed the examination. If both a written and a practical examination are given, an applicant shall be required to retake only the [1]portion of the examination on which he failed to achieve a passing grade, if he successfully passes that portion within a reasonable time of his passing the other portion. The board shall make available an examination review procedure for applicants. Unless prohibited or limited by rules implementing security or access guidelines of national examinations, the applicant is entitled to review his examination questions, answers, papers, grades, and grading key. An applicant may waive in writing the confidentiality of his examination grades.

(3) The department shall make an accurate record of each applicant's examination questions, answers, papers, grades, and grading key. The department shall keep such record for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 267.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36.

[1]Note.—The words "portion of the" were inserted by the editors.

Note.—Former s. 455.007(2).

455.219 Fees; receipts; disposition.—

(1) Each board within the [1]Department of Professional Regulation shall determine by rule the amount of licensing fees for its profession, based upon estimates by the Department of Revenue [2]of the amounts required to implement this part and the provisions of law with respect to the regulation

of professions by the [1]Department of Professional Regulation and any board within the [1]Department of Professional Regulation.

(2) All moneys collected by the [1]Department of Professional Regulation from fees shall be paid into the Professional Regulation Trust Fund, which fund is created in the department. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this part and the provisions of law with respect to professions regulated by the department and any board within the department. The department shall maintain separate revenue accounts in the Professional Regulation Trust Fund for every profession within the department. The department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. Each board shall be provided an annual report of revenue and allocated expenses related to the operation of that profession, and these reports may be used by the board to determine the amount of licensing fees. This subsection shall operate pursuant to the provisions of ss. 215.20 and 215.22(4).

History.—s. 5, ch. 79-36.
[1]**Note.**—The words "Department of Professional Regulation" were substituted for "department" by the editors.
[2]**Note.**—The words "of the amounts" were inserted by the editors.

455.221 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to each board within the Department of Professional Regulation, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state.

(2) The [1]Department of Professional Regulation may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36.
[1]**Note.**—The words "Department of Professional Regulation" were substituted for "department" by the editors.
Note.—Former s. 455.007(3), (4).

455.223 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. Challenges to, and enforcement of, said subpoenas and orders shall be handled as provided in s. 120.58.

History.—s. 5, ch. 79-36.

455.225 Disciplinary proceedings.—

(1) The department shall cause to be investigated any complaint which is filed before it, or which is otherwise called to its attention, if the complaint is legally sufficient. The complaint is legally sufficient if it contains ultimate facts which show that a violation has occurred of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule promulgated by the department or a regulatory board in the department. The department may investigate or continue to investigate, and the department and the appropriate regulatory board may take appropriate final action on, a complaint even though the original complainant withdraws his complaint or otherwise indicates his desire not to cause it to be investigated or prosecuted to completion. The department may investigate a complaint made anonymously or by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may delegate, by rule, its investigative function regarding a given practice act to the regulatory board having regulatory power over the practice.

(2) The department shall expeditiously investigate complaints. When its investigation is complete, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the department's investigative report. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause.

(3) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The panel, if any, shall be composed of board members, but not more than one of the panel members shall be a lay member. In aid of its duty to determine the existence of probable cause, the probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the department's investigative report. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the department's final investigative report. The secretary may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If probable cause is found to exist, the department shall file a formal complaint against the regulated professional or subject of the investigation and prosecute the complaint pursuant to the provisions of chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel.

(4) A formal hearing before a hearing officer from the Division of Administrative Hearings of the

Department of Administration shall be held pursuant to chapter 120 unless all parties, including the [2]Department of Professional Regulation, agree in writing that there is no disputed issue of material fact. The hearing officer shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(5) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (3) being excused, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(6) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(7) Any proceeding for the purpose of summary suspension of a license pursuant to s. 120.60(6) shall be conducted by the secretary or his designee, who shall issue the final summary order.

(8) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(9) The complaint and all information obtained pursuant to the department's investigation shall be exempt from s. 119.07 until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first.

(10) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to [1]this act, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.—s. 1, ch. 74-57; s. 5, ch. 79-36.
[1]**Note.**—The words "this act" were enacted by s. 5, ch. 79-36.
[2]**Note.**—The words "Department of Professional Regulation" were substituted for "department" by the editors.
Note.—Former s. 455.013.

455.227 Grounds for discipline; penalties; enforcement.—

(1) The board shall have the power to revoke, suspend, or deny the renewal of the license, or to reprimand, censure, or otherwise discipline a licensee, if the board finds that:

(a) The licensee has made misleading, deceptive, untrue, or fraudulent representations in the practice of his profession;

(b) The licensee has intentionally violated any rule adopted by the board or the department;

(c) The licensee has been convicted of a felony which relates to the practice of his profession;

(d) The licensee has been adjudicated mentally incompetent; or

(e) The license has been obtained by fraud or material misrepresentation of a material fact.

(2) In addition to, or in lieu of, any other discipline imposed pursuant to this section, the board may impose an administrative fine not to exceed $1,000 for each violation. In any case where the board imposes a civil penalty and the penalty is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, the Department of Legal Affairs shall bring, upon request by the board, a civil action to recover the penalty.

(3) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this part, or any provisions of law with respect to professions regulated by the department and any board therein, or the rules adopted pursuant thereto.

History.—s. 5, ch. 79-36.

455.229 Public inspection of information required from applicants; exceptions.—All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, examination questions, answers, papers, grades, and grading key, which shall not be discussed with or made accessible to anyone except members of the board, the department, and its staff who have a bona fide need to know such information.

History.—s. 5, ch. 79-36.

455.231 Display of notice of regulation; civil penalties.—

(1) Each place of business established under the license as issued by the department shall display, in a place that is in clear and unobstructed public view, a notice stating that the place of business is licensed and regulated by the Department of Professional Regulation and that any questions or complaints may be directed to the department. The notice shall be in a form specified by the department, and the department shall adopt rules to ensure that the notice is displayed in such place where the public is most likely to see it.

(2) The department may levy a civil penalty of $50 for the failure of any licensee to comply with this section.

History.—s. 5, ch. 79-36.

455.241 Patient records; copies of reports to be furnished.—

(1) Any health care practitioner licensed pursuant to chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 474 making a physical or mental examination of, or administering treatment to, any person shall, upon request of such person or his legal representative, furnish copies of all reports made of such examination or treatment. The furnishing of such copies shall not be conditioned upon payment of a disputed fee for services rendered.

(2) Such reports shall not be furnished to any person other than the patient or his legal representative, except upon written authorization of the patient. Nothing, however, shall prevent the furnishing of such reports without written authorization to any person, firm, or corporation which, with the patient's consent, shall have procured or furnished such examination or treatment or when compulsory physical examination is made pursuant to Rule

1.360, Florida Rules of Civil Procedure, in which case copies of the medical report shall be furnished both the defendant and the plaintiff.

History.—s. 1, ch. 79-302.

455.242 Disposition of records of deceased practitioners.—Each board created under the provisions of chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 474 shall provide by rule for the disposition of the medical records of practitioners under said chapter which are in existence at the time of the death of the practitioner and which pertain to the practitioner's patients. The rules shall provide for disposition of such records by the estate of the practitioner and shall provide that the records shall be retained for at least 1 year after the practitioner's death.

History.—s. 1, ch. 79-302.

CHAPTER 456

HYPNOSIS

456.30 Short title.—This chapter shall be known as the "Hypnosis Law."

History.—s. 2, ch. 61-506.

456.31 Legislative intent.—

(1) It is recognized that hypnosis has attained a significant place as another technique in the treatment of human injury, disease, and illness, both mental and physical; that the utilization of hypnotic techniques for therapeutic purposes should be restricted to certain practitioners of the healing arts who are qualified by professional training to fulfill the necessary criteria required for diagnosis and treatment of human illness, disease, or injury within the scope of their own particular field of competence; or that such hypnotic techniques should be employed by qualified individuals who work under the direction, supervision, or prescription of such practitioners.

(2) It is the intent of the Legislature to provide for certain practitioners of the healing arts, such as a trained and qualified dentist, to use hypnosis for hypnoanesthesia or for the allaying of anxiety in relation to dental work; however, under no circumstances shall it be legal or proper for the dentist or the individual to whom the dentist may refer the patient, to use hypnosis for the treatment of the neurotic difficulties of a patient. The same applies to the optometrist, podiatrist, chiropractor, osteopath, or physician of medicine.

(3) It is, therefore, the intent and purpose of this chapter to regulate the practice of hypnosis for therapeutic purposes by providing that such hypnotic techniques shall be used only by certain practitioners of the healing arts within the limits and framework of their own particular field of competence; or by qualified persons to whom a patient may be referred, in which event the referring practitioner of the healing arts shall be responsible, severally or jointly, for any injury or damages resulting to the patient because of either his own incompetence, or the incompetence of the person to whom the patient was referred.

History.—s. 1, ch. 61-506; s. 2, ch. 65-170.

456.32 Definitions.—In construing this chapter, the words, phrases, or terms, unless the context otherwise indicates, shall have the following meanings:

(1) "Hypnosis" shall mean hypnosis, hypnotism, mesmerism, post-hypnotic suggestion, or any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the person's mind to suggestion or direction is increased or is intended to be increased, where such a condition is used or intended to be used in the treatment of any human ill, disease, injury, or for any other therapeutic purpose.

(2) "Healing arts" shall mean the practice of medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, podiatry, chiropody, and optometry.

(3) "Practitioner of the healing arts" shall mean a person licensed under the laws of the state to practice medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, podiatry, chiropody, or optometry within the scope of his professional training and competence and within the purview of the statutes applicable to his respective profession, and who may refer a patient for treatment by a qualified person, who shall employ hypnotic techniques under the supervision, direction, prescription, and responsibility of such referring practitioner.

(4) "Qualified person" shall mean a person deemed by the referring practitioner to be qualified by both professional training and experience to be competent to employ hypnotic technique for therapeutic purposes, under supervision, direction, or prescription.

History.—s. 3, ch. 61-506; s. 2, ch. 65-170.

456.33 Hypnosis, unlawful to practice.—It shall be unlawful for any person to engage in the practice of hypnosis for therapeutic purposes unless such person is a practitioner of one of the healing arts, as herein defined, or acts under the supervision, direction, prescription, and responsibility of such a person.

History.—s. 4, ch. 61-506.

456.34 Penalties.—

(1) MISDEMEANOR.—Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) REVOCATION OF LICENSE.—A violation of any of the provisions of this chapter by any person licensed to practice any branch of the healing arts in this state shall constitute grounds for revocation of license, and action may be taken by the respective boards in accordance with the applicable statutes.

(3) CIVIL LIABILITY.—Any person who shall be damaged or injured by any practitioner of the healing arts, or by any person to whom such a practitioner may refer a patient for treatment, may bring suit against the practitioner either severally, or jointly, with the person to whom the referral was made.

(4) CONSTRUCTION IN RELATION TO OTHER LAWS.—No civil or criminal remedy for any wrongful action shall be excluded or impaired by the provisions of this chapter.

History.—s. 5, ch. 61-506; s. 387, ch. 71-136.

CHAPTER 458

MEDICAL PRACTICE

[1]**458.301 Purpose.**—The Legislature recognizes that the practice of medicine is potentially dangerous to the public if conducted by unsafe and incompetent practitioners. The Legislature finds further that it is difficult for the public to make an informed choice when selecting a physician and that the consequences of a wrong decision could seriously harm the public health and safety. The sole legislative purpose in enacting this chapter is to ensure that every physician practicing in this state meet minimum requirements for safe practice. It is the legislative intent that physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.303 Provisions not applicable to other practitioners; exceptions, etc.—

(1) The provisions of ss. 458.301, 458.303, 458.305, 458.307, 458.309, 458.311, 458.313, 458.315, 458.317, 458.319, 458.321, 458.327, 458.329, 458.331, 458.337, 458.339, 458.341, 458.343, 458.345, and 458.347 of this chapter shall have no application to:

(a) Other duly licensed health care practitioners acting within their scope of practice authorized by statute.

(b) Any physician lawfully licensed in another state or territory or foreign country, when meeting duly licensed physicians of this state in consultation.

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty.

(d) Any person while actually serving without salary or professional fees on the resident medical staff of a hospital in this state, subject to the provisions of s. 458.321.

(e) Any person furnishing medical assistance in case of an emergency.

(f) The domestic administration of recognized family remedies.

(g) The practice of the religious tenets of any church in this state.

(h) Any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes [2]or limbs, or other apparatus or appliances, or is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eyeglasses, or lenses.

(i) The holder of a medical faculty certificate. The department may issue a medical faculty certificate without examination to an individual who remits an application fee not to exceed $25 as set by the board and who demonstrates to the board that he is a graduate of an accredited medical school. The certificate shall authorize the holder to practice only in conjunction with his teaching duties at an accredited medical school or in its main teaching hospital. Such certificate shall automatically expire when the holder's relationship with the medical school is terminated or after a period of 1 year, whichever occurs sooner, and shall be renewable only if the holder of the medical faculty certificate has taken an examination conducted by the department pursuant to s. 458.311 during the preceding year and if the dean of the medical school where the holder of the certificate is teaching recommends in writing that the certificate be renewed. Such renewal shall be for a period of 1 year, and no medical faculty certificate holder shall be entitled to more than two consecutive 1-year renewals.

(2) Nothing in s. 458.301, s. 458.303, s. 458.305, s. 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.315, s. 458.317, s. 458.319, s. 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s. 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347 shall be construed to prohibit any service rendered by a physician's trained assistant, a registered nurse, or a licensed practical nurse, if such service is rendered under the direct supervision and control of a licensed physician. Further, nothing in this or any other chapter shall be construed to prohibit any service rendered

by a physician's trained assistant in accordance with the provisions of this subsection.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "or" was inserted by the editors.

[1]458.305 Definitions.—As used in this chapter:

(1) "Board" means the Board of Medical Examiners.

(2) "Department" means the Department of Professional Regulation.

(3) "Practice of medicine" means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.

(4) "Physician" means a person who is licensed to practice medicine in this state.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.307 Board of Medical Examiners.—

(1) There is created within the Department of Professional Regulation a Board of Medical Examiners, composed of 11 members appointed by the Governor and confirmed by the Senate.

(2) Nine members of the board shall be licensed physicians in good standing in this state who are residents of the state, who have been engaged in the practice of medicine for at least 4 years immediately prior to their appointment, and who are not connected in any way with any medical college. The remaining members shall be residents of the state who are not, nor have ever been, licensed health care practitioners.

(3) Within 30 days after June 30, 1979, the Governor shall appoint [2]11 eligible and qualified members of the board as follows:

(a) Four members for terms of 2 years each.

(b) Four members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of the board shall apply.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "eleven" was substituted for "seven" by the editors to conform to the correct total membership provided for by this subsection.

[1]458.309 Authority to make rules.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.311 Licensure by examination.—

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an approved examination fee not to exceed $250 as set by the board.

(b) Graduated from a medical school or college recognized and approved by an accrediting agency recognized by the United States Office of Education.

(c) Completed an approved internship of at least 1 year or at least 5 years of licensed practice.

(2) Notwithstanding the provisions of paragraph (1)(b), graduates of foreign medical schools, except approved schools in Canada, who are otherwise qualified, whose medical credentials have been evaluated by the Educational Commission for Foreign Medical Graduates, and who have passed the Educational Commission Qualification Examination for Foreign Medical Graduates may be accepted for the examinations in Florida. However, a graduate of a foreign medical school need not present the certificate by said educational commission or pass the Educational Commission Examination for Foreign Medical Graduates if:

(a) He is licensed through written examination in at least one state of the United States whose examination requirements shall have been approved by the board as substantially equivalent to or more stringent than the Florida examination; and

1. His license is in good standing in said state; and

2. He has continuously and actively engaged in the practice of medicine in said state for any 4 of the preceding 5 years immediately prior to application; and

(b) He has been examined and certified as a specialist by one of the appropriate American specialty boards accredited by the Council on Medical Education of the American Medical Association.

(3) Notwithstanding the provisions of paragraph (1)(b), a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the Educational Commission Examination for Foreign Medical Graduates if he:

(a) Has completed undergraduate work in an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission Examination for Foreign Medical Graduates equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission Examination for Foreign Medical Graduates equivalent.

(4) The department shall waive the requirements of paragraph (1)(b) for an applicant who demonstrates to the board that he has been examined and certified as a specialist by one of the appropriate American specialty boards accredited by the Council on Medical Education of the American Medical Association.

(5) Each applicant who successfully passes the examination and meets the requirements of this chapter shall be entitled to be licensed as a physician, with rights as defined by law. The department shall not issue a license to any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of s. 458.301, s. 458.303, s. 458.305, s. 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.315, s. 458.317, s. 458.319, s. 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s. 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347. Upon completion of the investigation, the provisions of s. 458.331 shall apply.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.313 Licensure by endorsement.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $250 set by the board, demonstrates to the board that he has met the qualifications for licensure in s. 458.311 and:

(a) Is more than 18 years of age;

(b) Is of good moral character and has not committed any act or offense within or without the state which would constitute the basis for disciplining a physician pursuant to s. 458.331;

(c) Is a graduate of a medical school or college maintaining a standard and reputation approved by the board pursuant to s. 458.311; and

(d) Has been certified by licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or is certified by the National Board of Medical Examiners as having completed its examination; provided that said examination required shall have been so certified within the 10 years immediately preceding the filing of his application for licensure under this section.

(2) The board may require oral examinations of any applicant under the provisions of this section. However, the applicant must be given adequate notice of the examination, both as to the time, place, nature, and scope thereof, as well as a statement of the reasons requiring such examination.

(3) A license so issued by endorsement shall become void and of no force and effect unless the recipient utilizes the same by actively engaging in the practice of medicine in this state within 3 years after issuance of the license and continues his practice in this state for a minimum period of 1 year. Use and residence may be postponed until the holder has been discharged from military service of the United States.

(4) The board may promulgate rules and regulations, to be applied on a uniform and consistent basis, which may be necessary to carry out the provisions of this section.

(5) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 458.331 shall apply.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.315 Temporary certificate for practice in areas of critical need.—Any physician who is licensed to practice in any other state, whose license is currently valid, and who pays a fee of $100 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians and the population is less than 7,500. The Board of Medical Examiners may issue this temporary certificate with the following restrictions:

(1) The board shall determine the areas of critical need, and the physician so certified may practice only in that specific area for a time to be determined by the board. Such areas shall include, but not be limited to, health manpower shortage areas designated by the United States Department of Health, Education, and Welfare.

(2) The board may administer an abbreviated oral examination to determine the physician's competency, but no written regular examination is necessary.

(3) Any certificate issued under this section shall be valid only so long as the area for which it is issued remains an area of critical need. The Board of Medical Examiners shall review the service within said area not less than annually to ascertain that the minimum requirements of the Medical Practice Act and the rules and regulations promulgated thereunder are being complied with. If it is determined that such minimum requirements are not being met, the board shall forthwith revoke such certificate.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.317 Limited licenses; restrictions, review.—Notwithstanding any contrary provisions in this chapter, the Board of Medical Examiners shall grant for a fee of $100 to a physician licensed to practice in another state a limited license to practice in this state. A limited license shall not be issued to a person who has been adjudged unqualified or guilty of any of the acts enumerated in [2]s. 458.

(1) Limited licenses shall be issued pursuant to the following conditions:

(a) The licensee shall apply to the Board of Medical Examiners on a form prescribed by the board and shall submit with such application an affidavit under oath that he has been licensed to practice his profession in such state in good standing and pursuant to law for at least 10 years, has now retired, and was in good standing at the time of retirement.

(b) If it has been more than 5 years since active practice was conducted by the applicant, the full-time director of the local health unit shall supervise the applicant for a period of 6 months before such applicant is granted a limited license for practice. Procedures for such supervision shall be established by the board.

(c) Applications adopted by the board shall indicate areas of medical specialty.

(d) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, which agencies or institutions are located in the areas of critical medical need as determined by the board. Determination of medically underserved areas shall be made by the board after consultation with the Department of Health and Rehabilitative Services and statewide medical organizations, the provisions of s. 458.315 to the contrary notwithstanding; however, such determination shall include, but not be limited to, health manpower shortage areas designated by the United States Department of Health, Education, and Welfare.

Nothing herein limits in any way any policy by the board, otherwise authorized by law, to grant licenses to physicians duly licensed in other states under conditions less restrictive than the requirements of this section.

(2) The board shall notify the director of the full-time local health unit of any county in which a licensee intends to practice under the provisions of this act. The director of the full-time health unit shall assist in the supervision of any licensee within his county and shall notify the board which issued the licensee his license if he becomes aware of any actions by the licensee which would be grounds for revocation of the limited license. The board shall establish procedures for such supervision.

(3) The board shall review the practice of each licensee annually to verify compliance with the restrictions prescribed in this section. If it is determined that a licensee is not complying with such restrictions, the board shall revoke the license of such licensee. A license may also be revoked by a board on any ground for which a regular license of such board may be revoked by law.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—This incomplete reference to s. "458" appears in s. 1, ch. 79-302, as enacted.

[1]458.319 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 458.321.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

(5) The licensee must have on file with the department the address of his primary place of practice within this state prior to engaging in that practice. Prior to changing the address of his primary place of practice, whether or not within this state, the licensee shall notify the department of the address of his new primary place of practice.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.321 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 458.319 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to this suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 458.331.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

458.323 Itemized patient billing.—Whenever a physician licensed under this chapter renders professional services to a patient, the physician is required, upon request, to submit to the patient, the patient's insurer, or the administrative agency for any federal or state health program under which the patient is entitled to benefits an itemized statement of the specific services rendered and the charge for each, no later than the physician's next regular billing cycle which follows the fifth day after the rendering of professional services. A physician may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 3, ch. 79-198.

458.325 Electroconvulsive and psychosurgical procedures.—

(1) In each case of utilization of electroconvulsive or psychosurgical procedures, prior written consent shall be obtained after disclosure to the patient, if he is competent, or to his guardian, if he is a minor or incompetent, of the purpose of the procedure, the common side effects thereof, alternative treatment modalities, and the approximate number of such procedures considered necessary and that any consent given may be revoked by the patient or his guardian prior to or between treatments.

(2) Before convulsive therapy or psychosurgery may be administered, the patient's treatment record

shall be reviewed and the proposed convulsive therapy or psychosurgery agreed to by one other physician not directly involved with the patient. Such agreement shall be documented in the patient's treatment record and shall be signed by both physicians.

History.—s. 1, ch. 79-302.

[1]458.327 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of medicine or an attempt to practice medicine without an active license.

(b) Use or attempted use of a license to practice medicine which is suspended or revoked.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Using the name or title "Doctor of Medicine," "Medical Doctor," or any other name or title which would lead the public to believe that the person using the name or title is licensed to practice medicine, unless such person holds a valid license.

(b) Knowingly concealing information relating to violations of this chapter.

(c) Attempting to obtain or obtaining a license to practice medicine by fraudulent misrepresentation.

(d) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.329 Sexual misconduct in the practice of medicine.—The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine shall mean violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce [2]the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "the patient to engage, or to" were inserted by the editors.

[1]458.331 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice medicine contrary to this chapter or to a rule of the department or the board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed physician.

(i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.

(j) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

(k) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

(l) Making deceptive, untrue, or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community.

(m) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral response from the recipient.

(n) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results.

(o) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(p) Performing professional services which have not been duly authorized by the patient or client, or his legal representative, except as provided in s. 743.064, s. 768.13, or s. 768.46.

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

(r) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the physician to himself, except one prescribed, dispensed, or administered to the physician by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

(s) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon probable cause, authority to compel a physician to submit to a mental or physical examination by physicians designated by the department. Failure of a physician to submit to such examination when so directed shall constitute an admission of the allegations against him, unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the board shall be used against a physician in any other proceeding.

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph.

(u) Performing any procedure or prescribing any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed, and written consent.

(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(w) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(x) Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(z) Procuring, or aiding or abetting in the procuring of, an unlawful termination of pregnancy.

(aa) Presigning blank prescription forms.

(bb) Prescribing any medicinal drug appearing on schedule II in chapter 893 by the physician for office use.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, [2]or to work under the supervision of another physician.

(3) The board shall not reinstate the license of a physician, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of medicine.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "or" was substituted for "and" by the editors.

cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

458.333 Prescription or administration of amygdalin (laetrile); disciplinary action; signed release by patient.—

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under this chapter or chapter 459.

(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless

the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure, and upon requesting the administration of amygdalin (laetrile) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing that amygdalin (laetrile) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education, and Welfare.

History.—s. 1, ch. 79-302.

458.335 Prescription or administration of dimethyl sulfoxide (DMSO).—

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under this chapter or chapter 459.

(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering dimethyl sulfoxide (DMSO) to a patient under his care who has requested the substance unless the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure and upon request for the administration of dimethyl sulfoxide (DMSO) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing if dimethyl sulfoxide (DMSO) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education, and Welfare for the disorder for which it is being prescribed.

(5) This act shall not apply to conditions for which dimethyl sulfoxide (DMSO) has been approved as a treatment by the Food and Drug Administration of the United States Department of Health, Education, and Welfare.

History.—s. 1, ch. 79-302.

[1]458.337 Reports of disciplinary actions by medical organizations.—

(1) The department shall be notified when any physician:

(a) Has been removed or suspended or has had any other disciplinary action taken by his peers within any professional medical association, society, body, or professional standards review organization established pursuant to s. 249F of Pub. L. No. 92-603 or similarly constituted professional organization, whether or not such association, society, body, or organization is local, regional, state, national, or international in scope; or

(b) Has been disciplined, which shall include allowing a physician to resign, by a licensed hospital or medical staff of said hospital for any act that constitutes a violation of this chapter.

(2) Any organization taking action as set forth in this section shall report such action to the department within 30 days of its initial occurrence, regardless of the pendency of appeals therefrom. Any organization failing to report such action pursuant to this section shall be subject to a fine assessed by the department in an amount not exceeding $1,000.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.339 Physician's consent; handwriting samples; mental or physical examinations.—Every physician who accepts a license to practice medicine in this state shall, by so accepting the license or by making and filing a renewal of licensure to practice in this state, be deemed to have given his consent, during a lawful investigation of a complaint, to the following:

(1) To render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against him.

(2) To waive the confidentiality and authorize the release of all medical records pertaining to the mental or physical condition of the physician himself and to have waived any objection to the admissibility of the records as constituting privileged communications. Such material shall remain confidential in the hands of the department until probable cause is found and an administrative complaint issued.

History.—ss. 1, 8, ch. 79-302.

[1]Note.—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.341 Search warrants for certain violations.—When the department has reason to believe that violations of s. 458.331(1)(q) or s. 458.331(1)(r) have occurred or are occurring, its agents or other duly authorized persons may search a physician's place of practice at reasonable hours for purposes of securing such evidence as may be needed for prosecution. Such evidence shall not include any medical records of patients unless pursuant to the patients' written consent. Notwithstanding the consent of the patient, such records shall be treated as confidential and shall not be transferred to any other agency. This section shall not limit the psychotherapist-patient privileges of s. 90.503. Prior to a search, the department shall secure a search warrant from any judge authorized by law to issue them. The search warrant shall be issued upon probable cause, supported by oath or affirmation particularly describing the things to be seized. The application for the warrant shall be sworn to and subscribed, and the judge may require further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The application and supporting information, if required, must set forth the facts tending to establish the grounds of the application or probable cause that they exist. If the judge is satis-

fied that probable cause exists, he shall issue a search warrant signed by him with his name of office to any agent or other person duly authorized by the department to execute process, commanding the agent or person to search the place described in the warrant for the property specified. The search warrant shall be served only by the agent or person mentioned in it and by no other person except an aide of the agent or person when such agent or person is present and acting in its execution.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.343 Subpoena of certain records.—Notwithstanding the provisions of s. 455.241, the department may issue subpoenas duces tecum requiring the names and addresses of some or all of the patients of a physician against whom a complaint has been filed pursuant to s. [2]455.225.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The cross reference "455.225" was substituted for "455.013" by the editors to conform to editorial transfer.

[1]458.345 Registration of resident physicians and interns; list of hospital employees; penalty.—Every person practicing as a resident physician, assistant resident physician, house physician, or intern in this state shall register with the department, showing the date upon which he started to practice as aforesaid within this state. Every hospital employing a resident physician, assistant resident physician, house physician, or intern shall, on January 1 and July 1 of each year, furnish the department with a list of its employees and such other information as the board may direct. Unless previously authorized by the board, no person may be employed as a house physician or act as a resident physician, an assistant resident physician, or an intern in a hospital of this state for more than 2 years without a license, except that resident physicians, assistant resident physicians, and interns in approved training programs shall be exempt from this limitation. Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]458.347 Physician's assistants.—

(1) LEGISLATIVE INTENT.—

(a) In its concern with the growing shortage and geographic maldistribution of health care services in this state, the Legislature intends to establish in this section a framework for development of a new category of health manpower, the physician's assistant.

(b) The purpose of this section is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified assistants when such delegation is consistent with the patient's health and welfare.

(c) In order that maximum skills may be obtained within a minimum time period of education, the physician's assistant shall be specialized to the extent that he can operate efficiently and effectively in the specialty areas in which he has been trained or is experienced.

(d) This section is established to encourage the utilization of physician's assistants by physicians and to allow for innovative development of programs for the education of physician's assistants.

(2) DEFINITIONS.—As used in this section:

(a) "Board" means the Board of Medical Examiners.

(b) "Department" means the Department of Professional Regulation.

(c) "Approved program" means a program, formally approved by the board, for the education of physician's assistants.

(d) "Trainee" means a person who is currently enrolled in an approved program.

(e) "Physician's assistant" means a person who is a graduate of an approved program or its equivalent and is approved by the department to perform medical services under the supervision of a physician or group of physicians certified by the board to supervise such assistant.

(f) "Supervision" means responsible supervision and control, with the licensed physician assuming legal liability for the services rendered by the physician's assistant. Except in cases of emergency, supervision shall require the easy availability or physical presence of the licensed physician for consultation and direction of the actions of the physician's assistant. The board shall further establish rules as to what constitutes responsible supervision of the physician's assistant.

(3) PERFORMANCE BY PHYSICIAN'S ASSISTANT.—Notwithstanding any other provision of law, a physician's assistant may perform medical services when such services are rendered under the supervision of a licensed physician or group of physicians certified by the board, in the specialty area or areas for which the physician's assistant is trained or experienced. Any physician's assistant certified under this section to perform services may perform those services only:

(a) In the office of the physician to whom the physician's assistant has been assigned, where such physician maintains his primary practice;

(b) When the physician to whom he is assigned is present;

(c) In a hospital or clinic where the physician to whom he is assigned is a member of the staff; or

(d) On calls outside said office, on the direct order of the physician to whom he is assigned.

(4) PERFORMANCE BY TRAINEES.—Notwithstanding any other provision of law, a trainee may perform medical services when such services are rendered within the scope of an approved program.

(5) PROGRAM APPROVAL.—

(a) The department shall issue certificates of approval for programs for the education and training of physician's assistants which meet board standards. Any basic program curriculum certified by the board shall cover a period of 24 months, except that for applicants with 10 or more years relevant experience in the United States Armed Services Medical Corps or who are graduates of accredited medical schools and licensed to practice medicine in a state

other than Florida the basic program shall cover a period of 3 months.

(b) In developing criteria for program approval, the board shall give consideration to and encourage the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(c) The board shall create groups of specialty classifications of training for physician's assistants. These classifications will reflect the training and experience of the physician's assistant. The physician's assistant may receive training in one or more such classifications, which shall be shown on the certificate issued.

(d) The board shall adopt and publish standards to ensure that such programs operate in a manner which does not endanger the health and welfare of the patients who receive services within the scope of the program. The board shall review the quality of the curricula, faculties, and facilities of such programs; issue certificates of approval; and take whatever other action is necessary to determine that the purposes of this section are being met.

(6) APPLICATION APPROVAL.—

(a) The board shall formulate guidelines for the consideration of applications by a licensed physician or [2]group of licensed physicians to supervise physician's assistants. Each application made by a physician or [3]group of physicians shall include all of the following:

1. The qualifications, including related experience, of the physician's assistant intended to be employed.
2. The professional background and specialty of the physician or physicians.
3. A description by the physician of his, or physicians of their, practice and the way in which the assistant or assistants are to be utilized.

The board shall certify an application by a licensed physician to supervise a physician's assistant when the proposed assistant is a graduate of an approved program or its equivalent and is fully qualified by reason of experience and education to perform medical services under the responsible supervision of a licensed physician and [4]when the public will be adequately protected by the arrangement proposed in the application.

(7) PENALTY.—Any person who has not been certified by the board and approved by the department and who holds himself out as a physician's assistant, or who uses any other term in indicating or implying that he is a physician's assistant, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not exceeding $5,000.

(8) REVOCATION OF APPROVAL.—The certificate of approval to supervise a physician's assistant held by any physician or group of physicians may be revoked when the board determines the intent of this section is not being carried out.

(9) RULES.—The board shall adopt rules necessary for the administration of the physician's assistant program. The board shall adopt such rules as are necessary to ensure both the continued competency of physician's assistants and the proper utilization of them by physicians or groups of physicians. Rules shall be adopted to assure that every physician's assistant performs his services under the responsible supervision and control of a physician or group of physicians.

(10) FEES.—

(a) A fee not to exceed $100 as set by the board shall accompany the annual application by a physician or group of physicians for authorization to supervise a physician's assistant.

(b) Upon approval of an application for certification of a physician's assistant in a specialty area, the applicant shall be charged an initial certification fee for the first biennium not to exceed $50, and a biennial renewal fee not to exceed $60 shall accompany each application for renewal of the physician's assistant certificate.

(11) EXISTING PROGRAMS.—Nothing in this section shall be construed to eliminate or supersede existing laws relating to other paramedical professions or services. It is the intent of this section to supplement, and be in addition to, all such existing programs relating to the certification and practice of paramedical professions, as may be authorized by law.

(12) LIABILITY.—All physicians or groups of physicians utilizing physician's assistants shall be liable for any acts or omissions of the physician's assistants acting under their supervision and control.

History.—ss. 1, 8, ch. 79-302.

[1]**Note.**—Section 8, ch. 79-302, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "group of licensed" were inserted by the editors.

[3]**Note.**—The words "group of" were inserted by the editors.

[4]**Note.**—The word "when" was substituted for "that" by the editors.

458.349 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses or certificates valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses and certificates shall be applied for and renewed in accordance with this act.

History.—ss. 6, 7, ch. 79-302.

CHAPTER 459

OSTEOPATHY

[1]459.001 Purpose.—The Legislature recognizes that the practice of osteopathic medicine is potentially dangerous to the public if conducted by unsafe and incompetent practitioners. The Legislature finds further that it is difficult for the public to make an informed choice when selecting an osteopathic physician and that the consequences of a wrong decision could seriously harm the public health and safety. The sole legislative purpose in enacting this chapter is to ensure that every osteopathic physician practicing in this state meet minimum requirements for safe practice. It is the legislative intent that osteopathic physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.002 Chapter not applicable to practice of medicine, surgery, chiropractic, etc.—

(1) The provisions of this chapter shall have no application to:

(a) Duly licensed health care practitioners, other than osteopathic physicians, acting within their scope of practice authorized by statute.

(b) Any physician lawfully licensed in another state or territory or foreign country when meeting duly licensed physicians of this state in consultation.

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty.

(d) Any person while actually serving without salary or professional fees on the resident medical staff of a hospital in this state, subject to the provisions of s. 459.021.

(e) Students practicing under the direct supervision of licensed osteopathic physicians in extern programs approved by any college recognized and approved by the American Osteopathic Association.

(f) Any person furnishing medical assistance in case of any emergency.

(g) The domestic administration of recognized family remedies.

(h) The practice of the religious tenets of any church in this state.

(2) Nothing in this [2]chapter shall be construed to prohibit any service rendered by an osteopathic physician's trained assistant, a registered nurse, a registered nurse midwife (nurse obstetric associate), or a licensed practical nurse if such service is rendered under the direct supervision and control of a licensed osteopathic physician. Further, nothing in this or any other chapter shall be construed to prohibit any service rendered by an osteopathic physician's trained assistant in accordance with the provisions of this subsection.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "chapter" was substituted for "part" by the editors.

[1]459.003 Definitions.—As used in this chapter:

(1) "Board" means the Board of Osteopathic Medical Examiners.

(2) "Department" means the Department of Professional Regulation.

(3) "Practice of osteopathic medicine" means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

(4) "Osteopathic physician" means a person who is licensed to practice osteopathic medicine in this state.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.004 Board of Osteopathic Medical Examiners.—

(1) There is created within the Department of Professional Regulation a Board of Osteopathic Medical Examiners, composed of seven members appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed

osteopathic physicians in good standing in this state who are residents of this state and who have been engaged in the practice of osteopathic medicine for at least 4 years immediately prior to their appointment. The remaining members shall be citizens of the state who are not, nor have ever been, licensed health care practitioners.

(3) Within 90 days after June 30, 1979, the Governor shall appoint seven eligible and qualified members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of the board shall apply.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.005 Authority to make rules.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.006 Licensure by examination.—

(1) Any person desiring to be licensed as an osteopathic physician shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee not to exceed $250 as set by the board.

(b) Submitted proof that he is 18 years of age or over and a graduate of a college of osteopathic medicine recognized and approved by the American Osteopathic Association.

(c) Completed 3 years of preprofessional education and a resident internship of not less than 12 months in a hospital approved for this purpose by the Bureau of Hospitals of the American Osteopathic Association. This requirement may be waived for applicants who matriculated in a college of osteopathy during or before 1948.

(2) Each applicant who successfully passes the examination and meets the requirements of this chapter shall be entitled to be licensed as an osteopathic physician, with rights as defined by law. The department shall not issue a license to any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of this chapter. Upon the completion of the investigation, the provisions of s. 459.015 shall apply.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.007 Department to issue license without examination in certain instances.—

(1) The department shall issue a license without examination to an osteopathic physician who is a graduate of a standard college of osteopathic medicine and who has passed an examination for admission into the Medical Corps of the United States Army, the United States Navy, United States Air Force, or the United States Public Health Service or who has passed all parts of the examination conducted by the National Board of Examiners for Osteopathic Physicians and Surgeons, provided the board certifies that the applicant is of good moral character. The applicant shall be required to pay the same fees as licentiates by examination.

(2) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 459.015 shall apply.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.008 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 459.009.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

(5) The licensee must have on file with the department the address of his primary place of practice within this state prior to engaging in that practice. Prior to changing the address of his primary place of practice, whether or not within this state, the licensee shall notify the department of the address of his new primary place of practice.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.009 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 459.008 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more

than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 459.015.

History.—ss. 1, 6, ch. 79-230.
[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]Note.—The words "for all years" were inserted by the editors.

[1]459.011 Privileges and obligations of osteopathic physicians.—

(1) Osteopathic physicians shall observe and be subject to all state and municipal regulations relative to reporting births and deaths and all matters pertaining to the public health, with equal rights and obligations as physicians of other schools of medicine, and such reports shall be accepted by the officers of the departments to which the same are made.

(2) Osteopathic physicians licensed under this chapter shall have the same rights as physicians and surgeons of other schools of medicine with respect to the treatment of cases or holding of offices in public institutions.

(3) It is the intent and purpose of this chapter to grant to osteopathic physicians the right to practice as taught and practiced in the standard colleges of osteopathic medicine.

History.—ss. 1, 6, ch. 79-230.
[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

459.012 Itemized patient billing.—Whenever an osteopathic physician licensed under this chapter renders professional services to a patient, the osteopathic physician is required, upon request, to submit to the patient, the patient's insurer, or the administrative agency for any federal or state health program under which the patient is entitled to benefits an itemized statement of the specific services rendered and the charge for each, no later than the osteopathic physician's next regular billing cycle which follows the fifth day after the rendering of professional services. An osteopathic physician may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 4, ch. 79-198.

[1]459.013 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of osteopathic medicine, or an attempt to practice osteopathic medicine, without an active license.

(b) Use or attempted use of a license to practice osteopathic medicine which is suspended or revoked.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Using the name or title "doctor of osteopathy," "osteopathic physician," or any other name or title which would lead the public to believe that the person using the name or title is licensed to practice osteopathic medicine, unless such person holds a valid license.

(b) Knowingly concealing information relating to violations of this chapter.

(c) Attempting to obtain or obtaining a license to practice osteopathic medicine by fraudulent misrepresentation.

(d) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

History.—ss. 1, 6, ch. 79-230.
[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.014 Sexual misconduct in the practice of osteopathic medicine.—The osteopathic physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of osteopathic medicine shall mean violation of the osteopathic physician-patient relationship through which the osteopathic physician uses said relationship to induce or attempt to induce [2]the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of osteopathic medicine is prohibited.

History.—ss. 1, 6, ch. 79-230.
[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]Note.—The words "the patient to engage, or to" were inserted by the editors.

[1]459.015 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice osteopathic medicine by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice osteopathic medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of osteopathic medicine or to the ability to practice osteopathic medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice osteopathic medicine

contrary to this chapter or to a rule of the department or the board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed osteopathic physician.

(i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed osteopathic physician.

(j) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent an osteopathic physician from receiving a fee for professional consultation services.

(k) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

(l) Making deceptive, untrue, or fraudulent representations in the practice of osteopathic medicine or employing a trick or scheme in the practice of osteopathic medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community.

(m) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or forms of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral response from the recipient.

(n) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results.

(o) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy, unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(p) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in s. 743.064, s. 768.13, or s. 768.46.

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the osteopathic physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the osteopathic physician's professional practice, without regard to his intent.

(r) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the osteopathic physician to himself, except one prescribed, dispensed, or administered to the osteopathic physician by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

(s) Being unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An osteopathic physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of osteopathic medicine with reasonable skill and safety to patients.

(t) Gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph.

(u) Performing any procedure or prescribing any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(w) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(x) Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or department.

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(z) Procuring, or aiding or abetting in the procuring of, an unlawful termination of pregnancy.

(aa) Presigning blank prescription forms.

(bb) Prescribing any medicinal drug appearing on schedule II in chapter 893 by the physician for office use.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the osteopathic physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the osteopathic physician to submit to treatment, attend continuing education courses, submit to reexamination, [2]or work under the supervision of another osteopathic physician.

(3) The board shall not reinstate the license of an osteopathic physician, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of osteopathic medicine. The board may, by rule, require all licensees to complete continuing education courses not exceeding 30 hours each biennium as a prerequisite to licensure renewal. Such courses shall be approved by the board and shall build on the basic educational requirements for licensure as an osteopathic physician.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "or" was substituted for "and" by the editors.

cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

459.0153 Prescription or administration of amygdalin (laetrile); disciplinary action; signed release by patient.—

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under chapter 458 or this chapter.

(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure, and upon requesting the administration of amygdalin (laetrile) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing that amygdalin (laetrile) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education, and Welfare.

History.—s. 1, ch. 79-302.

459.0154 Prescription or administration of dimethyl sulfoxide (DMSO).—

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under chapter 458 or this chapter.

(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering dimethyl sulfoxide (DMSO) to a patient under his care who has requested the substance unless the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure and upon request for the administration of dimethyl sulfoxide (DMSO) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing if dimethyl sulfoxide (DMSO) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education, and Welfare for the disorder for which it is being prescribed.

(5) This act shall not apply to conditions for which dimethyl sulfoxide (DMSO) has been approved as a treatment by the Food and Drug Administration of the United States Department of Health, Education, and Welfare.

History.—s. 1, ch. 79-302.

[1]459.016 Reports of disciplinary actions by medical organizations.—

(1) The department shall be notified when any osteopathic physician:

(a) Has been removed or suspended or has had any other disciplinary action taken by his peers within any professional medical association, society, body, or professional standards review organization established pursuant to s. 249F of Pub. L. No. 92-603, or similarly constituted professional organization, whether or not such association, society, body, or organization is local, regional, state, national, or international in scope; or

(b) Has been disciplined, which shall include allowing an osteopathic physician to resign, by a licensed hospital or medical staff of said hospital for any act that constitutes a violation of this chapter.

(2) Any organization taking action as set forth in this section shall report such action to the department within 30 days of its initial occurrence, regardless of the pendency of appeals therefrom. Any organization failing to report such action pursuant to this section shall be subject to a fine assessed by the department in an amount not exceeding $1,000.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]459.017 Osteopathic physician's consent; handwriting samples; mental or physical examinations.—Every osteopathic physician who accepts a license to practice osteopathic medicine in this state shall, by so accepting the license or by making and filing a renewal of licensure to practice in this state, be deemed to have given his consent during a lawful investigation of a complaint to the following:

(1) To render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against him.

(2) To waive the confidentiality and authorize the release of all medical records pertaining to the mental or physical condition of the osteopathic physician himself and to have waived any objection to the admissibility of the records as constituting privileged communications. Such material shall remain confidential in the hands of the department until probable cause is found and an administrative complaint issued.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.018 Search warrants for certain violations.—When the department has reason to believe that violations of s. 459.015(1)(q) or s. 459.015(1)(r) have occurred or are occurring, its agents or other duly authorized persons may search an osteopathic physician's place of practice at reasonable hours for purposes of securing such evidence as may be needed for prosecution. Such evidence shall not include any medical records of patients unless pursuant to the patient's written consent. Notwithstanding the consent of the patient, such records shall be treated as confidential and shall not be transferred to any other agency. This section shall not limit the psychotherapist-patient privileges of s. 90.503. Prior to a search, the department shall secure a search warrant from any judge authorized by law to issue search warrants. The search warrant shall be issued upon probable cause, supported by oath or affirmation particularly describing the things to be seized. The application for the warrant shall be sworn to and subscribed, and the judge may require further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The application and supporting information, if required, must set forth the facts tending to establish the grounds of the application or probable cause that they exist. If the judge is satisfied that probable cause exists, he shall issue a search warrant signed by him with his name of office to any agent or other person duly authorized by the department to execute process, commanding the agent or person to search the place described in the warrant for the property specified. The search warrant shall be served only by the agent or person mentioned in it and by no other person except an aide of the agent or person when such agent or person is present and acting in its execution.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]459.019 Subpoena of certain records.—Notwithstanding the provisions of s. 455.241, the department may issue subpoenas duces tecum requiring the names and addresses of some or all of the patients of an osteopathic physician against whom a complaint has been filed pursuant to s. [2]455.225.

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The cross reference "455.225" was substituted for "455.013" by the editors to conform to editorial transfer.

[1]459.021 Registration of hospital residents and interns.—

(1) Any person who holds a degree of Doctor of Osteopathy from a college of osteopathic medicine recognized and approved by the American Osteopathic Association who desires to serve as a resident or as an intern in an osteopathic hospital shall apply to the department for a certificate of registration. Upon certification by the board that the applicant holds a valid degree and that the hospital where he intends to serve is approved by the Bureau of Hospitals of the American Osteopathic Association, the department shall issue the certificate.

(2) A certificate for residency or internship may not be issued for a period greater than 1 year but may be renewed from time to time. No person shall hold a certificate for an aggregate of more than 4 years.

(3) Every osteopathic hospital having a resident or intern training program shall furnish, in January and July of each year, to the department a list of all residents and interns who have served in the hospital during the preceding 6-month period.

(4) The certificate may be revoked or the department may refuse to issue any certificate for any cause which would be a ground for its revocation or refusal to issue a license to practice osteopathic medicine, as well as on the following grounds:

(a) Omission of the name of a certificate holder from the list of interns and residents required by subsection (3) to be furnished to the department by the hospital served by the certificate holder.

(b) Practicing osteopathic medicine outside of a bona fide hospital training program.

(5) It is hereby constituted a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any osteopathic hospital, and also for the superintendent, administrator, and other person or persons having administrative authority in an osteopathic hospital:

(a) To employ the services in the hospital of any person as an intern or as a resident, unless such person is the holder of a valid certificate under the law or the holder of a license to practice osteopathic medicine under this chapter.

(b) To fail to furnish to the department the list required by subsection (3).

History.—ss. 1, 6, ch. 79-230.

[1]Note.—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]459.022 Osteopathic physicians' assistants.—

(1) LEGISLATIVE INTENT.—

(a) In its concern with the growing shortage and geographic maldistribution of health care services in this state, the Legislature intends to establish in this section a framework for development of a new category of health manpower, the osteopathic physician's assistant.

(b) The purpose of this section is to encourage the more effective utilization of the skills of osteopathic physicians by enabling them to delegate health care tasks to qualified assistants when such delegation is consistent with the health and welfare of patients.

(c) In order that maximum skills may be obtained within a minimum time period of education, the osteopathic physician's assistant shall be specialized to the extent that he can operate efficiently and effectively in the specialty areas in which he has been trained or is experienced.

(d) This section is established to encourage the utilization of osteopathic physician's assistants by osteopathic physicians and to allow for innovative development of programs for the education of physician's assistants.

(2) DEFINITIONS.—As used in this section:

(a) "Board" means the Board of Osteopathic Medical Examiners.

(b) "Department" means the Department of Professional Regulation.

(c) "Approved program" means a program for the education of osteopathic physician's assistants which has been formally approved by the board.

(d) "Trainee" means a person who is currently enrolled in an approved program.

(e) "Osteopathic physician's assistant" means a person who is a graduate of an approved program or its equivalent and is approved by the department to perform medical services under the supervision of an osteopathic physician or group of physicians certified by the board to supervise such assistant.

(f) "Supervision" means responsible supervision and control, with the licensed osteopathic physician assuming legal liability for the services rendered by the osteopathic physician's assistant. Except in cases of emergency, supervision shall require the easy availability or physical presence of the licensed osteopathic physician for consultation and direction of the actions of the osteopathic physician's assistant. The board shall further establish rules as to what constitutes responsible supervision of the osteopathic physician's assistant.

(3) PERFORMANCE BY OSTEOPATHIC PHYSICIAN'S ASSISTANT.—Notwithstanding any other provision of law, an osteopathic physician's assistant may perform medical services when such services are rendered under the supervision of a licensed osteopathic physician or group of osteopathic physicians certified by the board, in the specialty area or areas for which the osteopathic physician's assistant is trained or experienced. Any osteopathic physician's assistant certified under this section to perform services may perform those services only:

(a) In the office of the osteopathic physician to whom the osteopathic physician's assistant has been assigned, where such physician maintains his primary practice;

(b) When the osteopathic physician to whom he is assigned is present;

(c) In a hospital where the osteopathic physician to whom he is assigned is a member of the staff; or

(d) On calls outside said office, on the direct order of the osteopathic physician to whom he is assigned.

(4) PERFORMANCE BY TRAINEES.—Notwithstanding any other provision of law, a trainee may perform medical services when such services are rendered within the scope of an approved program.

(5) PROGRAM APPROVAL.—

(a) The department shall issue certificates of approval for programs for the education and training of osteopathic physician's assistants which meet board standards. Any basic program curriculum certified by the board shall cover a period of 24 months.

(b) In developing criteria for program approval, the board shall give consideration to, and encourage, the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(c) The board shall create groups of specialty classifications of training for osteopathic physician's assistants. These classifications will reflect the training and experience of the osteopathic physician's assistant. The osteopathic physician's assistant may receive training in one or more such classifications, which shall be shown on the certificate issued.

(d) The board shall adopt and publish standards to ensure that such programs operate in a manner which does not endanger the health and welfare of the patients who receive services within the scope of the program. The board shall review the quality of the curricula, faculties, and facilities of such programs; issue certificates of approval; and take whatever other action is necessary to determine that the purposes of this section are being met.

(6) APPLICATION APPROVAL.—

(a) The board shall formulate guidelines for the consideration of applications by a licensed osteopathic physician or [2]group of licensed osteopathic physicians to supervise osteopathic physician's assistants. Each application made by an osteopathic physician or [3]group of osteopathic physicians shall include all of the following:

1. The qualifications, including related experience, of the osteopathic physician's assistant intended to be employed.

2. The professional background and specialty of the osteopathic physician or physicians.

3. A description by the osteopathic physician of his, or physicians of their, practice and the way in which the assistant or assistants are to be utilized.

The board shall certify an application by a licensed osteopathic physician to supervise an osteopathic physician's assistant when the proposed assistant is a graduate of an approved program or its equivalent and is fully qualified by reason of experience and education to perform medical services under the responsible supervision of a licensed osteopathic physician and [4]when the public will be adequately protect-

ed by the arrangement proposed in the application.

(b) The board shall certify no more than two osteopathic physician's assistants for any osteopathic physician practicing alone; four osteopathic physician's assistants for two osteopathic physicians practicing together formally or informally; or a ratio of two osteopathic physician's assistants to three osteopathic physicians in any group of osteopathic physicians practicing together formally or informally.

(7) PENALTY.—Any person who has not been certified by the board and approved by the department and who holds himself out as an osteopathic physician's assistant, or who uses any other term in indicating or implying that he is an osteopathic physician's assistant, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not exceeding $5,000.

(8) REVOCATION OF APPROVAL.—The certificate of approval to supervise an osteopathic physician's assistant held by any osteopathic physician or group of osteopathic physicians may be revoked when the board determines the intent of this section is not being carried out.

(9) RULES.—The board shall adopt rules necessary for the administration of the osteopathic physician's assistant program, and such rules shall be adopted in accordance with chapter 120. The board shall adopt such rules as are necessary to ensure both the continued competency of osteopathic physician's assistants and their proper utilization by osteopathic physicians or groups of osteopathic physicians. Rules shall be adopted to assure that every osteopathic physician's assistant performs his services under the responsible supervision and control of an osteopathic physician or group of osteopathic physicians.

(10) FEES.—

(a) A fee not to exceed $100 as set by the board shall accompany the annual application by an osteopathic physician or group of physicians for authorization to supervise an osteopathic physician's assistant.

(b) Upon approval of an application for certification of an osteopathic physician's assistant in a specialty area, the applicant shall be charged an initial certification fee for the first biennium not to exceed $50, and a biennial renewal fee not to exceed $60 shall accompany each application for renewal of the osteopathic physician's assistant certificate.

(11) EXISTING PROGRAMS.—Nothing in this section shall be construed to eliminate or supersede existing laws relating to other paramedical professions or services. It is the intent of this section to supplement, and be in addition to, all such existing programs relating to the certification and practice of paramedical professions, as may be authorized by law.

(12) LIABILITY.—All osteopathic physicians or physician groups utilizing osteopathic physician's assistants shall be liable for any acts or omissions of physician's assistants acting under their supervision and control.

History.—ss. 1, 6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "group of licensed osteopathic" were inserted by the editors.

[3]**Note.**—The words "group of osteopathic" were inserted by the editors.

[4]**Note.**—The word "when" was substituted for "that" by the editors.

[1]459.024 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses or certificates valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses and certificates shall be applied for and renewed in accordance with this act.

History.—ss. 4-6, ch. 79-230.

[1]**Note.**—Section 6, ch. 79-230, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 460

CHIROPRACTIC

[1]**460.401 Legislative findings; intent.**—The Legislature finds that the practice of chiropractic by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about chiropractic physicians and that the consequences of a wrong choice could seriously endanger their health and safety. The sole legislative purpose for enacting this chapter is to ensure that every chiropractic physician practicing in this state meet minimum requirements for safe practice. It is the legislative intent that chiropractic physicians who fall below minimum competency or who otherwise present a danger to the public health be prohibited from practicing in this state.

History.—ss. 1, 7, ch. 79-211.

[1]**Note.**—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**460.402 Exceptions.**—The provisions of this chapter shall not apply to:

(1) Other duly licensed health care practitioners acting within their authorized scope of practice.

(2) Any person furnishing medical assistance in case of an emergency.

(3) The domestic administration of recognized family remedies.

(4) The practice of the religious tenets of any church.

(5) Any masseur acting within his scope of practice authorized in chapter 480.

(6) A student or recent unlicensed graduate practicing under the direct supervision of a licensed chiropractic physician in an extern program approved by the board pursuant to rules adopted by the board, pending the results of the first licensure examination for which the extern is qualified.

History.—ss. 1, 7, ch. 79-211.

[1]**Note.**—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**460.403 Definitions.**—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Chiropractic.

(3)(a) "Practice of chiropractic" means a noncombative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health.

(b) Any chiropractic physician who has complied with the provisions of this chapter may examine, analyze, and diagnose the human living body and its diseases by the use of any physical, chemical, electrical, or thermal method; use the X ray for diagnosing; and use any other general method of examination for diagnosis and analysis taught in any school of chiropractic recognized and approved by the Board of Chiropractic.

(c) Chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical, or natural methods or by the use of physical means or physiotherapy, including light, heat, water, or exercise, or by the oral administration of foods, food concentrates, and food extracts and may apply first aid and hygiene, but chiropractic physicians are expressly prohibited from prescribing or administering to any person any medicine or drug, from performing any surgery except as stated herein, or from practicing obstetrics.

(d) Chiropractic physicians shall have the privileges of services from the Department of Health and Rehabilitative Services laboratories.

(e) The term "chiropractic" or "doctor of chiropractic" or "chiropractor" shall be synonymous with "chiropractic physician," and each term shall be construed to mean a practitioner of chiropractic as the same has been defined herein. Chiropractic physicians may analyze and diagnose the physical conditions of the human body to determine the abnormal functions of the human organism and to determine such functions as are abnormally expressed and the cause of such abnormal expression.

(f) Any chiropractic physician who has complied with the provisions of this chapter is authorized to analyze and diagnose abnormal bodily functions and to adjust the physical representative of the primary cause of disease as is herein defined and provided. As an incident to the care of the sick, chiropractic physicians may advise and instruct patients in all matters pertaining to hygiene and sanitary measures as taught and approved by recognized chiropractic

schools and colleges.

(4) "Chiropractic physician" means any person licensed to practice chiropractic pursuant to this chapter.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.404 Board of Chiropractic; membership; appointment; terms.—

(1) The Board of Chiropractic is created within the Department of Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed chiropractic physicians who are residents of the state and who have been licensed chiropractic physicians engaged in the practice of chiropractic for at least 4 years, and the remaining two members shall be residents of the state who are not and have never been licensed as chiropractic physicians or members of any closely related profession.

(3) Within 30 days after June 30, 1979, the Governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to the board shall apply.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.405 Authority to make rules.—The Board of Chiropractic is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee set by the board not to exceed $250.

(b) Submitted proof satisfactory to the department that he is not less than 18 years of age and is a graduate of a chiropractic college maintaining a standard and reputability approved by the board, which college is accredited by, or has status with an agency or its successor which is recognized and approved by, the United States Office of Education or the Council on Postsecondary Accreditation or by the department, provided that the department applies the same standards used by the United States Office of Education which are applicable to the State of Florida when approving an agency. In evaluating any application for approval as an accrediting agency, the department shall give full recognition to the different philosophies of chiropractic prevailing in the profession and shall not reject any application solely because the accrediting agency is an adherent of one such philosophy as distinguished from another. No application for a license to practice chiropractic shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic as distinguished from another. Any application for approval filed by any accrediting agency shall be acted upon by the department within 180 days of the filing of the application.

(c) Completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an accrediting agency recognized and approved by the United States Office of Education.

(2) For those applicants who have matriculated prior to July 1, 1979, in a chiropractic college, the board shall waive the provisions of paragraph (1)(b) if the applicant is a graduate of a chiropractic college which has been denied accreditation or approval on the grounds that its curriculum does not include all of, or is deficient in, the subjects necessary for the completion of the state examination or if the applicant is a graduate of a chiropractic college where such subjects are not taught or offered, provided that the applicant can show that he has successfully completed such supplemental courses, the completion of which is upon July 1, 1979, a condition of admission to take the exam. In the event the department determines that such supplemental courses are unavailable or otherwise inaccessible, the department shall make available continuing education courses relating to such subjects as may be provided by rule.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.407 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed $150.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 460.409.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]460.408 Continuing chiropractic education.—

(1) No license renewal shall be issued by the department until the licensee submits proof satisfactory to the board that during the 2 years prior to his application for renewal he has participated in not more than 15 hours per year of continuing chiropractic education, as determined by the board, in courses approved by the board.

(2) The board shall approve only those courses that build upon the basic courses required for the practice of chiropractic.

(3) The board may make exception from the requirements of this section in emergency or hardship cases.

(4) The board may adopt rules within the requirements of this section that are necessary for its implementation.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.409 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to [2]section 11 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [3]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 460.413.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "section 11" appear as enacted by s. 1, ch. 79-211. See Senate Amendment 2 to H.B. 1832, Senate Journal 1979, p. 821.

[3]Note.—The words "for all years" were inserted by the editors.

460.41 Itemized patient billing.—Whenever a chiropractic physician licensed under this chapter renders professional services to a patient, the chiropractic physician is required, upon request, to submit to the patient, to the patient's insurer, or to the administrative agency for any federal or state health program under which the patient is entitled to benefits an itemized statement of the specific services rendered and the charge for each, no later than the chiropractic physician's next regular billing cycle which follows the fifth day after the rendering of professional services. A chiropractic physician may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 5, ch. 79-198.

[1]460.411 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice chiropractic without an active license or with a license fraudulently obtained.

(b) Using or attempting to use a license to practice chiropractic which has been suspended or revoked.

(2) Each of the following acts constitutes a violation of this chapter and is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Selling or fraudulently obtaining or furnishing any chiropractic diploma, license, or record of registration or aiding or abetting in the same.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) Using the name or title "chiropractic physician," "doctor of chiropractic," or any other name or title which would lead the public to believe that such person is engaging in the practice of chiropractic, unless such person is licensed as a chiropractic physician in this state.

(d) Knowingly concealing any information relative to violations of this chapter.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.412 Sexual misconduct in the practice of chiropractic.—The chiropractic physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of chiropractic shall mean violation of the chiropractic physician-patient relationship through which the chiropractic physician uses said relationship to induce or attempt to induce [2]the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of chiropractic is prohibited.

History.—ss. 1, 7, ch. 79-211.

[1]Note.—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "the patient to engage, or to" were inserted by the editors.

[1]460.413 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice chiropractic by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice chiropractic revoked, suspended, or otherwise acted against, includ-

ing the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of chiropractic or to the ability to practice chiropractic. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Causing to be advertised, by any means whatsoever, any advertisement which does not contain an assertion or statement which would identify himself as a chiropractic physician or identify such chiropractic clinic or related institution in which he practices or in which he is owner, in whole or in part, as a chiropractic institution.

(f) Advertising, practicing, or attempting to practice under a name other than one's own.

(g) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(h) Aiding, assisting, procuring, or advising any unlicensed person to practice chiropractic contrary to this chapter or to a rule of the department or the board.

(i) Failing to perform any statutory or legal obligation placed upon a licensed chiropractic physician.

(j) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity of a licensed chiropractic physician.

(k) Paying or receiving any commission, bonus, kickback, or rebate or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic or employing a trick or scheme in the practice of chiropractic when such scheme or trick fails to conform to the generally prevailing standards of treatment in the chiropractic community.

(m) Soliciting patients either personally or through an agent, unless such solicitation falls into a category of solicitations approved by rule of the board.

(n) Failing to keep written chiropractic records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results.

(o) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs.

(p) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in ss. 458.21, 768.13, and 768.46.

(q) Prescribing, dispensing, or administering any medicinal drug, performing any surgery, or practicing obstetrics.

(r) Being unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. A chiropractic physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(s) Gross or repeated malpractice or the failure to practice chiropractic at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the standards for malpractice in s. 768.45 in interpreting this provision.

(t) Performing any procedure or prescribing any therapy which, by the prevailing standards of chiropractic practice in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(u) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(v) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(w) Violating any provision of this chapter, any rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(x) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(y) Submitting to any third-party payor a claim for a service or treatment which was not actually provided to a patient.

(z) Failing to preserve identity of funds and property of a patient. As provided by rule of the board, money or other property entrusted to a chiropractic physician for a specific purpose, including advances for costs and expenses of examination or treatment, is to be held in trust and must be applied only to that purpose. Money and other property of patients coming into the hands of a chiropractic physician are not subject to counterclaim or setoff for chiropractic physician's fees, and a refusal to account for and deliver over such money and property upon demand shall be deemed a conversion. This is not to preclude the retention of money or other property upon which the chiropractic physician has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions for examinations or treatments. Controversies as to the amount of the fees are not grounds for disciplinary proceedings un-

less the amount demanded is clearly excessive or extortionate or the demand is fraudulent. All funds of patients paid to a chiropractic physician, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the chiropractic physician's office is situated, and no funds belonging to the chiropractic physician shall be deposited therein except as follows:

1. Funds reasonably sufficient to pay bank charges may be deposited therein.

2. Funds belonging in part to a patient and in part presently or potentially to the physician must be deposited therein, but the portion belonging to the physician may be withdrawn when due unless the right of the physician to receive it is disputed by the patient, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

Every chiropractic physician shall maintain complete records of all funds, securities, and other properties of a patient coming into the possession of the physician and render appropriate accounts to the patient regarding them. In addition, every chiropractic physician shall promptly pay or deliver to the patient, as requested by the patient, the funds, securities, or other properties in the possession of the physician which the patient is entitled to receive.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the chiropractic physician on probation for a period of time and subject to such conditions as the board may specify, including requiring the chiropractic physician to submit to treatment, to attend continuing education courses, to submit to reexamination, [2]or to work under the supervision of another chiropractic physician.

(3) The department shall not reinstate the license of a chiropractic physician, or cause a license to be issued to a person the board has deemed unqualified, until such time as the board is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of chiropractic.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 7, ch. 79-211.

[1]**Note.**—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "or" was substituted for "and" by the editors.

[1]460.414 Chiropractic physicians subject to state and municipal regulations.—All licensed chiropractic physicians shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates, and comply with all laws pertaining to public health, reporting to the proper authority as other practitioners are required to do.

History.—ss. 1, 7, ch. 79-211.

[1]**Note.**—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]460.415 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) Each chiropractic physician who is duly licensed on June 30, 1979, shall be entitled to hold such license. Henceforth, such license shall be renewed in accordance with the provisions of this act.

(3) All persons granted scholarship loans under former s. 460.40 shall continue to receive the full amount of such awards and shall not have the awards diminished as a result of the repeal of said section.

History.—ss. 2, 5-7, ch. 79-211.

[1]**Note.**—Section 7, ch. 79-211, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 461

PODIATRY

[1]461.001 Legislative findings; intent; scope.—The Legislature finds that the practice of podiatry by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about podiatrists and that the consequences of a wrong choice could seriously endanger their health and safety. The sole legislative purpose for enacting this chapter is to ensure that every podiatrist practicing in this state meet minimum requirements for safe practice. It is the legislative intent that podiatrists who fall below minimum competency or who otherwise present a danger to the public health be prohibited from practicing in this state.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.002 Exceptions.—

(1) The provisions of this chapter shall not apply to other duly licensed health care practitioners acting within their authorized scope of practice.

(2) This chapter shall not prohibit the manufacture, advertisement, or sale of proprietary foot appliances or remedies or corrective shoes.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.003 Definitions.—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Podiatry as created in this chapter.

(3) "Practice of podiatry" means the diagnosis and medical, surgical, palliative, and mechanical treatment of ailments of the human foot and leg. The surgical treatment of ailments of the human foot and leg shall be limited anatomically to that part below the anterior tibial tubercle. The practice of podiatry shall include the amputation of the toes or other parts of the foot but shall not include the amputation of the foot or leg in its entirety. A podiatrist may prescribe drugs that relate specifically to the scope of practice authorized herein.

(4) "Podiatrist" means any person licensed to practice podiatry pursuant to this chapter.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.004 Board of Podiatry; membership; appointment; terms.—

(1) The Board of Podiatry is created within the Department of Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed podiatrists who are residents of the state and who have been licensed podiatrists engaged in the practice of podiatry for at least 4 years, and the remaining two members shall be residents of the state who are not and have never been licensed as podiatrists or members of any closely related profession.

(3) Within 60 days after June 30, 1979, the Governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on July 1, 1979, shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to the board shall apply.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.005 Authority to make rules.—The Board of Podiatry is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.006 Licensure by examination.—

(1) Any person desiring to be licensed as a podiatrist shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee set by the board not to exceed $250.

(b) Submitted proof satisfactory to the department that he is not less than 18 years of age and is a recipient of a degree from a school or college of podiatry or chiropody recognized and approved by the Council on Podiatry Education. For applicants who matriculated prior to 1953, the course of study shall have been at least 3 years. For applicants who matriculated during or subsequent to 1953, the

course of study shall be at least 4 years or the total hourly equivalent of a 4-year course of study.

(2) The department shall issue a license to practice podiatry to any applicant who successfully completes the examination in accordance with this section. The department shall not issue a license to any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of this act. Upon the completion of the investigation, the provisions of s. 461.013 shall apply.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.007 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and a fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 461.008.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.008 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 461.007 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 461.013.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

461.009 Itemized patient billing.—Whenever a podiatrist licensed under this chapter renders professional services to a patient, the podiatrist is required, upon request, to submit to the patient, to the patient's insurer, or to the administrative agency for any federal or state health program under which the patient is entitled to benefits, an itemized statement of the specific services rendered and the charge for each, no later than the podiatrist's next regular billing cycle which follows the fifth day after rendering of professional services. A podiatrist may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 6, ch. 79-198.

[1]461.012 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice podiatry without an active license or with a license fraudulently obtained.

(b) Using or attempting to use a license to practice podiatry which has been suspended or revoked.

(2) Each of the following acts constitutes a violation of this chapter and is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Selling or fraudulently obtaining or furnishing any podiatry diploma, license, or record of registration or aiding or abetting in the same.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) Using the name or title "Podiatrist," "Doctor of Podiatry," "Doctor of Podiatric Medicine," or any other name or title which would lead the public to believe that such person is engaging in the practice of podiatry, unless such person is licensed as a podiatrist in this state.

(d) Knowingly concealing any information relative to violations of this chapter.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.013 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice podiatry by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice podiatry revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of podiatry or to the ability to practice podiatry. Any plea of nolo conten-

dere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice podiatry contrary to this chapter or to rule of the department or the board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed podiatrist.

(i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such report or records shall include only those which are signed in the capacity of a licensed podiatrist.

(j) Paying or receiving any commission, bonus, kickback, rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. This provision shall not be construed to prohibit a podiatrist from receiving consultation fees for professional services rendered.

(k) Making misleading, deceptive, untrue, or fraudulent representations in the practice of podiatry or employing a trick or scheme in the practice of podiatry when such scheme or trick fails to conform to the generally prevailing standards of treatment in the podiatric community.

(l) Soliciting patients either personally or through an agent, unless such solicitation falls into a category of solicitations approved by rule of the board.

(m) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(o) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in ss. 458.21, 768.13, and 768.46.

(p) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the podiatrist's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the podiatrist's professional practice, without regard to his intent.

(q) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the podiatrist to himself except those prescribed, dispensed, or administered to the podiatrist by another practitioner authorized to prescribe, dispense, or administer them.

(r) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to chapter 893.

(s) Being unable to practice podiatry with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph the department shall, upon probable cause, have authority to compel a podiatrist to submit to a mental or physical examination by physicians designated by the department. Failure of a podiatrist to submit to such examination when directed shall constitute an admission of the allegations against him, unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A podiatrist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of podiatry with reasonable skill and safety to patients.

(t) Gross or repeated malpractice or the failure to practice podiatry at a level of care, skill, and treatment which is recognized by a reasonably prudent podiatrist as being acceptable under similar conditions and circumstances. The board shall give great weight to the standards for malpractice in s. 768.45 in interpreting this provision.

(u) Performing any procedure or prescribing any therapy which, by the prevailing standards of podiatric practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent.

(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(w) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(x) Violating any provision of this chapter, any rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or department.

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude

another licensee from lawfully advertising his services.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (l), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placing the podiatrist on probation for a period of time and subject to such conditions as the board may specify, including requiring the podiatrist to submit to treatment, to attend continuing education courses, to submit to reexamination, and to work under the supervision of another podiatrist.

(3) The department shall not reinstate the license of a podiatrist, or cause a license to be issued to a person the board has deemed unqualified, until such time as the board is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of podiatry.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]461.015 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) Each podiatrist who is duly licensed on June 30, 1979, shall be entitled to hold such license. Henceforth, such license shall be renewed in accordance with the provisions of this act.

History.—ss. 4-6, ch. 79-229.

[1]**Note.**—Section 6, ch. 79-229, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 462

NATUROPATHY

462.01 "Naturopathy" defined.—For the purpose of this law, "natureopathy" and "naturopathy" shall be construed as synonymous terms and are hereby defined to mean the use and practice of psychological, mechanical, and material health sciences to aid in purifying, cleansing, and normalizing human tissues for the preservation or restoration of health, according to the fundamental principles of anatomy, physiology, and applied psychology, as may be required. Naturopathic practice employs, among other agencies, phytotherapy, dietetics, psychotherapy, suggestotherapy, hydrotherapy, zone therapy, biochemistry, external applications, electrotherapy, mechanotherapy, mechanical and electrical appliances, hygiene, first aid, sanitation, and heliotherapy; provided, however, that nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery or chiropractic, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathy, chiropractic, Christian Science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments.

History.—s. 1, ch. 12286, 1927; CGL 3469; s. 1, ch. 21707, 1943; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.02 Board of Naturopathic Examiners.—

(1) An examining and licensing board is created within the [1]Division of Occupations of the [2]Department of Professional and Occupational Regulation to be known as the "Board of Naturopathic Examiners." [3]Said board shall be composed of three practicing naturopathic physicians, of integrity and ability, who shall be residents of this state, and who shall have graduated from a reputable naturopathic school, and shall have been engaged in the active practice of their profession within this state for at least 1 year prior to their appointments, but none of them shall be connected in any way with, or have any interest in, any naturopathic school or college.

(2) The said members shall be appointed by the governor for terms of 4 years from the termination of the now existing terms. Upon the expiration of the term of office of each member of said board, or whenever a vacancy shall occur thereon, the governor shall appoint a naturopathic physician to fill such vacancy. The members of said board shall hold office until their successors are appointed and qualified.

(3) The board shall perform such duties and be vested with and exercise such powers relative to the protection of the public health and the control and regulation of the practice of naturopathy in the state as shall in this chapter be prescribed and conferred upon it.

History.—ss. 2, 3, ch. 12286, 1927; CGL 3470, 3471; ss. 30, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

[1]**Note.**—See s. 2, ch. 79-36, which in effect abolished the Division of Occupations and which assigned the regulatory boards in the Division of Occupations to the Division of Professions of the Department of Professional Regulation.

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[3]**Note.**—See s. 1, ch. 78-431, which added a lay member to each examining and licensing board within the Department of Professional and Occupational Regulation. Also, see s. 2, ch. 79-36, which also provides that each board with less than five members shall have at least one lay member.

462.022 Abolition of licensing power of board.—On July 1, 1959, the licensing powers of the State Board of Naturopathic Examiners as provided by law are hereby abolished. Only those naturopathic physicians that are presently practicing and licensed, and have been residents for 2 years in this state prior to enactment of this law may renew their licenses. This law does not affect any other functions of the State Board of Naturopathic Examiners.

History.—s. 1, ch. 59-164; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.03 Oath of members of board.—Before entering upon the duties of the office, the members of the Board of Naturopathic Examiners shall take the constitutional oath of office and shall file the same with the Department of State; and there shall thereupon issue to them a commission pursuant to their appointment.

History.—s. 4, ch. 12286, 1927; CGL 3472; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.04 Organization, meetings; powers and duties of board.—

(1) Immediately after the appointment and qualification of its members, the Board of Naturopathic Examiners shall meet and organize. Said board shall elect a president, vice president, and secretary-treasurer from its membership. Said board shall hold one regular meeting each year at some convenient place in the state, and on such date as the board may determine. Notice of such meeting shall be given by publication thereof once a week for 4 successive weeks in one or more newspapers of general circulation through the state.

(2) Special or call meetings may be held at such times and places and upon such notice as the majority of the board may determine. Said board shall adopt a seal which must be affixed to all licenses issued by it. The board shall, from time to time,

adopt such rules and regulations not inconsistent with this chapter as it may deem necessary for the performance of its duties, and shall examine and pass upon the qualifications of applicants for the practice of naturopathy in this state as provided in this chapter. A majority of the members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a record of all official actions and proceedings of the board, and said records shall be prima facie evidence of matters therein contained.

History.—s. 5, ch. 12286, 1927; CGL 3473; s. 3, ch. 76-168; s. 1, ch. 77-137; s. 1, ch. 77-457; s. 3, ch. 78-139.
cf.—s. 462.13 Additional duties of board.

[1]462.08 Renewal of license to practice naturopathy.—Each license holder shall renew his license to practice naturopathy on or before May 1 of each year in the following manner:

(1) At least 30 days prior to May 1 of each year, the board shall mail to each person holding a valid current license, at the last address of record, an application for license.

(2) The applicant shall fill in the application blank and return it to the board on or before May 1 of each year.

(3) The applicant shall furnish to the board such evidence as it may require of having complied with s. 462.18 relating to the annual educational requirements.

(4) The annual renewal fee, the amount of which shall be determined annually by the board, but which shall not exceed $50, shall be paid at the time the application for renewal of license is filed.

History.—s. 9, ch. 12286, 1927; CGL 3477; s. 3, ch. 21707, 1943; s. 1, ch. 63-374; s. 1, ch. 73-352; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 3, ch. 78-139.
[1]Note.—See s. 5, ch. 79-36, which requires each licensee to renew his license every 2 years and requires the Department of Professional Regulation to mail an application for renewal to the licensee. See s. 455.203.

462.09 Disposition of fees; report; bond of secretary-treasurer; compensation of board members.—All fees received under this chapter shall be paid to the secretary-treasurer. The secretary-treasurer shall be required to give a good and sufficient bond in such amount and upon such terms and conditions as the board may require, said bond to be approved by the board. Members of the board shall receive $10 per day, or any part of a day, while attending official board meetings, not to exceed 12 meetings per year, and shall receive per diem and mileage as provided in s. 112.061, from place of their residence to place of meeting and return. All moneys received by the board under this chapter shall be deposited and expended pursuant to the provisions of s. 215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers signed by the secretary-treasurer and approved by the president of the board. The secretary-treasurer shall, on the first Tuesday of October of every year, file with the Governor of the state a report of all receipts and disbursements of said board for the preceding fiscal year.

History.—s. 10, ch. 12286, 1927; CGL 3478; s. 96, ch. 26869, 1951; s. 12, ch. 28215, 1953; s. 7, ch. 61-514; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.
cf.—s. 455.219 Fees; receipts; disposition.

462.10 Recording of licenses.—All licenses issued as provided in this chapter shall be recorded in the office of the clerk of the circuit court of the county in which applicant practices, and the date of recording of same shall be indicated thereon. Said clerk shall keep a permanent record of the same, and shall receive a service charge for each license so recorded as provided in s. 28.24.

History.—s. 11, ch. 12286, 1927; CGL 3479; s. 26, ch. 70-134; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.
cf.—s. 28.24 Service charges by clerk of circuit court.

462.11 Naturopaths to observe regulations.—Doctors of naturopathy shall observe and be subject to all state, county, and municipal regulations in regard to the control of contagious and infectious diseases, the reporting of births and deaths, and to any and all other matters pertaining to the public health in the same manner as is required of other practitioners of the healing art.

History.—s. 12, ch. 12286, 1927; CGL 3480; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.12 Board to pass upon naturopathic schools.—The Board of Naturopathic Examiners may pass upon the good standing and reputability of any naturopathic school or college, and in determining the reputability of any naturopathic school or college, the right to investigate and make a personal inspection of the same is authorized.

History.—s. 14, ch. 12286, 1927; CGL 3482; s. 3, ch. 76-168.

462.13 Additional powers and duties of board.—The State Board of Naturopathic Examiners and its officers may administer oaths, summon witnesses, and take testimony in all matters relating to its duties. Said board shall issue a license to practice naturopathy to all persons who shall furnish satisfactory evidence of attainments and qualifications under the provisions of this chapter and the rules and regulations of the board. Such license shall be signed by the president, and attested by the secretary-treasurer of the board under its adopted seal, and it shall give absolute authority to the person to whom it is issued to practice naturopathy in this state. Every unrevoked license and indorsement of recordation made as provided in this chapter shall be presumptive evidence in all courts and places that the person therein named is legally licensed to practice naturopathy. The board shall aid the prosecuting attorneys of the state in the enforcement of this chapter.

History.—s. 15, ch. 12286, 1927; CGL 3483; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.14 Revocation of license.—

(1) The license or registration of a practitioner of naturopathy may be revoked, suspended, or annulled, or such practitioner may be reprimanded, upon the following grounds:

(a) That he is guilty of fraud or deceit in the practice of naturopathy or in his admission to the practice of naturopathy;

(b) That he has been convicted of a felony. The conviction of a felony shall be the conviction of any offense which, if committed within the state, would constitute a felony under the laws of this state;

(c) That he is engaged in the practice of naturopathy under a false or assumed name, or the impersonation of another practitioner of a like or different name;

(d) That he is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate him from the performance of his professional duties;

(e) That he is guilty of untrue, fraudulent, misleading, or deceptive advertising;

(f) Causing the publication or circulation of an advertisement of any modality by means whereby the monthly period of women can be regulated or the menses, if suppressed, can be established;

(g) The procuring, or aiding or abetting in procuring, of a criminal abortion.

(2) The license or registration of a practitioner of naturopathy shall be revoked and surrendered to the board immediately upon conviction, in any court in this state, of the following:

(a) Any felony committed while practicing naturopathy; or

(b) Any felony which relates to the authority vested in the practitioner by the license issued by the board.

History.—s. 16, ch. 12286, 1927; CGL 3484; s. 3, ch. 76-168; s. 166, ch. 77-104; s. 1, ch. 77-457; ss. 2, 3, ch. 78-139.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

s. 455.227 Grounds for discipline; penalties; enforcement.

462.15 Proceeding for revocation of license.—

(1) Proceedings for the revocation of a license or the annulment of registration shall be begun by filing written charges against the accused. These charges may be preferred by any person or the board may, on its own motion, direct the executive officer of said board to prefer said charges. Said charges shall be filed with the secretary-treasurer of said board.

(2) Said board may, upon determining that any licentiate has been guilty of any of the charges against him, suspend such licentiate from the practice of naturopathy and call in the license of said licentiate upon a majority vote of the board.

(3) In the event that any such license shall be revoked or registration annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the circuit court in which said accused is registered as a naturopathic physician, a certificate, under its seal, certifying that such registration has been annulled and that such clerk shall, upon receipt of such certificate, file the same and forthwith mark such registration annulled.

History.—s. 17, ch. 12286, 1927; CGL 3485; s. 5, ch. 63-509; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 37, ch. 78-95; s. 3, ch. 78-139.

cf.—s. 455.225 Disciplinary proceedings.

462.16 Reissue of license.—Any person who shall practice naturopathy after his license has been revoked and registration annulled shall be deemed to have practiced naturopathy without a license; provided, however, at any time after 6 months after the date of said conviction, said board, by a majority vote may issue a new license, or grant a license to the person affected, restoring to or conferring upon him all the rights and privileges of and pertaining to the practice of naturopathy as defined and regulated by this chapter. The fee therefor shall be the same as upon the issuance of the original license.

History.—s. 18, ch. 12286, 1927; CGL 3486; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

462.17 Penalty for offenses relating to naturopathy.—Any person who shall:

(1) Sell, fraudulently obtain, or furnish any naturopathic diploma, license, record, or registration or aid or abet in the same;

(2) Practice naturopathy under the cover of any diploma, license, record, or registration illegally or fraudulently obtained or secured or issued unlawfully or upon fraudulent representations;

(3) Advertise to practice naturopathy under a name other than his own or under an assumed name;

(4) Falsely impersonate another practitioner of a like or different name;

(5) Practice or advertise to practice naturopathy or use in connection with his name any designation tending to imply or to designate him as a practitioner of naturopathy without then being lawfully licensed and authorized to practice naturopathy in this state; or

(6) Practice naturopathy during the time his license is suspended or revoked

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 19, ch. 12286, 1927; CGL 7726; s. 396, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

[1]462.18 Educational requirements.—

(1) At the time each licensee shall renew his or her license as otherwise provided in this chapter each licensee, beginning with the license renewal due May 1, 1944, in addition to the payment of the regular renewal fee, shall furnish to the Board of Naturopathic Examiners satisfactory evidence that, in the year preceding each such application for such renewal, he or she has attended the 2-day educational program as promulgated and conducted by the Florida Naturopathic Physicians Association, Inc., or, as a substitute therefor, the equivalent of said program as approved by said board. The secretary of the Board of Naturopathic Examiners shall send a written notice to this effect to every person holding a valid license to practice naturopathy within this state at least 30 days prior to May 1 in each year, directed to the last known address of such licensee and shall enclose with such notice proper blank forms for application for annual license renewal. All of the details and requirements of the aforesaid educational program shall be adopted and prescribed by the Board of Naturopathic Examiners. In the event of national emergencies, or for sufficient reason, the Board of Naturopathic Examiners shall have the power to excuse the naturopathic physicians as a group or as individuals from taking this postgraduate course.

(2) The determination of whether a substitute annual educational program is necessary shall be solely within the discretion of the board.

(3) The fee to be charged for any such annual

educational program shall not exceed the sum of $100.

History.—s. 4, ch. 21707, 1943; s. 1, ch. 63-414; s. 2, ch. 73-352; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

[1]**Note.**—See s. 5, ch. 79-36, which requires each licensee to renew his license every 2 years. See s. 455.203.

462.19 Restoration of expired licenses.—In every instance where any person holding a license to practice naturopathy in this state shall fail to renew such license, as herein provided, then, in that event, such license shall thereupon terminate and end and be of no further force or effect. However, the Board of Naturopathic Examiners shall restore such license upon payment to the board by such former license holder of a restoration fee of $30 for each and every year such license has been delinquent and also upon such former license holder furnishing to such board evidence satisfactory to a majority of the board members that the applicant for reinstatement has completed postgraduate study of a reasonable standard approved by the board.

History.—s. 5, ch. 21707, 1943; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-139.

CHAPTER 463

OPTOMETRY

[1]463.001 Purpose; legislative findings; intent.—

(1) The Legislature finds that the practice of optometry is declared a health care profession. Unskilled and incompetent practitioners present a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice when selecting an optometrist and that the consequences of a wrong choice could seriously endanger the public health and safety. The Legislature declares that the only way to protect the public from the incompetent practice of optometry is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The sole legislative purpose in enacting this chapter is to ensure the protection of the public health and safety.

(3) Nothing in this chapter shall be construed to prevent a person licensed under chapter 458, chapter 459, or chapter 464 from performing those services which he is licensed to perform or delegating to his supportive personnel those services which he is licensed to perform.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.002 Definitions.—As used in this chapter:

(1) "Board" means the Board of Optometry.

(2) "Department" means the Department of Professional Regulation.

(3) "Optometrist" means a person who is licensed to engage in the practice of optometry in this state under the authority of this chapter.

(4) "Optometry" means the diagnosis of the human eye and its appendages; the employment of any objective or subjective means or methods for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and the prescribing and employment of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.

(5) "Direct supervision" means supervision [2]to an extent that the licensee remains on the premises while all work is being done and gives final approval to any work performed by an employee.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "to an extent that" were substituted for "where" by the editors.

[1]463.003 Board of Optometry.—

(1) There is created within the Department of Professional Regulation a Board of Optometry, composed of seven members appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed optometrists in good standing in this state, and the remaining two members shall be citizens of the state who are not, nor have ever been, licensed optometrists and who are in no way connected with the practice of optometry.

(3) Within 60 days after June 30, 1979, the Governor shall appoint seven eligible and qualified members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on July 1, 1979, shall continue in office until their successors are appointed.

(5) All applicable provisions of chapter 455 relating to activities of regulatory boards shall apply.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.004 Board headquarters.—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.005 Authority to make rules.—The Board of Optometry is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public. Such rules shall include, but not be limited to, rules relating to:

(1) A standard of practice for licensed optometrists.

(2) Minimum equipment which an optometrist shall at all times possess to engage in the practice of optometry.

(3) Procedures for transfer of prescription files or case records upon the going out of business of an optometrist.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.006 Licensure by examination.—

(1) Any person desiring to be licensed as an optometrist shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee not to exceed $250 as set by the board.

(b) Submitted proof satisfactory to the department that he is 18 years of age or over and a graduate of an accredited school or college of optometry approved by rule of the board.

(2) The examination shall consist of the appropriate subjects, including applicable state laws and rules; however, the board may, by rule, substitute a national examination as part or all of the examination. The board may, by rule, offer a practical examination in addition to the written examination.

(3) Each applicant who successfully passes the examination and meets the requirements of this chapter shall be entitled to be licensed as an optometrist.

History.—ss. 1, ch. 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.007 Renewal of license; periodic demonstration of competency.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 463.008.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

(5)(a) Unless otherwise provided by law, the board may require licensees to periodically demonstrate their professional competence, as a condition of renewal of a license, by completing up to 30 hours of continuing education every 2 years.

(b) Criteria or course content of continuing education shall be approved by the board and shall be regularly reviewed by the board to assure that the programs adequately and reliably contribute to the professional competence of the licensee.

(c) The board shall adopt rules to implement the provisions of this act.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.008 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 463.007 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 463.016.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "for all years" were inserted by the editors.

[1]463.009 Supportive personnel.—No person other than a licensed optometrist may engage in the practice of optometry, except that a licensed optometrist may delegate to nonlicensed supportive personnel those duties, tasks, and functions which do not fall within the purview of s. 463.002(4). All such delegated acts shall be performed under the direct supervision of a licensed optometrist who shall be responsible for all such acts performed by persons under his supervision.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.011 Exhibition of license; prerequisite to occupational license.—Each person to whom a license is issued by the department shall keep said license conspicuously displayed in his office or place of business and shall, whenever required, exhibit said license to any member or authorized representative of the department. It is unlawful for any licensing agency, [2]whether state, county, or municipal, to issue an occupational license tax to practice optometry unless the applicant shall first exhibit to such official a current license issued by the Department of Professional Regulation showing that the appli-

cant is qualified in all regards to practice optometry in accordance with the terms of this chapter.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "whether" was substituted for "either" by the editors.

[1]463.012 Prescriptions; filing; duplication.—

(1) A licensed optometrist shall keep on file for a period of at least 2 years any prescription he writes.

(2) An optometrist shall, upon request by a patient or his agent, make available a duplicate copy of any original prescription less than 2 years old. Any duplicate prescription shall be considered a valid prescription to be filled for a period of 2 years from the date of the original prescription.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.013 Optometric services for certain public agencies.—Any agency of the state or county or any commission, clinic, or board administering relief, social security, health insurance, or health service under the laws of the state shall accept the services of optometrists licensed in this state for the purposes of diagnosing and correcting any and all visual, muscular, neurological, and anatomic anomalies of the human eyes and their appendages of any persons under the jurisdiction of said agency, clinic, commission, or board administering such relief, social security, health insurance, or health service, on the same basis, and on a parity with any other person authorized by law to render similar professional service, when such services are needed, and shall pay for such services in the same way as other professionals may be paid for similar services.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.014 Certain acts prohibited.—

(1) Except as otherwise provided in this section:

(a) No optometrist shall practice or attempt to practice under a name other than his own or under the name of a professional association. No optometrist shall practice under the name of any company, corporation, trade name, business name, or other fictitious entity.

(b) No corporation, lay body, organization, or individual other than a licensed optometrist shall engage in the practice of optometry through the means of engaging the services, upon a salary, commission, or other means or inducement, of any person licensed to practice optometry in this state.

(c) No optometrist shall engage in the practice of optometry with any organization, corporation, group, or lay individual. This provision shall not prohibit optometrists from employing, or from forming partnerships or professional associations with, optometrists licensed in this state.

(d) No rule of the board shall forbid the practice of optometry in or on the premises of a commercial or mercantile establishment.

(2) A corporation or labor organization may employ optometrists to provide optometric services to bona fide employees of such corporation and members of their immediate families [2]or to bona fide members of such labor organization and members of their immediate families, provided that the provision of such services is incidental to the legitimate business or other lawful purposes of such corporation or labor organization. This section shall not be deemed to authorize the employment of optometrists by corporations or organizations formed primarily for such purposes unless such corporation or organization is licensed under part I of chapter 641.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976. as amended.

[2]Note.—The word "or" was substituted for "and" by the editors.

[1]463.015 Violations and penalties.—

(1) No person shall:

(a) Practice optometry unless the person holds an active license pursuant to this act;

(b) Use the name or title "optometrist" when the person has not been licensed pursuant to this act;

(c) Present as his own the license of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license;

(e) Use or attempt to use a license to practice optometry which has been suspended or revoked;

(f) Knowingly employ unlicensed persons in the practice of optometry; or

(g) Knowingly conceal information relative to violations of this chapter.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 6, ch. 79-194.

[1]Note.—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.016 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Procuring or attempting to procure a license to practice optometry by bribery, by fraudulent misrepresentations, or through an error of the department or board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Having a license to practice optometry revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of optometry or to the ability to practice optometry.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records shall include only those which are signed by the licensee in his capacity as a licensed optometrist.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Fraud or deceit, negligence or incompetency, or misconduct in the practice of optometry.

(h) A violation or repeated violations of provisions of this chapter, or of chapter 455, and any rules promulgated pursuant thereto.

(i) Conspiring with another licensee or with any person to commit an act, or committing an act, which would coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(j) Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

(k) Failing to keep written optometric records about the examinations, treatments, and prescriptions for patients.

(l) Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board.

(m) Exercising influence on the patient in such a manner as to exploit the patient for financial gain of the licensee or of a third party.

(n) Gross or repeated malpractice.

(o) Practicing with a revoked, suspended, or inactive license.

(p) Being unable to practice optometry with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An optometrist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of optometry with reasonable skill and safety to patients.

(q) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of Florida laws or rules regulating optometry.

(r) Violating any provision of s. 463.015.

(s) Violating any lawful order of the board or department, previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the board or department.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the optometrist on probation for a period of time and subject to such conditions as the board may specify, including requiring the optometrist to submit to treatment, to attend continuing education courses, or to work under the supervision of another optometrist.

(3) The board shall not reinstate the license of an optometrist, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of optometry.

History.—ss. 1, 6, ch. 79-194.

[1]**Note.**—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.017 Prosecution of criminal violations.—The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 6, ch. 79-194.

[1]**Note.**—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.018 Reciprocity.—In order to ensure that optometrists licensed in this state may be considered for licensure in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 6, ch. 79-194.

[1]**Note.**—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]463.019 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on July 1, 1979, shall remain in full force and effect. Henceforth, all licenses shall be applied for and renewed in accordance with this act.

History.—ss. 3, 4, 6, ch. 79-194.

[1]**Note.**—Section 6, ch. 79-194, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 464

NURSING

[1]**464.001 Short title.**—This chapter shall be known as the "Nurse Practice Act."

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**464.002 Purpose.**—The Legislature finds that the practice of nursing by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about nurses and that the consequences of a wrong choice could seriously endanger their health and safety. The sole legislative purpose in enacting this chapter is to ensure that every nurse practicing in this state meet minimum requirements for safe practice. It is the legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**464.003 Definitions.**—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Nursing as created in this chapter.

(3)(a) "Practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:

1. The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the maintenance of health and prevention of illness of others.

2. The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.

3. The supervision and teaching of other personnel in the theory and performance of any of the above acts.

(b) "Practice of practical nursing" means the performance of selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm and the maintenance of health and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatrist, or a licensed dentist.

The professional nurse and the practical nurse shall be responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

(c) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of post-basic specialized education, training, and experience, are proper to be performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the advanced registered nurse practitioner may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced registered nurse practitioner may also perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee composed of three members of the Board of Nursing, one of whom shall be the advanced registered nurse practitioner member, three members of the Board of Medical Examiners, and the secretary of the department or the secretary's designee. The Board of Nursing shall adopt rules authorizing the performance of any such acts approved by the joint committee. Unless otherwise specified by the joint committee, such acts shall be performed under the general supervision of a practitioner licensed under chapter 458, chapter 459, or chapter 466 within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance.

(d) "Nursing diagnosis" means the observation and evaluation of physical or mental conditions, behaviors, signs and symptoms of illness, and reactions to treatment and the determination as to whether such conditions, signs, symptoms, and reactions represent a deviation from normal.

(e) "Nursing treatment" means the establishment and implementation of a nursing regimen for the care and comfort of individuals, the prevention of illness, and the education, restoration, and maintenance of health.

(4) "Registered nurse" means any person li-

censed in this state to practice professional nursing.

(5) "Licensed practical nurse" means any person licensed in this state to practice practical nursing.

(6) "Advanced registered nurse practitioner" means any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice.

(7) "Approved program" means a nursing program conducted in a school, college, or university which is approved by the board pursuant to s. 464.019 for the education of nurses.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.004 Board of Nursing; membership; appointment; terms.—

(1) The Board of Nursing is created within the Department of Professional Regulation and shall consist of nine members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be registered nurses who are residents of this state and who have been engaged in the practice of professional nursing for at least 4 years, including at least one advanced registered nurse practitioner. In addition, two members of the board shall be licensed practical nurses who are residents of this state and who have been actively engaged in the practice of practical nursing for at least 4 years prior to their appointment. The remaining two members shall be residents of the state who have never been licensed as nurses and who are in no way connected with the practice of nursing. No person shall be appointed as a lay member who is in any way connected with, or has any financial interest in, any health care facility, agency, or insurer.

(3) Within 30 days after June 30, 1979, the Governor shall appoint nine eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Three members for terms of 3 years each.

(c) Four members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of the board shall apply.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.005 Board headquarters.—The board shall maintain its official headquarters in the city in which it has been domiciled for the past 5 years.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.006 Authority to make rules.—The Board of Nursing is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.007 Disposition of fees; expenditures.— All moneys received under this chapter shall be deposited and expended pursuant to the provisions of s. 215.37. All expenditures for duties of the board authorized by this chapter shall be paid upon presentation of vouchers approved by the executive director of the board.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.008 Licensure by examination.—

(1) Any person desiring to be licensed as a registered nurse or licensed practical nurse shall apply to the department to take the licensure examination. The department shall examine each applicant who:

(a) Has completed the application form and remitted an examination fee set by the board not to exceed $100.

(b) Is in good mental and physical health, a recipient of a high school diploma or the equivalent, and a graduate of an approved program for the preparation of registered nurses or licensed practical nurses, whichever is applicable. Courses successfully completed in a professional nursing program which are at least equivalent to a practical nursing program may be used to satisfy the education requirements for licensure as a licensed practical nurse.

(c) Has the ability to communicate in the English language, which may be determined by an examination given by the department.

(2) Each applicant who passes the examination shall, unless denied pursuant to s. 464.018, be entitled to licensure as a registered professional nurse or a licensed practical nurse, whichever is applicable.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.009 Licensure by endorsement.—

(1) The department shall issue the appropriate license by endorsement to practice professional or practical nursing to an applicant who, upon applying to the department and remitting a fee set by the board not to exceed $100, demonstrates to the board that he:

(a) Holds a valid license to practice professional or practical nursing in another state of the United States, provided that when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time; or

(b) Meets the qualifications for licensure in s. 464.008 and has successfully completed a state, regional, or national examination which is substantially equivalent to or more stringent than the examination given by the department.

(2) Such examinations and requirements from other states shall be presumed to be substantially

equivalent to or more stringent than those in this state, unless the board by rule finds otherwise. Such presumption shall not arise until January 1, 1980.

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 464.018 shall apply.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.012 Certification of advanced registered nurse practitioners; fees.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he holds a current license to practice professional nursing and that he meets one or more of the following requirements as determined by the board:

(a) Satisfactory completion of a formal postbasic educational program of at least 1 academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.

(b) Certification by an appropriate specialty board.

(c) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

(2) The board shall provide by rule the appropriate requirements for the following categories:

(a) Nurse anesthetist.
(b) Nurse midwife.
(c) Family nurse practitioner.
(d) Family planning nurse practitioner.
(e) Geriatric nurse practitioner.
(f) Pediatric nurse practitioner.
(g) Adult primary care nurse practitioner.
(h) Clinical specialist in psychiatric mental health nursing.
(i) Other categories as may be determined by rule of the board.

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(3)(c).

(4) In addition to the general functions specified in subsection (3), an advanced registered nurse practitioner may perform the following acts within his specialty:

(a) The nurse anesthetist may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:

1. Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.

2. Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.

3. Order under the protocol preanesthetic medication.

4. Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. This shall include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.

5. Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.

6. Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.

7. Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.

8. Recognize and treat a cardiac arrythmia while the patient is under anesthetic care.

9. Participate in management of the patient while in the postanesthesia recovery area, including ordering the administration of fluids and drugs.

10. Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

(b) The nurse midwife may, to the extent authorized by established protocol approved by the medical staff of the health care facility in which midwifery services are performed, perform any or all of the following:

1. Perform superficial minor surgical procedures.

2. Manage patient during labor and delivery to include amniotomy, episiotomy, and repair.

3. Order, initiate, and perform appropriate anesthetic procedures.

4. Perform postpartum examination.

5. Order appropriate medications.

6. Provide family-planning services.

7. Manage the medical care of the normal obstetrical patient.

(c) The family nurse practitioner may perform any or all of the following acts:

1. Manage selected medical problems.

2. Order physical therapy.

(d) The family-planning nurse practitioner may provide family-planning services.

(e) The geriatric nurse practitioner may perform any or all of the following:

1. Manage selected medical problems.

2. Order physical therapy.

(f) The pediatric nurse practitioner may perform any or all of the following:

1. Initiate, monitor, or alter therapies for certain uncomplicated, acute illnesses within the frame-

work of the standing protocol.

2. Initiate childhood immunizations.

(g) The adult primary care nurse practitioner may perform any or all of the following:

1. Initiate appropriate medications by defined protocol.

2. Initiate immunizations.

3. Monitor and manage patients with stable chronic diseases.

4. Initiate treatments and medications and alter dosage within the established protocol.

(h) The clinical nurse specialist in psychiatric mental health nursing may perform the following:

1. Establish behavioral problems diagnosis and make treatment recommendations.

2. Monitor and adjust dosages of prescribed psychotropic medications as indicated within the framework of the established protocol.

(5) The board shall certify, and the department shall issue a certificate to, any nurse meeting the qualifications in this section. The board shall establish an application fee not to exceed $100 and a biennial renewal fee not to exceed $50. The board is authorized to adopt such other rules as may be necessary to implement the provisions of this section.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.013 Renewal of license or certificate.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board may by rule prescribe continuing education not to exceed 30 hours biennially as a condition for renewal of a license or certificate. The criteria for programs shall be approved by the board.

(4) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 464.014.

(5) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.014 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 464.013 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 464.018.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

[1]464.015 Titles and abbreviations; restrictions; penalty.—

(1) Only persons who hold licenses to practice professional nursing in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N."

(2) Only persons who hold licenses to practice as licensed practical nurses in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N."

(3) Only persons who are graduates of approved programs or the equivalent may use the term "Graduate Nurse" and the abbreviation "G.N.," pending the results of the first licensure examination for which they are eligible.

(4) Only persons who are graduates of approved programs or the equivalent may use the term "Graduate Practical Nurse" and the abbreviation "G.P.N.," pending the results of the first licensure examination for which they are eligible.

(5) Only persons who hold valid certificates to practice as advanced registered nurse practitioners in this state shall have the right to use the title "Advanced Registered Nurse Practitioner" and the abbreviation "A.R.N.P."

(6) No person shall practice or advertise as, or assume the title of, registered nurse, licensed practical nurse, or advanced registered nurse practitioner or use the abbreviation "R.N.," "L.P.N.," or "A.R.N.P." or take any other action that would lead the public to believe that person was certified as such, unless that person is licensed or certified to practice as such.

(7) A violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.016 Violations and penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing advanced or specialized, professional or practical nursing, as defined in this chapter, unless holding an active license or certificate to do so.

(b) Using or attempting to use a license or certificate which has been suspended or revoked.

(c) Knowingly employing unlicensed persons in the practice of nursing.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Obtaining, or attempting to obtain, a license or certificate under this chapter through bribery or fraudulent misrepresentations.

(b) Using the name or title "Registered Nurse," "Licensed Practical Nurse," "Advanced Registered Nurse Practitioner," or any other name or title which implies that a person was licensed or certified as same, unless such person is duly licensed or certified.

(c) Knowingly concealing information relating to violations of this chapter.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.017 Sexual misconduct in the practice of nursing.—The nurse-patient relationship is founded on mutual trust. Sexual misconduct in the practice of nursing shall mean violation of the nurse-patient relationship through which the nurse uses said relationship to induce or attempt to induce [2]the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of nursing is prohibited.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "the patient to engage, or to" were inserted by the editors.

[1]464.018 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(a) Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing. A plea of nolo contendere shall be considered a conviction for purposes of this provision.

(d) Making or filing a false report or record, which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse's capacity as a licensed nurse.

(e) False, misleading, or deceptive advertising.

(f) Unprofessional conduct, which shall include, but not be limited to, any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice, in which [2]case actual injury need not be established.

(g) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes.

(h) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. A nurse affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she can resume the competent practice of nursing with reasonable skill and safety.

(i) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or board.

(j) Willfully or repeatedly violating any provision of this chapter, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the nurse on probation for a period of time and subject to such conditions as the board may specify, including requiring the nurse to submit to treatment, to attend continuing education courses, to take an examination, [3]or to work under the supervision of another nurse.

(3) The board shall not reinstate the license of a nurse, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of nursing.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 6, ch. 79-225.

[1]Note.—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "case" was substituted for "proceeding" by the editors.

[3]Note.—The word "or" was substituted for "and" by the editors.

[1]464.019 Approval of nursing programs.—

(1) An institution desiring to conduct an approved program for the education of professional or practical nurses shall apply to the department and submit such evidence as may be required to show that it complies with the provisions of this chapter and with the rules of the board.

(2) The board shall adopt rules regarding educational objectives, faculty qualifications, curriculum

guidelines, administrative procedures, and clinical training as are necessary to ensure that approved programs graduate nurses capable of competent practice under this act.

(3) The department shall survey each institution applying for approval and submit its findings to the board. If the board is satisfied that the program meets the requirements of this chapter and rules pursuant thereto, it shall certify the program for approval and the department shall approve the program.

(4) If the board, through an investigation by the department, finds that an approved program no longer meets the required standards, it may place the program on probationary status until such time as the standards are restored. If a program fails to correct these conditions within a specified period of time, the board may rescind the approval. Any program having its approval rescinded shall have the right to reapply.

(5) Provisional approval of new programs may be granted pending the licensure results of the first graduating class.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.022 Exceptions.—No provision of this chapter shall be construed to prohibit:

(1) The care of the sick by friends or members of the family without compensation, the incidental care of the sick by domestic servants, or the incidental care of noninstitutionalized persons by a surrogate family, as long as such persons do not practice nursing within the meaning of this chapter.

(2) Assistance by anyone in the case of an emergency.

(3) The practice of nursing by students enrolled in approved schools of nursing.

(4) The practice of nursing by graduates of approved programs or the equivalent, pending the result of the first licensing examination for which they are eligible following graduation, provided they practice under direct supervision of a registered professional nurse. The board may by rule define what constitutes direct supervision.

(5) The rendering of services by nursing assistants acting under the direct supervision of a registered professional nurse.

(6) Any nurse practicing in accordance with the practices and principles of the body known as the Church of Christ Scientist; nor shall any rule of the board apply to any sanitarium, nursing home, or rest home operated in accordance with the practices and principles of the body known as the Church of Christ Scientist.

(7) The practice of any legally qualified nurse or licensed attendant of another state who is employed by the United States Government, or any bureau, division, or agency thereof, while in the discharge of official duties.

(8) Any nurse currently licensed in another state from performing nursing services in this state for a period of 30 days after furnishing to the employer satisfactory evidence of current licensure in another state and having submitted proper application and fees to the board for licensure prior to employment. The board may extend this time for administrative purposes when necessary.

(9) The rendering of nursing services on a fee-for-service basis, or the reimbursement for nursing services directly to a nurse rendering such services by any government program, commercial insurance company, hospital or medical services plan, or any other third-party payer.

(10) The establishment of an independent practice by one or more nurses for the purpose of rendering to patients nursing services within the scope of the nursing license.

History.—ss. 1, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]464.023 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) Each licensee or holder of a certificate who was duly licensed or certified on June 30, 1979, shall be entitled to hold such license or certificate. Henceforth, such license or certificate shall be renewed in accordance with the provisions of this act.

History.—ss. 2, 5, 6, ch. 79-225.

[1]**Note.**—Section 6, ch. 79-225, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 465

PHARMACY

[1]465.001 Short Title.—This chapter shall be known as the "Florida Pharmacy Act."

History.—ss., 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.002 Legislative findings; intent.—The Legislature finds that the practice of pharmacy by unskilled and incompetent practitioners presents a significant danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about pharmacists and that the consequences of a wrong choice could seriously endanger their health and safety. The sole legislative purpose for enacting this chapter is to ensure that every pharmacist practicing in this state and every pharmacy meet minimum requirements for safe practice. It is the legislative intent that pharmacists who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.003 Definitions.—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Pharmacy.

(3) "Pharmacy" includes community pharmacies and institutional pharmacies as herein defined but shall not include the office of any duly licensed practitioner authorized by law to prescribe medicinal drugs.

(a) "Community pharmacies" includes every store, shop, office, hospital, nursing home, sanitarium, clinic, dispensary, or other place where medicinal drugs are compounded, dispensed, or sold or where prescriptions are filled or dispensed on an outpatient basis.

(b) "Institutional pharmacies" includes all of those areas of every hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are dispensed or stored.

(4) "Prescription" includes any order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so. The term shall also include an order for drugs or medicinal supplies so transmitted or written by a practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription.

(5) "Pharmacist" means any person licensed pursuant to this chapter to practice the profession of pharmacy.

(6) "Practice of the profession of pharmacy" includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug and consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders, or any other act, service, operation, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training.

(7) "Medicinal drugs" or "drugs" means those substances or preparations commonly known as prescription legend drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

(8) "Patent or proprietary preparation" means a medicine in its unbroken, original package which is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof and which is not misbranded under the provisions of the Florida Food, Drug, and Cosmetic Law.

(9) "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user. The actual sales transaction and delivery of such drug shall not be considered dispensing. The administration, as hereinafter defined, in a health care institution of medicinal drugs to a patient, or the administration of medicinal drugs by a physician to his patient, shall not be considered dispensing.

(10) "Pharmacy intern" means a person who is currently registered in, and attending, a duly accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is duly and properly registered with the department as provided for under its rules.

(11) "Consultant pharmacist" means a pharmacist licensed by the department and certified as a consultant pharmacist. The consultant pharmacist shall be responsible for maintaining all drug records required by law and for establishing drug-handling procedures for the safe handling and storage of drugs. The consultant pharmacist must have completed such additional training and demonstrate such additional qualifications in the practice of institutional pharmacy as shall be required by the Board of Pharmacy in addition to licensure as a registered pharmacist. The board shall promulgate rules necessary to implement and administer this subsection.

(12) "Administration" means the obtaining and giving of a single dose of medicinal drugs to a patient or the giving of a single dose by a physician to his patient for consumption by the patient.

(13) "Radio pharmacist" means a pharmacist licensed by the department and certified as a radio pharmacist. The radio pharmacist must have completed such additional training and demonstrate such additional qualifications in the practice of radio pharmacy as shall be required by the Board of Pharmacy in addition to licensure as a registered pharmacist.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.004 Board of Pharmacy.—

(1) The Board of Pharmacy is created within the Department of Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed pharmacists who are residents of this state and who have been engaged in the practice of the profession of pharmacy for at least 4 years, and the remaining two members shall be residents of the state who have never been licensed as pharmacists and who are in no way connected with the practice of the profession of pharmacy. No person shall be appointed as a lay member who is in any way connected with a drug manufacturer or wholesaler.

(3) Within 30 days after June 30, 1979, the Governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of the board shall apply.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.005 Authority to make rules.—The Board of Pharmacy is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.006 Disposition of fees; expenditures.— All moneys received under this chapter shall be deposited and expended pursuant to the provisions of s. 215.37. All expenditures for duties of the board authorized by this chapter shall be paid upon presentation of vouchers approved by the executive director of the board.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.007 Licensure by examination.—

(1) Any person desiring to be licensed as a pharmacist shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee set by the board not to exceed $250.

(b) Submitted satisfactory proof that he is not less than 18 years of age and is a recipient of a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education.

(c) Submitted satisfactory proof that he has completed an internship program of an accredited school or college of pharmacy. No such program shall exceed 2,080 hours, all of which may be obtained prior to graduation.

(2) The department may permit an applicant who has satisfied all requirements of subsection (1), except those relating to age or experience, to take the written examination, but the passing of the examination shall confer no rights or privileges upon the applicant in connection with the practice of pharmacy in this state.

(3) Except as provided in subsection (2), the department shall issue a license to practice pharmacy to any applicant who successfully completes the examination in accordance with this section.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]465.008 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and a fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 465.012.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

(5) Any person licensed under this chapter for 50 years or more shall be exempt from the payment of the renewal or delinquent fee, and a lifetime license shall be issued by the department to such person.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.009 Continuing professional pharmaceutical education.—

(1) No license renewal shall be issued by the department until the licensee submits proof satisfactory to the board that during the 2 years prior to his application for renewal he has participated in not less than 15 hours per year of continuing professional pharmaceutical education in courses approved by the board.

(2) The board shall approve only those courses that build upon the basic courses offered in the curricula of accredited colleges or schools of pharmacy.

(3) Upon initial licensure, the department may reduce the number of required hours consistent with the requirements of biennial renewal.

(4) The department may make exception from the requirements of this section in an emergency or hardship case. The board may adopt rules within the requirements of this section that are necessary for its implementation, including a rule creating a committee composed of equal representation from the board, the colleges of pharmacy in the state, and practicing pharmacists within the state, whose purpose shall be to approve the content of each course offered for continuing education credit prior to the time such course is offered.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.012 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 465.008 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 465.016.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "for all years" were inserted by the editors.

[1]465.013 Registration of pharmacy interns.— The department shall register as pharmacy interns persons certified by the board as being enrolled in an intern program at an accredited school or college of pharmacy or who are graduates of accredited schools or colleges of pharmacy and are not yet licensed in the state. The board may refuse to certify to the department or may revoke the registration of any intern for good cause, including grounds enumerated in this chapter for revocation of pharmacists' licenses.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.014 Supportive personnel.—No person other than a licensed pharmacist or pharmacy intern may engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to nonlicensed supportive personnel those duties, tasks, and functions which do not fall within the purview of s. 465.003(6). All such delegated acts shall be performed under the direct supervision of a licensed pharmacist who shall be responsible for all such acts performed by persons under his supervision. Unless otherwise permitted by the Board of Pharmacy, no licensed pharmacist shall supervise more than one supportive person.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.015 Violations and penalties.—

(1) It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a pharmacy:

(a) Which is not registered under the provisions of this chapter.

(b) In which a person not licensed as a pharmacist in this state or not registered as an intern in this state or in which an intern who is not acting under the direct and immediate personal supervision of a licensed pharmacist fills, compounds, or dispenses any prescription or dispenses medicinal drugs.

(2) It is unlawful for any person:

(a) To make a false or fraudulent statement, either for himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.

(b) To fill, compound, or dispense prescriptions or to dispense medicinal drugs if such person does not hold an active license as a pharmacist in this state, is not registered as an intern in this state, or is an intern not acting under the direct and immediate personal supervision of a licensed pharmacist.

(c) To sell or dispense drugs as defined in s. 465.003(7) without first being furnished with a prescription.

(d) To provide samples or complimentary packages of drug products listed within the provisions of s. 893.03 except for use in clinical trials or other research use or for educational purposes, if such distribution is not for resale. This provision shall not apply to persons licensed as pharmacists in this state.

(3)(a) It is unlawful for any person other than a pharmacist licensed under this chapter to use the title "pharmacist" or "druggist" or otherwise lead the public to believe that he is engaged in the practice of pharmacy.

(b) It is unlawful for any person other than an owner of a pharmacy registered under this chapter to display any sign or to take any other action that would lead the public to believe that such person is engaged in the business of compounding, dispensing, or retailing any medicinal drugs. This paragraph shall not preclude a person not licensed as a pharmacist from owning a pharmacy.

(4) Any person who violates any provision of subsection (1) or subsection (3) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates any provision of subsection (2) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In any warrant, information, or indictment, it shall not be necessary to negative any exceptions, and the burden of any exception shall be upon the defendant.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.016 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(a) Obtaining a license by misrepresentation or fraud or through an error of the department or the board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Permitting any person not licensed as a pharmacist in this state or not registered as an intern in this state, or permitting a registered intern who is not acting under the direct and immediate personal supervision of a licensed pharmacist, to fill, compound, or dispense any prescriptions in a pharmacy owned and operated by said pharmacist or in a pharmacy where said pharmacist is employed or on duty.

(d) Being unfit or incompetent to practice pharmacy by reason of:

1. Habitual intoxication.

2. The misuse or abuse of any medicinal drug appearing in any schedule set forth in chapter 893.

3. Any abnormal physical or mental condition which threatens the safety of persons to whom he might sell or dispense prescriptions, drugs, or medical supplies or for whom he might manufacture, prepare, or package or supervise the manufacturing, preparation, or packaging of prescriptions, drugs, or medical supplies.

(e) Violating any of the requirements of this chapter; chapter 500, known as the "Florida Food, Drug, and Cosmetic Law"; 21 U.S.C., ss. 301-392, known as the "Federal Food, Drug, and Cosmetic Act"; or chapter 893.

(f) Having been convicted or found guilty, regardless of adjudication, in a court of this state or other jurisdiction, of a crime which directly relates to the ability to practice pharmacy or to the practice of pharmacy. A plea of nolo contendere shall constitute a conviction for purposes of this provision.

(g) Using in the compounding of a prescription, or furnishing upon prescription, an ingredient or article different in any manner from the ingredient or article prescribed, except as authorized in s. 465.025.

(h) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of this chapter.

(i) Compounding, dispensing, or distributing a legend drug, including any controlled substance, other than in the course of professional practice of pharmacy. For purposes of this paragraph, it shall be legally presumed that the compounding, dispensing, or distributing of legend drugs in excessive or inappropriate quantities is not in the best interests of the patient and is not in the course of the professional practice of pharmacy.

(j) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records shall include only those which the licensee is required to make or file in his capacity as a licensed pharmacist.

(k) Failing to make prescription fee or price information readily available by providing such information upon request and upon the presentation of a prescription for pricing or dispensing. Nothing in this section shall be construed to prohibit the quotation of price information on a prescription drug to a potential consumer by telephone.

(l) Placing in stock of any pharmacy any part of any prescription compounded or dispensed which is returned by a patient; however, in a hospital, nursing home, or extended care facility in which unit dose medication is dispensed to inpatients, each dose being individually sealed and labeled with the name of the drug, dosage strength, manufacturer's control number, and expiration date, if any, the unused unit dose of medication may be returned to the pharmacy for redispensing. Each pharmacist shall maintain appropriate records for any unused or returned medicinal drugs.

(m) Being unable to practice pharmacy with reasonable skill and safety by reason of illness, use of drugs, narcotics, chemicals, or any other type of ma-

terial or as a result of any mental or physical condition. A pharmacist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of pharmacy with reasonable skill and safety to his customers.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the pharmacist on probation for a period of time and subject to such conditions as the board may specify, including requiring the pharmacist to submit to treatment, to attend continuing education courses, to [2]submit to reexamination, and to work under the supervision of another pharmacist.

(3) The board shall not reinstate the license of a pharmacist, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of pharmacy.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "submit to" were inserted by the editors.

[1]465.017 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any pharmacy, hospital, clinic, wholesale establishment, manufacturer, physician's office, or any other place in the state in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale for the purpose of:

(1) Determining if any of the provisions of this chapter or any rule promulgated under its authority is being violated;

(2) Securing samples or specimens of any drug or medical supply after paying or offering to pay for such sample or specimen; or

(3) Securing such other evidence as may be needed for prosecution under this chapter.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.018 Community pharmacies; permits.—Any person desiring a permit to operate a community pharmacy shall apply to the department. If the board certifies that the application complies with the laws of the state and the rules of the board governing pharmacies, the department shall issue the permit. No permit shall be issued unless a licensed pharmacist is designated as the prescription department manager responsible for maintaining all drug records, providing for the security of the prescription department, and following such other rules as relate to the practice of the profession of pharmacy. The permittee shall notify the department within 10 days of any change in prescription department manager.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.019 Institutional pharmacies; permits.—

(1) Any institution desiring to operate an institutional pharmacy shall apply to the department. If the board certifies that the application complies with the laws of the state and the rules of the board governing pharmacies, the department shall issue the permit.

(2) The following classes of institutional pharmacies are established:

(a) "Class I institutional pharmacies" are those institutional pharmacies in which all medicinal drugs are administered from individual prescription containers to the individual patient and in which medicinal drugs are not dispensed on the premises. No medicinal drugs may be dispensed in a Class I institutional pharmacy.

(b) "Class II institutional pharmacies" are those institutional pharmacies which employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, shall provide dispensing and consulting services on the premises to patients of that institution, for use on the premises of that institution. However, a single dose of a medicinal drug may be obtained and administered to a patient on a valid physician's drug order under the supervision of a physician or charge nurse, consistent with good institutional practice procedures. The obtaining and administering of such single dose of a medicinal drug shall be pursuant to drug-handling procedures established by a consultant pharmacist. Medicinal drugs may be dispensed in a Class II institutional pharmacy, but only in accordance with the provisions of this section.

(c) "Modified Class II institutional pharmacies" are those institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.

(3) Medicinal drugs shall be stocked, stored, compounded, dispensed, or administered in any health care institution only when that institution has secured an institutional pharmacy permit from the department.

(4) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department.

(5) All institutional pharmacies shall be under the professional supervision of a consultant pharmacist, and the compounding and dispensing of medici-

nal drugs shall be done only by a licensed pharmacist.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.022 Pharmacies; general requirements; fees.—

(1) The board shall adopt such rules relating to pharmacies as are necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, rules relating to:

(a) General drug safety measures.

(b) Minimum standards for the physical facilities of pharmacies.

(c) Safe storage of floor-stock drugs.

(d) Functions of a pharmacist in an institutional pharmacy, consistent with the size and scope of the pharmacy.

(e) Procedures for the safe storage and handling of radioactive drugs.

(f) Procedures for the distribution and disposition of medicinal drugs distributed pursuant to s. 500.152.

(g) Procedures for transfer of prescription files and medicinal drugs upon the change of ownership or closing of a pharmacy.

(h) Minimum equipment which a pharmacy shall at all times possess to fill prescriptions properly.

(2) The board shall set the fees for the following:

(a) Initial permit fee not to exceed $100.

(b) Biennial permit renewal not to exceed $100.

(c) Delinquent fee not to exceed $25.

(d) Change of ownership or location fee not to exceed $50.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.023 Revocation or suspension of pharmacy permits.—

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee who has:

(a) Obtained a permit by misrepresentation or fraud or through an error of the department or the board;

(b) Attempted to procure, or has procured, a permit for any other person by making, or causing to be made, any false representation;

(c) Violated any of the requirements of this chapter or any of the rules of the Board of Pharmacy; of chapter 500, known as the "Florida Food, Drug, and Cosmetic Law"; or of chapter 893; or

(d) Been convicted or found guilty, regardless of adjudication, of a felony or any other crime involving moral turpitude in any of the courts of this state, of any other state, or of the United States.

(2) If a pharmacy permit is revoked or suspended, the owner, manager, or proprietor shall cease to operate said establishment as a pharmacy as of the effective date of such suspension or revocation. In the event of such revocation or suspension, the owner, manager, or proprietor shall remove from the premises all signs and symbols identifying said premises as a pharmacy. The period of such suspension shall be prescribed by the Board of Pharmacy, but in no case shall it exceed 1 year. In the event that the permit is revoked, the person owning or operating said establishment shall not be entitled to make application for a permit to operate a pharmacy for a period of 1 year from the date of such revocation. Upon the effective date of such revocation, the permittee shall advise the Board of Pharmacy of the disposition of the medicinal drugs located on the premises. Such disposition shall be subject to continuing supervision and approval by the Board of Pharmacy.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.024 Promoting sale of certain drugs prohibited.—

(1) It is declared that the unrestricted use of certain controlled substances, causing abnormal reactions that may interfere with the user's physical reflexes and judgments, may create hazardous circumstances which may cause accidents to the user and to others, thereby affecting the public health, safety, and welfare. It is further declared to be in the public interest to limit the means of promoting the sale and use of these drugs. All provisions of this section shall be liberally construed to carry out these objectives and purposes.

(2) No pharmacist, owner, or employee of a retail drug establishment shall use any communication media to promote or advertise the use or sale of any controlled substance appearing in any schedule in chapter 893.

(3) This section shall not prohibit the advertising of any medicinal drugs, other than those controlled substances specified in chapter 893, or any patent or proprietary preparation, provided the advertising is not false, misleading, or deceptive.

History.—ss. 1, 7, ch. 79-226.

[1]Note.—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.025 Substitution of drugs.—

(1) As used in this section:

(a) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler, or distributor.

(b) "Generically equivalent drug product" means a drug product with the same active ingredient, finished dosage form, and strength.

(c) "Prescriber" means any practitioner licensed to prescribe medicinal drugs.

(2) A pharmacist who receives a prescription for a brand name drug shall, unless requested otherwise by the purchaser, substitute a less expensive, generically equivalent drug product that is:

(a) Distributed by a business entity doing business, and subject to suit and service of legal process, in the United States; and

(b) Listed in the formulary of generic and brand name drug products as provided in subsection (5) for

the brand name drug prescribed,

unless the prescriber writes the words "MEDICALLY NECESSARY," in his own handwriting, on the face of a written prescription or unless, in the case of an oral prescription, the prescriber expressly indicates to the pharmacist that the brand name drug prescribed is medically necessary.

(3)(a) Any pharmacist who substitutes any drug as provided in subsection (2) shall notify the person presenting the prescription of such substitution, together with the existence and amount of the retail price difference between the brand name drug and the drug substituted for it, and shall inform the person presenting the prescription that such person may refuse the substitution as provided in subsection (2).

(b) Any pharmacist substituting a less expensive drug product shall pass on to the consumer the full amount of the savings realized by such substitution.

(4) Each pharmacist shall maintain a record of any substitution of a generically equivalent drug product for a prescribed brand name drug as provided in this section.

(5) Each community pharmacy shall establish a formulary of generic and brand name drug products which, if selected as the drug product of choice, would not pose a threat to the health and safety of patients receiving prescription medication. In compiling the list of generic and brand name drug products for inclusion in the formulary, the pharmacist shall rely on drug product research, testing, information, and formularies compiled by other pharmacies, by states, by the United States Department of Health, Education, and Welfare, or by any other source which the pharmacist deems reliable. Each community pharmacy shall make such formulary available to the public, the Board of Pharmacy, or any physician requesting same. This formulary shall be revised following each addition, deletion, or modification of said formulary.

(6) The Board of Pharmacy and the Board of Medical Examiners shall establish by rule a formulary of generic drug type and brand name drug products which are determined by the boards to demonstrate clinically significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication.

(a) The formulary may be added to or deleted from as the Board of Pharmacy and the Board of Medical Examiners deem appropriate. Any person who requests any inclusion, addition, or deletion of a generic drug type or brand name drug product to the formulary shall have the burden of proof to show cause why such inclusion, addition, or deletion should be made.

(b) Upon adoption of the formulary required by this subsection, and upon each addition, deletion, or modification to the formulary, the Board of Pharmacy shall mail a copy to each manager of the prescription department of each community pharmacy licensed by the state, and each board regulating practitioners licensed by the laws of the state to prescribe drugs shall incorporate such formulary into its rules. No pharmacist shall substitute a generically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type drug product is included in the said formulary.

(7) Every community pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign in block letters not less than 1 inch in height which shall read: "CONSULT YOUR PHARMACIST CONCERNING THE AVAILABILITY OF A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG AND THE REQUIREMENTS OF FLORIDA LAW."

(8) The standard of care to be applied to the acts of any pharmacist performing professional services in compliance with this section when a substitution is made by said pharmacist shall be that which would apply to the performance of professional services in the dispensing of a prescription order prescribing a drug by generic name. In no event when a pharmacist substitutes a drug shall the prescriber be liable in any action for loss, damage, injury, or death to any person occasioned by or arising from the use or nonuse of the substituted drug, unless the original drug was incorrectly prescribed.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.026 Filling of certain prescriptions.—Nothing contained in this chapter shall be construed to prohibit a pharmacist licensed in this state from filling or refilling a prescription which meets the requirements of s. 465.003(4) and which is valid and on file with another pharmacy licensed in this state, under the following conditions:

(1) Prior to dispensing pursuant to any such prescription, the dispensing pharmacist shall:

(a) Advise the patient that the prescription on file at such other pharmacy must be canceled before he will be able to fill or refill it.

(b) Determine that the prescription is valid and on file at such other pharmacy and that such prescription may be filled or refilled, as requested, in accordance with the prescriber's intent expressed on such prescription.

(c) Notify the pharmacy at which the prescription is on file that the prescription must be canceled.

(d) Record in writing the prescription order, the name of the pharmacy at which the prescription was on file, the prescription number, the name of the drug and the original amount dispensed, the date of original dispensing, and the number of remaining authorized refills.

(e) Obtain the consent of the prescriber to the refilling of the prescription when the prescription, in the professional judgment of the dispensing pharmacist, so requires. Any interference with the professional judgment of the dispensing pharmacist by any pharmacy permittee, its agents, or employees shall be grounds for revocation or suspension of the permit issued to the pharmacy.

(2) Upon receipt of a request for prescription information set forth in paragraph (1)(d), if the requested pharmacist is satisfied in his professional judgment that such request is valid, the requested pharmacist shall:

(a) Provide such information accurately and completely.

(b) Record on the face of the prescription the name of the requesting pharmacy and pharmacist and the date of request.

(c) Cancel the prescription on file by writing the word "void" on its face. No further prescription information shall be given or medication dispensed pursuant to said original prescription.

(3) In the event that, after the information set forth in paragraph (1)(d) has been provided, a prescription is not dispensed by the requesting pharmacist, then such pharmacist shall provide notice of this fact to the pharmacy from which said information was obtained; such notice shall serve to revalidate the voided prescription. The pharmacist who has served such notice shall then cancel the prescription in the same manner as set forth in paragraph (2)(c).

(4) The provisions of this section shall not apply to prescription orders for any medicinal drugs listed in any schedule appearing in chapter 893.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]465.027 Exceptions.—

(1) This chapter shall not be construed to prohibit the sale of home remedies or preparations commonly known as patents or proprietary preparations, when such are sold only in original or unbroken packages, nor shall this chapter be construed to prevent businesses from engaging in the sale of sundries or patents or proprietary preparations.

(2) Nothing in this chapter shall be construed to prevent a practitioner authorized by law to prescribe medicinal drugs from compounding, dispensing, or giving such drugs to his patients in the regular course of his practice. Such compounding and dispensing may be done only by the practitioner himself and shall comply with all federal and state laws relating to the labeling and dispensing of medicinal drugs.

History.—ss. 1, 7, ch. 79-226.

[1]**Note.**—Section 7, ch. 79-226, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

465.028 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses and permits valid on the effective date of this act shall remain in full force and effect. Henceforth, all such licenses and permits shall be renewed pursuant to this act.

History.—ss. 5, 6, ch. 79-226.

465.185 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a pharmacy registered under this chapter.

(2) The Department of Health and Rehabilitative Services shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the [1]Department of Health and Rehabilitative Services, such penalties may include any disciplinary action available to the [1]Department of Health and Rehabilitative Services under the appropriate licensing laws. In the case of an entity not licensed by the [1]Department of Health and Rehabilitative Services, such penalties may include:

(a) A fine not to exceed $1,000.

(b) If applicable, a recommendation by the [1]Department of Health and Rehabilitative Services to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106.

[1]**Note.**—The words "Department of Health and Rehabilitative Services" substituted for "department" by the editors to conform to the apparent legislative intent in s. 2, ch. 79-106.

CHAPTER 466

DENTISTRY, DENTAL HYGIENE, AND DENTAL LABORATORIES

[1]466.001 Purpose; legislative findings.—The Legislature finds that the practice by unskilled dentists or dental hygienists of their professions presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about dentists or dental hygienists and that the consequences of a wrong choice could seriously endanger the public health and safety. The legislative purpose for enacting this chapter is to ensure that every dentist or dental hygienist practicing in this state meets minimum requirements for safe practice. It is the legislative intent that dentists and dental hygienists who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state. All provisions of this chapter relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out this purpose and intent.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.002 Persons exempt from operation of chapter.—Nothing in this chapter shall apply to the following practices, acts, and operations:

(1) The practice of his profession including surgical procedures involving the oral cavity by a physician or surgeon licensed as such under the laws of this state.

(2) The giving by a qualified anesthetist of an anesthetic for a dental operation under the direct supervision of a licensed dentist.

(3) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States Army, Air Force, Marines, Navy, Public Health Service, Coast Guard, or Veterans' Administration.

(4) The practice of dentistry by licensed dentists of other states or countries at meetings of dental organizations approved by the board, while appearing as clinicians.

(5) Students in Florida schools of dentistry and dental hygiene or dental auxiliary educational programs, while performing regularly assigned work under the curriculum of such schools.

(6) Instructors in Florida schools of dentistry or dental hygiene or dental auxiliary educational programs, while performing regularly assigned duties under the curriculum of such schools. A full-time dental instructor at a dental school approved by the board may be allowed to practice dentistry at the teaching facilities of such school, upon receiving a teaching permit issued by the board, in strict compliance with such rules as are adopted by the board pertaining to the teaching permit and with the established rules and procedures of the dental school.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.003 Definitions.—As used in this chapter:

(1) "Board" means the Board of Dentistry.

(2) "Dentist" means a person licensed to practice dentistry pursuant to this chapter.

(3) "Dentistry" means the healing art which is concerned with the examination, diagnosis, treatment planning, and care of conditions within the human oral cavity and its adjacent tissues and structures and includes the performance or attempted performance of any dental operation, or oral or oral-maxillofacial surgery, including physical evaluation directly related to such operation or surgery pursuant to hospital rules and regulations, or dental service of any kind gratuitously or for any remuneration paid, or to be paid, directly or indirectly, to himself or to any other person or agency; or the taking of an impression of the human tooth, teeth, or jaws directly or indirectly and by any means or method; or supplying artificial substitutes for the natural teeth or furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or any other structure designed to be worn in the human mouth except on the written

work order of a duly licensed dentist; or the placing of such appliance or structure in the human mouth or adjusting or attempting to adjust the same; or delivering the same to any person other than the dentist upon whose work order the work was performed; or professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure designed to be worn in the human mouth; or diagnosing, prescribing, or treating or professing to diagnose, prescribe, or treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws or oral-maxillofacial region; or extracting or attempting to extract human teeth; or correcting or attempting to correct malformations of teeth or of jaws; or repairing or attempting to repair cavities in the human teeth.

(4) "Dental hygiene" means the rendering of educational, preventive, and therapeutic dental services pursuant to ss. 466.023 and 466.024 and any related extra-oral procedure required in the performance of such services.

(5) "Dental hygienist" means a person licensed to practice dental hygiene pursuant to this chapter.

(6) "Dental auxiliary" means a person, other than a dental hygienist, who, under the supervision and authorization of a dentist, provides dental care services directly to a patient.

(7) "Department" means the Department of Professional Regulation.

(8) "Direct supervision" means supervision whereby a dentist diagnoses the condition to be treated, a dentist authorizes the procedure to be performed, a dentist remains on the premises while the procedures are performed, and a dentist approves the work performed before dismissal of the patient.

(9) "Indirect supervision" means supervision whereby a dentist authorizes the procedure and a dentist is on the premises while the procedures are performed.

(10) "General supervision" means supervision whereby a dentist authorizes the procedures which are being carried out but need not be present when the authorized procedures are being performed. The authorized procedures may also be performed at a place other than the dentist's usual place of practice. The issuance of a written work authorization to a commercial dental laboratory by a dentist does not constitute general supervision.

(11) "Irremediable tasks" are those intra-oral treatment tasks which, when performed, are irreversible and create unalterable changes within the oral cavity or the contiguous structures or which cause an increased risk to the patient. The administration of anesthetics other than topical anesthesia is considered to be an "irremediable task" for purposes of this chapter.

(12) "Remediable tasks" are those intra-oral treatment tasks which are reversible and do not create unalterable changes within the oral cavity or the contiguous structures and which do not cause an increased risk to the patient.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.004 Board of Dentistry.—

(1) To carry out the provisions of this chapter, there is created within the Department of Professional Regulation a Board of Dentistry consisting of nine members who shall be appointed by the Governor and subject to confirmation by the Senate. Six members of the board shall be licensed dentists actively engaged in the practice of dentistry in this state who are not connected in any way with any medical college, dental college, or community college; one member shall be a licensed dental hygienist actively engaged in the practice of dental hygiene in this state who is not connected in any way with any medical college, dental college, or community college; and two members shall be lay persons who are not and have never been dentists, dental hygienists, or members of any closely related profession or occupation. Each dental member of the board shall have been actively engaged in his respective profession for at least 5 years preceding the date of his appointment to the board.

(a) Initially, the Governor shall appoint two members for a term of 4 years, three members for a term of 3 years, two members for a term of 2 years, and two members for a term of 1 year. Thereafter, members shall be appointed for 4-year terms.

(b) The members of the Florida State Board of Dentistry who are serving as of June 30, 1979, shall serve as members of the Board of Dentistry until members are appointed pursuant to paragraph (a).

(2) The board shall maintain its headquarters in Tallahassee.

(3) The board is authorized to adopt all rules necessary to carry out the provisions of this chapter and chapter 455.

(4) The board is authorized to publish and distribute such pamphlets, newsletters, and other publications as are reasonably necessary.

(5) All provisions of chapter 455 relating to the board shall apply.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.006 Examination of dentists.—

(1) Any person desiring to be licensed as a dentist shall apply to the department to take the licensure examinations and shall verify the information required on the application by oath. The application shall include two recent photographs. There shall be an application fee, set by the board, not to exceed $100 which shall be nonrefundable. There shall also be an examination fee set by the board, which shall not exceed $150, which may be refundable if the applicant is found ineligible to take the examinations.

(2) An applicant shall be entitled to take the examinations required in this section to practice dentistry in this state if he:

(a) Is 18 years of age or older.

(b) Is a graduate of a dental school accredited by the Commission on Accreditation of the American Dental Association or its successor agency, if any, or any other nationally recognized accrediting agency.

(c) Has successfully completed the National

Board of Dental Examiners' dental examination within 10 years of the date of application.

(3) If an applicant is a graduate of a foreign dental college or school or of a dental college or school not approved by the board, he shall not be entitled to take the examinations required in this section to practice dentistry until he:

(a) Furnishes evidence to the board of a score on the examination of the National Board of Dental Examiners at least equal to the minimum score required for certification by that board; and

(b) Exhibits manual skills on a laboratory model pursuant to rules of the board. The board may charge a reasonable fee, not to exceed $100, to cover the costs of administering the exhibition of competency in manual skills.

(4) To be licensed as a dentist in this state, an applicant must successfully complete the following:

(a) A written examination on the laws and rules of the state regulating the practice of dentistry; and

(b) A practical or clinical examination, which shall be administered and graded by dentists licensed in this state and employed by the department for just such purpose. The practical examination shall include:

1. Two amalgam restorations, and the board by rule shall determine the class of such restorations and whether they shall be performed on mannequins, live patients, or both;

2. A demonstration of periodontal skills on a live patient;

3. A final impression and articulation for a complete dental prosthetic;

4. A cast gold restoration of a class to be determined by board rule on a mannequin, with attendant cast gold laboratory; and

5. A demonstration of endodontic skills on a mannequin.

The board may, by rule, provide for additional procedures which are to be tested, provided that such procedures shall be common to the practice of general dentistry. The board by rule shall determine the passing grade for each procedure, the acceptable variation for examiners, and the point of statistical invalidity of a procedure. No such rule shall apply retrospectively. The department shall require a mandatory standardization exercise for all examiners prior to each practical or clinical examination and shall retain for employment only those dentists who have substantially adhered to the standard of grading established at such exercise.

(5) On or after August 1, 1979, the practical or clinical examination required in subsection (4) shall test competency in areas to be established by rule of the board. It is the intent of the Legislature that the examinations relate to those procedures which are actually performed by the dentist in a general practice.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.007 Examination of dental hygienists.—

(1) Any person desiring to be licensed as a dental hygienist shall apply to the department to take the licensure examinations and shall verify the information required on the application by oath. The application shall include two recent photographs of the applicant. There shall be a nonrefundable application fee set by the board not to exceed $100 and an examination fee set by the board which shall not be more than $150. The examination fee may be refunded if the applicant is found ineligible to take the examination.

(2) An applicant shall be entitled to take the examinations required in this section to practice dental hygiene in this state if he:

(a) Is 18 years of age or older.

(b) Is a graduate of a dental hygiene college or school approved by the board.

(c) Has successfully completed the National Board of Dental Hygiene examination within 10 years of the date of application.

(3) To be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(a) A written examination on the laws and rules of this state regulating the practice of dental hygiene.

(b) A practical or clinical examination. On or after August 1, 1979, the practical or clinical examination shall test competency in areas to be established by rule of the board which shall include testing the ability to adequately perform a prophylaxis. The department shall require a mandatory standardization exercise for all examiners prior to each practical or clinical examination and shall retain for employment only those dentists and dental hygienists who have substantially adhered to the standard of grading established at such exercise. It is the intent of the Legislature that the examinations relate to those procedures which are actually performed by a dental hygienist in general practice.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.009 Reexamination.—

(1) The department shall permit any person who fails an examination which is required under s. 466.006 or s. 466.007 to retake the examination. If the examination to be retaken is a practical or clinical examination, the applicant shall pay a reexamination fee set by rule of the board in an amount not to exceed the original examination fee.

(2) If an applicant for a license to practice dentistry fails the practical or clinical examination because of a failing grade on just one part or procedure tested, he shall be required to retake only that part or procedure. However, if any such applicant fails more than one part or procedure of any such examination, he shall be required to retake the entire examination.

(3) If an applicant for a license to practice dental hygiene fails one portion of the practical or clinical examination, such applicant shall be required to retake only that portion if he reapplies within 12 months. If, however, the applicant fails the prophylaxis, he shall be required to retake the entire examination.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]**466.011 Licensure.**—The board shall certify for licensure by the department any applicant who satisfies the requirements of s. 466.006 or s. 466.007. The board may refuse to certify an applicant who has violated any of the provisions of s. 466.026 or s. 466.028.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**466.013 Renewal of license.**—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 466.015.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**466.014 Continuing education.**—In addition to the other requirements for relicensure for dental hygienists set out in this act, the board shall require each licensed dental hygienist to complete not less than 24 hours or more than 36 hours of continuing professional education in dental subjects, biennially, in programs prescribed or approved by the board or in equivalent programs of continuing education. Programs of continuing education approved by the board shall be programs of learning which, in the opinion of the board, contribute directly to the dental education of the dental hygienist. The board shall adopt rules and guidelines to administer and enforce the provisions of this section. Proof of completion of the required number of hours of continuing education shall be submitted to the board biennially by each dental hygienist, with his renewal certificate fee, on forms provided by the board. Compliance with the continuing education requirements shall be mandatory for issuance of the renewal certificate. The board shall have the authority to excuse licensees, as a group or as individuals, from the continuing educational requirements, or any part thereof, in the event an unusual circumstance, emergency, or hardship has prevented compliance with this subsection.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**466.015 Inactive status.**—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 466.013 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 466.028.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

[1]**466.016 License to be displayed.**—Every practitioner of dentistry or dental hygiene within the meaning of this chapter shall post and keep conspicuously displayed his license in the office wherein he practices, in plain sight of his patients. Any dentist or dental hygienist who practices at more than one location shall be required to display a copy of his license in each office where he practices.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**466.017 Prescription of drugs; anesthesia.**—

(1) A dentist shall have the right to prescribe drugs or medicine, subject to limitations imposed by law; perform surgical operations within the scope of his practice and training; administer general or local anesthesia or sedation, subject to limitations imposed by law; and use such appliances as may be necessary to the proper practice of dentistry.

(2) Druggists in this state may fill prescriptions of legally licensed dentists in this state for any drugs necessary for the practice of dentistry. This subsection shall stand repealed on July 1, 1981.

(3) The board shall adopt rules which:

(a) Define general anesthesia.

(b) Specify which general or local anesthesia or sedation, if any, are limited or prohibited for use by dentists.

(c) Establish minimal training, education, experience, or certification for a dentist to use general anesthesia or sedation, which rules may exclude, in the board's discretion, those dentists using general anesthesia or sedation in a competent and effective manner as of the effective date of the rules.

(d) Establish further requirements [2]relating to the use of general anesthesia or sedation, including, but not limited to, office equipment and the training of dental auxiliaries or dental hygienists who work with dentists using general anesthesia or sedation.

(4) A licensed dentist may utilize an X-ray ma-

chine, expose dental X-ray films, and interpret or read such films. The provisions of part VII of chapter 468 to the contrary notwithstanding, a licensed dentist may authorize or direct a dental auxiliary to operate such equipment and expose such films under his direction and supervision, pursuant to rules adopted by the board in accordance with s. 466.024 which ensure that said auxiliary is competent by reason of training and experience to operate said equipment in a safe and efficient manner.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "relating to" substituted for "on" by the editors.

[1]466.018 Dentist of record.—Each patient shall have a dentist of record. The dentist of record shall remain primarily responsible for all dental treatment on such patient regardless of whether the treatment is rendered by the dentist himself or by another dentist, dental hygienist, or dental auxiliary rendering such treatment in conjunction with, at the direction or request of, or under the supervision of such dentist of record. The purposes of this section are to assign primary responsibility for each patient to one dentist in a multidentist practice of any nature and to assign primary responsibility to the dentist for treatment rendered by a dental hygienist or auxiliary under his supervision. This section shall not be construed to assign any responsibility to a dentist of record for treatment rendered pursuant to a proper referral to another dentist not in practice with the dentist of record or to prohibit a patient from voluntarily selecting a new dentist without permission of the dentist of record.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.019 Advertising by dentists.—

(1) The purpose of this section is to authorize the advertisement by dentists of information which is intended to provide the public with a sufficient basis upon which to make an informed selection of dentists while protecting the public from false or misleading advertisements which would detract from a fair and rational selection process. The board shall adopt rules to carry out the intent of this section, the purpose of which shall be to regulate the manner of such advertising in keeping with the provisions hereof.

(2) A dentist may advertise in accordance with the provisions of this chapter and with rules of the board adopted pursuant hereto. Advertising on radio and television shall be in accordance with rules adopted by the board which reflect the special characteristics of said media and which are in keeping with subsection (1). Each advertisement in any media shall contain the name, address, and telephone number of the dentist and of other dentists with whom the dentist is associated and may contain the names of the dental hygienists associated with said dentists. In addition, such advertising may contain the following information:

(a) Any specialty recognized by the board to which the dentist confines his practice if such dentist has the required academic specialty education or if he is a diplomate of one or more national specialty boards which are recognized by the Board of Dentistry.

(b) Office hours.

(c) Fees charged for routine dental services as delineated in subsection (3), in which case said advertisement shall also include a statement that the fee advertised is the minimum fee to be charged for such service and that the actual fee may vary depending upon the degree of complexity involved in a given case. Such statement shall be no less prominent than the general text of the advertisement.

(3) The advertisement of fees pursuant to paragraph (2)(c) shall be limited to the following routine dental services:

(a) Examinations.
(b) Diagnosis.
(c) Treatment planning.
(d) Prophylaxis.
(e) Radiographs.
(f) Simple extractions.
(g) Basic full upper or lower dentures, or both.
(h) Such other procedures which are determined by the board by rule to be routine dental services.

The board shall establish by rule a definition of what constitutes each of the services enumerated in this subsection, and said definitions shall be in keeping with the definition of "routine dental services" provided in subsection (4).

(4) For purposes of this section, a "routine dental service" is a procedure which:

(a) Is considered basic and common to the practice of the general dentist or to the respective dental specialty.

(b) May reasonably be expected to be performed on a regular or routine basis.

(c) Does not usually involve a significant degree of variation in terms of the procedure utilized and the level of difficulty encountered in carrying out such service.

(d) Is suitable for advertising in keeping with the purposes of this section as set forth in subsection (1) in terms of providing the public with a rational basis upon which to make an informed selection of dentists.

(5) No advertisement by a licensed dentist shall contain any false, fraudulent, misleading, deceptive, or unfair statement or claim or any statement or claim which:

(a) Contains misrepresentations of fact;

(b) Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

(c) Contains laudatory statements about the dentist or group of dentists;

(d) Is intended or is likely to create false, unjustified expectations of favorable results;

(e) Relates to the quality of dental services provided;

(f) Is intended or is likely to appeal primarily to a layperson's fears; or

(g) Contains other representations or implications that in reasonable probability will cause an

ordinary, prudent person to misunderstand or to be deceived.

History.—ss. 1, 3, ch. 79-330.

[1]Note.—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.021 Employment of unlicensed persons by dentist; penalty.—Every duly licensed dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, partial denture, bridge splint, or orthodontic or prosthetic appliance shall be required to furnish such unlicensed person with a written work order in such form as shall be approved by the department. This form shall be supplied to the dentist by the department at a cost not to exceed that of printing and handling. The work order blanks shall be assigned to individual dentists and are not transferable. This form shall be dated and signed by such dentist and shall include the patient's name or number with sufficient descriptive information to clearly identify the case for each separate and individual piece of work; said work order shall be made in duplicate form, the duplicate copy to be retained in a permanent file in the dentist's office for a period of 2 years, and the original to be retained in a permanent file for a period of 2 years by said unlicensed person in his place of business. Such permanent file of work orders to be kept by such dentist or by such unlicensed person shall be open to inspection at any reasonable time by the department or its duly constituted agent. Failure of the dentist to keep such permanent records of said work orders shall subject the dentist to suspension or revocation of his license to practice dentistry. Failure of such unlicensed person to have in his possession a work order as above defined shall be admissible evidence of a violation of this chapter and shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Nothing in this section shall preclude a registered dental laboratory from working for another registered dental laboratory, provided that such work is performed pursuant to written authorization, in a form to be prescribed by rule of the department, which evidences that the originating laboratory has obtained a valid work order and which sets forth the work to be performed. Furthermore, nothing in this section shall preclude a registered laboratory from providing its services to dentists licensed and practicing in another state, provided that such work is requested or otherwise authorized in written form which clearly identifies the name and address of the requesting dentist and which sets forth the work to be performed.

History.—ss. 1, 3, ch. 79-330.

[1]Note.—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.023 Dental hygienists; scope and area of practice.—

(1) Dental hygienists may remove calculus deposits, accretions, and stains from exposed surfaces of the teeth and from the gingival sulcus; perform root planing and curettage; expose dental X-ray films; apply topical preventive or prophylactic agents; and perform all tasks delegable by the dentist in accordance with s. 466.024. The board by rule shall determine whether such functions shall be performed under the direct, indirect, or general supervision of the dentist.

(2) Dental hygienists may perform their duties:

(a) In the office of a licensed dentist;

(b) In public health programs and institutions of the Department of Health and Rehabilitative Services under the general supervision of a licensed dentist; or

(c) Upon a patient of record of a dentist who has issued a prescription for the services of a dental hygienist, which prescription shall be valid for 2 years unless a shorter length of time is designated by the dentist, in:

1. Licensed public and private health facilities;
2. Other public institutions of the state and federal government;
3. The home of a nonambulatory patient; and
4. Other places in accordance with the rules of the board.

However, the dentist issuing such prescription shall remain responsible for the care of such patient. As used in this subsection, "patient of record" means a patient upon whom a dentist has taken a complete medical history, completed a clinical examination, recorded any pathology or disease, and prepared a treatment plan.

(3) Dental hygienists may, without supervision, provide educational programs, faculty or staff training programs, authorized fluoride rinse programs, and other services as approved by rule of the board, in:

(a) Public, private, and parochial schools licensed by the Department of Education; and

(b) Private, nonprofit, charitable, community, and eleemosynary institutions and programs.

(4) The board by rule may limit the number of dental hygienists and dental auxiliaries who work under the supervision of a dentist or who perform expanded duties pursuant to the provisions of this chapter. However, the Department of Health and Rehabilitative Services and public institutions approved by the board shall not be so limited as to the number of dental hygienists or dental auxiliaries working under the supervision of a licensed dentist.

(5) Dental hygienists are exempt from the provisions of part VII of chapter 468.

History.—ss. 1, 3, ch. 79-330.

[1]Note.—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.024 Delegation of duties; expanded functions.—

(1) A dentist may not delegate irremediable tasks to a dental hygienist or dental auxiliary, except as provided by law. A dentist may delegate remediable tasks to a dental hygienist or dental auxiliary. The board by rule shall also designate which tasks are remediable, except that the following are by law found to be remediable:

(a) Taking impressions for study casts but not for the purpose of fabricating any intra-oral restorations or orthodontic appliance.

(b) Placing periodontal dressings.

(c) Removing periodontal or surgical dressings.
(d) Removing sutures.
(e) Placing or removing rubber dams.
(f) Placing or removing matrices.
(g) Placing or removing temporary restorations.
(h) Applying cavity liners, varnishes, or bases.
(i) Polishing amalgam restorations.
(j) Polishing clinical crowns of the teeth for the purpose of removing stains but not changing the existing contour of the tooth.
(k) Obtaining bacteriological cytological specimens not involving cutting of the tissue.

Nothing in this subsection shall be construed to limit remediable tasks to those specified therein.

(2) Notwithstanding subsection (1), a dentist may delegate the tasks of gingival curettage and root planing to a dental hygienist but not to a dental auxiliary.

(3) The procedures described in paragraphs (l), (m), (n), and (o) of subsection (1) shall be performed under the direct supervision of a dentist and only by dental hygienists or dental auxiliaries who have completed such formal education as the board shall by rule prescribe and successfully completed such examination, following said education, as the board shall by rule approve. All other remediable tasks shall be performed under the direct, indirect, or general supervision of a dentist, as determined by rule of the board, and after such formal or on-the-job training by the dental hygienist or dental auxiliary as the board by rule may require. The board by rule may establish a certification process for expanded-duty dental auxiliaries, establishing such training or experience criteria or examinations as it deems necessary and specifying which tasks may be delegable only to such auxiliaries. If the board does establish such a certification process, the department shall implement the application process for such certification and administer any examinations required.

(4) Notwithstanding subsection (1), a dentist may not delegate to anyone other than another licensed dentist:

(a) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician.
(b) Any diagnosis for treatment or treatment planning.

(5) Notwithstanding any other provision of law, a dentist is primarily responsible for all procedures delegated by him.

(6) Effective July 1, 1980, no dental auxiliary shall perform an intra-oral procedure except after such formal or on-the-job training as the board by rule shall prescribe.

History.—ss. 1, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.025 Dental interns; institutional dentists and nonprofit corporations; issuance and revocation of permits.—

(1) The department shall, upon presentation of satisfactory credentials meeting such requirements as the board may by rule prescribe, issue a permit to a graduate of an approved dental school or college who has not been licensed to practice dentistry in this state to serve as a dental intern in state-maintained and state-operated hospitals or institutes of Florida that may offer such a post or in such hospitals or institutions as shall be approved by the board; provided such hospitals or institutions maintain a recognized staff of one or more licensed dentists. Such intern shall function under the general supervision of the dental staff of such hospital. His work shall be limited to the patients confined to the hospital in which he serves, and he shall serve without fee or compensation other than that received in salary or other remuneration from such hospital. The board shall have the power to revoke the permit of any such intern at any time upon the recommendation by the executive officer of the dental staff of the hospital or institution in which he serves or for any other just cause.

(2) The department shall have the authority to issue annual permits to unlicensed dentists to serve as institutional dentists, working under the general supervision of licensed dentists of this state in the hospitals or other institutions operated by the state, provided such permits shall be issued only to graduates of schools approved by the board and further subject to cancellation for just cause.

(3) The department shall have the authority, upon presentation of satisfactory credentials and under such rules as the board may prescribe, to issue a permit to a nonprofit corporation chartered for one or more of the following purposes:

(a) Training and teaching dental auxiliaries in the public schools of the state.
(b) Promoting research and training among duly licensed dentists in the state.
(c) Providing dental care for indigent persons.

Such nonprofit corporations shall function pursuant to rule of the board. The board shall have the power to revoke the permit issued to any such corporations for any violation of the rules. Such permits shall be granted and issued for a period of 1 year and shall be renewed only upon application and approval of the board and upon a showing by the nonprofit corporation that it is complying and will comply with the rules and regulations and all provisions prescribed by the board.

History.—ss. 1, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.026 Prohibitions; penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing dentistry or dental hygiene unless the person has an appropriate, active license issued by the department pursuant to this chapter.
(b) Using or attempting to use a license issued pursuant to this chapter which license has been suspended or revoked.
(c) Knowingly employing any person to perform duties outside the scope allowed such person under this chapter or the rules of the board.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Using the name or title "dentist," the letters

"D.D.S." or "D.M.D.," or any other words, letters, title, or descriptive matter which in any way represents a person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or oral-maxillofacial region, unless the person has an active dentist's license issued by the department pursuant to this chapter.

(b) Using the name "dental hygienist" or the initials "R.D.H.," or otherwise holding himself out as an actively licensed dental hygienist or implying to any patient or consumer that he is an actively licensed dental hygienist unless that person has an active dental hygienist's license issued by the department pursuant to this chapter.

(c) Presenting as his own the license of another.

(d) Giving false or forged evidence to the department or board for the purpose of obtaining a license.

(e) Selling or offering to sell a diploma conferring a degree from a dental college or dental hygiene school or college, or a license issued pursuant to this chapter, or procuring such diploma or license with intent that it shall be used as evidence of that which the document stands for, by a person other than the one upon whom it was conferred or to whom it was granted.

(f) Knowingly concealing information relative to violations of this chapter.

(g) Performing any services as a dental auxiliary, as defined herein, except in the office of a licensed dentist, unless authorized by rule of the board.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.027 Sexual misconduct.—The dentist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of dentistry shall mean violation of the dentist-patient relationship through which the dentist uses said relationship to induce or attempt to induce [2]the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of dentistry is prohibited.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "the patient to engage, or to" were inserted by the editors.

[1]466.028 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which relates to the practice of dentistry or dental hygiene. Any plea of nolo contendere shall be considered a finding of guilt for purposes of this chapter.

(d) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content or which is contrary to s. 466.019 or rules of the board adopted pursuant thereto.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows, or has reason to believe, is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice dentistry or dental hygiene contrary to this chapter or to a rule of the department or the board.

(h) Being employed by any corporation, organization, group, or person other than a dentist or professional association composed of dentists; however, a dentist may be employed by a corporation or group for purposes of providing services to the employees and members of such corporation or group and to members of their immediate families.

(i) Failing to perform any statutory or legal obligation placed upon a licensee.

(j) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensee.

(k) Committing any act which would constitute sexual battery, as defined in chapter 794, upon a patient or intentionally touching the sexual organ of a patient.

(l) Making deceptive, untrue, or fraudulent representations in the practice of dentistry.

(m) Failing to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, and test results.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(o) Failing to make available to a patient or client, or to his legal representative, copies of documents in the possession or under control of the licensee which relate to the patient or client.

(p) Performing professional services which have not been duly authorized by the patient or client, or his legal representative, except as provided in ss. 768.13 and 768.46.

(q) Prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of a dentist's professional practice. For

the purposes of this paragraph, it shall be legally presumed that prescribing, procuring, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the dentist's professional practice, without regard to his intent.

(r) Prescribing, procuring, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893, by a dentist to himself, except those prescribed, dispensed, or administered to the dentist by another practitioner authorized to prescribe them.

(s) Prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving any drug which is an amphetamine or a compound, derivative, congener, or analogue thereof to or for any person except for the clinical investigation of the effects of such drugs or compounds when an investigative protocol therefor is submitted to, and reviewed and approved by, the board before such investigation is begun.

(t) Being unable to practice his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. A licensee affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of his profession with reasonable skill and safety to patients.

(u) Fraud, deceit, or misconduct in the practice of dentistry or dental hygiene.

(v) Failure to provide and maintain reasonable sanitary facilities and conditions.

(w) Failure to provide adequate radiation safeguards.

(x) Performing any procedure or prescribing any therapy which, by the prevailing standards of dental practice in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(y) Being guilty of incompetence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance, including, but not limited to, the undertaking of diagnosis and treatment for which the dentist is not qualified by training or experience.

(z) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(aa) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(bb) A violation or repeated violation of this chapter, chapter 455, or any rule promulgated pursuant to chapter 455 or this chapter; or a violation of a lawful order of the board or department previously entered in a disciplinary hearing; or failure to comply with a lawfully issued subpoena of the board or department.

(cc) Conspiring with another licensee or with any person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(dd) Being adjudged mentally incompetent in this or any other state, the discipline for which shall last only so long as the adjudication.

(2) When the board finds any applicant or licensee guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or demonstrate his competency through a written or practical examination or to work under the supervision of another licensee.

(f) Restricting the authorized scope of practice.

(3) There shall be a minimum 6-month suspension of the license of a dentist who is convicted of a violation of paragraph [2](1)(aa).

(4) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

(5) In addition, if the department finds that an applicant has a complaint filed against him in another jurisdiction, the board may deny the application pending final disposition of said complaint.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—Cross reference "(1)(aa)" substituted for "(1)(y)" by the editors to conform to relettering resulting from House Amendments 5 and 11 to H. B. 1822 (1979). See 1979 House Journal, pp. 911 and 912.

[1]466.029 Prosecution of criminal violations.—The department shall report any criminal violation of this chapter to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 3, ch. 79-330.

[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.031 "Dental laboratory" defined.—The term "dental laboratory" as used in this chapter shall be deemed to include any person, firm, or corporation who:

(1) Performs for a fee of any kind, gratuitously or otherwise, directly or through an agent or employee, by any means or method, or who in any way supplies or manufactures artificial substitutes for the natural teeth, or who furnishes, supplies, constructs, or reproduces or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth or who in any way holds itself out as a dental laboratory;

(2) Shall be those individual dental laboratory technicians, excluded from the provisions of s. 466.032, who construct or repair dental prosthetic

appliances in the office of a licensed dentist for such dentist only and under his supervision and work order.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.032 Registration.—

(1) Every person, firm, or corporation operating a dental laboratory in this state shall, by January 1 of each year, register with the department on forms to be provided by the department and, at the same time, pay to the department a registration fee of $10 for which the department shall issue a registration certificate entitling the holder to operate a dental laboratory for a period of 1 year.

(2) Upon the failure of any dental laboratory operator to comply with subsection (1), the department shall notify him by registered mail, February 1, return receipt requested, at his last known address, of such failure and inform him of the provisions of subsections (3) and (4).

(3) Any dental laboratory operator who has not complied with subsection (1) by March 1 of any year shall be required to pay a delinquency fee of $25 in addition to the regular annual registration fee.

(4) The department is authorized to commence and maintain proceedings to enjoin the operator of any dental laboratory who has not complied with subsection (1) by March 1 of any year from operating a dental laboratory in this state until he has obtained a registration certificate and paid the required fees.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.033 Registration certificates.—The department shall not require an examination, but shall issue a registration certificate upon completion of the registration form and compliance with any rules promulgated by the department under s. 466.038.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.034 Change of ownership or address.— When the ownership or address of any dental laboratory operating in this state is changed, the owner thereof shall notify the department within 30 days of such change of ownership or address.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.035 Advertising.—Dental laboratories shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth or for the regulation of natural teeth.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.036 Periodic inspections required.—The department may require from the applicant for a registration certificate to operate a dental laboratory any information necessary to carry out the purpose of this chapter and may require periodic inspection of all dental laboratories operating in this state. Such inspections shall include, but not be limited to, inspection of sanitary conditions and facilities on the premises.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.037 Suspension and revocation.—The department may suspend or revoke the certificate of any dental laboratory registered under s. 466.032, for failing to comply with the provisions of this chapter.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.038 Rules.—The department may promulgate all rules necessary to enforce the provisions of this chapter pertaining to and regulating dental laboratories.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]466.039 Violations.—It shall be unlawful for any person, firm, or corporation to operate as a dental laboratory as defined in this chapter, except those registered as provided in s. 466.032. Violation shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 2, 3, ch. 79-330.
[1]**Note.**—Section 3, ch. 79-330, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

466.0395 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses shall be applied for and renewed in accordance with this act.

History.—ss. 4, 5, ch. 79-330.

CHAPTER 468

MISCELLANEOUS PROFESSIONS AND OCCUPATIONS

PART I

OPERATORS OF MOVING PICTURE MACHINES

[1]468.01 Licenses required; application of part I of chapter 468.—

(1) Any person engaging or working at the business of operating or assisting in the operation of any cinematograph or similar apparatus commonly known as moving picture machines, in any city in this state shall be required to obtain a license.

(2) The provisions of this part shall not apply to cities and towns of less than 6,000 inhabitants.

History.—s. 1, ch. 6955, 1915; RGS 2244; CGL 3577; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.02 Board of examiners; qualifications.— The mayor of each city in the state shall appoint a board of examiners and license commissioners to be composed of three members; one of whom shall have some knowledge of electricity; one an expert operator of moving picture machines; and, the third an electrical inspector or building commissioner employed by the city.

History.—s. 2, ch. 6955, 1915; RGS 2245; CGL 3578; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.03 Examination of applicants; fee.—All applications for license accompanied by a fee of $1 shall be made to the board of examiners and each applicant shall at any time and place that the board shall designate, be required to pass an examination as to his qualifications as said board may direct. The examination may be made in whole or in part, in writing, but shall be of a practical and elementary character and sufficiently strict to test the qualifications of the applicant as to his knowledge of electricity.

History.—s. 3, ch. 6955, 1915; RGS 2246; CGL 3579; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.04 Issuance of license.—A license good for 1 year from date of issuance shall be issued to every operator who successfully passes the required examination. Any operator failing to pass said examination shall have the fee returned to him, and his employer shall be notified by the board of examiners.

History.—s. 4, ch. 6955, 1915; RGS 2247; CGL 3580; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.05 Qualifications of operator and assistant.—It is unlawful for any proprietor, owner, or manager of any theater or moving picture show in any city, to employ or have in his employ, any operator or assistant operator, on a moving picture machine who is not over 18 years of age, and who has not successfully passed the examination and received a license as required by this part. No operator shall be granted a license as operator who has not had at least 1 year practical experience on moving picture machines and no person shall be granted an assistant license who has not served under an experienced operator for 1 year prior to making application for assistant license. All machines shall be under the care and supervision of one person holding an operator's license, who shall be responsible for the proper handling of the machine by said assistant. The provisions of this section shall apply to owners and managers who operate their own machines, who are required to be in possession of an operator's license.

History.—s. 5, ch. 6955, 1915; RGS 2248; CGL 3581; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.06 Inspection of machines.—One member of the board of examiners or some person designated by said board shall make an inspection of every moving picture machine in the city at least three times a year and report to the board on blanks provided, the condition of electrical connections, name of operator and each assistant, and make an examination of each license issued.

History.—s. 7, ch. 6955, 1915; RGS 2249; CGL 3582; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.07 Appropriation by city.—A sufficient appropriation shall be made by the city council or commission whose duty is to appropriate such funds for the proper administration of the provisions of this part, for the purposes and use of the board of examiners.

History.—s. 8, ch. 6955, 1915; RGS 2250; CGL 3583; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.08 Violation of regulations as to operating moving picture machine.—Any person violating any of the provisions of this part, either as operator or manager, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 6955, 1915; RGS 5541; CGL 7718; s. 406, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART II

FITTING AND SELLING OF HEARING AIDS

[1]468.120 Short title of part II of this chapter.—This part II may be cited as the "Fitting and Selling of Hearing Aids Act."

History.—s. 2, ch. 67-423; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.121 Purpose.—Part II of this chapter requires registration for protection of the public of any person engaged in the fitting or selling of hearing aids, to encourage better educational training programs for such persons to provide against unethical and improper conduct and for the enforcement of this part, and to provide penalties for its violation.

History.—s. 1, ch. 67-423; s. 1, ch. 71-223; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.122 Definitions; corporations, etc.; not prohibited, conditions.—

(1)(a) "Department" means the Department of Health and Rehabilitative Services.

(b) "Hearing aid" means any instrument or device worn on the human body represented as aiding or improving defective human hearing and any attachments or accessories of such instrument or device, except batteries and cords.

(c) "Registrant" means a person who is engaged in the fitting and selling of hearing aids. A registrant shall be responsible for the acts of all employees or trainees supervised by him in connection with fitting, selling and/or servicing hearing aids.

(d) "Trainee" means a person who has not, for the purpose of this part, been engaged as a registrant prior to the effective date of this part, but who desires to become a registrant. Said trainee shall be provided a temporary training certificate of registration upon payment of fee with application, as hereinafter prescribed.

(e)1. "Fitting" means not only the physical acts of adjusting the hearing aid to the individual, taking audiographs, and making of earmolds, but also counseling, advising, audiograph interpretation, and assisting the purchaser in the selection of a suitable hearing aid. The holder of a certificate of registration granted under part II of this chapter shall be entitled to make such measurements of the dimensions of human hearing, by means of an audiometer or by other means approved by the department, as are consistent with the practices, procedures, and instrumentation currently employed by the hearing aid industry.

2. "Selling" means all acts and agreements pertaining to the selling, renting, leasing, pricing, delivering, and guaranteeing of a hearing aid and other services not related to fitting, as outlined in this part.

(f) "Certificate of registration" shall be synonymous with "license"; "registrant" shall be synonymous with "licensee."

(2) Nothing in this part shall prohibit a corporation, partnership, trust, association, or other like organization from engaging in the business of fitting and selling or offering for sale hearing aids at retail without a certificate of registration if it employs reg-

istrants in the direct fitting and selling of such products. Such corporations, partnerships, trusts, associations, or other like organizations shall also file with the department a statement, on a form approved by the department, that it submits itself to the rules and regulations of the department and the provisions of this part which the department shall deem applicable to it.

History.—s. 3, ch. 67-423; ss. 19, 35, ch. 69-106; ss. 2, 3, ch. 71-223; s. 173, ch. 71-377; s. 3, ch. 76-168; s. 348, ch. 77-147; s. 1, ch. 77-457; s. 1, ch. 78-325.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.123 Powers and duties of the department.—In addition to those prescribed by law the powers and duties of the Department of Health and Rehabilitative Services under this part are as follows:

(1) To authorize all disbursements necessary to carry out the provisions of this part and to receive and account for all fees.

(2) To supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for registration.

(3) To register persons who apply to the department and who are qualified to practice the fitting of hearing aids.

(4) To purchase and maintain, rent or acquire, audiometric equipment and facilities necessary to carry out the examination of applicants for registration.

(5) To issue and renew certificates of registration and certificates of endorsement to qualified persons.

(6) To suspend or revoke certificates of registration or impose administrative fines pursuant to this part.

(7) To appoint representatives to conduct or supervise the examination of applicants for registration.

(8) To designate the time and place for examining applicants for certificates of registration.

(9) To make, publish, and enforce rules and regulations not inconsistent with the laws of this state which are necessary to carry out the provisions of this part.

(10) To require the periodic inspection of audiometric testing equipment and to carry out the periodic inspection of facilities of persons who practice the fitting of hearing aids.

(11) To conduct investigations into the business and ethical background of any person who makes application for license in order to determine the applicant's qualification for a certificate of registration.

(12) To issue cease and desist orders for violation of any provisions of this part, including rules adopted pursuant to this part.

History.—s. 4, ch. 67-423; ss. 19, 35, ch. 69-106; s. 4, ch. 71-223; s. 3, ch. 76-168; s. 349, ch. 77-147; s. 1, ch. 77-457; s. 2, ch. 78-325.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

468.1235 Advisory council.—

(1) An advisory council to the Department of Health and Rehabilitative Services is created to consist of six members who shall be residents of this state. Three members shall be licensed hearing aid dispensers. One member shall be an otolaryngologist licensed pursuant to chapter 458. One member shall be an audiologist licensed under part III of this chapter. All of these members shall be persons who have had at least 5 years' experience in their specialty field. In addition, a consumer who is a hearing aid user shall be appointed. Members of the council shall be appointed by the Secretary of Health and Rehabilitative Services and shall act in an advisory capacity to the department in all matters relating to the dispensing of hearing aids under this part. The term of office for members of the council shall be 3 years, or until their successors are appointed and qualify, except that of the members first appointed, one shall be for 1 year, two for 2 years, and three for 3 years.

(2) Each member of the council shall be entitled to reimbursement as provided in s. 112.061.

History.—s. 3, ch. 78-325.

[1]468.126 Qualification for applicants for certificates of registration.—

(1) Any person who applies for a certificate of registration shall first be issued a temporary trainee certificate of registration by the department if he is of good moral character, is at least 18 years of age, pays to the department the required fee for a temporary trainee certificate of registration, and has received a diploma from an accredited high school or has received the equivalent thereof.

(2) An applicant, after receiving a temporary trainee certificate of registration, shall begin trainee apprenticeship for a period of 6 months as follows:

(a) Stage I. A period of work for 1 month under the direct control and supervision of a sponsor. During this period, a trainee shall not fit a purchaser or user with a hearing aid, but may administer practice audiograms.

(b) Stage II. A period of work for 2 months under the direct control and supervision of a sponsor. During this period, a trainee may perform such testing as is necessary for the proper selection and fitting of a hearing aid and may perform any function required for the making of ear impressions, but shall not deliver a hearing aid to the purchaser or user and shall not perform the final fitting of a hearing aid.

(c) Stage III. A period of work for 3 months during which, in addition to activities performed in stage II, a trainee may deliver a hearing aid to the purchaser or user while in the presence of his sponsor or a designated registrant. During this period, the trainee shall work for and be responsible to a sponsor.

(3) Each of the three stages must be completed in the sequence set out with no lapse of time between stages. If a trainee leaves his place of training without the approval of his sponsor, the trainee shall revert to the beginning of stage I. Any decision of sponsor that a trainee left his place of training without the sponsor's approval may be appealed to the department, and the decision of the department in this regard shall be final and binding on both the sponsor and trainee.

(4) At the conclusion of the 6 months' apprenticeship period and upon payment of the examination fee, the trainee shall be admitted to the next scheduled examination given by the department for a cer-

tificate of registration. Upon successfully passing the examination and upon payment of the fee for a certificate of registration, the trainee shall be issued a certificate of registration as a hearing aid specialist.

(5) If the trainee fails to pass the examination, the department, upon receipt of an additional application accompanied by the payment of an additional temporary trainee certificate of registration fee, shall renew the temporary trainee certificate of registration for a period ending 10 days after the date of the next examination for a certificate of registration. Upon renewal of a temporary trainee certificate of registration, the trainee shall complete again stage II and stage III of the apprenticeship period. After completion of stage II and stage III of the apprenticeship period and upon payment of the examination fee, the trainee shall be admitted to the next scheduled examination for a certificate of registration. Upon successfully passing the examination and upon payment of the fee for a certificate of registration, the trainee shall be issued a certificate of registration as a hearing aid specialist.

(6) If the trainee fails to pass the examination a second time, the trainee shall not be readmitted to the apprenticeship program and shall not be permitted to take the examination again until he satisfactorily completes a course in the fitting or selling of hearing aids, which course shall be approved by the department and shall provide suitable instruction in the subject matter areas required in s. 468.127. After the satisfactory completion of the course and upon payment of the examination fee, the trainee shall be admitted to the next scheduled examination for a certificate of registration. Upon successfully passing the examination and upon payment of the fee for a certificate of registration, the trainee shall be issued a certificate of registration as a hearing aid specialist.

(7) If the trainee fails to pass the examination a third time, the procedure outlined in subsection (6) may be repeated and the trainee may take the examination a total of five times. If the trainee fails to pass the examination a fifth time, the trainee shall not be readmitted to the apprenticeship program and shall not be permitted to take the examination again or permitted to apply again for a certificate of registration.

(8) At such time as a course in fitting and selling of hearing aids, as approved by the department, shall be established in this state, satisfactory completion of this course shall be considered equivalent to stages I and II of the trainee period. After such course of study has been offered in this state for a period of 2 years, such course shall replace stages I and II in the trainee program.

(9) Any person who has held an unsuspended and unrevoked certificate of registration or license to fit or sell hearing aids in another state for a period of 5 years may be admitted to the examination for a certificate of registration without first participating in the trainee apprenticeship program if he becomes a resident of this state and if he is otherwise qualified pursuant to this part.

(10) No person shall be issued a certificate of registration to fit or sell hearing aids unless he demonstrates to the department that he has established and maintains within this state a place of business at a permanent address which is open during normal business hours or that he is employed by a registrant meeting these requirements.

(11) Audiologists, as defined in part III of this chapter, shall be exempt from the training and education requirements of this part.

History.—s. 7, ch. 67-423; ss. 19, 35, ch. 69-106; ss. 6-8, ch. 71-223; s. 3, ch. 76-168; s. 32, ch. 77-121; s. 351, ch. 77-147; s. 1, ch. 77-457; s. 4, ch. 78-325.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

468.1261 Establishment of academic courses in the fitting, selling, and servicing of hearing aids.—

(1) There shall be established within educational institutions, financed in whole or in part with public funds of this state, formal courses of instruction in the fitting, selling, and servicing of hearing aids to enable eligible students to become qualified hearing aid specialists.

(2) As a minimum, the course of instruction shall consist of the successful completion of the requirements for an associate degree, as computed by accredited colleges in this state. The course shall be devoted to such classroom instruction and practical application as the department finds most effective.

History.—s. 5, ch. 78-325.

[1]**468.127 Trainee requirements.**—All trainees are required to satisfactorily complete and pass an examination as prescribed by the Department of Health and Rehabilitative Services. The examination shall be such that it will establish knowledge or proficiency in each of the following:

(1) Basic physics of sound.

(2) Structure and functions of the hearing mechanism.

(3) Counseling of the hard of hearing.

(4) Structure and functions of hearing aids.

(5) Pure tone audiometry, air and bone conduction.

(6) Live voice or recorded speech audiometry including speech reception, threshold testing and speech discrimination testing.

(7) Masking.

(8) Interpretation of audiograms and speech scores to determine hearing aid candidacy.

(9) Selection and adaptation of hearing aids and evaluation of hearing aid performance.

(10) Taking ear mold impressions.

History.—s. 8, ch. 67-423; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 352, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

468.1279 Fees.—

(1) The fee for a certificate of registration shall be set by the department at an amount not to exceed $75 for any certificate of registration issued prior to July 1 of any year and at an amount not to exceed $37.50 for any certificate of registration issued on or after July 1 of any year.

(2) The fee for a temporary trainee certificate of registration shall be set by the department at an amount not to exceed $25.

(3) The annual renewal fee for a certificate of registration shall be set by the department at an amount not to exceed $75.

(4) The examination fee shall be set by the department at an amount not to exceed $50.

(5) The delinquency fee for failure to renew a certificate of registration shall be set by the department at an amount not to exceed $25.

History.—s. 6, ch. 78-325; s. 126, ch. 79-164.

[1]468.1281 **Disposition of fees.**—All fees collected under the provisions of this part shall be paid to the Department of Health and Rehabilitative Services, which shall deposit said funds with the State Treasurer to the credit of the Hearing Aids and Devices Trust Fund. The cost of administration of this part shall be paid from the moneys collected under the provisions of this part.

History.—s. 14, ch. 71-223; s. 3, ch. 76-168; s. 353, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.129 **Refusal to issue or renew a certificate of registration; administrative fines.**—The Department of Health and Rehabilitative Services may refuse to issue or to renew or may suspend or revoke any certificate of registration or may impose an administrative fine not to exceed $500 per day for each violation, after notification of the right to a hearing under chapter 120, for any of the following causes:

(1) The conviction of a felony or a misdemeanor involving moral turpitude.

(2) When a certificate of registration has been secured by fraud or deceit practiced upon the department.

(3) For unethical conduct or for gross malpractice in the fitting or selling of hearing aids.

(4) Violation of any of the provisions of this part or of any rules or regulations promulgated pursuant to the authority delegated in this part.

(5) Altering a license with fraudulent intent.

(6) Willfully making a false statement in an application for a certificate of registration or application for renewal of a certificate of registration.

History.—s. 10, ch. 67-423; ss. 19, 35, ch. 69-106; s. 10, ch. 71-223; s. 3, ch. 76-168; s. 354, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; s. 7, ch. 78-325.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]468.130 **Unethical conduct defined.**—Unethical conduct shall include:

(1) The obtaining of any fee or the making of any sale by fraud or misrepresentation.

(2) Employing directly or indirectly any suspended or unregistered person to perform any work covered by this part.

(3) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceiving or untruthful.

(4) Advertising or offering for sale a particular model, type or kind of hearing aid when the offer is not a bona fide effort to sell the product so offered as advertised and at the advertised price. In determining whether there has been a violation of this rule, consideration will be given to actions or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product, but was made for the purpose of contacting prospective purchasers and selling them a product or products other than the product offered. Among actions or procedures which will be considered in making that determination are the following:

(a) The creation, through the initial offer or advertisement, of a false impression of the product offered in any material respect.

(b) The refusal to show, demonstrate or sell the product offered in accordance with the terms of the offer.

(c) The disparagement, by actions or words, of the product offered or the disparagement of the guarantee, credit terms, availability of service, repairs or parts or in any other respect, in connection with it.

(d) The showing, demonstrating, and in the event of sale, the delivery of a product which is unusable or impractical for the purpose represented or implied in the offer.

(e) The refusal, in the event of sale of the product offered, to deliver such product to the buyer within a reasonable time thereafter.

(f) The failure to have access to a quantity of the advertised product at the advertised price sufficient to meet reasonably anticipated demands.

(5) Representing that the professional services or advice of a physician or audiologist will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor," "clinic," "clinical," "medical, clinical or research audiologist," "audiologic" or any other like words, abbreviations or symbols which tend to connote audiological or professional services when such use is not accurate.

(6) Permitting another to use the certificate of registration.

(7) Representing, advertising or implying that the hearing aid or repair is guaranteed without a clear and concise disclosure of the identity of the guarantor, the nature and extent of the guarantee and any conditions or limitations imposed.

(8) Failure to properly and reasonably accept responsibility for the actions of the registered trainee.

(9) Using any advertisement or other representation which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle, when such is not the fact.

(10) Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features such as the absence of anything in the ear, or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle and that in many cases of hearing loss this type of instrument may not be suitable.

(11) Making any predictions or prognostications as to the future course of a hearing impairment,

either in general terms or with reference to an individual person.

(12) Stating or implying that the use of any hearing aid will improve or preserve hearing, prevent or retard progression of a hearing impairment, or that it will have any similar or opposite effect.

(13) Making any statement regarding the cure of the cause of a hearing impairment by the use of a hearing aid.

(14) Representing or implying that a hearing aid is or will be "custom made," "made to order," "prescription made," or in any other sense specially fabricated for an individual person when such is not the case.

(15) Canvassing from house to house or by telephone either in person or by an agent for the purpose of selling a hearing aid, except that contacting persons who are known to be hard of hearing, have evidenced an interest in a hearing aid, or have been referred as in need of a hearing aid shall not be considered canvassing.

History.—s. 11, ch. 67-423; s. 11, ch. 71-223; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-325.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.134 Application for certificates, etc.—

(1) No person shall fit or sell hearing aids in this state unless such person has complied with the requirements hereof as to registration and licensing. Every person now lawfully engaged in fitting or selling of hearing aids and every person hereafter duly registered to fit or sell hearing aids shall, on or before January 1 of each year, apply to the Department of Health and Rehabilitative Services for a certificate of registration upon a blank form to be furnished by the department, and shall pay at such time the regular annual renewal fee. The certificate of registration of any person who fails or neglects to register by January 1 of any year, as required herein, shall be suspended automatically after a 30-day grace period until such time as such person shall register and shall pay the regular annual fee, plus a delinquency fee of $25 for each year or fraction thereof that he failed to register.

(2) A person in making his first registration hereunder shall write or cause to be written upon the application blank so furnished by the department his full name, post-office and residence address, the date and number of his certificate of registration and such other facts for identification of the applicant as may be deemed necessary, and shall duly execute and verify the same before an officer authorized to take acknowledgments of deeds and shall file the same with the department. Registration subsequent to the first registration need not be upon sworn application unless the department, in a particular case for reasons satisfactory to it, may require the application be under oath.

(3) The department on or before October 1 of each year after the first registration shall mail or cause to be mailed to each registered person a blank form of application for registration addressed to the last known post-office address of such person. The form of such application shall be such as to contain space for the insertion by the applicant of the information required by the provisions of this part.

(4) The department shall issue to any duly registered person fitting and selling hearing aids in this state, upon his application therefor in accordance with the provisions hereof, a certificate of registration under the seal of the department for the year ensuing and ending December 31, provided that the registrant shows evidence of satisfactory completion of a continuing education course relating to the fitting and selling of hearing aids during the previous calendar year. Said course shall consist of a minimum of 10 contact hours of classroom instruction and be subject to approval for credit by the department. The requirement for completion of continuing education courses shall begin with calendar year 1979.

(5) Each registered person shall conspicuously display his proper registration certificate in his place of business at all times.

(6) Any registrant whose certificate of registration has been revoked, but who, pursuant to a hearing under chapter 120, has successfully proven rehabilitation and who is otherwise qualified as provided in this part, may apply to take the qualifying examination and, upon successfully passing the examination, shall be granted a certificate of registration.

History.—s. 15, ch. 67-423; ss. 19, 35, ch. 69-106; s. 13, ch. 71-223; s. 3, ch. 76-168; s. 358, ch. 77-147; s. 1, ch. 77-457; s. 9, ch. 78-325.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.135 Minimal procedures and equipment.—The following minimal procedures and equipment shall be used in the fitting and selling of hearing aids:

(1) Pure tone audiometric testing by air and bone to determine the degrees and type of hearing deficiency. Effective masking.

(2) Appropriate testing to determine speech reception threshold, speech discrimination, most comfortable sound tolerance level and selection of the best ear for maximum hearing aid benefit. Selection of an instrument that will best compensate for the degree of loss and tolerance level and provide a frequency amplification curve that will give the best speech discrimination possible.

(3) Equipment:

(a) Pure tone audiometer which shall meet with the American Standards Association specifications for diagnostic audiometers.

(b) Speech audiometer or a master hearing aid in order to determine most comfortable listening level and speech discrimination.

(4) Final fitting insuring physical and operational comfort of the aid.

(5) Medical clearance: If, upon inspection of the ear canal with an otoscope, in the common procedure of a hearing aid fitter, and upon interrogation of the client, there is any recent history of infection or any observable anomaly, the client shall be instructed to see a physician, and a hearing aid shall not be fitted until medical clearance is obtained for the condition noted. Any person with a significant difference between bone conduction and air conduction hearing must be informed of the possibility of medical correction.

(6) A hearing aid office will have available or access to a selection of hearing aid models, hearing

aid supplies and services complete enough to accommodate the various needs of the hearing aid wearers, such as:

(a) An adequate stock of hearing aids including an appropriate selection of receivers.

(b) An adequate selection of accessories.

(c) Maintain, or have access to, facilities for making ear molds.

(7) Each audiometric test conducted by a registrant in the fitting and selling of hearing aids shall be made in a testing room that has been certified by the department not to exceed the sound-pressure levels at frequencies specified by the department. The exception to this requirement shall be in the case of a client who requests that the test be conducted in a place other than the registrant's certified testing room. When a test is conducted under this exception, the registrant shall obtain a waiver from the client on a form provided by the department. The executed waiver shall be attached to the client's copy of the contract, and a copy of the executed waiver shall be retained in the registrant's file.

(8) The Department of Health and Rehabilitative Services shall have the power to prescribe minimum procedures and the equipment which shall be used in fitting and selling of hearing aids which may be different than that which is provided herein in order to utilize devices and equipment which may hereafter be adopted by the department as more efficient procedures and equipment.

History.—s. 16, ch. 67-423; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 359, ch. 77-147; s. 1, ch. 77-457; s. 10, ch. 78-325.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.136 Receipt; packaging; disclaimer; guarantee.—

(1) Each person who fits and sells hearing aids shall deliver to each person he supplies with a hearing aid a receipt which shall contain his signature and show the address of his regular place of business and the number of his certificate of registration, together with the brand, model, and serial number of the hearing aid furnished and amount charged therefor. Said receipt shall also specify whether the hearing aid is new, used, or rebuilt and the length of time and other terms of the guarantee and by whom guaranteed. Said receipt shall also state that any complaint concerning the hearing aid and guarantee therefor, if not reconciled with the registrant from whom the aid was purchased, should be directed by the purchaser to the Hearing Aid Licensure Office, Department of Health and Rehabilitative Services. The address and telephone number of such office shall be stated on the receipt.

(2) No hearing aid shall be sold to any person unless both the packaging containing the hearing aid and the itemized receipt provided pursuant to subsection (1) carry the following disclaimer in 10-point or larger type: "This hearing aid will not restore normal hearing, nor will it prevent further hearing loss."

History.—s. 17, ch. 67-423; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 11, ch. 78-325.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.137 Part II of this chapter not applicable to persons in certain professions.—

(1) This part II shall not apply to a person while he is engaged in the practice of recommending hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization which is primarily supported by voluntary contribution, provided this organization does not dispense or sell hearing aids or accessories.

(2) This part shall not apply to any physician licensed to practice in the State of Florida.

(3) On the selling and fitting of hearing aids located in the temples of glasses, the lens portion or frame front shall not be fitted, adjusted or sold by a registrant or licensee under this part, unless the registrant or licensee is otherwise qualified to do so.

(4) This part does not apply to an audiologist who does not sell or repair hearing aids.

History.—s. 18, ch. 67-423; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

468.1375 Injunction.—The fitting or selling of hearing aids in violation of this part or the performance of any act prohibited in this part is declared a nuisance inimical to the public health, safety, and welfare of this state. The department or any state attorney in the name of the people of this state may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation of this part until compliance with the provisions of this part, including rules adopted pursuant to this part, has been demonstrated to the satisfaction of the department.

History.—s. 12, ch. 78-325.

[1]468.138 Penalty.—Any action in violation of any provision of part II of this chapter shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 19, ch. 67-423; s. 408, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART III

SPEECH PATHOLOGY AND AUDIOLOGY

[1]468.139 Short title of part III of this chapter.—This part III of chapter 468 may be cited as the "Speech Pathology and Audiology Act," to be administered by the Department of Education of Florida.

History.—s. 1, ch. 69-395; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.140 Legislative intent and purpose.—It is declared that the practice of speech pathology or audiology is a privilege which is granted to qualified persons by legislative authority in the interest of public health, safety and welfare, and in enacting this law it is the intent of the legislature to require educational training and certification of any person who engages in the practice of speech pathology and audiology; to encourage better educational training programs; to prohibit the unauthorized and unqualified practice of speech pathology and audiology and the unprofessional conduct by persons certified to practice speech pathology and audiology; and to provide for enforcement of this part and penalties for its violation.

History.—s. 2, ch. 69-395; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.141 Definitions of terms.—In this part unless the context or subject matter otherwise requires:

(1) "Speech pathologist" means any person who examines, evaluates, treats, or counsels, for which a fee may be charged, persons suffering, or suspected of suffering, from disorders or conditions affecting speech or language, or who assists persons in the faculty of uttering articulate sounds or words for purposes of communication by means of the spoken word. A person is deemed to be a speech pathologist if he offers such services to the public under any title incorporating the words "speech pathology," "speech pathologist," "speech correction," "speech correctionist," "speech therapy," "speech therapist," "speech clinic," "speech clinician," "voice therapist," "language therapist," "aphasia therapist," "communication disorder specialist," or "communication therapist."

(2) "Audiologist" means any person who examines, tests, evaluates, treats, or counsels, for which a fee may be charged, persons suffering, or suspected of suffering, from disorders or conditions affecting hearing or assists persons in the perceiving of sound or improving the senses by which noises and tones are received as stimuli to the auditory faculties. A person is deemed to be an audiologist if he offers such services to the public under any title incorporating the terms "audiology," "audiologist," "audiological," "hearing clinic," "hearing clinician," "hearing therapy," or "hearing therapist."

(3) "Speech pathology aide" and "audiology aide" mean those persons meeting the minimum qualifications established by the department for speech pathology and audiology aides who work directly under the supervision of a speech pathologist or audiologist, respectively. The qualifications for registration as an aide shall be uniform, but shall be less than those prescribed for a speech pathologist or audiologist.

(4) "Council" shall mean the Florida State Advisory Council of Speech Pathology and Audiology.

(5) "Department" shall mean the Department of Education.

(6) "Certification" shall mean certificate of registration; "registrant" shall mean a person certified to practice speech pathology or audiology by the Department of Education.

History.—s. 3, ch. 69-395; ss. 15, 35, ch. 69-106; s. 174, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.142 Certification of speech pathologists and audiologists.—

(1) No person shall practice, or hold himself out as being able to practice, speech pathology or audiology in this state unless he is certified by the department in accordance with the provisions of this part. However, nothing in this part shall prohibit any person licensed in this state under any other law from engaging in the profession for which he is licensed.

(2) Nothing in this part shall prohibit a corporation, partnership, trust, association, or other like organization from engaging in the business of speech pathology or audiology without certification if it employs certified natural persons in the direct practice of speech pathology or audiology. Such corporations, partnerships, trusts, associations, or other like organizations shall also file with the department a statement, on a form approved by the department, that it submits itself to the rules and regulations of the department and the provisions of this part which the department shall deem applicable to them.

History.—s. 4, ch. 69-395; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.1425 Students, interns, trainees; fees.— Fees may be charged for speech pathology services and audiologic services rendered by a student, intern, or trainee actively engaged in a qualified training program only if:

(1) The student, intern, or trainee renders such services as part of fulfilling required clinical practicum;

(2) The student, intern, or trainee renders such services under the direct supervision of a certified speech pathologist or audiologist; and

(3) The student, intern, or trainee is not a direct recipient of such fees, either complete or partial.

History.—s. 4, ch. 70-238; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.143 Administration of this part; certification qualifications; examinations.—

(1) The department shall administer, coordinate, and enforce the provisions of this part, evaluate the qualifications of applicants, supervise the examination of applicants, and be responsible for the granting of certificates to qualified persons and for withholding certificates from unqualified persons. It may issue subpoenas, examine witnesses, and administer oaths, and shall investigate persons engaging in practices which violate the provisions of this part.

(2) The department shall conduct such hearings

and keep such records and minutes as shall be necessary to an orderly dispatch of business.

(3) The department shall adopt reasonable rules and regulations, including but not limited to regulations which establish ethical standards of practice, and may amend or repeal the same in accordance with the Florida Administrative Procedure Act.

(4) The department shall annually issue a list of the names of the persons currently certified under the provisions of this part and furnish the council with a copy of same.

(5) The conferral or enumeration of specific powers elsewhere in this part shall not be construed as a limitation of the general powers conferred by this section.

(6) The commissioner of education shall meet with the council at least once per year to discuss such subjects as policy, administration of this part, qualifications and examination of applicants, and other similar matters.

(7) To be eligible for certification by the department as a speech pathologist or audiologist, the applicant shall:

(a) Be of good moral character.

(b) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 60 semester hours constituting a well-integrated program that includes 18 semester hours in courses that provide fundamental information applicable to the normal development and use of speech, hearing, and language and 42 semester hours in courses that provide information about and training in the management of speech, hearing, and language disorders and that provide information supplementary to these fields. Of these 42 semester hours:

1. No fewer than 6 may be in audiology for the speech pathologist or in speech pathology for the audiologist;

2. No more than 6 may be in courses that provide academic credit for clinical practice;

3. At least 24, not including credit for thesis or dissertation, must be in courses in the field in which the registration is requested; and

4. Thirty must be in courses acceptable toward a graduate degree by the college or university in which these courses are taken.

(c) Submit evidence of the completion of 275 clock hours of supervised, direct clinical experience with individuals presenting a variety of disorders of communication, the experience being obtained within the training institution or in one of its cooperating programs.

(d) Present written evidence from employers or supervisors of 9 months of full-time professional employment pertinent to the certification being sought. This experience must follow the completion of the requirements set forth in paragraphs (b) and (c).

(e) Pass an examination promulgated or approved by the department which demonstrates that the applicant has a fundamental knowledge of:

1. The normal psychological, anatomical, and cultural development of speech, hearing, and language;

2. The current principles, procedures, techniques, and instrumentation used in evaluating speech;

3. The disorders of speech and hearing and their classifications, causes, and manifestations;

4. The principles and remedial procedures used in habilitation and rehabilitation for disorders of communications; and

5. The relationships between speech, language, and hearing problems,

and which demonstrates his capability for the organization and administration of programs designed to provide direct service to those who suffer from disorders of communication.

(8) An applicant possessing the required training and qualifications to be certified as both a speech pathologist and audiologist shall receive a dual certification, which for the purposes of the fees charged by s. 468.146 shall be considered as a single certification.

History.—s. 5, ch. 69-395; ss. 15, 35, ch. 69-106; s. 1, ch. 70-238; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]468.144 Advisory council; appointment; terms; powers; duties; expenses.—

(1) An advisory council to the department is created and shall consist of five persons who are residents of the state and shall be appointed by the department. To be eligible for appointment to the council, a registrant shall have been in the actual practice or vocation of speech pathology or audiology not less than 5 years prior to his appointment, and be certified under this part. In addition, after enactment of this part, appointees shall hold an unrevoked, unsuspended certificate under this part. The term of office for members shall be for 3 years, or until their successors are appointed and qualify, except that terms of the members appointed first shall be as follows: One shall be appointed for 1 year; two for 2 years; and two for 3 years.

(2) Members of the council shall receive no compensation for their services; however, they shall be entitled to reimbursement for necessary traveling expenses pursuant to s. 112.061 from the funds derived from fees collected under the provisions of this part.

(3) When a vacancy on the council occurs, the Florida Speech and Hearing association shall recommend not less than three persons to fill each vacancy, and the department shall make its appointment from the persons so nominated.

(4) The council shall reorganize annually and select a chairman.

(5) Three members of the council shall constitute a quorum to do business.

(6) No person shall be appointed to serve more than 2 consecutive terms.

(7) The council shall recommend to the department examination procedures for applicants, minimum requirements for qualification, and a code of ethics for the betterment and improvement of the standard of practice for speech pathologists and audiologists. The council shall do all in its power to encourage the continuation and improvement of specialized educational courses of training to the de-

partment. The council shall also investigate alleged irregularities in the practice of speech pathology and audiology and make recommendations to the department with respect thereto.

(8) The council shall submit to the department each year recommendations and findings for the improvement of the practice of speech pathology and audiology.

(9) The council shall submit a report to the department of all its official acts during the preceding year.

(10) Upon the request of any person, the council shall furnish a list of persons registered under the provisions of this part.

(11) The council shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the council and certificates purporting to relate the facts concerning such proceedings, records and acts signed by the secretary and authenticated by said seal, shall be prima facie evidence thereof in all the courts of this state.

History.—s. 6, ch. 69-395; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**468.145 Certification under special conditions.**—The department may waive the examination and educational requirements for any of the following:

(1) Applicants who are, on July 9, 1969, actively engaged in the practice of speech pathology or audiology, or who purport to be engaged in the practice of speech pathology or audiology, in the state upon proof of bona fide practice presented to the department in the manner prescribed in the department's regulations. The application of any such applicant shall be filed with the department on or before December 31, 1969.

(2) Applicants who present proof of current certification or licensure in a state which has standards at least equal to those for registration in Florida.

(3) Applicants who have received the certificate of clinical competence of the American Speech and Hearing Association.

(4)(a) Applicants who are certified by the State of Florida to teach speech pathology and audiology, were so certified as of July 9, 1969, and were actively engaged in such teaching under their certificate as of July 9, 1969.

(b) Nothing in this subsection shall prohibit a previously laryngectomized individual from rendering guidance and instruction, if the patient is under the supervision of a speech pathologist certified by this part, or a physician licensed under chapter 458 or chapter 459 and qualified to perform this surgical procedure.

History.—s. 7, ch. 69-395; ss. 15, 35, ch. 69-106; ss. 1, 2, ch. 72-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**468.146 Fees.**—

(1) The department shall charge an application fee to applicants of $25, which fee shall also include the cost of certification for the period preceding the annual renewal date.

(2) On or before January 31 of each year following the year of initial application, the department shall charge an annual certification renewal fee of $25. The fees promulgated by the department shall be in addition to those of any municipality requiring any registrant under the provisions of this part to furnish any bond, pass any examination, or pay any license fee or occupational tax.

(3) Any person, otherwise qualified and certified by the department, not in the active practice of speech pathology or audiology, may register with the department for a nonactive certificate at an annual fee of $10.

(4) The proceeds or receipts derived from the certification fees shall be applied first to the costs of administration of this part, including activities of the advisory council, and the balance, at the discretion of the department, shall be transferred to the General Revenue Fund. The department shall be the custodian for all funds collected.

History.—s. 8, ch. 69-395; ss. 15, 35, ch. 69-106; s. 2, ch. 70-238; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**468.147 Suspension or revocation of certification.**—A certificate may be suspended or revoked upon a showing that the registrant has:

(1) Violated any provision of this chapter.

(2) Violated any lawful order, rule, or regulation rendered or adopted by the department.

(3) Been convicted of a felony by any court in the United States.

(4) Obtained his registration or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

(5) Been found guilty of gross misconduct in the pursuit of his profession.

History.—s. 9, ch. 69-395; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]**468.148 Exemptions.**—The provisions of this part shall not apply to:

(1) Students, interns, or trainees actively engaged in a training program or persons accruing the first nine months of full-time professional employment required in s. 468.143(7)(d) if said persons are acting under the direct supervision of a certified speech pathologist or audiologist.

(2) Persons practicing a licensed profession or operating within the scope of their profession or employed by someone operating within the scope of their profession, such as doctors of medicine, clinical psychologists, nurses, and persons fitting and selling hearing aids who are properly licensed or registered under the laws of the state.

History.—s. 10, ch. 69-395; s. 3, ch. 70-238; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**468.149 Penalties.**—Any person who violates any of the provisions of this part shall be guilty of a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 69-395; s. 409, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART IV

ELECTRONIC REPAIR

[1]468.150 Short title.—This part IV may be cited as the "Florida Electronic Repair Act of 1970."

History.—s. 1, ch. 70-111; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.151 Definitions.—As used in this part:

(1) "Person" means any firm, partnership, association, or corporation.

(2) "Department" means the Department of Business Regulation.

(3) "Division" means the Division of General Regulation of the Department of Business Regulation.

(4) "Bureau" means the Bureau of Electronic Repair Dealer Registration in the Division of General Regulation.

(5) "Chief" means the chief of the Bureau of Electronic Repair Dealer Registration.

(6) "Advisory council" means the advisory council to the Bureau of Electronic Repair Dealer Registration.

(7) "Service dealer" means a person who, for compensation, engages in the business of repairing, servicing, or maintaining televisions, radios, tape recorders, or phonograph equipment normally used or sold for use in the home.

(8) "Complainant" means the customer of a service dealer who has complained to the chief concerning a service dealer.

History.—s. 2, ch. 70-111; s. 1, ch. 70-439; s. 127, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-4.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature. The purported amendment by s. 1, ch. 79-4, is also included for reference only.

[1]468.152 Bureau of Electronic Repair Dealer Registration.—There is created within the Division of General Regulation of the Department of Business Regulation the Bureau of Electronic Repair Dealer Registration. The division shall administer and enforce the provisions of this part. The division shall appoint, with the approval of the Secretary of Business Regulation, a bureau chief. The chief shall have had at least 10 years' experience in the retail electronic repair business immediately preceding his appointment as chief. The chief shall serve under the direction of the division. All powers granted to or duties imposed upon the division under this part may be exercised in the name of the division by the bureau as the division may prescribe.

History.—s. 3, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 79-4.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature. The purported amendment by s. 2, ch. 79-4, is also included for reference only.

[1]468.153 Powers and duties of the division.—The division shall:

(1) Inquire into the practices of the radio, phonograph, and television repair industry and into the functions of the bureau and the policies thereof and take such appropriate action as may be considered important for the welfare of the consuming public;

(2) Consider and make appropriate recommendations on its own initiative as to changes in, additions to, or deletions of, regulations which the division has adopted;

(3) Collect such information and data as are necessary to the proper administration of this part;

(4) Gather evidence of violations of this part and of any regulations established hereunder by any service dealer, whether registered or not, and by any employee, partner, officer, or member of any service dealer;

(5) Conduct spot check investigations of service dealers throughout the state on a continuous basis on its own initiative;

(6) Distribute to each registered service dealer copies of this part and of any regulations adopted hereunder, and it may establish and enforce such regulations as may be reasonable for the conduct of service dealers and for the general enforcement of the various provisions of this part for the protection of the consuming public; and

(7) Keep a complete record of all registered service dealers and annually prepare a roster showing the names and addresses of such dealers which shall be made available to the public at a reasonable cost.

History.—ss. 3, 4, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.154 Advisory council; duties.—

(1) There is created within the division an advisory council of five members appointed by the Governor. Each member shall have been a resident of the state for at least 5 years. Three members shall have been engaged in the electronic repair business for at least 5 years prior to their appointment. Two members shall have demonstrated by previous action their interest in consumer protection. Members of

the advisory council shall serve for 4 years, initial appointments to be staggered. The Governor is empowered to fill any vacancies that may occur on the council from time to time. The advisory council shall meet at least once every 4 months and may hold special meetings at the call of the chairman at any time or place within the state. The advisory council shall, at its first regular meeting to be held within 3 months from January 1, 1971, organize and elect from among its members a chairman and a secretary. Thereafter elections for secretary and chairman shall be held annually. A majority of the members of the advisory council shall constitute a quorum at all advisory council meetings, provided at least one member appointed for having shown an interest in consumer protection is present. No member of the advisory council shall be paid a salary but each member shall receive necessary expenses while attending advisory council meetings and reimbursement, including travel, in performance of his duties as provided in s. 112.061.

(2) The advisory council shall:

(a) Confer and advise with the division as to how the bureau may best fulfill its functions; and

(b) Consider and make appropriate recommendations in all matters submitted to it by the division.

History.—s. 5, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**468.155 Registration procedures.**—Each service dealer shall pay a fee as herein provided for each place of business operated by him in this state and shall register with the division upon forms prescribed by it. If the business is to be carried on under a fictitious name, such fictitious name shall be stated. If the service dealer is a partnership, identifying data shall be stated for each partner. If the service dealer is a corporation, data shall be included for each of the officers and directors of the corporation as well as the individual in charge of each place of the service dealer's business in the state and each individual employed for the purpose of repairing or servicing equipment covered by this part, subject to such regulations as the division may make. Upon receipt of the required fee, the division shall, if the applicant is of good moral character, validate the registration and send a proof of such validation to the service dealer. The division shall by regulation prescribe conditions upon which a person whose registration has previously been invalidated or refused may have his registration validated. A registration shall cease to be valid if not renewed annually or when any of the information provided in the registration form ceases to be current. The division shall make regulations prescribing the procedure for keeping such registration information current.

History.—s. 6, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**468.156 Fees.**—The fees prescribed by this part shall be set by the division according to the following schedule:

(1) The service dealer registration fee shall not be less than $25 or more than $50 for each place of business in this state for the purposes of repairing, servicing, or maintaining electronic equipment. Receipt of electronic equipment at a location for forwarding elsewhere to be repaired, serviced, or maintained shall not render such location subject to said fee;

(2) The annual renewal fee for a service dealer registration shall not be less than $25 or more than $50 for each place of business in this state, if renewed prior to the expiration date;

(3) The late fee shall be an amount equal to 50 percent of the renewal fee in effect on the last preceding regular renewal date.

History.—s. 11, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**468.157 Disposition of moneys received; payment of expenses.**—All moneys received by the Bureau of Electronic Repair Dealer Registration shall be deposited to the credit of the General Revenue Fund unallocated. All expenses incurred by the Bureau of Electronic Repair Dealer Registration in administering statutes relating to electronic repair dealer registration shall be paid from funds appropriated for these purposes to the Department of Business Regulation.

History.—s. 10, ch. 70-111, s. 128, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**468.158 Service dealer; transactions, records.**—All work done by a service dealer shall be recorded on an invoice in such detail as is required by regulations issued by the division and shall describe all service work done and all parts supplied. If any used parts are supplied, the invoice shall clearly state that fact. One copy shall be given to the customer and one copy retained by the service dealer for a period of at least 1 year. The service dealer shall return replaced parts to the customer excepting such parts as may be exempted from this requirement by regulations of the division and excepting such parts as the service dealer needs to return to the manufacturer or distributor under a warranty arrangement. If a customer requests an estimate for labor and parts necessary for a specific job, the service dealer shall make such an estimate in writing and may not charge for work done or parts supplied in excess of the estimate, plus 10 percent, without previous consent of the customer. A reasonable fee for making an estimate may be charged by the service dealer. A service dealer may not make the compensation of any employee, partner, officer, or member dependent upon the value of parts replaced in any equipment by, or with the consent of, such employee, partner, officer, or member. The use of the word "guarantee" and words of like import shall conform to the regulations adopted by the division. Each service dealer shall maintain such records as are required by regulations adopted to carry out the provisions of this part. Such records shall be open for

reasonable inspection by the division or its representative.

History.—s. 7, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.159 Invalidation of registration; civil penalties.—

(1) The division may refuse to validate or may invalidate temporarily or permanently the registration of a service dealer for any of the following acts or omissions related to the conduct of his business done by himself or any employee, partner, officer, or member of the service dealer:

(a) Making or authorizing any statement or advertisement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;

(b) Making any false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of the equipment covered by this part;

(c) Acting for more than one customer in a transaction without the knowledge or consent of all parties thereto;

(d) Committing any other act which constitutes fraud or dishonest dealing;

(e) Committing any act which constitutes gross negligence; or

(f) Failing in any material respect to comply with the provisions of this part or regulations adopted pursuant thereto.

(2) In lieu of the invalidation of registrations described in subsection (1), the division may impose civil penalties against the holders of such registration for violations of this act or rules and regulations relating thereto. No civil penalty so imposed shall exceed $500 for each offense, and all amounts collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund. If the holder of such registration fails to pay the civil penalty, his registration shall be temporarily invalidated for such period of time as the division may specify.

(3) The division may impose a civil penalty against a service dealer of up to and including $50 multiplied by the number of years and part of a year in which said service dealer has been operating without a valid registration.

History.—s. 7, ch. 70-111; s. 1, ch. 70-439; s. 1, ch. 72-160; s. 1, ch. 73-167; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.160 Appeals to the department.—Refusal by the division to validate, and a decision temporarily or permanently to invalidate, a registration may be appealed to the department by such procedures as adopted by the department as rules.

History.—s. 7, ch. 70-111; s. 1, ch. 70-439; s. 126, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; s. 3, ch. 79-4.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979, except for the possible effect of laws affecting this section prior to that date. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature. The purported amendment by s. 3, ch. 79-4, is also included for reference only.

[1]468.161 Informal adjustment of complaints.—The division shall establish procedures for accepting complaints from the public against any service dealer. If a complaint does not appear to state any violation of this part or of the rules and regulations made pursuant to this part, the division shall so advise the complainant and take no further action. If such complaint indicates a possible violation of this part or of said rules, the division shall advise the service dealer of the contents of the complaint and, after the service dealer has had reasonable opportunity to reply thereto, the division shall make a summary investigation of the facts. If, upon summary investigation, it appears to the division probable that a violation has occurred, the division, in its discretion, may suggest measures that would compensate the complainant for the damages he has suffered as a result of the alleged violations. If the service dealer accepts the division's suggestions and performs accordingly, the division shall give such fact due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the division, the division may investigate further and institute disciplinary proceedings in accordance with the provisions of this part.

History.—s. 9, ch. 70-111; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.162 Penalty.—Any person who violates any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 70-111; s. 410, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]468.1625 Assignment of bureau's powers and duties.—Notwithstanding anything in this part to the contrary, the head of the Department of Business Regulation may, in its discretion, assign the powers, duties and responsibilities of the Bureau of Electronic Repair Dealer Registration as provided herein to the office of the executive director of the department or to any division of the department.

History.—s. 12, ch. 70-111; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

PART V

NURSING HOME ADMINISTRATION

[1]**468.1635 Purpose.**—The Legislature finds that the unsafe and incompetent practice of nursing home administration poses a significant danger to the public health and safety. The Legislature finds further that it is difficult for the public to make informed choices about nursing home services and that the consequences of a wrong choice are serious. The sole legislative purpose for enacting this chapter is to ensure that every nursing home administrator practicing in this state meet minimum requirements for safe practice. It is the legislative intent that nursing home administrators who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 2, ch. 79-227.
[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**468.1645 Administrator license required.**—
(1) No nursing home in the state may operate unless it is under the management of a currently valid licensed administrator or holder of a provisional license.

(2) Nothing in this part or in the rules and regulations adopted hereunder shall be construed to require an applicant for a license as a nursing home administrator, who is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical standards not in accord with the remedial care and treatment provided in such institutions.

History.—ss. 1, 2, ch. 79-227.
[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**468.1655 Definitions.**—As used in this part:
(1) "Board" means the Board of Nursing Home Administrators.

(2) "Department" means the Department of Professional Regulation.

(3) "Nursing Home Administrator" means a person who is licensed to engage in the practice of nursing home administration in this state under the authority of this part.

(4) "Practice of nursing home administration" means any service requiring nursing home administration education, training, or experience and the application of such to the planning, organizing, staffing, directing, and controlling of the total management of a nursing home. A person shall be construed to practice or to offer to practice nursing home administration who:

(a) Practices any of the above services.

(b) Holds himself out as able to perform, or does perform, any form of nursing home administration by written or verbal claim, sign, advertisement, letterhead, or card; or in any other way represents himself to be, or implies that he is, a nursing home administrator.

(5) "Nursing home" means a facility providing nursing services as defined in chapter 400.

History.—ss. 1, 2, ch. 79-227.
[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**468.1665 Board of Nursing Home Administrators; membership; appointment; terms.**—
(1) The Board of Nursing Home Administrators is created within the Department of Professional Regulation and shall consist of 11 members, to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed nursing home administrators. One member shall be a licensed medical doctor. One member shall be a registered nurse trained in geriatric nursing. One member shall be a hospital administrator, and one member shall be a licensed pharmacist. Two members of the board shall be lay persons who are not and have never been nursing home administrators or members of any closely related profession or occupation.

(3) Only board members who are nursing home administrators may have a direct financial interest in any nursing home.

(4) Within 30 days after June 30, 1979, the Governor shall appoint three members for a term of 4 years, three members for a term of 3 years, three members for a term of 2 years, and two members for a term of 1 year.

(5) As the terms expire the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the Florida State Board of Examiners of Nursing Home Administrators who are serving on the effective date of this act shall continue to serve as members of the Board of Nursing Home Administrators until their successors are appointed.

(6) All provisions of chapter 455 relating to activities of regulatory boards shall apply.

History.—ss. 1, 2, ch. 79-227.
[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**468.1675 Board headquarters.**—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 2, ch. 79-227.
[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**468.1685 Powers and duties of board and department.**—It is the function and duty of the board, as required by 42 U.S.C. s. 1396g(a), (b), and (c), and any of its legislative successors, together with the department, to:

(1) Make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this part and as may be necessary to protect the health, safety, and welfare of the public.

(2) Develop, impose, and enforce specific standards within the scope of the general qualifications established by this part which must be met by individuals in order to receive licenses as nursing home administrators. These standards shall be designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, qualified to serve as nursing home administrators.

(3) Develop by appropriate techniques, including examinations and investigations, a method for determining whether an individual meets such standards.

(4) Issue licenses to qualified individuals meeting the standards of the board and revoke or suspend licenses previously issued by the board when the individual holding such license is determined to have failed to conform substantially to the requirements of such standards.

(5) Establish and carry out procedures, by rule, designed to ensure that licensed nursing home administrators will comply with standards adopted by the board.

(6) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the department to the effect that a licensed nursing home administrator has failed to comply with the requirements or standards adopted by the board.

(7) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes in order to improve the standards imposed for the licensing of such administrators and the procedures and methods for enforcing such standards with respect to administrators of nursing homes who have been licensed as such.

(8) Set up procedures, by rule, for advising and acting together with the Department of Health and Rehabilitative Services, the Board of Pharmacy, and the Board of Nursing in matters affecting procedures and methods for effectively enforcing the purpose of this part and the administration of chapter 400.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1695 Licensure by examination.—

(1) Any person desiring to be licensed as a nursing home administrator shall apply to the department to take the licensure examination. The examination shall include, but not be limited to, questions on the subjects of nursing home administration such as:

(a) Applicable standards of nursing home health and safety;

(b) Federal, state, and local health and safety laws and rules;

(c) General administration;

(d) Psychology of patient care;

(e) Principles of medical care;

(f) Personal and social care;

(g) Therapeutic and supportive care and services in long-term care;

(h) Departmental organization and management;

(i) Community interrelationships; and

(j) Terminology.

The board may, by rule, adopt use of a national examination in lieu of part or all of the examination required by this part.

(2) The department shall examine each applicant who the board certifies has completed the application form and remitted an examination fee set by the board not to exceed $250 and who:

(a) Is 18 years of age or over;

(b) Is a high school graduate or equivalent; and

(c)1. Has fulfilled the requirements of a 1-year nursing home administrator-in-training program which may be developed by rule of the board;

2. Has completed 2 years of college level studies which would prepare the applicant for health administration, to be further defined by rule;

3. Has obtained 2 years of practical experience in nursing home administration; or

4. Has 4 years of practical experience in a related health administration area.

(3) The department shall issue a license to practice nursing home administration to any applicant who successfully completes the examination in accordance with this section.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1705 Licensure by endorsement.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee set by the board not to exceed $250, demonstrates to the board that he:

(a) Holds a valid license to practice nursing home administration in another state of the United States, provided that when the applicant secured his original license, the requirements for licensure were substantially equivalent to, or more stringent than, those existing in this state at that time; or

(b) Meets the qualifications for licensure in s. 468.1695 and has successfully completed a state, regional, or national examination which is substantially equivalent to, or more stringent than, the examination given by the department.

(2) National, regional, or state examinations for licensure as a nursing home administrator shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board. Such presumption shall not arise until July 1, 1980.

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for any act which would constitute a violation of this part until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1715 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establish-

ing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 468.1725.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1725 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to [2]s. 468.1715 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [3]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 468.1755.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The cross reference "468.1715" was substituted for "468.1725" by the editors to correct an apparent typographical error.

[3]**Note.**—The words "for all years" were inserted by the editors.

[1]468.1735 Provisional license.—In order to meet the requirement of [2]42 C.F.R. s. 431.710, or any of its legislative successors, the board may establish, by rule, requirements for issuance of a provisional license. A provisional license shall be issued only to fill a position of nursing home administrator that unexpectedly becomes vacant and shall be issued for one single period not to exceed 6 months. The license may be issued to a person who does not meet all of the licensing requirements established by this part, but the board shall by rule establish minimal requirements to ensure protection of the public health, safety, and welfare.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The cross-reference "42 C.F.R. s. 431.710" was substituted for "Subpart N, section 431.710, C.F.R." by the editors.

[1]468.1745 Prohibitions; penalties.—

(1) No person shall:

(a) Practice nursing home administration unless the person holds an active license to practice nursing home administration.

(b) Use the name or title "nursing home administrator" when the person has not been licensed pursuant to this act.

(c) Present as his own the license of another.

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license.

(e) Use or attempt to use a nursing home administrator's license which has been suspended or revoked.

(f) Knowingly employ unlicensed persons in the practice of nursing home administration.

(g) Knowingly conceal information relative to violations of this part.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1755 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violation of any provision of s. 468.1745 or s. 455.227(1).

(b) Attempting to procure a license to practice nursing home administration by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(c) Having a license to practice nursing home administration revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which relates to the practice of nursing home administration or the ability to practice nursing home administration.

(e) Making or filing a report or record which the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed nursing home administrator.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Fraud or deceit, negligence, incompetence, or misconduct in the practice of nursing home administration.

(h) A violation or repeated violations of this part, chapter 455, or any rules promulgated pursuant thereto.

(i) Violation of a lawful order of the board or

department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or department.

(j) Practicing with a revoked, suspended, or inactive license.

(k) Repeatedly acting in a manner inconsistent with the health and safety of the patients of the facility in which he is the administrator.

(l) Being unable to practice nursing home administration with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition. A licensee affected under this paragraph shall have the opportunity, at reasonable intervals, to demonstrate that he can resume the competent practice of nursing home administration with reasonable skill and safety to patients.

(m) Has willfully or repeatedly violated any of the provisions of the law, code or rules of the licensing or supervising authority or agency of the state or political subdivision thereof having jurisdiction of the operation and licensing of nursing homes.

(n) Has paid, given, caused to be paid or given, or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home usage.

(o) Has willfully permitted unauthorized disclosure of information relating to a patient or his records.

(p) Has discriminated in respect to patients, employees, or staff on account of race, religion, color, sex, or national origin.

(2) When the board finds any nursing home administrator guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.

(f) Restriction of the authorized scope of practice.

(3) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1765 Prosecution of criminal violations.—The department shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]468.1775 Reciprocity.—In order to ensure that nursing home administrators licensed in this state may be considered for licensure in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 2, ch. 79-227.

[1]**Note.**—Section 2, ch. 79-227, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

PART VI

OCCUPATIONAL THERAPISTS

468.201 Short title; purpose.—

(1) This act shall be known and may be cited as the "Occupational Therapy Practice Act."

(2) It is the purpose of this act to provide for the regulation of persons offering occupational therapy services to the public in order to:

(a) Safeguard the public health, safety, and welfare.

(b) Protect the public from being misled by incompetent, unscrupulous, and unauthorized persons.

(c) Assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants.

(d) Assure the availability of occupational therapy services of high quality to persons in need of such services.

History.—ss. 1, 2, ch. 75-179.

468.203 Definitions.—As used in this act:

(1) "Board" means the [1]State Board of Medical Examiners.

(2) "Occupational therapy" means the evaluation and treatment of individuals whose ability to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability. The treatment utilizes task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual. Specific occupational therapy techniques include, but are not limited to, activities of daily living (ADL), the fabrication and application of splints, perceptual-motor activities, the use of specifically designed crafts, guidance in the selection and

use of adaptive equipment, exercises to enhance functional performance, and prevocational evaluation and treatment. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

(3) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this act and whose license is in good standing.

(4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose license is in good standing.

(5) "Occupational therapy aide" means a person who assists in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(6) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this act.

(7) "Association" means the Florida Occupational Therapy Association.

History.—s. 3, ch. 75-179; s. 1, ch. 78-18.

[1]Note.—See ch. 79-302, which repealed provisions relating to the "State Board of Medical Examiners" and created the "Board of Medical Examiners."

468.205 Occupational Therapist Council.—There is created an Occupational Therapist Council under the supervision of the board. The board shall employ licensed occupational therapists as members of the council for terms of 4 years each. The board may delegate such powers and duties to the council as it may deem proper, including the examination of applicants and the carrying out of the mechanics and procedures necessary to effectuate this act. No occupational therapist shall serve more than two successive terms. Any time there is a vacancy to be filled by the employment of an occupational therapist, the Florida Occupational Therapy Association shall recommend persons to fill the vacancy to the board in a number at least twice the number of vacancies to be filled, and the board may appoint from the submitted list, in its discretion, any of those so recommended. However, the board shall, insofar as possible, appoint persons from different geographical areas and persons who represent various areas of occupational therapy treatment. The board shall fix their compensation and pay their expenses.

History.—s. 6, ch. 75-179; s. 171, ch. 77-104.

468.207 License required.—No person shall practice occupational therapy or hold himself out as an occupational therapist or an occupational therapy assistant or as being able to practice occupational therapy or to render occupational therapy services in the state unless he is licensed in accordance with the provisions of this act.

History.—s. 4, ch. 75-179.

468.209 Requirements for licensure.—

(1) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the board, showing to the satisfaction of the board that he:

(a) Is of good moral character.

(b) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biologic or physical science, psychology, and sociology, and with education in selected manual skills. For an occupational therapist, such a program shall be accredited by the American Medical Association in collaboration with the American Occupational Therapy Association. For an occupational therapy assistant, such a program shall be approved by the American Occupational Therapy Association.

(c) Has successfully completed a period of supervised fieldwork experience at a recognized educational institution or a training program approved by the educational institution where he or she met the academic requirements. For an occupational therapist, a minimum of 6 months of supervised fieldwork experience is required. For an occupational therapy assistant, a minimum of 2 months of supervised fieldwork experience is required.

(d) Has passed an examination conducted by the board as provided in s. 468.211.

(2) An applicant who has practiced as an occupational therapy assistant for 4 years with a minimum of 6 months of supervised fieldwork experience may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under paragraph (1)(b). Those persons currently enrolled in the occupational therapy assistants' program in Florida shall not be affected by the passage of chapter 78-18, Laws of Florida.

(3) If the board determines that the applicant has not passed an examination and is not qualified to be licensed by endorsement, but has otherwise met all the requirements of this section, and has made application for the next scheduled examination, the board may issue the applicant a temporary permit allowing him to practice occupational therapy until notification of the results of the examination, but not for a longer period of time. Only one temporary permit shall be issued, and it shall not be renewable.

History.—s. 7, ch. 75-179; s. 1, ch. 77-174; s. 2, ch. 78-18.

468.211 Examination for licensure.—

(1) Any person applying for licensure shall, in addition to demonstrating his eligibility in accordance with the requirements of s. 468.209, make application to the board for examination at least 30 days prior to the date of examination, upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by s. 468.221, which fee shall not be refunded. A person who fails an examination may make reapplication for reexamination accompanied by the prescribed fee.

(2) Each applicant for licensure under this act shall be examined by the board in a written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice, including the applicant's professional skills and judgment in the

utilization of occupational therapy techniques and methods, and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall establish standards for acceptable performance.

(3) Applicants for licensure shall be examined at such time and place and under such supervision as the board may determine. Examinations shall be given at least twice each year at such places within this state as the board may determine, and the board shall give reasonable public notice of such examinations in accordance with its rules at least 60 days prior to their administration and shall notify by mail all individual examination applicants of the time and place of their administration.

(4) Applicants may obtain their examination scores and review their papers in accordance with such rules as the board may establish.

History.—s. 8, ch. 75-179.

468.213 Waiver of requirements for licensure.—

(1) The board shall waive the examination and grant a license to any person certified prior to the effective date of this act as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American Occupational Therapy Association. The board may waive the examination and grant a license to any person so certified after the effective date of this act if the board considers the requirements for such certification to be equivalent to the requirements for licensure in this act.

(2) The board may waive the examination and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this act.

(3) The board shall waive the education and experience examination requirements for licensure in paragraphs 468.209(1)(b) and (c) for applicants for licensure who present evidence to the board that they have been engaged in the practice of occupational therapy on and prior to the effective date of this act. Such proof of actual practice shall be presented to the board in such a manner as it may prescribe by rule. To obtain the benefit of this waiver, an applicant shall file an application for examination no later than 1 year from the effective date of this act.

History.—s. 9, ch. 75-179.

468.215 Issuance of license.—

(1) The board shall issue a license to any person who meets the requirements of this act upon payment of the license fee prescribed.

(2) Any person who is issued a license as an occupational therapist under the terms of this act may use the words "occupational therapist," "licensed occupational therapist," or "occupational therapist registered," or he may use the letters "O.T.," "L.O.T.," or "O.T.R.," in connection with his name or place of business to denote his registration hereunder.

(3) Any person who is issued a license as an occupational therapy assistant under the terms of this act may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant," or he may use the letters, "O.T.A.," "L.O.T.A.," or "C.O.T.A.," in connection with his name or place of business to denote his registration hereunder.

History.—s. 10, ch. 75-179.

468.217 Suspension and revocation of license; refusal to renew.—

(1) The board may deny, or refuse to renew, a license; suspend or revoke a license; or impose probationary conditions, when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct shall include:

(a) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.

(b) Being guilty of unprofessional conduct as defined by the rules established by the board or violating the code of ethics adopted and published by the board.

(c) Being convicted in any court of a crime other than minor offenses, defined as "minor misdemeanors," "violations," or "offenses," if the acts for which he was convicted are found by the board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant.

(2) One year from the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement.

History.—s. 11, ch. 75-179; s. 36, ch. 78-95.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

468.219 Renewal of license.—

(1) Licenses issued under this act shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the rules of the board, upon the payment of a renewal fee. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no such late renewal of a license may be granted more than 5 years after its expiration.

(2) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

History.—s. 12, ch. 75-179.

468.221 Fees.—

(1) The board shall prescribe, and publish in the manner established by its rules, fees in amounts determined by the board for the following purposes:

(a) Application for examination.
(b) Initial license fee.
(c) Renewal of license fee.
(d) Late renewal fee.

(2) Such fees shall be set in such an amount as to reimburse the state, to the extent feasible, for the cost of the services rendered.

History.—s. 13, ch. 75-179.

468.223 False representation of registration prohibited; penalty.—

(1) It is unlawful for any person who is not registered under this act as an occupational therapist or an occupational therapy assistant or whose registration has been suspended or revoked to use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant"; the letters "O.T.," "L.O.T.," "O.T.R.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant or, in any way, orally or in writing, in print or by sign, directly or by implication, to represent himself as an occupational therapist or an occupational therapy assistant.

(2) Any person in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 14, ch. 75-179.

468.225 Persons and practices not affected.—

(1) Nothing in this act shall be construed as preventing or restricting the practice, services, or activities of:

(a) Any person licensed in this state by any other law from engaging in the profession or occupation for which he is licensed.

(b) Any person employed as an occupational therapist or occupational therapy assistant by the United States, if such person provides occupational therapy solely under the direction or control of the organization by which he is employed.

(c) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee.

(d) Any person fulfilling the supervised fieldwork experience requirements of s. 468.209, if such activities and services constitute a part of the experience necessary to meet the requirements of that section.

(e) Any person employed by, or working under the supervision of, an occupational therapist as an occupational therapy aide.

(2) No provision of this act shall be construed to prohibit physicians, nurses, physical therapists, osteopathic physicians or surgeons, or clinical psychologists from using occupational therapy as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession.

History.—s. 5, ch. 75-179; s. 1, ch. 77-174.

PART VII

RADIOLOGIC TECHNOLOGISTS

468.30 Declaration of policy.—It is declared to be the policy of the state that the health and safety of the people must be protected against the harmful effects of excessive and improper exposure to ionizing radiation. Such protection can in some major measure be accomplished by requiring adequate training and experience of persons who operate radiation-emitting equipment in each particular case under the specific direction of licensed practitioners. It is the purpose of this part to establish standards of education, training, and experience and to require the examination and certification of operators of radiation-emitting equipment.

History.—s. 1, ch. 78-383.

468.301 Definitions.—As used in this part:

(1) "Administrator" means the administrator of the Radiological and Occupational Health Section, or its successor, of the Health Program Office of the Department of Health and Rehabilitative Services.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Certificate" means a certification granted and issued by the department under this part.

(4) "Health physicist" means a person recognized by the Health Program Office of the Department of Health and Rehabilitative Services as a qualified expert in the field of radiation protection as it relates to diagnostic and therapeutic X ray.

(5) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, podiatry, chiropody, osteopathy, naturopathy, or chiropractic in this state.

(6) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or any other state, or political subdivision of any agency thereof and any legal successor, representative, agent, or agency of the foregoing.

(7) "Program Office" means the Health Program Office of the Department of Health and Rehabilitative Services.

(8) "Radiologic technologist" means a person other than a licensed practitioner who is qualified by education, training, or experience to use X rays on human beings under the specific direction of a licensed practitioner in each particular case.

(9) "Section" means the Radiological and Occupational Health Section, or its successor, of the Health Program Office of the Department of Health and Rehabilitative Services.

(10) "National Organization" means a professional association or registry, approved by the department, that examines, registers, certifies, or approves individuals and education programs relating to operators of sources of radiation.

History.—s. 2, ch. 78-383.

468.302 Use of X rays; limitations; exceptions.—

(1) Except as hereinafter provided, no person shall use X rays on a human being unless he is a licensed practitioner or unless he is the holder of a certificate as provided in this part.

(2) A person holding a certificate as a radiologic technologist may use the title "Certified Radiologic Technologist" or the letters "CRT" after his name. No other person shall be entitled to so use such title or letters, or to use a title or letters after his name that indicate or imply that he is a certified radiologic technologist, or to hold himself out in any way, whether orally or in writing, expressly or by implication, as a certified radiologic technologist.

(3) A person holding a certificate as a radiologic technologist may only use X rays or X-ray producing equipment on human beings for diagnostic or therapeutic purposes while operating in each particular case under a licensed practitioner, and only if the application of X rays is limited to those persons or parts of the human body specified in the law under which the practitioner is licensed.

(4) Nothing contained in this part relating to radiologic technology shall be construed to limit, enlarge, or affect in any respect the practice of their respective professions by duly licensed practitioners.

(5) The requirement of a certificate shall not apply to:

(a) A hospital resident who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, dental assisting, chiropractic, or radiologic technology who applies radiation to a human being while under the direct supervision of a licensed practitioner.

(b) A person engaged in performing the duties of a radiologic technologist in his employment by a governmental agency of the United States.

(c) A dental hygienist, licensed prior to the effective date of this part, who operates only dental radiographic equipment for the sole purpose of dental radiography and limits the X-ray beam to the face of the patient.

(d) A dental assistant, certified prior to the effective date of this part, who operates only dental radiographic equipment for the sole purpose of dental radiography and limits the X-ray beam to the face of the patient.

History.—s. 3, ch. 78-383.

468.303 Rules.—The department is authorized to make such rules, not inconsistent with law, as may be necessary to carry out the provisions of this part.

History.—s. 4, ch. 78-383.

468.304 Certification examination; admission.—The department shall admit to examination for certification any applicant who pays to the program office a nonrefundable fee of $25 and submits satisfactory evidence, verified by oath or affirmation, that he:

(1) Is at least 18 years of age at the time of application.

(2) Is of good moral character.

(3) Has successfully completed a 24-month course of study in radiologic technology in a school of radiologic technology approved by the department as maintaining a satisfactory standard, or has completed a course of study as determined by the department with appropriate study material provided the applicant by the department.

History.—s. 5, ch. 78-383.

468.305 Certification; standards.—The department shall develop criteria for certification based on levels of difficulty of radiological procedures. All such levels of certification shall include demonstration of safety procedure competency; however, nothing in this part shall be construed to require that all operators of X-ray equipment be registered radiologic technologists.

History.—s. 6, ch. 78-383.

468.306 Examinations; certification without examination.—

(1) All applicants shall be required to pass an examination consistent with the curriculum required for education programs in radiologic technology accredited by the Council on Medical Education of the American Medical Association.

(2) The department shall prepare and submit to the section, as required, lists of examination questions or problems. Examinations shall be administered by the department.

(3) The department shall hold an examination at least once every 6 months at such times and places as the department may determine to be advantageous for applicants who desire to practice as radiologic technologists in this state.

(4) Examinations shall include a written portion, but may also include practical and oral portions. Following each examination, the papers and the practical and oral examinations shall be graded, and the standing of each applicant shall be recorded. The department shall either pass or fail each applicant on the basis of his final grade.

(5) An applicant who fails to pass the examination may apply for a second examination. A nonrefundable application fee of $20 shall be charged for the second and for any subsequent examination.

(6) The department may accept, in lieu of its own examination, a certificate of a national organization

or a state board issued on the basis of a registry examination satisfactory to the department.

History.—s. 7, ch. 78-383.

468.307 Certificate; issuance; possession; display.—

(1) The department shall issue a certificate to each candidate who has paid the prescribed fee and either successfully passed the examination or qualified under s. 468.306(6).

(2)(a) The department may, at its discretion, issue a temporary certificate to any applicant who does not qualify, by reason of a restricted area or duration of training and experience, for the issuance of a certificate under the provisions of s. 468.304, s. 468.306, or s. 468.308, but who has demonstrated to the satisfaction of the department by examination that he is capable of performing the functions of a radiologic technologist within the limited field specified in his application. The temporary certificate shall specify the activities in which its holder may engage. Authority of the department to issue temporary certificates under the provisions of this subsection shall terminate 2 years after the effective date of this part.

(b) Upon application by a physician, the department may, at its discretion, issue a temporary certificate to an applicant hired after the 2-year period specified in paragraph (a), provided such temporary certificate shall expire 6 months from the date of issuance and shall not be renewed.

(3)(a) Additionally, the department may, at its discretion, issue a temporary certificate to:

1. Any person who has qualified for examination under s. 468.308 and who has applied for such examination.

2. Any person qualified under s. 468.308 who has failed his first examination under s. 468.308, and who has applied for a second examination.

3. Any person whose certification or recertification may be pending and in whose case the issuance of a temporary certificate may be justified by reason of special circumstances.

(b)1. A temporary certificate as provided in subsection (2) and this subsection shall be issued only if the department finds that its issuance will not violate the purposes of this part or tend to endanger the public health and safety.

2. The holders of temporary certificates issued pursuant to paragraph (2)(a) must have successfully completed the certified radiologic technologist's examination given by the department or be enrolled in an accredited American Medical Association school program.

3. In the event the applicant is required to take a national organization or state board examination, a temporary certificate shall expire 90 days after the date of the next examination or, if the applicant does not take the required examination, then on the date of such examination.

4. Except as provided in paragraph (2)(b) and this subsection, a temporary certificate shall expire when the determination is made either to issue to the applicant, or to deny him the issuance of, a regular certificate, and in no event shall any such temporary certificate be issued for a period longer than 2 years.

(4) Every radiologic technologist shall carry his certificate with him when at work, and the certificate shall be displayed on request.

History.—s. 8, ch. 78-383.

468.308 Certification based on prior experience or training.—

(1) The department shall issue a certificate to any person who makes application to it in writing accompanied by a fee of $25 within 2 years from the effective date of this part:

(a) If he has been engaged in the area of diagnostic radiologic technology for at least 5 of the 6 years immediately prior to the effective date of this part, and if he passes an oral or practical examination prepared by the department to show his proficiency; or

(b) If he has been engaged in the field of diagnostic radiologic technology for at least 2 of the 3 years immediately prior to the effective date of this part, and if he passes an oral, practical, or written examination prepared by the department to show his proficiency.

(2) Any person who has the qualifications specified in paragraph (1)(b) and who is on active duty with the Armed Forces of the United States during any portion of a 6-month period after the effective date of this part shall be permitted to make application under the terms provided in this section within 6 months after the date of termination of his active duty, but in any event not later than 2 years after the effective date of this part.

(3) A student who is engaged in a 24-month course of study of radiologic technology in a school of radiologic technology on the effective date of this part, and who completes such a course of study, shall be eligible for examination and certification as provided in paragraph (1)(b).

(4) Application shall be made on a form prescribed by the department and shall be accompanied by such other evidence of qualifications as may be required.

(5) If a candidate who applied for certification under the provisions of this section fails the first examination, he may, at any time thereafter, apply for a second examination for which an additional nonrefundable application fee of $20 shall be required.

(6) The department shall issue certificates without examination to health personnel licensed, certified, or regulated pursuant to chapter 458, chapter 459, chapter 464, or chapter 483, and employed by licensed practitioners of the healing arts, provided such health personnel demonstrate to the satisfaction of the department that their training program included training in radiographic techniques.

(7) The department shall issue a limited certificate to any person licensed in accordance with this part who is a certified dental assistant or dental hygienist and who operates only dental radiographic equipment for the sole purpose of dental radiography and limits the X-ray beam to the face of the patient, if such person has:

(a) Satisfactorily completed a course of study in a dental hygiene or a dental assistant school approved by the department; or

(b) Passed an examination approved or adminis-

tered by the department encompassing dental radiographic techniques.

(8) The department shall issue a limited certificate to any person who has received special training satisfactory to the department to operate computer-assisted tomographic scanners.

History.—s. 9, ch. 78-383; s. 1, ch. 79-80.

468.309 Certificate; duration; renewal; reissuance.—

(1) A radiologic technologist's certificate issued in accordance with s. 468.307 or s. 468.308 shall expire on the last day of the second year after the year of issuance. A certificate shall be renewed by the department for a period of 2 years upon payment of a renewal fee in an amount to be determined by the department and upon submission of a renewal application containing such information as the department deems necessary to show that the applicant for renewal is a radiologic technologist in good standing and has completed any continuing education requirements which may be established by the department for advance levels of radiologic technology. Continuing education which may be required for persons certified in basic safety may be provided by the department through home study courses.

(2) A radiologic technologist who has been heretofore duly certified in this state, whose certificate has not been revoked or suspended, but who has failed to renew his certificate, may apply for the reissuance of a certificate upon complying with the provisions of this section and may be required to take the examination therefor, at the discretion of the department.

History.—s. 10, ch. 78-383.

468.31 Suspension or revocation of certification.—

(1) The certificate of a radiologic technologist may be suspended for a fixed period or may be revoked, or such technologist may be censured, reprimanded, or otherwise disciplined in accordance with the provisions and procedures defined in this part, if, after due hearing, it is determined that he:

(a) Is guilty of any fraud or deceit in his activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring his certificate.

(b) Has been convicted in a court of competent jurisdiction, either within or without this state, of a crime involving moral turpitude, except that, if the conviction is discharged or acquitted or if he is pardoned or his civil rights restored, the certificate may be restored to him.

(c) Is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having a similar effect, or is insane.

(d) Has aided and abetted a person who is not a certified radiologic technologist, or otherwise authorized, in engaging in the activities of a radiologic technologist.

(e) Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified radiologic technologist pursuant to this part.

(f) Has falsely impersonated a certified radiologic technologist or former certified radiologic technologist or is engaging in the activities of a certified radiologic technologist under an assumed name.

(g) Has been guilty of unethical conduct as defined by rules promulgated by the department.

(h) Has continued to practice without obtaining a certificate of renewal as required by s. 468.309.

(i) Has applied X rays to human beings when not operating in each particular case under the specific direction of a duly licensed practitioner as defined herein, or to any parts of the human body other than those specified in the law under which such practitioner is licensed.

(j) Has expressed to a member of the public an interpretation of a diagnostic X-ray film or fluorescent image without the permission of a duly licensed practitioner.

(k) Has used or is using the prefix "Dr.," the word "doctor," or any suffix or affix to indicate or imply that the certified radiologic technologist is a duly licensed practitioner as defined herein, when not so licensed.

(l) Is, or has been, guilty of incompetence or negligence in his activities as a radiologic technologist.

(2) Proceedings against any certified radiologic technologist under this section shall be initiated by filing with the department a written charge or charges under oath against such radiologic technologist. The charges may be preferred by any person, corporation, association, or public officer or by the department in the first instance. If the department decides that the charges should be heard, it shall establish a time and a place for a hearing on the charges. A copy of the charges, together with a notice of the time and place of hearing, shall be served upon the person charged, either personally or by registered mail, at least 15 days before the date fixed for the hearing, and the person charged shall have an opportunity to appear and answer the charges, either personally or by counsel, to cross-examine witnesses against him, and to produce evidence and witnesses in his defense. For the purpose of this section, the department or its committee shall have power to issue subpoenas for the appearance of witnesses and to take testimony under oath. Upon the conclusion of the hearing, the committee shall make a written report of its findings and recommendations to the administrator. If the administrator finds that the charges have not been proved, he shall order them dismissed. If the charges are found to be true, the administrator shall, at his discretion, issue an order suspending or revoking the certificate of the accused or otherwise disciplining him.

(3) When the certificate of any person has been revoked or suspended as herein provided, the department may, after the expiration of 2 years, entertain an application for restoration of such certificate. At the discretion of the department, such person may be required to take the examination for certification as prescribed herein.

History.—s. 11, ch. 78-383.

468.311 Unlawful activities; penalties.—

(1) It shall be unlawful for any person to:

(a) Sell or fraudulently obtain or furnish a radiologic technologist's diploma, certificate, or record or to aid or abet in the same.

(b) Engage in the activities of a radiologic technologist under cover of a diploma or certificate ille-

gally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation or mistake of fact in material regard.

(c) Engage in the activities of a radiologic technologist under a false or assumed name.

(d) Engage in, or hold himself out as entitled to engage in, the activities of a radiologic technologist without a valid certificate.

(e) Employ, for the purpose of applying X-radiation to any human being, any individual who is not a certified radiologic technologist under the provisions of this part.

(f) Otherwise violate any of the provisions of this part.

(2) Violation of the provisions of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 12, ch. 78-383.

468.312 Fees; disposition.—All moneys derived from fees imposed pursuant to this part shall be placed in a fund to be used by the Radiological and Occupational Health Section of the Department of Health and Rehabilitative Services for the sole purpose of carrying out the provisions of this part.

History.—s. 13, ch. 78-383.

CHAPTER 469

PLUMBING

[1]469.01 Plumber's certificate; chapter not applicable to cities of less than 7,500 population.—Any person engaged in or working at the business of plumbing in cities of 7,500 population or more in this state, either as master plumber or employing plumber or as journeyman plumber, shall first receive a certificate thereof in accordance with the provisions of this chapter.

History.—s. 1, ch. 6944, 1915; s. 1, ch. 7312, 1917; RGS 2251; CGL 3587, 3588; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]469.02 Application for certificate; examination.—Any person desiring to engage in or work at the business of plumbing, either as a master plumber or employing plumber or as a journeyman plumber, in cities having a population of 7,500 or more and a system of water supply or sewerage, shall make application to the board of examiners provided for in this chapter, at such time and place as said board may direct. Said examinations may be made in whole or in part in writing and shall be of a practical and elementary character sufficiently strict to test the qualifications of the applicant.

History.—s. 2, ch. 6944, 1915; s. 2, ch. 7312, 1917; RGS 2252; CGL 3589, 3590; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]469.03 Board of examiners; qualifications; terms of office; compensation.—There shall be in every city of 7,500 inhabitants or more, a board of examiners of plumbers, consisting of three members, one of whom shall be chairman of the board of health; a second member, who shall be a master plumber, and a third member, who shall be a journeyman plumber. Said second and third members shall be appointed by the appointing power of said city or town as provided by charter or ordinance for the term of 1 year from January 1 in the year of appointment, thereafter annually before January 1, and shall be paid from the treasury of said city the same as other officers, in such sum as the authorities may designate.

History.—s. 3, ch. 6944, 1915; s. 3, ch. 7312, 1917; RGS 2253; CGL 3591, 3592; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]469.04 Examination of applicants; fees, etc.—The board shall, as soon as may be after their appointment, meet, and shall then designate the times and places for examination of all applicants desiring to engage in or work at the business of plumbing within their respective jurisdiction. Said board shall examine said applicants as to their practical knowledge of plumbing, house drainage, and plumbing ventilation, and, if satisfied with the competency of such applicants, shall thereupon issue a certificate to such applicant authorizing him to engage in or work at the business of plumbing, either as master plumber or employing plumber, or as a journeyman plumber. The maximum fee for a master plumber or employing plumber shall be $25, and for a journeyman plumber shall be $15. Said certificate shall be valid for the term of 1 year, but the same may be renewed if application for renewal is made to said board not less than 30 days before the expiration of said certificate. The fee for renewals shall be $1. All moneys shall be paid into the city or town treasury for the use of said city or town.

History.—s. 4, ch. 6944, 1915; s. 4, ch. 7312, 1917; RGS 2254; CGL 3593, 3594; s. 1, ch. 28035, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]469.05 Cities to provide rules for construction of all plumbing; plumbing inspector; qualification; reports to city board of health.—

(1) All cities or towns in this state shall, within the provisions of this chapter, provide by ordinance, rules and regulations for the construction and maintenance of all plumbing and drainage placed in or on any building or the premises thereof in such city or town, and no work of this character shall be done unless a permit be issued therefor, excepting the repairing of leaks. The term plumbing as used in this section shall not include the installation and maintenance of portable water-softening units and no ordinances, rules or regulations adopted by cities or towns shall prevent the installation and maintenance of portable water-softening units by licensed operators of water-softening services.

(2) Said cities or towns shall provide for the appointment or election of a plumbing inspector and such assistants as are necessary, but said inspector and assistants must be practical plumbers of not less than 10 years' experience, who shall see that all rules and regulations touching plumbing are faithfully and diligently observed and executed.

(3) The plumbing inspector shall preside at all meetings of the examining board of plumbers and shall have the deciding voice and vote in all matters connected with the examination of applicants and granting of certificates, whenever the remaining members of said board are unable to agree. The plumbing department of every city or town embraced in this chapter, consisting of the examining board of plumbers, the plumbing inspector and his assistants, shall be under the supervision of the

board of health of said city or town, and the plumbing inspector shall make a complete report of this department to said board of health at the end of each year, and oftener as may be required by said board, or provided for by ordinance.

History.—s. 5, ch. 6944, 1915; s. 5, ch. 7312, 1917; RGS 2255; CGL 3595, 3596; s. 1, ch. 25395, 1949; s. 1, ch. 61-207; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**469.07 Penalty for violation of chapter.**—Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than $5 nor exceeding $50 for each and every violation thereof.

History.—s. 6, ch. 7312, 1917; RGS 5671; CGL 7876; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 470

FUNERAL DIRECTING, EMBALMING, AND DIRECT DISPOSITION

[1]470.001 Legislative findings and intent.—

(1) The Legislature finds that the practice of embalming and funeral directing by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about embalmers and funeral directors and that the consequences of a wrong choice could endanger the public health and welfare. The only way to protect the public from the incompetent practice of embalming and funeral directing is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The Legislature further finds that the unregistered practice of direct disposition may present a danger to the public welfare and, therefore, deems it necessary to provide for the registration of all direct disposers, to provide against improper conduct by practitioners of direct disposition, and to establish swift and effective discipline for these practitioners who violate the law.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.002 Definitions.—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Funeral Directors and Embalmers.

(3) "Funeral director" means any person licensed in this state to practice funeral directing.

(4) "Practice of funeral directing" means making, at need or preneed, arrangements for, or directing the arrangements for, the preparation and transportation of dead human bodies for final disposition; or using, in connection with one's name the words "funeral director," "licensed funeral director," "undertaker," or "mortician"; or offering or holding oneself out as offering such services. However, nothing herein shall be construed to require a direct disposer or an agent registered under s. 470.028 to be a funeral director.

(5) "Embalmer" means any person licensed in this state to practice embalming.

(6) "Practice of embalming" means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(7) "Funeral establishment" means a place licensed under this chapter where a funeral director or embalmer practices his funeral directing or embalming.

(8) "Direct disposal establishment" means a place registered under this chapter where a direct disposer practices direct disposition.

(9) "Direct disposer" means any person who is registered in this state to practice direct disposition.

(10) "Practice of direct disposition" means the final disposition of a dead human body without preparation of the body by embalming and without any attendant services or rites such as funeral or graveside services.

(11) "Final disposition" means the final disposal of a dead human body whether it be by, but not limited to, earth interment, above-ground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.

(12) "Funeral merchandise" means the goods, sold or offered for sale, including, but not limited to, a casket or alternative container, which is used in

connection with the final disposition of a dead human body.

(13) "Funeral" or "funeral service" means the observances, services, or ceremonies held for dead human bodies.

(14) "Cinerator" means a facility where dead human bodies are reduced to a residue, including bone fragments, by direct flame, also known as "cremation," or by intense heat, also known as "calcination."

(15) "Alternative container" means a nonmetal receptacle or enclosure which is less expensive than a casket and of sufficient strength to be used to hold and transport a dead human body.

(16) "Casket" means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

(17) "Solicitation" means any communication which directly or implicitly requests an immediate oral response from the recipient.

(18) "Legally authorized person" means the surviving spouse, son or daughter who is 18 years of age or older, parent, or brother or sister 18 years of age or over; any person in the next degree of kinship; the guardian of the dead person at the time of death; the personal representative of the deceased; or a public health officer.

(19) "Outer burial container" means an enclosure into which a casket is placed, including, but not limited to, a vault made of concrete, steel, fiberglass, or copper, a sectional concrete enclosure, a crypt, [2]or a wooden enclosure.

(20) "Personal residence" means any residential building in which one temporarily or permanently maintains his abode, including, but not limited to, an apartment or a hotel, motel, nursing home, convalescent home, home for the aged, [2]or a public [2]or private institution.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "or" was substituted for "and" by the editors.

[1]470.003 Board of Funeral Directors and Embalmers; membership; appointment; terms.—

(1) The Board of Funeral Directors and Embalmers is created within the Department of Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be chosen from the licensees under this chapter, and the remaining two members shall be residents of the state who have never been licensed as funeral directors or embalmers and who are in no way connected with the practice of embalming or funeral directing.

(3) Within 30 days after June 30, 1979, the Governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 2 years each.

(b) Two members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of regulatory boards shall apply.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.004 Board headquarters.—The board shall maintain its official headquarters in the city in which it has been domiciled for the past 5 years.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.005 Rulemaking authority of board.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.006 Licensure as an embalmer by examination.—

(1) Any person desiring to be licensed as an embalmer shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee set by the board not to exceed $250.

(b) Submitted proof satisfactory to the department that he is not less than 18 years of age and is a recipient of a high school degree or equivalent.

(c) Had no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the ability to practice embalming or the practice of embalming.

(d) Completed a course in mortuary science approved by the board which course embraces, at least, the following subjects: theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, and public health and sanitation.

(e) Completed a 1-year internship under a licensed embalmer.

(2) If the department finds that the applicant has met all the requirements of subsection (1) and the other provisions of this chapter, it shall license the applicant if he passes an examination on the subjects of the theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, public health and sanitation, and local and state laws and rules relating to the disposition of dead bodies; however, the board by rule may adopt the use of a national examination, such as the embalming examination prepared by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976, as amended.

[1]470.007 Licensure as an embalmer by endorsement.—

(1) The department shall issue a license by endorsement to practice embalming to an applicant who, upon applying to the department and remitting a fee set by the board not to exceed $250, demonstrates to the board that he:

(a) Holds a valid license to practice embalming in another state of the United States, provided that, when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

(b)1. Meets the qualifications for licensure in s. 470.006, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state; and

2. Has successfully completed a state, regional, or national examination in mortuary science, which is substantially equivalent to or more stringent than the examination given by the department, within 10 years of the date of application.

(2) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or more stringent than the examination and requirements in this state unless found otherwise by rule of the board. Such presumption shall not arise until January 1, 1980.

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete.

(4) Each applicant for licensure by endorsement must pass the examination on local and state laws and rules relating to the disposition of dead human bodies which is required under s. 470.006 and which shall be given by the department.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.008 Registration of an embalmer intern.—

(1) Any person desiring to become an embalmer intern shall make application to the department on forms provided by the department, together with a $25 nonrefundable fee. The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training is to be conducted. The embalmer intern shall intern under the supervision of a licensed embalmer.

(2) An applicant for internship shall be 18 years of age or older and have completed a course of study in mortuary science prior to being registered by the board as an intern.

(3) The board shall adopt rules establishing an internship program and criteria for intern training agencies. Any funeral establishment where embalming is conducted shall be eligible to act as an intern training agency.

(4) No funeral establishment designated as an intern training agency shall exact a fee from any person obtaining intern training at such funeral establishment.

(5) Any person who on June 30, 1979, is a duly registered embalmer intern shall immediately be granted registration as an embalmer intern and shall receive credit for the obtaining of a license for the practice of embalming for all of the time spent by such intern prior to July 1, 1979.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.009 Licensure as a funeral director by examination.—

(1) Any person desiring to be licensed as a funeral director shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has met the requirements to qualify to take the examination to be a licensed embalmer pursuant to s. 470.006(1)(a)-(c), has been granted an Associate of Arts degree in mortuary science, and has completed a 1-year internship under a licensed funeral director.

(2) If the department finds that the applicant meets the requirements of subsection (1) and any other provisions of this chapter, it shall license the person as a funeral director if he has passed an examination prepared by the department on the following subjects:

(a) The signs of death.

(b) The manner by which death may be determined.

(c) The laws and rules of the state and Federal Government concerning funeral directing and embalming, disposition of dead human bodies, vital statistics, medical examiners, burial insurance and contracts, offenses concerning dead human bodies, and the shipment and care of bodies that died from infectious and contagious diseases.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.011 Licensure as a funeral director by endorsement.—

(1) The department shall issue a license by endorsement to practice funeral directing to an applicant who, upon applying to the department and remitting a fee set by the board not to exceed $250, demonstrates to the board that he:

(a) Holds a valid license to practice funeral directing in another state of the United States, provided that, when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

(b) Meets the qualifications for licensure in s. 470.009 and has successfully completed a state, regional, or national examination in mortuary science, which is substantially equivalent to or more stringent than the examination given by the department, within 10 years of the date of application.

(2) The department shall not issue a license by endorsement to any applicant who is under investi-

gation in another jurisdiction for acts which would constitute a violation of this chapter until such time as the investigation is complete.

(3) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or more stringent than the examination and requirements in this state unless found otherwise by rule of the board. Such presumption shall not arise until January 1, 1980.

(4) Each applicant for licensure by endorsement must pass the examination on local and state laws and rules relating to the disposition of dead human bodies which is required under s. 470.009 and which shall be given by the department.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.012 Registration of a funeral director intern.—

(1) Any person desiring to become a funeral director intern shall make application to the department on forms provided by the department, together with a $25 nonrefundable fee. The application shall indicate the name and address of the licensed funeral director under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training is to be conducted. The funeral director intern shall intern under the supervision of a licensed funeral director.

(2) The board shall adopt rules establishing an internship program and criteria for intern training agencies. Any funeral establishment where funeral directing is conducted shall be eligible to act as an intern training agency.

(3) No funeral establishment designated as an intern training agency shall exact a fee from any person obtaining intern training at such funeral establishment.

(4) Any person who on June 30, 1979, is a duly registered funeral director intern shall immediately be granted registration as a funeral director intern and shall receive credit for the obtaining of a license for the practice of funeral directing for all of the time spent by such intern prior to July 1, 1979.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.013 License as funeral director and embalmer permitted.—Nothing in this chapter shall be construed to prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.014 Concurrent internships.—The internship requirement for embalmers and funeral directors may be served concurrently pursuant to rules adopted by the board.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.015 Renewal of licenses.—

(1) The department shall renew a license upon receipt of the renewal application and fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 470.016.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.016 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 470.015 or s. 470.018 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in ss. 470.036 and 470.019.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "for all years" were inserted by the editors.

[1]470.017 Registration as a direct disposer.—

(1) Any person who is not a licensed funeral director and who engages in the direct disposition of dead human bodies as defined by this chapter shall be registered pursuant to this section as a direct disposer.

(2) Any person who desires to be registered as a direct disposer shall file an application with the department on a form furnished by the department; pay the applicable fee, as provided by department rule, not to exceed $250; and meet the following requirements:

(a) Be 18 years of age.

(b) Be a high school graduate or equivalent.

(c) Have no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the functions and duties of a direct disposer or the practice of direct disposition.

(d) Have passed an examination prepared by the department on the subjects of the signs of death, the manner in which death may be determined, and the laws and rules of the state and Federal Government concerning disposition of dead human bodies, vital statistics, medical examiners, and offenses concerning dead human bodies.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.018 Renewal of registration of direct disposer.—

(1) The department shall renew a license upon receipt of the renewal application and fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 470.016.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.019 Disciplinary actions against direct disposers.—

(1) Upon a finding of any one or more of the grounds enumerated in subsection (2) or any other section of this chapter, the department may take the following actions:

(a) Deny the application for registration as a direct disposer.

(b) Revoke the registration of the direct disposer.

(c) Suspend the registration of the direct disposer.

(d) Impose an administrative fine not to exceed $1,000.

(e) Issue a public reprimand.

(2) The following shall be sufficient grounds for disciplining according to subsection (1):

(a) Procuring or attempting to procure a registration by bribery, by fraudulent misrepresentations, or through an error of the department or board.

(b) Having been convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of direct disposition or the ability to practice direct disposition.

(c) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of this chapter as it relates to direct disposers.

(d) Misrepresentation or fraud in the conduct of the business of a direct disposer.

(e) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of the dead.

(f) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for direct disposing business, by the registrant or his agent, assistant, or employee; however, this shall not prohibit the payment of commissions by a direct disposer to his agents registered pursuant to s. 470.028 or to registrants hereunder.

(g) Aiding or abetting an unregistered person to engage in the disposition of dead human bodies or remains as provided under this chapter or to engage in conduct or activities for which a license to engage in the profession of funeral directing or embalming is required.

(h) Violation of any state law or rule or any municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead bodies.

(i) Refusing to surrender promptly the custody of a dead human body upon the expressed order of the person legally authorized to its custody; however, this provision shall be subject to any state or local laws or rules governing custody or transportation of dead human bodies.

(j) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person to remove the body.

(k) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(l) Advertising goods and services in a manner which is fraudulent, deceptive, or misleading in form or content.

(m) Violation or repeated violations of this chapter or chapter 455 and any rules promulgated pursuant thereto which relate to direct disposers.

(n) Practicing on a revoked or suspended registration.

(o) Soliciting by the registrant or his agent, assistant, or employee through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

History.—ss. 1, 5, ch. 79-231.

[1]Note.—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.021 Direct disposal establishment; standards and location.—

(1) A direct disposer shall practice at a direct disposal establishment which has been approved by the department and which may be a cinerator facility. The department shall establish by rule standards for such facilities, including, but not limited to, requirements for refrigeration and storage of dead human bodies.

(2) The practice of direct disposition must be engaged in at a fixed location. No person, partnership, corporation, association, or other organization shall open or maintain a place or establishment at which to engage in or conduct or hold himself or itself out

as engaging in direct disposition unless permission has been granted by the department. Any change in location of such facility shall be reported promptly to the department as prescribed by rule of the department.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.022 Direct disposition not funeral directing.—The duties, functions, and services performed by a direct disposer registrant, as provided by this chapter, shall not be deemed to constitute funeral directing or embalming or the duties, functions, or services performed by a funeral director or embalmer as otherwise defined and provided by this chapter.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.023 Practice of direct disposition without registration.—Any person as an individual, as a partner in a partnership, or as an officer or employee of a corporation, association, or other organization, except for a licensed funeral director as defined by this chapter, who, without registration, holds himself out as a direct disposer or engages in direct disposition is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.024 Funeral establishment; licensure.—

(1) A funeral establishment shall be a place at a specific street address or location and must consist of and maintain either a suitable room for storage of dead human bodies or a preparation room equipped with necessary ventilation and drainage and containing necessary instruments for embalming dead human bodies.

(2) No person shall conduct, maintain, manage, or operate a funeral establishment unless an establishment operating license has been issued by the department for that funeral establishment.

(3) Application for a funeral establishment license shall be made on forms furnished by the department, shall be accompanied by a fee not to exceed $100 as set by department rule, and shall include the name of the licensed funeral director who is in charge of that establishment.

(4) A funeral establishment license shall be renewable biennially pursuant to procedures, and [2]upon payment of a fee not to exceed $100, as set by department rule.

(5) If the practice of embalming is done at a funeral establishment, it shall only be practiced by a licensed embalmer.

(6) Each licensed funeral establishment shall have at least one full-time funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for that establishment.

(7) The issuance of a license to operate a funeral establishment to a person or entity who is not individually licensed as a funeral director does not entitle the person to practice funeral directing as defined in this chapter, it being the intent of this chapter that such practice may be performed only by persons licensed as funeral directors.

(8) Each funeral establishment located at a specific address shall be deemed to be a separate entity and shall require separate licensing and compliance with the requirements of this chapter.

(9) Every funeral establishment licensed under this chapter shall at all times be subject to inspection [3]by the department or any of its designated representatives or agents or local or Department of Health and Rehabilitative Services inspectors. The department shall by rule establish requirements for inspection of funeral establishments.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "upon" was inserted by the editors.

[3]**Note.**—The word "by" was substituted for "of" by the editors.

[1]470.025 Cinerator facility; licensure.—

(1) No person shall conduct, maintain, manage, or operate a cinerator facility unless a license for such facility has been issued by the department.

(2) Application for licensure of cinerator facilities shall be on a form furnished and prescribed by the department and shall be accompanied by a license fee of up to $100 as set by department rule. No license shall be issued unless the cinerator facility has been inspected and approved as meeting all requirements as set forth by the department, the Department of Health and Rehabilitative Services, the Department of Environmental Regulation, or any local ordinance regulating the same.

(3) Licenses shall be renewed biennially in accordance with a schedule established by the department. The annual renewal fee shall be up to $100 as set by department rule.

(4) A change in ownership of a cinerator facility shall be promptly reported to the department.

(5) The board shall adopt rules requiring each facility to submit periodic reports to the department which include the names of persons cremated and the types of containers used.

(6) No more than one dead human body shall be placed in a retort at one time, unless written permission has been received from the personal representative responsible for each body.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.026 Solicitation of goods or services.—

(1) The department is authorized to adopt rules regulating the solicitation of goods or services by licensees or registrants.

(2) The department shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The department shall regulate such solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public has a high expectation of privacy

in one's personal residence, and the department by rule may restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this act shall be construed to restrict the right of a person to lawfully advertise, direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.027 Exemption of certificateholder under chapter 639.—Nothing in this chapter shall prevent a certificateholder under chapter 639 from selling preneed funerals and funeral merchandise through its agents and employees.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.028 Preneed sales; registration of agents.—

(1) All sales of preneed funeral service contracts or direct disposition contracts shall be made pursuant to chapter 639.

(2) All persons selling preneed funeral service contracts or direct disposition contracts shall be registered with the department. The registration shall be signed by the agent and the individual licensed funeral director or direct disposer to whom the agent will be responsible. The registration shall be renewed annually on a schedule established by the department. The licensed funeral director or direct disposer who has registered an agent shall notify the department within 10 days after the agent's status has terminated.

(3) No person may act as an agent for a funeral director, funeral establishment, or direct disposer unless such person is registered pursuant to this section.

(4) Each licensee or registrant shall be subject to discipline if his agent violates any provision of this chapter applicable to said licensee or registrant. The department may refuse to register, or may revoke the registration of, any agent, who has violated the provisions of this chapter applicable to said agent.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.029 Affidavit of cases embalmed and bodies handled.—Each funeral establishment or direct disposal establishment shall report monthly on a form prescribed and furnished by the department the name of the deceased and such other information as may be required [2]with respect to each dead human body embalmed or otherwise handled by the establishment. Such forms shall be signed by the embalmer who performs the embalming and the funeral director in charge of the establishment or [3]by the direct disposer who disposes of the body. These reports, in affidavit form, shall be submitted to the local registrar of vital statistics within 5 working days after the end of each month. The local registrar shall forward said reports to the department within 10 days after receipt.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "with respect to" were substituted for "of" by the editors.

[3]**Note.**—The word "by" was inserted by the editors.

[1]470.031 Prohibitions; penalties.—

(1) No person shall:

(a) Practice funeral directing, embalming, or direct disposition unless the person holds an active license or registration under this chapter.

(b) Use the name or title "funeral director," "embalmer," or "direct disposer" when the person has not been licensed or registered pursuant to this chapter.

(c) Represent as his own the license or registration of another.

(d) Give false or forged evidence to the board, a member thereof, or the department for the purpose of obtaining a license or registration.

(e) Use or attempt to use a license or registration which has been suspended or revoked.

(f) Knowingly employ unlicensed persons in the practice of funeral directing, embalming, or direct disposing.

(g) Knowingly conceal information relative to violations of this chapter.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.032 Unlawful to remove or embalm body without consent of proper official when crime is suspected.—It is unlawful for a licensee or registrant to remove or embalm a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death until permission of the medical examiner or other lawfully authorized official has first been obtained.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.033 Sale of funeral merchandise.—If a licensee or registrant offers funeral merchandise for sale as part of his services to a consumer, he shall be subject to disciplinary action as provided in this chapter if he:

(1) When displaying any caskets, fails to display the least expensive casket offered for sale or use in adult funerals in the same general manner as the funeral service industry member's other caskets are displayed.

(2) Makes oral, written, or visual representations, directly or indirectly, that any funeral merchandise or service is offered for sale when such is not a bona fide offer to sell said merchandise or service.

(3) Discourages a customer's purchase of any fu-

neral merchandise or service which is advertised or offered for sale, with the purpose of encouraging the purchase of additional or more expensive merchandise or service, by disparaging its quality or appearance, except that true factual statements concerning features, design, or construction do not constitute disparagement; by misrepresenting its availability or any delay involved in obtaining it; or by suggesting directly or by implication that a customer's concern for price or expressed interest in inexpensive funeral merchandise or services is improper, inappropriate, or indicative of diminished respect or affection for the deceased.

(4) Fails to have the price of any casket offered for sale clearly marked on or in the casket, whether the casket is displayed at the funeral establishment or at any other location, regardless of whether the licensee or registrant is in control of such location. If a licensee uses books, catalogues, brochures, or other printed display aids, the price of each casket shall be clearly marked.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.034 Disclosure of information to public.—If a licensee or registrant offers to provide services to the public, he shall be subject to disciplinary action as provided in this chapter if he:

(1) Fails to reasonably provide by telephone, upon request, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that licensee or registrant or fails to disclose in response to a general telephone inquiry about the licensee's or registrant's offerings or prices that price information is available over the telephone.

(2) Fails to fully disclose all of his available services and merchandise prior to the selection of a casket. The full disclosure required shall identify what is included in the funeral or direct disposition and the prices of all services and merchandise provided by the licensee or registrant. Full disclosure shall also be made in the case of a funeral or direct disposition with regard to the use of funeral merchandise which is not to be disposed of with the body, and written permission shall be obtained from the purchaser.

(3) Makes any false or misleading statements of the legal requirement as to the conditions under which preservation of a dead human body is required or as to the necessity of a casket or outer burial container.

(4) Fails to disclose, when such disclosure is desired, the components of the prices for alternatives such as:

(a) Graveside service.

(b) Direct disposition.

(c) Body donation without any rites or ceremonies prior to the delivery of the body and prices of service if there are to be such after the residue has been removed following the use thereof.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.035 Itemized price lists.—A licensee shall be subject to disciplinary action as provided in this chapter if he:

(1) Fails to furnish for retention to anyone who inquires in person about the arrangement of funeral merchandise and services, before any discussion of selection, a printed or typewritten list concerning the retail prices for at least each of the following items, if regularly offered for sale:

(a) Transfer of the body to the funeral home.

(b) Embalming, together with the statement that embalming is not required by state law.

(c) Use of facilities for viewing.

(d) Use of facilities for funeral service.

(e) Use of hearse.

(f) Use of limousine.

(g) Other transportation.

(h) Casket price range with a statement that a complete price list is available.

(i) Alternative container price range.

(j) Outer burial container price range with a statement that a complete price list is available.

(k) Other professional services.

(2) Fails to include on the list provided in subsection (1) the name, address, and telephone number of the funeral establishment and the statement that the consumer may choose only the items he desires, that he will be charged for only those items he uses, and that there may be extra charges for other items such as cemetery fee and flowers.

(3) Fails to furnish for retention to each customer making arrangements a written agreement listing at least the following categories of services and merchandise, if selected by the customer, together with the price for each item:

(a) Embalming.

(b) Other preparation of the body.

(c) Use of facilities for viewing.

(d) Use of facilities for funeral ceremony.

(e) Services of funeral director and staff.

(f) Casket or alternative container as selected.

(g) Other specifically itemized charges for merchandise, services, facilities, or transportation.

(h) Specifically itemized cash advances, to the extent then known. If estimates are given, a written statement of the actual charges must be provided before the final bill is paid; provided that the charge for the item provided in paragraph (e) is to reflect only those services actually provided. The principal services actually provided for this charge must be specified in writing.

(4) Fails to include on the written agreement required by subsection (3) the name, address, and telephone number of the funeral home and the statement that charges are only for those items that are used and that, if the type of funeral selected requires extra items, an explanation will be given.

(5) Fails to include immediately below the items required by subsection (3) the signatures of the customer and the funeral director and the date signed.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976, as amended.

[1]470.036 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violation of any provision of s. 470.031 or s. 455.227(1).

(b) Attempting to procure, or procuring, a license to practice embalming or funeral directing by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(c) Having a license to practice funeral directing or embalming revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of embalming or funeral directing or the ability to practice embalming or funeral directing.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state, local, or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed funeral director or embalmer.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Fraud or deceit, or negligence, incompetency, or misconduct, in the practice of funeral directing or embalming.

(h) A violation or repeated violation of this chapter or of chapter 455 and any rules promulgated pursuant thereto.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failure to comply with a lawfully issued subpoena of the board or department.

(j) Practicing on a revoked, suspended, or inactive license.

(k) Misrepresentation or fraud in the conduct of the business of or profession of the licensee.

(l) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the disposition of dead human bodies.

(m) Making any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with funeral directing or embalming, on a preneed or at-need basis.

(n) Aiding or abetting an unlicensed person to practice any licensed activity.

(o) Violation of any state law or rule or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead bodies.

(p) Refusing to surrender promptly the custody of a dead human body upon the express order of the legally authorized person; however, this provision shall be subject to any state laws or rules governing custody or transportation of deceased human bodies.

(q) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for funeral directing business or embalming business, by the licensee, or his agent, assistant, or employee; however, this shall not prohibit the payment of commissions by a funeral director or funeral establishment to its agents registered pursuant to s. 470.028 or to licensees hereunder.

(r) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person.

(s) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(t) Embalming a deceased human body without first having obtained written or oral permission from a legally authorized person; however, washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded.

(u) Misrepresenting the amount advanced on behalf of a customer for any item of service or merchandise, including, but not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates, described as cash advances, accommodations, or words of similar import on the contract, final bill, or other written evidence of agreement or obligation furnished to customers; however, nothing herein shall require disclosure of a discount or rebate which may accrue to a licensee subsequent to making a cash advance.

(v) Making any false or misleading statement or claim that natural decomposition or decay of human remains can be prevented or substantially delayed by embalming, use of a sealed or unsealed casket, or use of a sealed or unsealed outer burial container.

(w) Solicitation by the licensee, or his agent, employee, or assistant, through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

(2) When the board finds any licensee guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.

(f) Restriction of the authorized scope of practice.

(3) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976, as amended.

[1]470.037 Prosecution of criminal violations.—The department shall report any criminal violation of this chapter to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.038 Reciprocity.—In order to ensure that funeral directors, embalmers, and direct disposers who are licensed or registered in this state may be considered for licensure or registration in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]470.039 Exceptions.—

(1) Nothing in this chapter shall be construed to limit the sale of caskets, alternative containers, outer burial containers, or funeral merchandise by any person.

(2) Nothing in this chapter shall be construed to override the written instructions or wishes of the deceased as to how his body is to be disposed of, if such instructions are reasonably available at the time of death.

History.—ss. 1, 5, ch. 79-231.

[1]**Note.**—Section 5, ch. 79-231, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

470.0395 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses or registrations shall be applied for and renewed in accordance with this chapter.

History.—ss. 3, 4, ch. 79-231.

CHAPTER 471

ENGINEERING

[1]**471.001 Purpose.**—The Legislature finds that, if incompetent engineers performed engineering services, physical and economic injury to the citizens of the state would result and, therefore, deems it necessary in the interest of public health and safety to regulate the practice of engineering in this state.

History.—ss. 1, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**471.003 Qualifications for practice, exemptions.—**

(1) No person other than a duly registered engineer shall practice engineering or use the name or title of "registered engineer" in this state.

(2) The following persons are not required to register under the provisions of ss. 471.001-471.039 as a registered engineer:

(a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly registered under the provisions of ss. 471.001-471.039.

(b) A person acting as a public officer employed by any state, county, municipal, or other governmental unit of this state when working on any project the total estimated cost of which is $10,000 or less.

(c) Regular full-time employees of a corporation not engaged in the practice of engineering as such, whose practice of engineering for such corporation is limited to the design or fabrication of manufactured products and servicing of such products.

(d) Regular full-time employees of a public utility or other entity subject to regulation by the Florida Public Service Commission, Federal Energy Regulatory Commission, or Federal Communications Commission.

(e) Employees of a firm, corporation, or partnership who are the subordinates of a person in responsible charge, registered under ss. 471.001-471.039.

(f) Any certified full-time faculty member teaching the principles and methods of engineering design in any college or university located in the state, as of July 1, 1979, and any such faculty member initially employed after July 1, 1979, for a period of 2 years from the date of employment.

(g) Any person as contractor in the execution of work designed by a professional engineer or in the supervision of the construction of work as a foreman or superintendent.

(h) A registered land surveyor who takes, or contracts for, professional engineering services incidental to his practice of land surveying and who delegates such engineering services to a registered professional engineer qualified within his firm or contracts for such professional engineering services to be performed by others who are registered professional engineers under the provisions of ss. 471.001-471.039.

(3) Notwithstanding the provisions of ss. 471.001-471.039 or of any other law, no registered engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to his engineering practice, nor is any registered architect, or employee or subordinate under the responsible supervision or control of the architect, precluded from performing engineering services which are purely incidental to his architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice engineering or use the designation "engineer" or any term derived therefrom.

History.—ss. 10, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**471.005 Definitions.**—As used in ss. 471.001-471.039:

(1) "Board" means the Board of Engineers.

(2) "Department" means the Department of Professional Regulation.

(3) "Engineer" includes the terms "professional engineer" and "registered engineer" and means a person who is registered to engage in the practice of engineering under ss. 471.001-471.039.

(4)(a) "Engineering" includes the term "professional engineering" and means any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of

engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

(b) A person shall be construed to practice or offer to practice engineering within the meaning and intent of ss. 471.001-471.039, who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself to be an engineer or, through the use of some other title, implies that he is an engineer or that he is registered under ss. 471.001-471.039; or who holds himself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(5) The term "engineer intern" means a person who has graduated from, or is in the final year of, an engineering curriculum approved by the board and has passed the fundamentals of engineering examination as provided by rules adopted by the board.

(6) "License" means the registration of engineers or certification of businesses to practice engineering in this state.

(7) "Certificate of authority" means a license to practice engineering issued by the department to a corporation or partnership.

History.—ss. 2, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.007 Board of Engineers.—

(1) There is created in the Department of Professional Regulation a Board of Engineers. The board shall consist of nine members, seven of whom shall be registered engineers and two of whom shall be lay persons who are not and have never been engineers or members of any closely related profession or occupation. Of the members who are registered engineers, three shall be civil engineers, one shall be either an electrical or electronic engineer, one shall be a mechanical engineer, one shall be an engineering educator, and one shall be from any discipline of engineering other than civil engineering.

(2) Initially, the Governor shall appoint four members for a term of 4 years, three members for a term of 3 years, and two members for a term of 2 years. Thereafter, members shall be appointed for 4-year terms.

(3) The engineer members of the Florida State Board of Professional Engineers and Land Surveyors who are serving as of June 30, 1979, shall continue to serve as members of the Board of Engineers until January 1, 1980, or until all members are appointed pursuant to this section and s. 20.30, whichever occurs first.

History.—ss. 3, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.009 Board headquarters.—The location of the Board of Engineers shall be in Leon County; provided, however, that this relocation shall be accomplished by January 1, 1980.

History.—ss. 3, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.011 Fees.—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $150. The fee for application for registration by endorsement shall not exceed $50. The biennial renewal fee shall not exceed $50. The board may also establish, by rule, a late renewal penalty. The fee for a temporary registration or certificate to practice engineering in this state shall not exceed $25 for an individual or $50 for a business firm. The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement ss. 471.001-471.039 and the provisions of law with respect to the regulation of engineers.

History.—ss. 4, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.013 Examinations; prerequisites.—

(1)(a) A person shall be entitled to take an examination for the purpose of determining whether he is qualified to practice in this state as an engineer if the person is of good moral character and:

1. Is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

2. Has, in lieu of such education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering.

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules shall be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

(b) A person shall be entitled to take an examination for the purpose of determining whether he is qualified to practice in this state as an engineer intern if he is in the final year of, or is a graduate of, an approved engineering curriculum in a school, college, or university approved by the board.

(2)(a) The board may refuse to certify an applicant for failure to satisfy [2]the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a registered engineer; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 5, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "the requirement of good moral character" were substituted for "this requirement" by the editors to conform to the apparent legislative intent evidenced by Senate Amendment 3 and House Amendment 3 to C.S. for S.B. 388. See 1979 Senate Journal, pp. 567 and 884.

[1]471.015 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to practice engineering and who has passed the licensing examination.

(2) The board shall certify for licensure any applicant who satisfies the requirements of s. 471.013. The board may refuse to certify any applicant who has violated any of the provisions of s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 471.013, has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 471.013, and has satisfied the experience requirements set forth in s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in this state at the time the license was issued.

(4) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for any act which would constitute a violation of ss. 471.001-471.039 or of chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 6, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.017 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 471.019.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 7, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.019 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 471.017 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 471.033.

History.—ss. 8, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

[1]471.021 Engineers and firms of other states; temporary certificates to practice in Florida.—

(1) Upon approval of the board and payment of the fee set in s. 471.011, the department shall grant a temporary registration for work on one specified project in this state for a period not to exceed 1 year to an engineer holding a certificate to practice in another state, provided Florida registrants are similarly permitted to engage in work in such state.

(2) Upon approval by the board and payment of the fee set in s. 471.011, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).

(3) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected

with or incidental to the practice of engineering for which the temporary license was issued.

History.—ss. 9, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.023 Certification of partnerships and corporations.—

(1) The practice of or the offer to practice engineering by registrants through a corporation or partnership offering engineering services to the public or by a corporation or partnership offering said services to the public through registrants under ss. 471.001-471.039 as agents, employees, officers, or partners is permitted only if the firm possesses a certification issued by the department pursuant to qualification by the board, subject to the provisions of ss. 471.001-471.039. One or more of the principal officers of the corporation or one or more partners of the partnership and all personnel of the corporation or partnership who act in its behalf as engineers in this state shall be registered as provided by ss. 471.001-471.039. All final drawings, specifications, plans, reports, or other papers or documents involving practices registered under ss. 471.001-471.039 which are prepared or approved for the use of the corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the registrant who prepared or approved them. Nothing in this section shall be construed to mean that a certificate of registration to practice engineering shall be held by a corporation. Nothing herein prohibits corporations and partnerships from joining together to offer engineering services to the public, provided that each corporation or partnership otherwise meets the requirements of this section. No corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing engineering be relieved of responsibility for professional services performed by reason of his employment or relationship with a corporation or partnership.

(2) For the purposes of this section, a certificate of authorization shall be required for a corporation, partnership, association, or person practicing under a fictitious name, offering engineering services to the public. However, when an individual is practicing engineering in his own given name, he shall not be required to register under this section.

(3) The fact that any registered engineer practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him. Corporations and stockholders who are engineers, or partnerships, and all partners, shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, officers, or partners while acting in a professional capacity.

(4) Persons seeking to incorporate under the provisions of this section shall first obtain approval from the department prior to filing articles of incorporation with the Department of State.

(5) Each certification of authorization shall be renewed every 2 years. Each partnership and corporation certified under this section shall notify the board within 1 month of any change in the information contained in the application upon which the certification is based.

(6) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered engineer.

History.—ss. 11, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.025 Seals.—

(1) The board shall prescribe, by rule, a form of seal to be used by registrants holding valid certificates of registration. Each registrant shall obtain an impression-type metal seal in the form aforesaid. All plans, specifications, plats, or reports prepared or issued by the registrant and being filed for public record shall be signed by the registrant, dated, and stamped with said seal. Such signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. It is unlawful for any person to stamp or seal any document with a seal after his certificate of registration has expired or been revoked or suspended, unless reinstated or reissued.

(2) When the certificate of registration of a registrant has been revoked or suspended by the board, it shall be mandatory that the registrant surrender his seal to the secretary of the board within a period of 30 days after the revocation or suspension has become effective. In the event the registrant's certificate has been suspended for a period of time, his seal shall be returned to him upon expiration of the suspension period.

(3) No registrant shall affix or permit to be affixed his seal or name to any plan, specification, drawing, or other document which depicts work which he is not licensed to perform or which is beyond his profession or specialty therein.

History.—ss. 12, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.027 Engineers authorized to enter lands of third parties under certain conditions.—Engineers are hereby granted permission and authority to go on, over, and upon the lands of others when necessary to make engineering surveys and, in so doing, to carry with them their agents and employees necessary for that purpose. Entry under the right hereby granted shall not constitute trespass, and engineers and their duly authorized agents or employees so entering shall not be liable to arrest or a civil action by reason of such entry; however, nothing in this section shall be construed as giving authority to said registrants, agents, or employees to destroy, injure, damage, or move anything on lands of another without the written permission of the landowner.

History.—ss. 17, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory

Reform Act of 1976, as amended.

[1]471.031 Prohibitions; penalties.—

(1) No person shall knowingly:

(a) Practice engineering unless the person is registered pursuant to ss. 471.001-471.039;

(b) Use the name or title "registered engineer" when the person is not registered pursuant to ss. 471.001-471.039;

(c) Present as his own the registration of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a registration;

(e) Use or attempt to use a registration which has been suspended, revoked, or placed on inactive status;

(f) Employ unlicensed persons to practice engineering; or

(g) Conceal information relative to violations of ss. 471.001-471.039.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 14, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 471.031 or s. 455.227(1);

(b) Attempting to procure a license to practice engineering by bribery or fraudulent misrepresentations;

(c) Having a license to practice engineering revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of engineering or the ability to practice engineering;

(e) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed engineer;

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(g) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetence, or misconduct, in the practice of engineering;

(h) Violation of chapter 455; or

(i) Practicing on a revoked, suspended, or inactive license.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.

(f) Restriction of the authorized scope of practice by the licensee.

(4) The department shall reissue the license of a disciplined engineer or business upon certification by the board that the disciplined person has complied with all of the terms and conditions set forth in the final order.

History.—ss. 15, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.035 Prosecution of criminal violations.— The board shall report any criminal violation of ss. 471.001-471.039 to the proper prosecuting authority for prompt prosecution.

History.—ss. 16, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.037 Effect of ss. 471.001-471.039 locally.—

(1) Nothing contained in ss. 471.001-471.039 shall be construed to repeal, amend, limit, or otherwise affect any local building code or zoning law or ordinance, now or hereafter enacted, which is more restrictive with respect to the services of registered engineers than the provisions of ss. 471.001-471.039.

(2) In counties or municipalities which issue building permits, such permits shall not be issued in any case in which it is apparent from the application for such building permit that the provisions of ss. 471.001-471.039 have been violated. However, this shall not authorize the withholding of building permits in any cases within the exempt classes set forth in ss. 471.001-471.039.

History.—ss. 13, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]471.039 Registrations remain in force.—Registrations of engineers in effect on June 30, 1979, shall remain in effect under ss. 471.001-471.039.

History.—ss. 18, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 472

LAND SURVEYING

[1]**472.001 Purpose.**—The Legislature finds that improper land surveying of land, water, and space presents a significant threat to the public and therefore deems it necessary to regulate land surveyors as provided in ss. 472.001-472.039.

History.—ss. 20, 42, ch. 79-243.
[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**472.003 Persons not affected by ss. 472.001-472.039.**—Sections 472.001-472.039 do not apply to:

(1) Any land surveyor working as a salaried employee of the United States Government when engaged in work solely for the United States Government.

(2) A registered professional engineer who takes or contracts for professional land surveying services incidental to his practice of engineering and who delegates such land surveying services to a registered professional land surveyor qualified within his firm or contracts for such professional land surveying services to be performed by others who are registered professional land surveyors under the provisions of ss. 472.001-472.039.

History.—ss. 29, 42, ch. 79-243.
[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**472.005 Definitions.**—As used in ss. 472.001-472.039:

(1) "Board" means the Board of Land Surveyors.

(2) "Department" means the Department of Professional Regulation.

(3) "Land surveyor" includes the term "professional land surveyor" and means a person who is registered to engage in the practice of land surveying under ss. 472.001-472.039.

(4)(a) "Practice of land surveying" means, among other things, any professional service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water, for the purpose of determining or establishing the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relocation, and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums.

(b) The practice of land surveying shall also include, but not be limited to, photogrammetric control; the monumentation and remonumentation of property boundaries and subdivisions; the measurement of and preparation of plans showing existing improvements after construction; the layout of proposed improvements; the preparation of descriptions for use in legal instruments of conveyance of real property and property rights; the preparation of subdivision planning maps and record plats, as provided for in chapter 177; the determination of, but not the design of, grades and elevations of roads and land in connection with subdivisions or divisions of land; and the creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them.

(5) The term "surveyor intern" includes the term "land surveyor-in-training" and means a person who complies with the requirements provided by ss. 472.001-472.039, and has passed an examination as provided by rules adopted by the board.

(6) The term "responsible charge" means direct control and personal supervision of land surveying work, but does not include experience as a chainman, rodman, instrumentman, ordinary draftsman, and other positions of routine work.

(7) The term "license" means the registration of land surveyors or the certification of businesses to practice land surveying in this state.

History.—ss. 21, 42, ch. 79-243.
[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**472.007 Board of Land Surveyors.**—

(1) There is created in the Department of Professional Regulation a Board of Land Surveyors. The board shall consist of [2]five members, [2]four of whom shall be registered land surveyors primarily engaged in the practice of land surveying and [2]one of whom shall be a lay person who is not and has never been a land surveyor or a member of any closely related profession or occupation.

(2) Initially, the Governor shall appoint two

members for a term of 4 years, two members for a term of 3 years, and one member for a term of 2 years. Thereafter, members shall be appointed for 4-year terms.

(3) The land surveyor members of the Florida State Board of Professional Engineers and Land Surveyors who are serving as of June 30, 1979, shall serve as members of the Board of Land Surveyors until January 1, 1980, or until all members are appointed pursuant to this section and s. 20.30, whichever occurs first.

History.—ss. 22, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—See s. 2, ch. 79-36, which amended s. 20.30 to provide that each board with five or more members shall have at least two lay members.

[1]**472.009 Board headquarters.**—The headquarters of the board shall be in Tallahassee.

History.—ss. 22, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**472.011 Fees.**—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $150. The fee for application for licensure by endorsement shall not exceed $100. The biennial renewal fee shall not exceed $50. The board may also establish, by rule, a late renewal penalty. The fee for a temporary registration or certificate to practice land surveying shall not exceed $25 for individuals or $50 for business firms. The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement ss. 472.001-472.039 and the provisions of law with respect to the regulation of land surveyors.

History.—ss. 23, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**472.013 Examinations, prerequisites.**—

(1) A person desiring to be licensed as a land surveyor shall apply to the department for licensure.

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a land surveyor if the applicant is of good moral character and has satisfied one of the following requirements:

(a) Is a graduate of an approved course of study in land surveying from a college or university recognized by the board and has a specific experience record of 2 or more years as a subordinate to a professional land surveyor in the active practice of land surveying, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the land surveying work performed. The course of study in land surveying shall have included not less than 32 semester hours of study, or its academic equivalent, in the science of land surveying or in board-approved land survey related courses. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge.

(b) Is a graduate of a 4-year course of study, other than in land surveying, at an accredited college or university and has a specific experience record of 4 or more years as a subordinate to a registered land surveyor in the active practice of land surveying, 3 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the land surveying work performed. The course of study in disciplines other than land surveying shall have included not less than 32 semester hours of study or its academic equivalent, 25 semester hours of which shall be in land surveying subjects or in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge.

(c) Has successfully completed a 32-semester hour, or its academic equivalent, course of study in land surveying or in board-approved, land survey related courses at an accredited college or university and has a specific experience record of 6 or more years as a subordinate to a registered land surveyor, 5 years of which shall be in active practice of land surveying of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the land surveying work performed. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge.

(d) Has successfully completed a specific experience record of 8 or more years as a subordinate to a land surveyor, 6 years of which shall be in the active practice of land surveying of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the land surveying work performed.

(3) A person shall be entitled to take an examination for the purpose of determining whether he is qualified to practice in this state as a land surveyor intern if the person is in the final year, or is a graduate, of an approved land surveying curriculum in a school which has been approved by the board.

(4) The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in land surveying in such schools or colleges. The rules shall be based on the educational requirements for land surveying as defined in s. 472.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

(5)(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for laws of this state and nation.

(b) The board may refuse to certify an applicant for failure to satisfy this requirement only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a registered land surveyor; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified

for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 24, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.015 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to practice land surveying.

(2) The board shall certify for licensure any applicant who satisfies the requirements of s. 472.013 and who has passed the licensing examination. The board may refuse to certify any applicant who has violated any of the provisions of s. 472.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 472.013, who has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 472.013, and who has satisfied the experience requirements set forth in s. 472.013; or

(b) Holds a valid license to practice land surveying issued by another state or territory of the United States if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in Florida at the time the license was issued.

(4) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for any act which would constitute a violation of ss. 472.001-472.039 or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 25, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.017 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and, if a demonstration of competency is required by law or rule, upon certification by the board that the licensee has satisfactorily demonstrated his competence in land surveying.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 472.019.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 26, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.019 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 472.017 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 472.033.

History.—ss. 27, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

[1]472.021 Certification of partnerships and corporations.—

(1) The practice of or the offer to practice [2]land surveying by registrants through a corporation or partnership offering land surveying services to the public, or by a corporation or partnership offering said services to the public through registrants under ss. 472.001-472.039 as agents, employees, officers, or partners, is permitted subject to the provisions of ss. 472.001-472.039, provided that one or more of the principal officers of the corporation or one or more partners of the partnership and all personnel of the corporation or partnership who act in its behalf as land surveyors in this state are registered as provided by ss. 472.001-472.39, and, further, provided that the corporation or partnership has been issued a certificate of authorization by the board as provided in this section. All final drawings, specifications, plans, reports, or other papers or documents involving the practice of land surveying which are prepared or approved for the use of the corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the registrant who prepared or approved them. Nothing in this section shall be construed to mean that a certificate of registration to practice land surveying shall be held by a corporation. No corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing land surveying be relieved of responsibility for professional services performed by reason of his employment or relationship with a corporation or partnership.

(2) For the purposes of this section, a certificate of authorization shall be required for a corporation, partnership, association, or person practicing under a fictitious name, offering land surveying services to the public; except, however, when an individual is practicing land surveying in his own given name, he shall not be required to register under this section.

(3) The fact that any registered land surveyor practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him. Corporations and stockholders who are land surveyors, or partnerships, and all partners, shall be jointly and severally liable for the negligence, misconduct or wrongful acts committed by their agents, employees, officers, or partners while acting in a professional capacity.

(4) Persons seeking to incorporate under the provisions of this section shall obtain approval from the department prior to filing articles of incorporation with the Department of State.

(5) Each certification of authorization shall be renewed every 2 years. Each partnership and corporation certified under this section shall notify the board within 1 month of any change in the information contained in the application upon which the certification is based.

(6) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered land surveyor.

History.—ss. 28, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "land surveying" were substituted for "any profession" by the editors.

[1]472.023 Land surveyors and firms of other states; temporary certificates to practice in this state.—

(1) Upon approval by the board and payment of a fee not to exceed $25, the department shall grant a temporary certificate for work on one specified project in this state and for a period not to exceed 1 year to a land surveyor holding a certificate to practice in another state, provided that Florida registrants are similarly permitted to engage in work in such state.

(2) Upon approval by the board and payment of a fee not to exceed $50, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).

(3) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of land surveying for which the temporary license was issued.

History.—ss. 30, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.025 Seals.—

(1) The board shall prescribe, by rule, a form of seal to be used by registrants holding valid certificates of registration. Each registrant shall obtain an impression-type metal seal in the form aforesaid; and all plans, specifications, plats, or reports prepared or issued by the registrant and being filed for public record shall be signed by the registrant, dated, and stamped with his seal. This signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. It shall be unlawful for any person to stamp or seal any document with a seal after his certificate of registration has expired or been revoked or suspended unless reinstated or reissued.

(2) When the certificate of registration of a registrant has been revoked or suspended by the board, the registrant shall surrender his seal to the secretary of the board within a period of 30 days after the revocation or suspension has become effective. In the event the registrant's certificate has been suspended for a period of time, his seal shall be returned to him upon expiration of the suspension period.

(3) No registrant shall affix or permit to be affixed his seal or name to any plan, specification, drawing, or other document which depicts work which he is not licensed to perform or which is beyond his profession or specialty therein.

History.—ss. 31, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.027 Minimum technical standards for land surveying.—The board shall adopt rules relating to the practice of land surveying which establish minimum technical standards to assure the achievement of [2]no less than minimum degrees of accuracy, completeness, and quality in order to assure adequate and defensible real property boundary locations and other pertinent information provided by land surveyors under the authority of ss. 472.001-472.039.

History.—ss. 36, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—the words "no less than" were inserted by the editors.

[1]472.029 Land surveyors authorized to enter lands of third parties under certain conditions.—Land surveyors may go on, over, and upon the lands of others when necessary to make land surveys, and, in so doing, to carry with them their agents and employees necessary for that purpose. Entry under the right hereby granted shall not constitute trespass, and land surveyors and their duly authorized agents or employees so entering shall not be liable to arrest or a civil action by reason of such entry; however, nothing in this section shall be construed as giving authority to registrants, agents, or employees to destroy, injure, damage, or move anything on lands of another without the written permission of the landowner.

History.—ss. 37, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory

Reform Act of 1976, as amended.

[1]472.031 Prohibitions; penalties.—

(1) No person shall:

(a) Practice land surveying unless such person is registered pursuant to ss. 472.001-472.039;

(b) Use the name or title "registered land surveyor" when such person has not registered pursuant to ss. 472.001-472.039;

(c) Present as his own the registration of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a registration; or

(e) Use or attempt to use a registration which has been suspended or revoked.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 33, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 472.031 or s. 455.227(1);

(b) Attempting to procure a license to practice land surveying by bribery or fraudulent misrepresentations;

(c) Having a license to practice land surveying revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of land surveying or the ability to practice land surveying;

(e) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a registered land surveyor;

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(g) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of land surveying;

(h) Violation of chapter 455; or

(i) Practicing on a revoked, suspended, or inactive license.

(2) The board shall specify, by rule, the acts or omissions which constitute a violation of subsection (1).

(3) When the board finds any land surveyor guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the land surveyor on probation for a period of time and subject to such conditions as the board may specify.

(f) Restriction of the authorized scope of practice by the land surveyor.

(4) The department shall reissue the license of a disciplined land surveyor upon certification by the board that he has complied with all of the terms and conditions set forth in the final order.

History.—ss. 34, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.035 Prosecution of criminal violations.— The board shall report any criminal violation of ss. 472.001-472.039 to the proper prosecuting authority for prompt prosecution.

History.—ss. 35, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.037 Application of ss. 472.001-472.039.—

(1) Nothing contained in ss. 472.001-472.039 shall be construed to repeal, amend, limit or otherwise affect any local building code or zoning law or ordinance, now or hereafter enacted, which is more restrictive with respect to the services of registered land surveyors than the provisions of ss. 472.001-472.039.

(2) In counties or municipalities which issue building permits, such permits shall not be issued in any case where it is apparent from the application for such building permit that the provisions of ss. 472.001-472.039 have been violated. However, this shall not authorize the withholding of building permits in any cases within the exempt classes set forth in ss. 472.001-472.039.

History.—ss. 32, 42, ch. 79-243.

[1]**Note.**—Section 42, ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]472.039 Registrations remain in force.—Registrations of land surveyors in effect on June 30, 1979, shall remain in effect under ss. 472.001-472.039.

History.—ss. 38, 42, ch. 79-243.

[1]**Note.**—Section 42. ch. 79-243, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 473

PUBLIC ACCOUNTANCY

[1]**473.301 Purpose.**—The Legislature recognizes that there is a public need for independent and objective public accountants and that it is necessary to regulate the practice of public accounting to assure the minimum competence of practitioners and the accuracy of audit statements upon which the public relies and to protect the public from dishonest practitioners and, therefore, deems it necessary in the interest of public welfare to regulate the practice of public accountancy in this state.

History.—ss. 1, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.302 Definitions.**—As used in this act:

(1) "Board" means the Board of Accountancy.

(2) "Department" means the Department of Professional Regulation.

(3) "Certified public accountant" means a person who holds a license to practice public accounting in this state under the authority of this act.

(4) "Practice of," "practicing public accountancy," or "public accounting" means:

(a) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of management advisory or consulting services, by a certified public accountant, or firm of certified public accountants, of this state, including the performance of such services in the employ of another person; or

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of management advisory or consulting services, by any other person holding himself or itself out as a certified public accountant or a firm of certified public accountants, including the performance of such services by a certified public accountant in the employ of a person so holding himself or itself out.

History.—ss. 2, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.303 Board of Accountancy.**—

(1) There is created in the Department of Professional Regulation a Board of Accountancy. The board shall consist of seven members, five of whom shall be certified public accountants and two of whom shall be lay persons who are not and have never been certified public accountants or members of any closely related profession or occupation. The members who are certified public accountants shall have practiced public accounting on a substantially full-time basis for at least 5 years.

(2) Initially, the Governor shall appoint two members for a term of 4 years, two members for a term of 3 years, two members for a term of 2 years, and one member for a term of 1 year. Thereafter, members shall be appointed for 4-year terms.

(3) The members of the State Board of Accountancy who are serving as of June 30, 1979, shall serve as members of the Board of Accountancy until January 1, 1980, or until all members are appointed pursuant to subsection (1) and s. 20.30, whichever occurs first.

History.—ss. 3, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.304 Rules of board.**—The board shall adopt all rules necessary to administer this act. Every licensee shall be governed and controlled by this act and the rules adopted by the board.

History.—ss. 3, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.305 Fees.**—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $150. The biennial renewal fee shall not exceed $150. The board may also establish, by rule, a late renewal penalty. The board shall establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants. Fees shall be based on department estimates of the revenue required to implement this act and the provisions of law with respect to the regulation of certified public accountants.

History.—ss. 4, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976.

[1]473.306 Examinations.—

(1) A person desiring to be licensed as a certified public accountant shall apply to the department for licensure.

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a certified public accountant if the applicant:

(a) Is of good moral character; and

(b) Has met the following educational requirements from an accredited college or university:

1. If application is made prior to August 2, 1983, a baccalaureate degree with a major in accounting or its equivalent with a concentration in accounting and business to the extent specified by the board.

2. If application is made after August 1, 1983, a baccalaureate degree or its equivalent with a major in accounting or its equivalent plus at least 30 semester or 45 quarter hours in excess of those required for a 4-year baccalaureate degree, with a concentration in accounting and business in the total educational program to the extent specified by the board.

(3) The board shall have the authority to establish the standards for determining and shall determine:

(a) Which educational institutions, in addition to the universities in the State University System of Florida, shall be deemed to be accredited colleges or universities;

(b) What courses and number of hours constitute a major in accounting;

(c) What courses and number of hours constitute additional accounting courses acceptable under subparagraph (2)(b)2.; and

(d) What courses and number of hours constitute an additional 1 year of accounting courses, acceptable in lieu of 1 year of employment, under s. 473.307(2).

(4)(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The board may refuse to certify an applicant for failure to satisfy this requirement only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 5, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.307 Experience.—If application is made prior to August 2, 1983, an applicant who passes the examination shall be entitled to be licensed as a certified public accountant pursuant to s. 473.308 if the applicant:

(1) Has worked for a period of at least 1 year under the supervision of a certified public accountant engaged in the full-time practice of public accounting; or

(2) Has successfully completed at least 1 additional year of accounting courses at an accredited college or university.

History.—ss. 6, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.308 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to practice public accounting.

(2) The board shall certify for licensure any applicant who satisfies the requirements of ss. 473.306 and 473.307 or ss. 473.309 and 473.3101. The board may refuse to certify any applicant who has violated any of the provisions of s. 473.322.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 473.306, who has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 473.306, and who has satisfied the experience requirements set forth in s. 473.307; or

(b) Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria which existed in this state at the time the license was issued.

(4) The board may refuse to certify for licensure any applicant who is under investigation in another state for any act which would constitute a violation of this act or chapter 455, until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 7, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.309 Partnerships and professional service corporations.—

(1) A partnership shall not engage in the practice of public accounting in this state unless it meets the following requirements:

(a) At least one general partner and each partner domiciled in this state is a certified public accountant of this state and holds an active license;

(b) Each partner is a certified public accountant in some state; and

(c) The partnership is currently licensed as required by this act.

(2) A corporation shall not engage in the practice of public accounting in this state unless it meets the following requirements:

(a) It is a professional service corporation duly

organized in this or any other state;

(b) Each shareholder of the corporation is licensed as a certified public accountant in some state and is principally engaged in the business of the corporation;

(c) The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation is a certified public accountant in some state;

(d) At least one shareholder of the corporation, and each shareholder, director, and officer domiciled in this state having authority over the practice of public accounting by the corporation, is a certified public accountant;

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization and adequate public liability insurance; and

(f) It is currently licensed as required by this act.

History.—ss. 8, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.3101 Licensure of partnerships and corporations.—

(1) Each partnership or corporation desiring to engage in the practice of public accounting in this state shall file an application for licensure with the department and supply such information as the board may, by rule, require. Applications shall be made upon the affidavit of a general partner or shareholder who is a certified public accountant.

(2) The board shall determine whether the partnership or corporation meets the requirements for practice and, pending that determination, may certify to the department the partnership or corporation for provisional licensure.

(3) Each license shall be renewed every 2 years. Each partnership or corporation licensed under this section shall notify the department within 1 month of any change in the information contained in the application on which the license is based.

History.—ss. 9, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.311 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the board that the licensee has satisfactorily demonstrated his competence in public accounting.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 473.313.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 11, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.312 Periodic demonstration of competency.—As part of the license renewal procedure, the board shall, by rule, require licensees to periodically demonstrate their competence in public accounting by completing, each two years, not less than 48 or more than 80 classroom hours of continuing professional education programs in public accounting subjects approved by the board.

(1) Not less than 25 percent of the total hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.

(2) Programs of continuing professional education approved by the board shall be formal programs of learning which contribute directly to the professional competency of an individual following licensure to practice public accounting and may be any of the following:

(a) Professional development programs of the American Institute of Certified Public Accountants, state societies of certified public accountants, [2]or other organizations.

(b) Technical sessions at meetings of the American Institute of Certified Public Accountants, state societies, chapters, [2]or other organizations.

(c) University and college courses.

(d) Formal organized in-firm education programs.

History.—ss. 10, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]Note.—The word "or" was substituted for "and" by the editors.

[1]473.313 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 473.311 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed one-half of the requirements in s. 473.312 for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 473.323.

History.—ss. 12, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]Note.—The words "for all years" were inserted by the editors.

[1]473.314 Temporary license.—

(1) The board shall adopt rules providing for the issuance of temporary licenses to certified public accountants or firms of other states, for the purpose of enabling them or their employees to perform specific engagements involving the practice of public accountancy in this state. No temporary license shall be valid for more than 90 days after its issuance, and no license shall cover more than one engagement. After the expiration of 90 days, a new license shall be required.

(2) Each application for a temporary license shall state the names of all persons who are to enter this state and shall be accompanied by a fee in an amount established by the board not to exceed $200.

(3) A temporary license shall not be required of a person entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters.

(4) Upon certification [2]of the applicant by the board, the department shall issue a temporary license to the applicant.

(5) The application for a temporary license shall constitute the appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with, or incidental to, the practice of public accounting for which the temporary license was issued.

History.—ss. 13, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]Note.—The words "of the applicant" were inserted by the editors.

[1]473.315 Independence, technical standards.—

(1) A certified public accountant shall not express an opinion on the financial statements of an enterprise unless he and his firm are independent with respect to such enterprise.

(2) A certified public accountant shall not undertake any engagement in the practice of public accounting which he or his firm cannot reasonably expect to complete with professional competence.

(3) The board shall adopt rules establishing the standards of practice of public accounting, including, but not limited to, independence, competence, and technical standards.

History.—ss. 14, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.316 Communications between the accountant and client privileged.—

(1) For purposes of this section:

(a) An "accountant" is a certified public accountant.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.

(c) A communication between an accountant and his client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.

2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The accountant, but only on behalf of the client. The accountant's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no accountant-client privilege under this section when:

(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.

(b) A communication is relevant to an issue of breach of duty by the accountant to his client or by the client to his accountant.

(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.

(5) Communications are not privileged from disclosure in any disciplinary investigation or proceeding conducted pursuant to this act by the department or before the board or in any judicial review of such a proceeding. In any such proceeding, a certified public accountant or public accountant, without the consent of his client, may testify with respect to any communication between him and his client or be compelled, pursuant to a subpoena of the department or the board, to testify or produce records, books, or papers. Such a communication disclosed to the board and records of the board relating to the communication shall for all other purposes and proceedings be a privileged communication in all of the courts of this state.

History.—ss. 15, 25, ch. 79-202.

[1]Note.—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.317 Competitive negotiation.—

(1) A licensee shall not make a competitive bid for a professional engagement in which the licensee will attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed.

(2) As used in this section, "competitive bid"

means the submission of an offer to a prospective client, as distinguished from an existing client, or representative thereof, by a licensee, either orally or in writing, directly or indirectly, as either a prime contractor, a subcontractor, or a subcontractor using a prime contractor as a conduit, to perform a professional engagement for an estimated fee, a fixed fee, or a basis of fee when the surrounding facts and circumstances indicate that another licensee will be asked to make an offer, has been asked to make an offer, or has made an offer which has not been rejected to perform the same professional engagement for an estimated fee, a fixed fee, or basis of fee as defined in this section. The performance of an engagement for a specific purpose, which engagement by its nature is not expected to recur, does not create an "existing client" relationship.

(3) The term "subcontractor" as used in this section means a subcontractor whose actions, together with the surrounding facts and circumstances, are in such a manner as to make him a party to a competitive bid or bids, either with respect to a specific engagement or as a result of a series of engagements with the same prime contractor, without regard to whether a subcontract is entered into before or after the bid.

(4) A licensee may respond to any request from a person or entity for a proposal giving qualifications and other factual information, excluding any quotation as to basis of fee.

(5) If a licensee's proposal in subsection (4) is the only proposal received or accepted by a person or entity, the licensee may negotiate a basis of fee for that engagement. If a person or entity receives more than one proposal for the same engagement, the person or entity may rank, in order of preference, the licensee to perform the engagement. The licensee ranked first may then negotiate a contract with the person or entity giving, among other things, a basis of fee for that engagement. Should the person or entity be unable to negotiate a satisfactory contract with that licensee, negotiations with that licensee shall be formally terminated, and the person or entity shall then undertake negotiations with the second-ranked licensee. Failing accord with the second-ranked licensee, negotiations shall be terminated and undertaken with the third-ranked licensee. Negotiations with the other ranked licensees shall be undertaken in the same manner. Once negotiations have been undertaken with a subsequent licensee, a licensee shall not contract with the requesting person or entity for the same engagement.

History.—ss. 16, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.318 Ownership of working papers.**—All statements, records, schedules, working papers, and memoranda made by a licensee or his employee incident to, or in the course of, professional services to a client, except the reports submitted by the licensee to the client and except for records which are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary.

History.—ss. 17, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.319 Contingent fees.**—Public accounting services shall not be offered or rendered for a fee contingent upon the findings or results of such service. This section does not apply to services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for purposes of this section.

History.—ss. 18, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.321 Fictitious names.**—

(1) No certified public accountant, partnership, or corporation shall practice public accountancy in this state under any name which is misleading or deceptive as to the legal form; as to persons who are partners, officers, or shareholders of the firm; or as to any other matter. However, a firm name may include the names of retired or deceased persons who were such active partners or shareholders of a firm.

(2) This section shall not prohibit any licensee from practicing public accounting under a fictitious name which is not misleading or deceptive as to the persons who are partners, officers, or shareholders.

(3) The board shall adopt rules for interpretation of this section.

History.—ss. 19, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**473.322 Prohibitions; penalties.**—

(1) No person shall knowingly:

(a) Practice public accounting unless the person is a certified public accountant or a public accountant;

(b) Assume or use the titles or designations "certified public accountant" or "public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person holds an active license under this act, unless such person holds an active license under this act;

(c) Attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed unless such person holds an active license under this act. This subsection shall not prevent the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon.

(d) Present as his own the license of another;

(e) Give false or forged evidence to the board or

a member thereof for the purpose of obtaining a license;

(f) Use or attempt to use a public accounting license which has been suspended, revoked, or placed on inactive status;

(g) Employ unlicensed persons to practice public accounting; or

(h) Conceal information relative to violations of this act.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 20, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.323 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 473.317, s. 455.227(1), or any other provision of this act;

(b) Attempting to procure a license to practice public accounting by bribery or fraudulent misrepresentations;

(c) Having a license to practice public accounting revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting;

(e) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a certified public accountant;

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(g) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of public accounting;

(h) Violation of any rule adopted pursuant to this act or chapter 455;

(i) Practicing on a revoked, suspended, or inactive license;

(j) Suspension or revocation of the right to practice before any state or federal agency;

(k) Performance of any fraudulent act while holding a license to practice public accounting; or

(l) Engaging in direct, in-person, uninvited solicitation of a specific potential client, except to the extent that such solicitation constitutes the exercise of constitutionally protected speech as determined by the rules of the board.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any licensee guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.

(f) Restriction of the authorized scope of practice by the certified public accountant.

(4) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.—ss. 21, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.324 Prosecution of criminal violations.—The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 22, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]473.325 Certificates to remain in effect; public accountants licensed as certified public accountants.—All certificates issued by the State Board of Accountancy in effect on June 30, 1979, shall remain in effect under this act. Public accountants licensed as such by the State Board of Accountancy on June 30, 1979, shall be licensed by the department as certified public accountants.

History.—ss. 23, 25, ch. 79-202.

[1]**Note.**—Section 25, ch. 79-202, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

CHAPTER 474

VETERINARY MEDICAL PRACTICE

[1]474.201 Purpose.—The Legislature finds that the practice of veterinary medicine is potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners. The legislative purpose in enacting this chapter is to ensure that every veterinarian practicing in this state meet minimum requirements for safe practice. It is the legislative intent that veterinarians who are not normally competent or who otherwise present a danger to the public shall be disciplined or prohibited from practicing in this state.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.202 Definitions.—As used in this chapter:

(1) "Board" means the Board of Veterinary Medicine.

(2) "Department" means the Department of Professional Regulation.

(3) "Veterinarian" means a person who is licensed to engage in the practice of veterinary medicine in Florida under the authority of this chapter.

(4) "Practice of veterinary medicine" means diagnosing, prescribing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature, including surgery or acupuncture, for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals; performing any manual procedure for the diagnosis or treatment for sterility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions.

(5) "Responsible supervision" or words of similar purport mean the control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services which he delegates to unlicensed personnel.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.203 Exemptions.—This chapter shall not apply to:

(1) An individual who teaches veterinary medicine at a school, college, or university while engaged in the performance of his official duties.

(2) A student in a school or college of veterinary medicine while in the performance of duties assigned by his instructor or when working as an intern under the immediate supervision of a licensee.

(3) Any doctor of veterinary medicine in the employ of a state agency or the United States Government while actually engaged in the performance of his official duties; however, this exemption shall not apply to such person when he is not engaged in carrying out his official duties or is not working at the installations for which his services were engaged.

(4) Any person, or his regular employee, administering to the ills or injuries of his own animals, including, but not limited to, castration and spaying of animals and dehorning of cattle, unless title has been transferred or employment provided for the purpose of circumventing this law.

(5) State agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof, which or who conduct experiments and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment, or techniques for the diagnosis or treatment of human ailments, or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems of the practice of veterinary medicine.

(6) Any veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian who administers medication or renders auxiliary or supporting assistance under the responsible supervision of such licensed practitioner. However, the licensed veterinarian shall be responsible for all such acts performed by persons under his supervision.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.204 Board of Veterinary Medicine.—

(1) To carry out the provisions of this chapter, there is created within the Department of Professional Regulation a Board of Veterinary Medicine consisting of seven members, who shall be appointed by the Governor, subject to confirmation by the Senate.

(2) Five members of the board shall be licensed veterinarians. Two members of the board shall be lay persons who are not and have never been veterinarians or members of any closely related profession or occupation.

(3) Within 30 days after June 30, 1979, the Governor shall appoint two members for a term of 4

years, two members for a term of 3 years, and three members for a term of 2 years.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on July 1, 1979, shall continue to serve as members of the Board of Veterinary Medicine until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of regulatory boards shall apply.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.205 Headquarters.—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.206 Authority to make rules.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.207 Licensure by examination.—

(1) Any person desiring to be licensed as a veterinarian shall apply to the department to take a licensure examination. The examination shall include the subject of the laws of this state which govern the practice of veterinary medicine. The board may, by rule, adopt use of a national examination in lieu of part or all of the examination required by this section. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an examination fee set by the board not to exceed $250.

(b) Graduated from a college of veterinary medicine which has been approved by the board according to standards set by rule of the board. However, these standards shall be substantially equivalent to the standards established by an accrediting agency approved by the United States Office of Education. The board may approve veterinary schools not meeting such standards if it develops by rule a procedure for reviewing such schools in order to ensure that graduates of such schools are minimally competent to practice in this state.

(c) Passed the examination given by the National Board of Veterinary Medical Examiners, with a reasonable passing score to be set by rule of the board.

(2) The department shall issue a license to practice veterinary medicine to any applicant who successfully completes the examination in accordance with this section.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.209 Applicants for temporary permits.—

(1) The board may issue, without examination, a temporary permit to practice veterinary medicine to an applicant for licensure, provided such applicant meets all conditions and requirements of s. 474.207 relating to the qualification of applicants for license to practice veterinary medicine. Any person applying for a temporary permit shall associate himself with a licensed doctor of veterinary medicine; his work shall be limited to the practice of the licensed doctor of veterinary medicine; and he shall not participate without direct supervision in the practice or operation of a branch office, clinic, or allied establishment. The permit, when granted, shall bear the name and address of the licensed doctor of veterinary medicine. The applicant must present himself for examination at the next scheduled examination of the board. There shall be a $25 fee, which shall not be refundable, for the temporary permit.

(2) An applicant who holds a current and valid license to practice veterinary medicine in another state of the United States may apply for and receive a temporary permit at any time. An applicant unlicensed in another state of the United States may apply for and receive a temporary permit only within 90 days prior to the next scheduled examination of the board.

(3) No more than one temporary permit may be issued to an individual. No temporary permit shall be issued to an applicant who has previously failed the examination.

(4) All temporary permits shall expire on the day following the announcement of the grades of the first examination given after such temporary permit is issued; when the temporary permitholder fails to appear for the next regularly scheduled examination following issuance of said permit; or upon issuance of licensure by endorsement, whichever shall occur first.

(5) Acceptance of a temporary permit by an applicant shall be deemed to be consent for expiration of that permit in accordance with the provisions of this chapter.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.211 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 474.212.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal

and possible reversion to the last known address of the licensee.

History.—ss. 1, 2, ch. 79-228.

[1]Note.—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.212 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 474.211 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition for reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 474.214.

History.—ss. 1, 2, ch. 79-228.

[1]Note.—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[2]Note.—The words "for all years" were inserted by the editors.

[1]474.213 Prohibitions; penalties.—

(1) No person shall:

(a) Practice veterinary medicine unless the person holds an active license to practice veterinary medicine;

(b) Use the name or title "veterinarian" when the person has not been licensed pursuant to this chapter;

(c) Present as his own the license of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license;

(e) Use or attempt to use a veterinarian's license which has been suspended or revoked;

(f) Knowingly employ unlicensed persons in the practice of veterinary medicine; or

(g) Knowingly conceal information relative to violations of this chapter.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, ch. 79-228.

[1]Note.—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.214 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violating any provision of s. 474.213 or s. 455.227(1).

(b) Attempting to procure a license to practice veterinary medicine by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(c) Having a license to practice veterinary medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of veterinary medicine or the ability to practice veterinary medicine.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed veterinarian.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) A violation or repeated violation of this chapter, chapter 455, or any rules promulgated pursuant thereto.

(h) Practicing with a revoked, suspended, or inactive license.

(i) Being unable to practice veterinary medicine with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition. A licensee affected under this paragraph shall have the opportunity, at reasonable intervals, to demonstrate that he can resume the competent practice of veterinary medicine with reasonable skill and safety to patients.

(j) Violation of a lawful order of the board or department previously entered in a disciplinary hearing, or failure to comply with a lawfully issued subpoena of the board or department.

(k) Judicially determined mental incompetency. However, a license suspended for this cause may be reinstated upon legal restoration of the [2]competency of the individual whose license was so suspended.

(l) Knowingly maintaining a professional connection or association with any person who is in violation of the provisions of this chapter or the rules of the board.

(m) Paying or receiving kickbacks, rebates, bonuses, or other remuneration for receiving a patient or client or for referring a patient or client to another provider of veterinary services or goods.

(n) Performing or prescribing unnecessary treatment.

(o) Fraud in the collection of fees from consumers or any person, agency, or organization paying fees to practitioners.

(p) Attempting to restrict competition in the field of veterinary medicine other than for the protection of the public. However, this provision shall not apply to testimony made in good faith at a hearing or other proceeding in which the subject is the

revocation of a license or a lesser penalty.

(q) Fraud or deceit, or negligence, incompetency, or misconduct, in the practice of veterinary medicine.

(r) Conviction on a charge of cruelty to animals.

(s) Permitting or allowing another to use a veterinarian's license for the purpose of treating or offering to treat sick, injured, or afflicted animals.

(t) Maintaining a professional or business connection with any other person who continues to violate any of the provisions of this chapter or rules of the board after 10 days' notice in writing by the board.

(u) Willfully making any misrepresentations in connection with the inspection of food for human consumption.

(v) Fraudulently issuing or using any false health certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine relating to the presence or absence of animal disease or transporting animals or issuing any false certificate relating to the sale of inedible products of animal origin for human consumption.

(w) Fraud or dishonesty in applying, treating, or reporting on tuberculin, diagnostic, or other biological tests.

(x) Failing to keep the equipment and premises of the business establishment in a clean and sanitary condition or having a premises permit suspended or revoked pursuant to s. 474.215.

(y) Refusing to permit the department to inspect the business premises of the licensee during regular business hours.

(z) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs as defined in chapter 465, or controlled substances as defined in chapter 893, for use other than for the specific treatment of animal patients.

(aa) Providing, prescribing, ordering, or making available for human use medicinal drugs or drugs as defined in chapter 465, controlled substances as defined in chapter 893, or any material, chemical, or substance used exclusively for animal treatment.

(2) When the board finds any veterinarian guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the veterinarian on probation for a period of time and subject to such conditions as the board may specify, including requiring the veterinarian to attend continuing education courses or to work under the supervision of another veterinarian.

(f) Restricting the authorized scope of practice.

(3) The department shall reissue the license of a disciplined veterinarian upon certification by the board that the disciplined veterinarian has complied with all of the terms and conditions set forth in the final order.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[2]**Note.**—The words "competency of the" were inserted by the editors.

[1]474.215 Premises permits.—

(1) Any establishment where a licensed veterinarian practices must have a premises permit issued by the department. Upon application and payment of a $25 fee, the department shall cause such establishment to be inspected. A premises permit shall be issued if the establishment meets minimum standards, to be adopted by rule of the board, as to sanitary conditions and physical plant. In lieu of the above procedure, the department may issue a premises permit to any premises which is accredited by a recognized organization whose standards meet or exceed board minimum standards, as established by rule.

(2) Each application for a premises permit shall set forth the name of the licensed veterinarian who will be responsible for the management of the premises.

(3) The premises permit may be revoked, suspended, or denied when inspection reveals that the premises do not meet the standards set by rule or when the license of the responsible veterinarian has been suspended or revoked.

(4) The board may, after notice and hearing, impose a penalty against any owner, operator, or responsible veterinarian of any premises operating without a premises permit in violation of this section or any rule promulgated by the board. No penalty so imposed shall exceed $1,000 for each count or separate offense.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.216 License and premises permit to be displayed.—Each person to whom a license or premises permit is issued shall keep such license conspicuously displayed in his office, place of business, or place of employment and shall, whenever required, exhibit said license to any member or authorized representative of the board.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.217 Reciprocity.—In order to ensure that veterinarians licensed in this state may be considered for licensure in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.218 Prosecution of criminal violations.—The department shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 2, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

[1]474.219 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of chapter 474.

(2) All licenses or permits valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses or permits shall be applied for and renewed in accordance with this act.

History.—ss. 2, 4, 5, ch. 79-228.

[1]**Note.**—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

CHAPTER 475

REAL ESTATE BROKERS, SALESMEN, AND SCHOOLS

[1]**475.001 Purpose.**—The Legislature finds that a significant number of real property transactions are facilitated by real estate brokers and salesmen and that it is necessary to assure the minimal competence of real estate practitioners in order to protect the public from potential economic loss; therefore, the Legislature deems it necessary in the interest of the public welfare to regulate real estate brokers, salesmen, and schools in this state.

History.—ss. 1, 42, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.01 Definitions.**—As used in this chapter:

(1) "Board" means the Board of Real Estate.

(2) "Department" means the Department of Professional Regulation.

(3) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. The term "broker" also includes any person who is a partner, officer, or director of a partnership or corporation which acts as a broker.

(4) "Salesman" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person.

(5) "Broker-salesman" means a person who is registered as a broker, but who performs the duties of a salesman for another person, and who is designated as a broker-salesman in the registration list of the board.

(6) "Real property" or "real estate" means any interest or estate in land, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(7) The terms "employ," "employment," "employer," and "employee," when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a salesman, include an independent contractor relationship when such relationship is intended by and established between a broker and a salesman. The existence of such relationship shall not relieve either the

broker or the salesman of his duties, obligations, or responsibilities under this chapter.

(8) Wherever the word "operate" or "operating" as a broker, a broker-salesman, or a salesman shall appear in this chapter, or in any order, rule, or regulation of the board, or in any pleading, indictment, or information under this chapter, or in any court action or proceeding, or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in s. 475.01(3) as constituting or defining a broker or salesman, not including, however, any of the exceptions stated therein. A single such act shall be sufficient to bring a person within the meaning of this chapter, and each act shall, if prohibited herein, constitute a separate offense.

History.—s. 1, ch. 12223, 1927; CGL 4062; s. 1, ch. 29983, 1955; s. 1, ch. 59-199; s. 1, ch. 59-197; s. 1, ch. 59-438; ss. 30, 35, ch. 69-106; s. 1, ch. 75-112; s. 7, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-239; s. 1, ch. 77-355; s. 1, ch. 77-457; s. 1, ch. 78-215; s. 1, ch. 78-366; ss. 2, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.011 Exemptions.—This chapter does not apply to:

(1) Any person acting as an attorney-in-fact for the purpose of the execution of contracts or conveyances only; or as an attorney-at-law within the scope of his duties as such; or as the personal representative, receiver, trustee, or master under or by virtue of an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof is charitable, is philanthropic, or provides for those having a natural right to the bounty of the donor or trustor;

(2) Any person who deals with property in which he is a part owner, unless he receives a larger share of the proceeds or profits from the transaction than his proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging, or leasing the property;

(3) Any corporation, partnership, limited partnership, or joint venture which deals with property in which it is a part owner, unless it receives a larger share of the proceeds or profits from the transaction than its proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging, or leasing the property.

(4) Any employee of a public utility, a rural electric cooperative, a railroad, or the Department of Transportation who acts within the scope of his employment, for which no compensation in addition to the employee's salary is paid, to buy or lease any real property, or any interest in real property, for the use of his employer;

(5) One resident manager of an apartment building complex and one nonresident manager of such complex who are employed by a registered broker or by the owner of the apartment building complex to lease the residential apartments in such complex; or

(6) Any person employed as, or acting in the capacity of, a manager of a condominium or cooperative apartment building as a result of any activities or duties which he may have in relation to the renting of individual units within such a condominium or cooperative apartment if such manager is acting on behalf of a tenant owning or having an interest in no more than one unit within the condominium or cooperative apartment and if rentals arranged by him are for periods no greater than 1 year.

History.—ss. 3, 42, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.02 Board of Real Estate.—

(1) There is created within the Department of Professional Regulation a Board of Real Estate. The board shall consist of seven members, five of whom shall be licensed brokers and two of whom shall be lay persons who are not and have never been brokers, salesmen, or members of any closely related profession or occupation.

(2) Initially, the Governor shall appoint two members for a term of 4 years, two members for a term of 3 years, two members for a term of 2 years, and one member for a term of 1 year. Thereafter, members shall be appointed for 4-year terms.

(3) The members of the Florida Real Estate Commission who are serving as of June 30, 1979, shall continue to serve as members of the Board of Real Estate until January 1, 1980, or until all members are appointed pursuant to subsection (1) and s. 20.30, whichever occurs first.

History.—ss. 2, 3, ch. 12223, 1927; CGL 4063, 4064; ss. 30, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.03 Board may delegate duties to individual member.—Any of the duties and powers of the board, except disciplinary powers and the power to adopt rules, may be delegated, by resolution, to any member; but the chairman may exercise such duties and powers without such resolution.

History.—s. 4, ch. 12223, 1927; CGL 4065; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.04 Duty of board to educate members of profession.—

(1) The board shall foster the education of brokers, broker-salesmen, salesmen, and instructors concerning the ethical, legal, and business principles which should govern their conduct.

(2) For the purpose of performing its duty to educate registrants under subsection (1), the board may conduct, offer, sponsor, prescribe, or approve real estate educational courses for all persons licensed by the department as brokers, broker-salesmen, salesmen, or instructors, and the cost and expense of such courses shall be paid as provided for other expenses of the board by s. 475.12.

(3) The board may also publish and sell, at a reasonable price intended to cover costs, a handbook on this chapter and other publications intended to be textbooks or guidelines for study and guidance of students, applicants, licensees, and members of the general public, copyright of which shall be the property of the State of Florida.

History.—s. 5, ch. 12223, 1927; CGL 4066; s. 1, ch. 59-200; s. 1, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed

on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.05 Power of board to enact bylaws, rules, and regulations and decide questions of practice.—The board may enact bylaws and regulations for its own government, and rules and regulations in the exercise of its powers, not in conflict with the constitution and laws of the United States or of this state, and amend the same at its pleasure. The board may decide questions of practice arising in the proceedings before it, having regard to this chapter and the rules and regulations then in force. Printed copies of rules and regulations, or written copies under the seal of the board, shall be prima facie evidence of their existence and substance, and the courts shall judicially notice such rules and regulations. The conferral, or enumeration, of specific powers elsewhere in this chapter shall not be construed as a limitation of the general powers conferred by this section.

History.—s. 6, ch. 12223, 1927; CGL 4067; s. 2, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.10 Seal.—The board shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chairman and authenticated by said seal, shall be prima facie evidence thereof in all the courts of this state.

History.—s. 11, ch. 12223, 1927; CGL 4072; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 8, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.125 Fees.—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $100. The biennial renewal fee shall not exceed $100. The board may also establish, by rule, a late renewal penalty. The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on estimates made by the department of the revenue required to implement this chapter and other provisions of law relating to the regulation of real estate practitioners.

History.—ss. 9, 42, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.15 Registration of licenses of members of firm, etc., required.—Each partnership or corporation which acts as a broker shall register with the board and shall renew the licenses of its members, officers, and directors for each license period. The registration of such partnership shall be canceled automatically during any period of time that licenses of any of its partners are not in force. If the license of at least one active broker member is not in force, the registration of such corporation shall be canceled automatically during that period of time.

History.—s. 16, ch. 12223, 1927; CGL 4077; s. 4, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.17 Qualifications for practice.—

(1) An applicant for licensure who is a natural person shall be 18 years of age, a bona fide resident of the state, honest, truthful, trustworthy, and of good character and shall have a good reputation for fair dealing. An applicant for an active broker's license or a salesman's license shall be competent and qualified to make real estate transactions and conduct negotiations therefor with safety to investors and to those with whom he may undertake a relationship of trust and confidence. If the applicant has been denied registration or a license or has been disbarred, or his registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by this or any other state, any nation, possession, or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revoking or suspending his license under this chapter had the applicant then been registered, the applicant shall be deemed not to be qualified, unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it shall appear to the board that the interest of the public and investors will not likely be endangered by the granting of registration.

(2) In addition to other requirements under this chapter, the board may require the satisfactory completion of one or more of the educational courses or equivalent courses conducted, offered, sponsored, prescribed, or approved pursuant to s. 475.04, taken at an accredited college, university, or community college or at a registered real estate school, as a condition precedent for any person to become licensed or to renew his license as a broker, broker-salesman, or salesman. The course or courses required for one to become initially licensed shall not exceed a total of 51 classroom hours of 50 minutes each, inclusive of examination, for a salesman and 48 classroom hours of 50 minutes each, inclusive of examination, for a broker. No person shall be registered as a real estate broker unless, in addition to the other requirements of law, he shall have held an active real estate salesman's registration certificate in the office of one or more registered real estate brokers for at least 12 months during the preceding 5 years. The satisfactory completion of an examination administered by the accredited college, university, or community college or by the registered real estate school shall be the basis for determining satisfactory completion of the course. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 6 classroom hours. When such requirement is made, provisions shall be made to make such course or courses available by correspondence or other suitable means to any person who, by reason of hardship, cannot attend the

place or places where the course is regularly conducted.

History.—s. 18, ch. 12223, 1927; CGL 4079; s. 1, ch. 24090, 1947; s. 1, ch. 57-244; s. 2, ch. 59-200; ss. 2, 3, ch. 69-378; s. 1, ch. 74-343; s. 1, ch. 75-106; s. 1, ch. 75-117; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-238; s. 1, ch. 77-457; ss. 11, 42, 43, ch. 79-239; s. 206, ch. 79-400.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]475.175 Examinations.—

(1) A person desiring to be licensed as a broker or salesman shall apply to the department and shall answer such questions and furnish such supporting information as may be required by the department, including fingerprints for processing through the Federal Bureau of Investigation.

(2) A person shall be entitled to take the license examination to practice in this state as a broker or salesman if the person has met the qualifications specified in s. 475.17 and has submitted to the department the appropriate application and fee. The application shall include documentary proof of satisfactory completion of the required educational course.

History.—ss. 12, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.181 Licensure.—

(1) The department shall license any applicant whom the board certifies to be qualified to practice as a broker or salesman.

(2) The board shall certify for licensure any applicant who satisfies the requirements of ss. 475.17 and 475.175. The board may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under [2]s. 475.25.

(3) The department shall not issue a license to any applicant who is under investigation in another state or territory for any act which would constitute a violation of this chapter or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 13, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The reference "475.25" was substituted for "475.425" by the editors to correct an obvious typographical error.

[1]475.182 Renewal of license; continuing education.—

(1) The department shall renew a license upon receipt of the renewal application and fee. The renewal application shall include proof satisfactory to the board that the licensee has, since the issuance or renewal of his current license, satisfactorily completed at least 14 classroom hours of 50 minutes each of a continuing education course, as prescribed by the board.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 475.183.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 14, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.183 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to [2]s. 475.182 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [3]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 475.25.

History.—ss. 15, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The reference "475.182" was substituted for "475.172" by the editors to correct an obvious typographical error.

[3]Note.—The words "for all years" were inserted by the editors.

[1]475.22 Broker to maintain office and sign at entrance of office.—Each active broker shall maintain an office, which shall consist of at least one enclosed room in a building of stationary construction. Each active broker shall maintain a sign on or about the entrance of his principal office and all branch offices, which sign may be easily observed and read by any person about to enter such office and shall be of such form and minimum dimensions as shall be prescribed by the board.

History.—s. 23, ch. 12223, 1927; CGL 4084; s. 3, ch. 76-168; s. 2, ch. 77-355; s. 1, ch. 77-457; ss. 16, 42, 43, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.23 License to expire on change of address.—A license shall cease to be in force whenever a broker changes his business address, a real estate school operating under a permit issued pursuant to s. 475.451 changes its business address, or a salesman or instructor working for a real estate school changes employer. In such cases, the old license shall be surrendered or accounted for, and a replacement

license shall be issued upon request therefor on a form provided by the board. The fee for the issuance of the replacement license shall be in an amount prescribed by the board, not to exceed $10.

History.—s. 24, ch. 12223, 1927; CGL 4085; s. 4, ch. 29983, 1955; s. 2, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-366; ss. 17, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.24 Branch office; fees.**—Whenever any licensee desires to conduct business at some other location, either in the same or different municipality or county than that in which he is licensed, such other place of business shall be registered as a branch office, and an annual registration fee prescribed by the board, in an amount not exceeding $20, shall be paid for each such office. It shall be necessary to maintain and register a branch office whenever, in the judgment of the board, the business conducted at a place other than the principal office is of such a nature that the public interest requires registration of a branch office. Any office shall be deemed to be a branch office if the name or advertising of a broker having a principal office located elsewhere is displayed in such manner as to reasonably lead the public to believe that such office is owned or operated by such broker.

History.—s. 25, ch. 12223, 1927; CGL 4086; s. 3, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-366; ss. 18, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.25 Discipline.**—

(1) The board may deny an application for licensure or renewal, may suspend a license for a period not exceeding 10 years, may revoke a license, may impose an administrative fine not to exceed $1,000 for each count or separate offense, or may issue a reprimand, if it finds that the licensee or applicant has:

(a) Violated any provision of s. 475.42 or of s. 455.227(1);

(b) Been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and has committed an overt act in furtherance of such intent, design, or scheme. It shall be immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee, or was an identified member of the general public;

(c) Advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(d) Failed to account or deliver to any person, including a licensee under this chapter, at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission, or any secret or illegal profit, or any divisible share or portion thereof, which has come into his hands and which is not his property or which he is not in law or equity entitled to retain under the circumstances. However, if the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon him for the escrowed property, which property he still maintains in his escrow or trust account, the licensee shall promptly notify the board of such doubts and shall promptly:

1. Request that the board issue an escrow disbursement order determining who is entitled to the escrowed property; or

2. With the consent of all parties, submit the matter to arbitration; or

3. By interpleader or otherwise, seek adjudication of the matter by a court.

If the licensee promptly employs one of the escape procedures contained herein, and if he abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property;

(e) Violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455;

(f) Been found guilty, regardless of whether adjudication was withheld, of a crime against the laws of this state or any other state or of the United States, which crime directly relates to the activities of a licensed broker or salesman or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt;

(g) Had a broker's or salesman's license revoked, suspended, or otherwise acted against, or had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country;

(h) Shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker-salesman, or salesman under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(3). For the purpose of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state;

(i) Become temporarily incapacitated from acting as a broker or salesman with safety to investors or those in a fiduciary relation with him because of drunkenness, use of drugs, or temporary mental derangement, but suspension of a license in such a case shall be only for the period of such incapacity;

(j) Rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney-at-law, or failed to advise a prospective purchaser to consult his attorney on the merchantability of the title or to obtain title insurance;

(k) Failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to him by any person dealing with him as a broker in escrow with a title company, banking institution, or savings and loan association located and doing business in Florida, or to deposit such funds in a trust or escrow account maintained by him with some bank or savings and loan association located and doing business in Florida, wherein the funds shall be kept until disbursement thereof is properly authorized; or failed, if a salesman, to immediately place with his registered employer any money, fund, deposit, check, or draft entrusted to him by any person dealing with him as agent of his registered employer. The board shall establish rules and regulations to provide for records to be maintained by the broker and the manner in which such deposits shall be made;

(l) Made or filed a report or record which the licensee knows to be false, willfully failed to file a report or record required by state or federal law, willfully impeded or obstructed such filing, or induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or salesman;

(m) Obtained a license by means of fraud, misrepresentation, or concealment; or if the licensee is confined in any state or federal prison or mental institution; or if, through mental disease or deterioration, the licensee can no longer safely be entrusted to deal with the public or in a confidential capacity; or

(n) Been found guilty, for a second time, of any misconduct that warrants his suspension, or been found guilty of a course of conduct or practices which show that he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom he may sustain a confidential relation, may not safely be entrusted to him.

(2) A license may be revoked or canceled if it was issued through the mistake or inadvertence of the board. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

(3) The department shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the board that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

History.—s. 26, ch. 12223, 1927; CGL 4087; s. 3, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 5, ch. 29983, 1955; s. 1, ch. 61-108; ss. 1, 2, ch. 70-421; s. 3, ch. 75-112; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-117; s. 9, ch. 78-366; ss. 19, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.28 Rules of evidence.—

(1) In all proceedings before the board or before the courts, civil or criminal, where the payment, receipt, or expectation of a commission, compensation, or valuable consideration is a necessary element of the offense, proof of the performance of the act, service, or condition for which such commission, compensation, or valuable consideration is required to be shown shall be prima facie evidence that such act, service, or condition was performed or existed for or in expectation of the payment or receipt of a commission, compensation, or valuable consideration. If it is material to determine whether or not a party to any action, civil or criminal, is properly licensed, the burden of proof shall be on such party.

(2) Photostatic copies of any papers or documents may be introduced in lieu of the originals, in any proceeding or prosecution under this chapter. The books of account and records of any person shall be admissible upon a showing that they were made in the regular course of business, without introducing the person who made the entries, the weight of such evidence to be decided by the court or board.

History.—s. 30, ch. 12223, 1927; CGL 4091; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 20, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.31 Final orders.—

(1) An order revoking or suspending the license of a broker shall automatically cancel the licenses of all salesmen registered with the broker, and, if a partnership or corporation, of all members, officers, and directors thereof, while the license of the broker is inoperative or until new employment or connection is secured and a new license is issued to the member, officer, director, or salesman; but the right to transfer or have a license issued or reissued shall not extend beyond a period of 6 months after the termination of the license year in which the order became effective.

(2) The board may publish and distribute in such manner and form as it may prescribe any of its final orders or decisions made under this chapter, after they become final by lapse of time, or upon affirmance on appeal, or opinions of appellate courts, for the guidance of registrants and the public, and may publish, or withhold from publication, the names and addresses of any parties concerned. This subsection shall not be construed to affect the operation of chapter 119.

History.—s. 33, ch. 12223, 1927; CGL 4094; s. 2, ch. 22861, 1945; s. 8, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 3, ch. 59-197; s. 3, ch. 76-168; s. 3, ch. 77-355; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 21, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.37 Effect of reversal of order of court or board.—Should the order of the court or board denying, revoking, or suspending a license be finally reversed and set aside, the defendant shall be restored to his rights and privileges as a broker or salesman as of the date of filing the mandate or a copy thereof with the board. The matters and things alleged in

the information shall not thereafter be reexamined in any other proceeding concerning the licensure of the defendant. If the inquiry concerned was in reference to an application for licensure, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

History.—s. 40, ch. 12223, 1927; CGL 4101; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 22, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.38 Payment of costs.**—The board shall not be required to advance any fee or costs to any officer or witness, or to execute any bond in any proceeding in the courts, any general statute to the contrary notwithstanding, but in every case where the board is liable for any fees or costs, a voucher therefor shall be presented to the board and, if approved, shall be audited and paid as are other expenses of the board. The board may, if it is satisfied that a defendant is unable to pay or advance any fees or costs and that the service from which such fees or costs have accrued or will accrue is probably necessary in the interests of justice, upon application by the defendant, order that such fees or costs be incurred at the expense of the board and be paid as are other fees and costs, but the defendant shall remain liable to the board for all sums so paid.

History.—s. 41, ch. 12223, 1927; CGL 4102; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 23, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.41 Contracts of unlicensed person for commissions invalid.**—No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or salesman has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

History.—s. 44, ch. 12223, 1927; CGL 4105; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 24, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**475.42 Violations and penalties.**—

(1) VIOLATIONS.—

(a) No person shall operate as a broker or salesman without being the holder of a valid and current license therefor.

(b) No person licensed as a salesman shall operate as a broker or operate as a salesman for any person not registered as his employer.

(c) No broker shall employ, or continue in employment, any person as a salesman who is not the holder of a valid and current license as salesman; but a license as salesman may be issued to a person registered as an active broker, upon request and surrender of the license as broker, without a fee in addition to that paid for the issuance of the broker's active license.

(d) No salesman shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate salesman, whether the holder of a valid and current license or not, shall commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as his employer at the time the cause of action is alleged to have arisen.

(e) No person shall violate any lawful order or rule of the board which is binding upon him.

(f) No person shall commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(g) No person shall make any false affidavit or affirmation intended for use as evidence by or before the board or a member thereof, or by any of its authorized representatives, nor shall any person give false testimony under oath or affirmation to or before the board or any member thereof in any proceeding authorized by this chapter.

(h) No person shall fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court, nor shall a person who is present before the board, a member thereof, or one of its authorized representatives acting under authority of this chapter refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the board, a member thereof, or such representatives, or any person by the authority of such officer or appointee, nor shall any person, so being present, conduct himself in a disorderly, disrespectful, or contumacious manner.

(i) No person shall obstruct or hinder in any manner the enforcement of this chapter, or the performance of any lawful duty by any person acting under the authority of this chapter, or interfere with, intimidate, or offer any bribe to any member of the board, or any of its employees, or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(j) No broker or salesman shall place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, lien, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or salesman or other person, or for any unlawful purpose.

(k) No person shall operate as a broker under a trade name without causing the same to be noted in the records of the board and placed on his license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless said partnership or corporation is the holder of a valid current registration certificate.

(l) No person shall knowingly conceal any information relating to violations of this chapter.

(2) PENALTIES.—Any person who shall violate any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or, if a corporation, it is guilty of a misdemeanor of the

second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

History.—s. 45, ch. 12223, 1927; CGL 8134; s. 11, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 22, ch. 63-129; s. 418, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 25, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.421 Publication of false or misleading information; promotion of sales, leases, rentals; penalty.—Any person who publishes or causes to be published by means of newspaper, periodical, radio, television, or written or printed matter any false or misleading information for the purpose of offering for sale or for the purpose of causing or inducing any other person to purchase, lease, or rent real estate located in the state, or to acquire an interest in the title thereto, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 31401, 1956; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 475.47.

[1]475.43 Presumptions.—In all criminal cases, contempt cases, and other cases filed pursuant to this chapter, if a party has sold, leased, or let real estate, the title to which was not in him when it was offered for sale, lease, or letting, or such party has maintained an office bearing signs that real estate is for sale, lease, or rental thereat, or has advertised real estate for sale, lease, or rental, generally, or describing property, the title to which was not in such party at the time, it shall be a presumption that such party was acting or attempting to act as a real estate broker, and the burden of proof shall be upon him to show that he was not acting or attempting to act as a broker or salesman. All contracts, options, or other devices not based upon a substantial consideration, or that are otherwise employed to permit an unlicensed person to sell, lease, or let real estate, the beneficial title to which has not, in good faith, passed to such party for a substantial consideration, are hereby declared void and ineffective in all cases, suits, or proceedings had or taken under this chapter; however, this section shall not apply to irrevocable gifts, to unconditional contracts to purchase, or to options based upon a substantial consideration actually paid and not subject to any agreements to return or right of return reserved.

History.—s. 3, ch. 22861, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.451 Schools teaching real estate practice.—

(1) Each person, school, or institution, except approved and accredited colleges and universities in this state, that offers or conducts any course of study in real estate practice, teaches any course prescribed by the board as a condition precedent to licensure or renewal as a broker or salesman, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or salesmen to pass examinations for such licensure conducted by the department shall, before commencing or continuing further to offer or conduct such course or courses, obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules of the board adopted pursuant to this chapter.

(2) An applicant for a permit to operate a real estate school, or to be a chief administrator of such a school, or to be an instructor in such a school shall meet the following minimal requirements:

(a) "School permitholder" is defined as that individual who is responsible for directing the overall operation of the real estate school. He shall be the holder of a license as a broker, either active or nonactive, or have passed the instructor's examination administered by the department. The school permitholder shall also meet the requirements of a school instructor if he is actively engaged in teaching.

(b) "School chief administrative person" is defined as that individual who is responsible for the administration of the overall policies and practices of the school. He shall also meet the requirements of a school instructor if he is actively engaged in teaching.

(c) "School instructor" is defined as that individual who actively instructs in the classroom. He shall, within the 5 years immediately preceding the filing of his application, have obtained his initial license as a broker, either active or nonactive, or, within such 5 years, have passed the instructor's examination. Every second year, each instructor shall recertify his competency by presenting to the board evidence of his successfully completing a minimum of 15 classroom hours of instruction in real estate subjects or instructional techniques as prescribed by the board.

The department may require an applicant to submit names of persons having knowledge concerning the applicant and the enterprise, may propound interrogatories to such persons and to the applicant concerning the character of the applicant, and shall make such investigation of him or the school or institution as it may deem necessary to the granting of the permit; and, if an objection is filed, it shall be considered in the same manner as objections or administrative complaints against applicants for licensure by the department.

(3) It is unlawful for any person, school, or institution to offer the courses described in subsection (1) or to conduct classes in such courses, regardless of the number of pupils, whether by correspondence or otherwise, without first procuring a permit, or to guarantee that its pupils will pass any examinations

given by the department, or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder.

(4) Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Location of classes and frequency of class meetings shall be in the discretion of the school offering real estate courses, so long as said courses conform to s. 475.17(2).

(6) Any person operating a real estate school on June 14, 1978, shall not be required to comply with the provisions of this section; however, he shall comply with the requirement of licensure as a broker.

History.—s. 1, ch. 57-817; s. 420, ch. 71-136; s. 3, ch. 76-168; ss. 3, 4, ch. 77-238; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 1, 3, ch. 78-244; s. 10, ch. 78-366; s. 129, ch. 79-164; ss. 28, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.4511 Advertising by real estate schools.—

(1) No person representing a real estate school offering and teaching real estate courses under this chapter shall make, cause to be made, or approve any statement, representation, or act, oral, written, or visual, in connection with the operation of the school, its affiliations with individuals or entities of courses offered, or any endorsement of such, if such person knows or believes or reasonably should know or believe the statement, representation, or act to be false, inaccurate, misleading, or exaggerated.

(2) A school shall not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(3) No representative of any school or institution coming within the provisions of this chapter shall promise or guarantee employment or placement of any student or prospective student using information, training, or skill purported to be provided, or otherwise enhanced, by a course or school as an inducement to enroll in the school, unless such person offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student.

(4) A school shall advertise only as a school and under the registered name of that school and shall not advertise the school in connection with an advertisement of an affiliated broker.

(5) No reference may be made in any publication or communication medium as to a "pass/fail ratio" on a state examination by any school approved by the board.

History.—s. 2, ch. 78-244; ss. 29, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.452 Advance fees; deposit; accounting; penalty; damages.—

(1) It is unlawful for any broker to contract for or collect any advance fee for the listing of real property from any principal without depositing 75 percent of such amount, when collected, in a trust account with a bank or other recognized depository. Such funds shall be held as trust funds and may not be commingled with the funds of the broker who has collected the fee. Prior to the withdrawal of any fees from the trust account, the broker shall furnish a statement to the principal itemizing how the advance fees are to be expended and the amounts thereof. Amounts may be withdrawn for the benefit of the broker only when actually expended for the benefit of the principal or 5 days after verified accounts have been mailed to the principal. If the listed property is not sold within the period of time specified in the broker's contract or within 18 months after the contract date, whichever period is shorter, any funds held by the broker in the trust account shall be refunded to the principal, together with a final accounting relating to any or all funds expended by the broker.

(2) The board may adopt such rules as are necessary to regulate the method of accounting to be complied with by all brokers in relation to advance fees for the listing of real property. Such rules shall include, but need not be limited to, the establishing of forms for, and information to be included in, such accountings.

(3) Each broker shall furnish each principal a verified copy of such accountings at the end of each calendar quarter; when the contract has been completely performed by the broker; and at any other time deemed appropriate by the board. The board shall be furnished a verified copy of any account or all accounts upon its demand therefor.

(4) Any person who violates any of the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) In addition to any other penalties provided for in this section, the principal in any advance-fee transaction for the listing of real property, which transaction is in violation of the provisions of this section, may recover treble damages for any funds misapplied and shall be entitled to reasonable attorney's fees in any action to recover such funds.

History.—s. 1, ch. 76-84; s. 3, ch. 76-168; s. 4, ch. 77-355; s. 1, ch. 77-457; ss. 30, 42, ch. 79-239.

[1]**Note.**—Although this section was not included among those sections readopted by s. 43, ch. 79-239, notwithstanding the Regulatory Reform Act of 1976, as amended, it is republished here because its amendment by s. 30, ch. 79-239, indicates a legislative intent that the repeal by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, not become operative. Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.453 Rental information; contract or receipt; refund; penalty.—

(1) Each broker or salesman who attempts to negotiate a rental, or who furnishes rental information to a prospective tenant, for a fee paid by the prospective tenant, shall provide such prospective tenant with a contract or receipt, which contract or receipt contains a provision for the repayment of any amount over 25 percent of the fee to the prospective tenant if the prospective tenant does not obtain a rental. If the rental information provided by the broker or salesman to a prospective tenant is not current or accurate in any material respect, the full fee shall be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the

return of the fee, or any part thereof, shall be made within 30 days following the day on which the real estate broker or salesman has contracted to perform services to the prospective tenant. The contract or receipt shall also conform to the guidelines adopted by the board in order to effect disclosure of material information regarding the service to be provided to the prospective tenant.

(2) The board may adopt a guideline for the form of the contract or receipt required to be provided by brokers or salesmen pursuant to the provisions of subsection (1).

(3)(a) Any person who violates any provision of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In addition to the penalty prescribed in paragraph (a), the license of any broker or salesman who participates in any rental information transaction which is in violation of the provisions of subsection (1) shall be subject to suspension or revocation by the board in the manner prescribed by law.

History.—s. 1, ch. 78-214; ss. 31, 42, 43, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.454 Prosecution of criminal violations.—The board shall report any criminal violation of this chapter to the state attorney having jurisdiction thereof for prompt prosecution.

History.—ss. 32, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.455 Exchange of disciplinary information.—

(1) The board shall inform the Division of Florida Land Sales and Condominiums of the Department of Business Regulation of any disciplinary action the board has taken against any of its licensees. The division shall inform the board of any disciplinary action the division has taken against any broker or salesman registered with the division.

(2) If the board finds that another state agency has suspended or revoked the license or registration of, or imposed a penalty against, a licensee, it shall issue a notice to the licensee to show cause why the board should take no action, which notice shall provide for a hearing in accordance with chapter 120, upon request.

History.—ss. 33, 42, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.482 Real Estate Recovery Fund.—There is created the Florida Real Estate Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Real Estate Recovery Fund shall be disbursed as provided in s. 475.484, on order of the board, as reimbursement to any person or corporation who is adjudged by a court of competent jurisdiction to have suffered monetary damages by reason of any of the following acts committed as a part of any transaction involving the sale of real property in this state by any broker or salesman who was licensed under the provisions of this chapter at the time the alleged act was committed:

(a) Any violation of the provisions of this chapter; or

(b) Obtaining money or property by fraud, misrepresentation, deceit, false pretenses, artifice, or trickery or by any other act which would constitute any violation proscribed in s. 475.25.

(2) A fee of $3.50 per annum shall be added to the license fee for both new licenses and renewals of licenses for brokers, and a fee of $1.50 per annum shall be added for new licenses and renewals of licenses for salesmen. This fee shall be in addition to the regular license fee and shall be deposited in or transferred to the Real Estate Recovery Fund. Should the fund at any time exceed $450,000, collection of special fees for this fund shall be discontinued at the end of the 2-year licensing renewal cycle. Such special fees shall not be reimposed unless the fund is reduced below $250,000 by disbursement made in accordance with this chapter.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 34, 42, 43, ch. 79-239.

[1]Note.—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.483 Conditions for recovery; eligibility.—

(1) Any person shall be eligible to seek recovery from the Real Estate Recovery Fund if:

(a) Such person has received final judgment in a court of competent jurisdiction in this state in any action wherein the cause of action was based on any violation proscribed in s. 475.25;

(b) At the time the action was commenced, such person gave notice thereof to the board by certified mail;

(c) The act for which recovery is sought occurred on or after July 1, 1976, and not more than 2 years prior to making such claim;

(d) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(e) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment;

(f) Any amounts recovered by such person from the judgment debtor, or from any other source, have been applied to the damages awarded by the court; and

(g) Such person is not a person who is precluded by this act from making a claim for recovery.

(2) A person shall not be qualified to make a claim for recovery from the Real Estate Recovery Fund, if:

(a) He is the spouse of the judgment debtor or a

personal representative of such spouse;

(b) He is a licensed broker or salesman who acted as principal or agent in the transaction which is the subject of the claim; or

(c) Such person's claim is based upon a real estate transaction in which the licensed broker or salesman was acting on his behalf with respect to the property owned or controlled by him.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 35, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.4835 Board powers upon notification of commencement of action.—When the board receives notice of any action, as required by s. 475.483(1)(b), the board may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate on behalf, and in the name, of the defendant and take recourse through any appropriate method of review on behalf, and in the name, of the defendant.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 36, 42, ch. 79-239.

[1]**Note.**—Although this section was not included among those sections readopted by s. 43, ch. 79-239, notwithstanding the Regulatory Reform Act of 1976, as amended, it is republished here because its amendment by s. 36, ch. 79-239, indicates a legislative intent that the repeal by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, not become operative. Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.484 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 475.482 may apply to the board to cause payment to be made to such person from the Real Estate Recovery Fund in an amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages.

(2) Upon receipt by the claimant of the payment from the Real Estate Recovery Fund, the claimant shall assign his additional right, title, and interest in the judgment, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment by the board, to the extent of the board's right, title, and interest therein, shall be for the purpose of reimbursing the Real Estate Recovery Fund.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to $10,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

(4) Payments for claims based upon judgments against any one broker or salesman shall not exceed, in the aggregate, $20,000.

(5) If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the board shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were made.

(6) All payments and disbursements from the Real Estate Recovery Fund shall be made by the State Treasurer upon a voucher signed by the secretary of the department. Amounts transferred to the Real Estate Recovery Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

(7) Upon the payment of any amount from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against a broker or salesman, the license of such broker or salesman shall be automatically revoked. A discharge of bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 37, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.485 Investment of the fund.—The funds in the Real Estate Recovery Fund may be invested by the Treasurer under the same limitations as apply to investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Real Estate Recovery Fund and shall be available for the same purposes as other moneys deposited in the Real Estate Recovery Fund.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 38, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]475.486 Rules; violations.—

(1) The board shall adopt such rules and regulations as are necessary to effect the efficient administration of ss. 475.482-475.486.

(2) It is unlawful for any person or his agent to file with the board any notice, statement, or other document required under the provisions of ss. 475.482-475.486 which is false or contains any material misstatement of fact. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 39, 42, 43, ch. 79-239.

[1]**Note.**—Section 42, ch. 79-239, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 476

BARBERING

[1]**476.014 Short title.**—This act may be cited as the "Florida Barbers' Act."

History.—ss. 1, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.024 Purpose.**—The Legislature recognizes that barbering is potentially dangerous to the public in that barbers work in close proximity to patrons, thus risking transmission of disease and vermin, apply various caustic chemical agents to the hair and scalp of patrons, and employ instruments which could harm patrons if improperly used. Therefore, it is deemed necessary in the interest of public health, safety, and welfare to regulate the practice of barbering in this state. However, restrictions should be imposed only to the extent necessary to protect the public from these recognized dangers and in a manner which will not unreasonably affect the competitive market.

History.—ss. 2, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.034 Definitions.**—As used in this act:

(1) "Barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: Shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.

(2) "Barbershop" means any place of business wherein the practice of barbering is carried on.

[2](3) "Board" means the Florida Barbers' Board.

[3](4) "Department" means the Department of Professional and Occupational Regulation.

(5) "Division" means the [4]Division of Occupations of the [3]Department of Professional and Occupational Regulation.

(6) "Commission" means the Florida Barbering Practice Commission.

History.—ss. 3, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Florida Barbers' Board" to "Barbers' Board."

[3]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[4]**Note.**—See s. 2, ch. 79-36, which in effect abolished the Division of Occupations of the Department of Professional and Occupational Regulation and assigned the several boards within that division to the Division of Professions.

[1]**476.044 Exemptions.**—This act does not apply to:

(1) Persons authorized under the laws of this state to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry;

(2) Commissioned medical or surgical officers of the United States Armed Forces hospital service;

(3) Registered nurses under the laws of this state;

(4) Persons practicing cosmetology under the laws of this state; or

(5) Persons employed in federal, state, or local institutions, hospitals, or military bases as barbers, whose practice is limited to the inmates, patients, or authorized military personnel of such institutions, hospitals, or bases.

History.—ss. 4, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.054 [2]Florida Barbers' Board.**—

(1) There is created within the [4]Division of Occupations of the [3]Department of Professional and Occupational Regulation the [2]Florida Barbers' Board, consisting of seven members who shall be appointed by the Governor, subject to confirmation by the Senate.

(2) Five members of the board shall be practicing barbers who have practiced the occupation of barbering in this state for at least 5 years. [5]The remaining two members of the board shall be citizens of the state who are not presently licensed barbers. No person shall be appointed to the board who is in any way connected with the manufacture, rental, or wholesale distribution of barber equipment and supplies. No person who is financially or otherwise connected in any capacity with a school of barbering shall be eligible to serve.

(3) Within 30 days after June 30, 1978, the Governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) Two members for terms of 1 year each.
(b) Two members for terms of 2 years each.
(c) Three members for terms of 4 years each.

(4) Annually thereafter, as the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed and qualified. The Governor may remove any member for cause.

(5) No person shall be appointed to serve more than two consecutive terms. Any vacancy shall be filled by appointment by the Governor for the unexpired portion of the term.

(6) Each board member shall receive per diem and mileage allowances as provided in s. 112.061 from the place of his residence to the place of meetings and the return therefrom.

(7) Each board member shall be held accountable to the Governor for the proper performance of all duties and obligations of such board member's office. The Governor shall cause to be investigated any complaints or unfavorable reports received concerning the actions of the board or its individual members and shall take appropriate action thereon, which may include removal of any board member for malfeasance, misfeasance, neglect of duty, commission of a felony, drunkenness, incompetency, or permanent inability to perform his official duties.

History.—ss. 5, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]Note.—See s. 2, ch. 79-36, which changed the name of the "Florida Barbers' Board" to "Barbers' Board."
[3]Note.—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."
[4]Note.—See s. 2, ch. 79-36, which in effect abolished the Division of Occupations of the Department of Professional and Occupational Regulation and assigned the several boards within that division to the Division of Professions.
[5]Note.—See ch. 78-431, which added an additional lay member to each examining and licensing board in the Department of Professional and Occupational Regulation. Also, see s. 2, ch. 79-36, which provides that each board shall have at least two lay members who are not and have never been members of the regulated profession or of any closely related profession.
cf.—s. 455.207 Boards; organization; compensation and travel expenses.

[1]476.064 Organization; headquarters; personnel; meetings; quorum.—

(1) The board shall annually elect a chairman, a vice chairman, and a secretary from its number. The board shall maintain its headquarters in Tallahassee.

(2) The department shall appoint or employ such personnel as may be necessary to assist the board in exercising the powers and performing the duties and obligations set forth in this act. Such personnel need not be licensed barbers and shall not be members of the board. Such personnel shall be authorized to do and perform such duties and work as may be assigned by the board.

(3) The board shall hold an annual meeting and such other meetings during the year as it may determine to be necessary. The chairman of the board may call other meetings at his discretion. Five members shall constitute a quorum.

History.—ss. 6, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.207 Boards; meetings; quorum.

[1]476.074 Legal and investigative services.—

(1) The department shall provide all legal services needed to carry out the provisions of this act.

(2) The department shall provide all investigative services required by the board, the department, or the commission in carrying out the provisions of this act.

History.—ss. 6, 7, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.221 Legal and investigative services.

[1]476.084 Receipts; disposition.—

(1) The commission, pursuant to chapter 120, shall establish the fees to be charged of applicants for examination and the fees to be charged for the issuance, renewal, restoration, and duplication of licenses and certificates of registration issued pursuant to this act. Such fees shall not be more than $50 per year and shall be adequate to insure the continued funding for the purposes provided herein.

(2) All moneys collected by the department from fees authorized by this chapter shall be paid into the Professional and Occupational Regulation Trust Fund, which fund is created in the department. It is the intent of this provision that such fees collected, even to the exhaustion thereof, shall be directly applied by the department for the purposes provided in this act, with particular emphasis being placed upon enforcement of the provisions hereof. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter. The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

History.—ss. 8, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 215.37 Department of Professional Regulation and boards to be financed from fees collected; moneys deposited in trust fund; etc.
s. 455.219 Fees; receipts; disposition.

[1]476.094 Florida Barbering Practice Commission; rules; health and safety standards.—

(1) There is created the Florida Barbering Practice Commission, consisting of the secretary of the department, or a representative from time to time designated in writing by the secretary, and the seven members of the board.

(2) The commission is authorized to adopt rules in accordance with chapter 120 to carry out the provisions of this chapter.

(3) The commission shall hold such meetings during the year as it may determine to be necessary. The officers of the board shall serve in the same capacities upon the commission. A quorum of the commission shall consist of not less than five members, of whom one must be the secretary of the department or a representative designated in writing by the secretary. Commission members shall receive per diem and mileage as provided in s. 112.061 from place of residence to place of meeting and return.

(4) Any proposed rule or any proposed amendment to or abolition of an existing rule must, prior to any rulemaking process held pursuant to s. 120.54, be approved by a majority of commission members present and the secretary of the depart-

ment or a representative designated in writing by the secretary. Additionally, any proposed rule which establishes sanitary, sterilization, or chemical standards, or which proposes an amendment to or abolition of an existing rule setting such standards, must receive approval from the Department of Health and Rehabilitative Services prior to any rulemaking process held pursuant to s. 120.54. With respect to any such proposed rule or proposed amendment to or abolition of an existing such rule, the commission shall submit to the Administrative Procedure Committee a statement from the Department of Health and Rehabilitative Services verifying that approval of the department has been obtained.

History.—ss. 9, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.104 Inspections.**—All inspections of barbershops, to insure compliance with the provisions of this act and rules adopted pursuant to this act, which provisions and rules relate to health and safety matters, shall be performed by the Department of Health and Rehabilitative Services. Any agent of a county health department or the Department of Health and Rehabilitative Services who is designated to perform such inspections may enter and inspect any barbershop at any time during its business days and hours. Any violation of the provisions of this act or rules adopted pursuant to this act shall be promptly reported to the department.

History.—ss. 10, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.114 Qualifications of applicants for licenses as barbers.**—

(1) Any person is qualified to receive a license to practice barbering who:

(a) Is at least 17 years of age;

(b) Has graduated from a state-licensed barber school; and

(c) Has passed an examination conducted by the department to determine his fitness to practice barbering.

(2) An applicant for a license to practice as a barber who fails to pass the whole examination or a part of the examination shall be entitled to take the whole examination or that part of the examination again at its next administration upon filing the appropriate form and paying the required fee.

History.—ss. 16, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.124 Application for examination.**—Each applicant for an examination shall:

(1) Make application to the department at least 30 days prior to the examination date on forms prepared and furnished by the department;

(2) Furnish to the department two signed photographs of the applicant, of sufficient size to identify the applicant, one photograph to accompany the application and one photograph to be returned to the applicant for presentation to the examiners when the applicant appears for examination; and

(3) Pay the required fee to the department.

History.—ss. 11, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**476.134 Time, place, and subjects of examination.**—

(1) The department shall conduct examinations of applicants for licenses as barbers not less than four times each year at such time and place as the department may determine. The examination of applicants for licenses as barbers shall include both a practical demonstration and a written test.

(2) The commission shall adopt rules specifying the areas of competency to be covered by the examination. Such rules shall include the relative weight assigned in grading each area. All areas tested shall be reasonably related to protection of the public and the applicant's competency to practice barbering in a manner which will not endanger the public. The department may employ professional testing services to formulate or to assist in administering the examinations.

(3) The department shall be in charge of administering the examinations and shall control the personnel assisting in giving the examinations. The written examination shall be identifiable by number only until completion of the grading process. The practical demonstration shall be graded by members of the board. Each applicant shall be informed of his grade on the examination by the department as soon as is practicable.

(4) An accurate record of each examination shall be made, and that record, together with all examination papers, shall be filed with the department and shall be kept for reference and inspection following the examination. The department shall make a record of the grade of each applicant on each subject covered by that examination, and that grade shall be part of the examination papers to be preserved.

History.—ss. 12, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

cf.—s. 455.217 Examinations.

[1]**476.144 Licenses.**—A barber's license shall be issued by the department to any applicant who passes the required examination, achieving a grade of not less than 75 percent on both the practical and the written parts thereof, and who possesses the other qualifications required by law. The department shall keep a record relating to the issuance, refusal, and renewal of licenses. Such record shall contain the name, place of business, and residence of each licensed barber and the date and number of his license.

History.—ss. 13, 28, ch. 78-155.

[1]**Note.**—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

cf.—s. 455.213 General licensing provisions.

[1]**476.154 Biennial renewal of licenses.**—

(1) Each licensed barber who continues in active practice or service shall, during the period July 1 through July 31 of each even-numbered year, renew his license and pay the required fee. Each license

which has not been renewed during the month of July in any even-numbered year shall expire on August 1 of that year. Any practitioner licensed under this act who retires from the practice of barbering may renew his license upon payment of the required restoration fee.

(2) Any license or certificate of registration issued pursuant to this act for a period of less than the established biennial issuance period may be issued for that lesser period of time, and the department shall adjust the required fee accordingly. The commission shall adopt rules providing for such partial period fee adjustments.

History.—ss. 14, 28, ch. 78-155.

[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.164 Barbers' assistants.—

(1) Any person is qualified to register as a barber's assistant who is at least 16 years of age and pays the required registration fee.

(2) The department shall issue on a biennial basis to each eligible applicant a registration card as a barber's assistant. The registration card shall state the name of the person registered, the period of such registration, and the name and address of the barbershop in which such person is initially registered to work as a barber's assistant.

(3) Whenever any registered barber's assistant leaves the employ of, or ceases to work within, the barbershop named on his registration card, the registration shall automatically be revoked at the expiration of 30 days from the date of his departure unless the registrant applies for and pays the fee for transfer of the registration to the new barbershop in which the registrant is to work. Any such application for transfer shall automatically be granted by the department for the unexpired term of the registration, and a new registration card shall thereupon be issued as soon as practicable.

(4) A barber's assistant shall not practice barbering except to shampoo hair and apply hair tonics or conditioner under the supervision of a licensed barber.

(5) Violation of subsection (4) shall constitute grounds for revocation of the barber's assistant's certificate.

(6) The department shall keep a record relating to the issuance, transfer, and revocation of registration cards. Such record shall contain the name, place of business, and residence of each barber's assistant and the date and number of his registration card.

History.—ss. 15, 28, ch. 78-155.

[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.174 Qualifications of barbers and apprentices from other states.—

(1) Any person who is at least 17 years of age and who has held a valid license or certificate of registration as a practicing barber in another state or country for at least 1 year shall be eligible, upon payment of the required fee, to take an examination to determine his fitness to practice as a barber.

(2) Any person who is at least 17 years of age and who has held, for at least 1 year, a valid license or certificate of registration as an apprentice barber in another state or country which has preliminary requirements for licensure substantially the same as those required by s. 476.114 shall be eligible, upon payment of the required fee, to take an examination to determine his fitness to practice as a barber.

(3) Notwithstanding subsection (1) or subsection (2), a person holding a license or certificate in another state may be refused an opportunity to be so examined if such other state does not extend to the holder of a Florida license a similar or comparable opportunity. The commission shall adopt rules governing such applicants' eligibility for examination.

History.—ss. 17, 28, ch. 78-155; s. 130, ch. 79-164.

[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.184 Barbershop registration; requirements; fee.—

(1) Each person, whether as owner, manager, or agent, who opens a barbershop in this state shall, prior to opening such barbershop, file with the department the name and address of the owner of the barbershop and the city or town and the street address at which it is located, together with the appropriate fee, on forms provided by the department. Upon receipt of the completed form and the fee, the department shall issue a certificate of registration for a period of 2 years or the remaining portion of the biennial license period. Said registration shall be renewed during the period July 1 through July 31 of each even-numbered year upon payment of the renewal fee. In the event of a change of location or ownership of any registered barbershop, and upon notice thereof and filing of the appropriate fee with the department, the department shall issue a transfer of the certificate of registration of such barbershop to its new location or new owner.

(2) The commission, pursuant to chapter 120, shall adopt rules establishing procedures and fees, not to exceed $25 per issuance, relating to the registration of barbershops and renewal of barbershop certificates. The commission, pursuant to chapter 120, shall adopt rules establishing procedures relating to the suspension or revocation of barbershop certificates.

History.—ss. 18, 28, ch. 78-155.

[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.194 Prohibited acts.—It is unlawful for any person to:

(1) Engage in the practice of barbering without a license as a barber or barber's assistant issued pursuant to the provisions of this act by the department.

(2) Engage in willful or repeated violations of this act or of any of the rules adopted by the commission.

(3) Hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber, or registered barber's assistant.

(4) Obtain or attempt to obtain a license for money other than the required fee, or any other thing of value or by fraudulent misrepresentations.

History.—ss. 19, 28, ch. 78-155.

[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976, as amended.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

[1]476.204 Penalty.—Any person who violates any of the provisions of s. 476.194 shall be liable for a civil penalty, not to exceed $500, as determined by the board.

History.—ss. 20, 28, ch. 78-155; s. 131, ch. 79-164.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

[1]476.214 Grounds for suspending, revoking, or refusing to grant license or certificate.—

(1) The board shall have the power to revoke or suspend any license, registration card, or certificate of registration issued pursuant to this act, or to reprimand, censure, deny subsequent licensure of, or otherwise discipline any holder of a license, registration card, or certificate of registration issued pursuant to this act for any of the following causes:

(a) Gross malpractice or gross incompetency in the practice of barbering;

(b) Practice by person knowingly having an infectious or contagious disease; or

(c) Commission of any of the offenses described in s. 476.194.

(2) The commission shall adopt rules relating to the suspension or revocation of licenses or certificates of registration under this section pursuant to the provisions of chapter 120.

(3) The board shall keep a record of its disciplinary proceedings against holders of licenses or certificates of registration issued pursuant to this act.

History.—ss. 21, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

[1]476.224 Complaints.—

(1) Any complaint that a licensee has violated a provision of this chapter or any rule promulgated hereunder shall be filed with the department. Subsequent to its investigation, the department shall determine whether there exists probable cause to believe the allegations contained in the complaint are true. If the department finds probable cause, it shall petition the board for a hearing and the Department of Legal Affairs shall prosecute the complaint before the board. The hearing, and the board's determination subsequent to the hearing, shall be in accordance with the provisions of chapter 120.

(2) A complaint may be filed pursuant to the provisions of subsection (1) by any person.

(3) Any complaint filed pursuant to subsection (1) and all information obtained by the department pursuant to the investigation of the complaint shall be confidential and shall not constitute a public record unless and until the department files a petition for a hearing as provided in said subsection.

History.—ss. 22, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.225 Disciplinary proceedings.

[1]476.234 Civil proceedings.—In addition to any other remedy, the department may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this act or the lawful rules or orders of the board, commission, or department.

History.—ss. 23, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.244 Administrative proceedings.—All hearings and other administrative proceedings shall be conducted pursuant to the provisions of chapter 120.

History.—ss. 24, 28, ch. 78-155.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]476.254 Saving clause.—Notwithstanding any other provision of this act, each licensed barber or registered barber's assistant who was duly licensed or registered as such by this state on June 30, 1978, shall be entitled to continue to hold such license without reexamination, and such license shall be renewed and held henceforth in accordance with the provisions of this act. Any person who, on June 30, 1978, was duly licensed by this state as a barber apprentice is deemed to be in substantial compliance with the requirements of s. 476.114 of this act and shall be issued a license as a barber upon application for renewal of such barber apprentice license.

History.—ss. 25, 28, ch. 78-155; s. 132, ch. 79-164.
[1]Note.—Section 28, ch. 78-155, in effect provides that this section is repealed on July 1, 1983, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 477

COSMETOLOGY

477.011 Short title.—This act shall be known and may be cited as the "Florida Cosmetology Act."

History.—s. 1, ch. 78-253.

477.012 Purpose.—The Legislature recognizes that the practice of cosmetology involves the use of tools and chemicals which may be dangerous when applied improperly and, therefore, deems it necessary in the interest of public health to regulate the practice of cosmetology in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from significant and discernible danger to health and not in a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

History.—s. 1, ch. 78-253.

477.013 Definitions.—As used in this act:

[1](1) "Board" means the State Board of Cosmetology.

[2](2) "Department" means the Department of Professional and Occupational Regulation.

(3) "Commission" means the Florida Cosmetology Practice Commission.

(4) "Cosmetologist" means a person who is licensed to engage in the practice of cosmetology in Florida under the authority of this chapter.

(5) "Cosmetology instructor" means a person who is licensed to teach cosmetology in Florida under the authority of this chapter.

(6) "Cosmetology" means the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, hair relaxing, or hair removing, for compensation.

History.—s. 1, ch. 78-253.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "State Board of Cosmetology" to "Board of Cosmetology."

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

477.014 Qualifications for practice and teaching.—On and after January 1, 1979, no person other than a duly licensed cosmetologist shall practice cosmetology or use the name or title of cosmetologist; likewise, on and after January 1, 1979, no person other than a duly licensed cosmetology instructor shall teach cosmetology in any school regulated under this chapter. However, nothing herein shall prevent the Department of Education from certifying its own cosmetology instructors to teach cosmetology in the public school system or prevent employment of instructors in other government-operated programs of cosmetology in Florida.

History.—s. 1, ch. 78-253.

477.015 Board of Cosmetology.—

(1) There is created within the [1]Department of Professional and Occupational Regulation the [2]State Board of Cosmetology consisting of seven members, who shall be appointed by the Governor, subject to confirmation by the Senate, and whose function it shall be to carry out certain responsibilities assigned in this chapter.

(2) Five members of the board shall be licensed cosmetologists and shall have been engaged in the practice of cosmetology in Florida for not less than 5 years. [3]Two members of the board shall be lay persons. Each board member shall be a resident of this state and shall have been a resident of this state for not less than 5 continuous years.

(3) The terms of the board members first appointed shall expire as follows: Two members on January 1, 1980; two members on January 1, 1981; and three members on January 1, 1982. [4]All appointments thereafter shall be for 3-year terms. The Governor may at any time fill vacancies on the board for the remainder of unexpired terms. Each member of the board shall hold over after the expiration of his term until a successor is duly appointed and qualified. No board member shall serve more than two consecutive terms, whether full or partial.

(4) Before assuming his duties as a board member, each appointee shall take the constitutional oath of office and shall file it with the Department of State, which shall then issue to such member a certificate of his appointment.

(5) The board shall, as soon as organized, and annually thereafter in the month of January, elect from its number a chairman, a vice chairman, and a secretary.

(6) The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chairman of

the board shall have the authority to call other meetings at his discretion. A quorum of the board shall consist of not less than four members.

(7) Each member of the board shall receive $50 for each day spent in the performance of official board business, with the total annual compensation per member not to exceed $2,000. Additionally, board members shall receive per diem and mileage as provided in s. 112.061, from place of residence to place of meeting and return.

(8) Each board member shall be held accountable to the Governor for the proper performance of all his duties and obligations. The Governor shall investigate any complaints or unfavorable reports received concerning the actions of the board, or its members, and shall take appropriate action thereon, which action may include removal of any board member. The Governor may remove from office any board member for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

History.—s. 1, ch. 78-253.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "State Board of Cosmetology" to "Board of Cosmetology."

[3]**Note.**—See ch. 78-431 which added an additional lay member to each examining and licensing board in the Department of Professional and Occupational Regulation. Also, see s. 2, ch. 79-36, which provides that each board with 5 or more members shall have at least two lay members who are not and have never been members or practitioners of the regulated profession or of any closely related profession.

[4]**Note.**—See s. 5, ch. 79-36, which provides that each member of a board within the Department of Professional Regulation be appointed for a 4-year term.

cf.—s. 455.207 Boards; organization; meetings; compensation and travel expenses.

477.016 Rulemaking.—

(1) There is created the Florida Cosmetology Practice Commission, consisting of the secretary of the department, or a representative from time to time designated in writing by the secretary, and the seven members of the board.

(2) The commission is authorized to adopt rules in accordance with chapter 120 to carry out the provisions of this chapter.

(3) The commission shall hold such meetings during the year as it may determine to be necessary. The officers of the board shall serve in the same capacities upon the commission. A quorum of the commission shall consist of not less than five members, of whom one must be the secretary of the department or a representative designated in writing by the secretary. Commission meetings shall be considered official board business for purposes of compensation for board members as established herein. Commission members also shall receive per diem and mileage as provided in s. 112.061, from place of residence to place of meeting and return.

(4) Any proposed rule or any proposed amendment to or abolition of an existing rule must, prior to any rulemaking process held pursuant to s. 120.54, be approved by a majority of commission members present and the secretary of the department or a representative designated in writing by the secretary.

History.—s. 1, ch. 78-253.

477.017 Legal services.—The department shall provide all legal services needed to carry out the provisions of this act.

History.—s. 1, ch. 78-253.

cf.—s. 455.221 Legal and investigative services.

477.018 Investigative services.—The department shall provide all investigative services required by the board, the department, or the commission in carrying out the provisions of this act.

History.—s. 1, ch. 78-253.

cf.—s. 455.221 Legal and investigative services.

477.019 Cosmetologists; qualifications; licensure; license renewal; inactive licenses; reciprocity.—

(1) Any person is qualified for licensure as a cosmetologist under this chapter who:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a minimum of 1,200 hours of training at a school of cosmetology approved by the department, in a cosmetology program within the public school system, from the Cosmetology Division of the Florida School for the Deaf and Blind, provided said division meets the standards of this chapter, or from any other government-operated cosmetology program in Florida or has met standards established by the commission for a service-based competency equivalent to 1,200 such hours of training. However, the standards for service-based competency established by the commission shall include procedures for certification by the school of any such person to qualify to take the examination hereinafter provided once only after the completion of a minimum of 600 actual school hours. If such person then passes the examination, he shall have satisfied this requirement, but if such person fails the examination, he shall not be qualified to take the examination again until the completion of the full requirements herein provided.

(c) Has received a passing grade on an examination administered by the department.

(2) Every person desiring to be examined for licensure as a cosmetologist shall apply to the department in writing upon forms prepared and furnished by the department, after which the applicant may take a department examination.

(3) Upon an applicant passing the examination and paying the initial licensing fee, the department shall issue a license to practice cosmetology.

(4) Renewal of license registration shall be accomplished pursuant to rules adopted by the commission. As part of the license renewal procedure, the department shall require licensees periodically to demonstrate their current competency in cosmetology. These requirements shall be reasonable and shall include, but not be limited to, completion of continuing education programs approved by the commission and reexamination.

(5) The commission shall also adopt rules establishing provisions for persons to hold inactive licenses and standards for the reactivation of such licenses.

(6) The commission shall adopt rules specifying procedures for the licensing of practitioners desiring to be licensed in Florida who have been licensed and

are practicing in states which have licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

History.—s. 1, ch. 78-253.
cf.—s. 455.203 Department of Professional Regulation; renewal of licenses.
s. 455.213 General Licensing provisions.
s. 455.217 Examinations.

477.021 Cosmetology instructors; qualifications; licensure; license renewal; inactive licenses.—

(1) The commission shall adopt rules governing the experience, training, and competency necessary for licensure of cosmetology instructors and establishing an examination for applicants seeking licensure under this chapter as cosmetology instructors.

(2) Any person is qualified for licensure under this chapter as a cosmetology instructor who:

(a) Meets the standards for experience, training, and competency established under subsection (1).

(b) Holds an active or inactive practitioner's license in the state.

(c) Has received a passing grade on the examination established under subsection (1).

(3) Every person seeking licensure as a cosmetology instructor under this chapter shall apply to the department in writing upon forms prepared and furnished by the department and shall pay an application fee, which fee shall accompany the application.

(4) When the applicant meets the requirements of subsections (1),(2), and (3), the department shall issue to the applicant a cosmetology instructor's license.

(5) When an applicant for licensure as a cosmetology instructor under this chapter fails to meet the requirements herein, the department shall deny the application in writing and shall list the specific requirements not met. No applicant denied licensure because of failure to meet the requirements herein shall be precluded from reapplying for licensure.

(6) Renewal of license registration shall be accomplished pursuant to rules adopted by the commission. As part of the license renewal procedure, the commission shall require licensees to periodically demonstrate their current competency in the teaching of cosmetology. Such requirements shall be reasonable and may include, but not be limited to, completion of continuing education programs approved by the commission and reexamination. The commission is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(7) The commission may also adopt rules establishing provisions for cosmetology instructors licensed under this chapter to hold inactive licenses and standards for the reactivation of such licenses.

(8) No cosmetology instructor licensed under this chapter shall be required to continue or renew the cosmetologist's license required in paragraph (2)(b) in order to practice cosmetology, as long as his license as a cosmetology instructor remains active. However, any person holding an inactive cosmetology instructor's license under this chapter, in order to practice cosmetology, shall be required to hold an active cosmetologist's license.

History.—s. 1, ch. 78-253.
cf.—s. 455.203 Department of Professional Regulation; renewal of licenses.
s. 455. 213 General licensing provisions.
s. 455.217 Examinations.

477.022 Examinations.—

(1) The commission shall specify by rule the general areas of competency to be covered by examinations for the licensing under this chapter of cosmetologists and cosmetology instructors. The rules shall include the relative weight assigned in grading each area, the grading criteria to be used by the examiner, and the score necessary to achieve a passing grade. The commission shall insure that examinations adequately measure both an applicant's competency and his knowledge of related statutory requirements. Professional testing services may be utilized to formulate the examinations.

(2) The commission shall insure that examinations comply with state and federal equal employment opportunity guidelines.

(3) The department shall, in accordance with rules established by the commission, examine persons who file applications for licensure under this chapter in all matters pertaining to the practice of cosmetology. A written and practical examination shall be given at least once yearly and at such other times as the department shall deem necessary.

(4) The department shall, in accordance with rules established by the commission, examine persons who file application for licensure under this chapter as cosmetology instructors. The examination shall be given at least once yearly and at such other times as the department shall deem necessary.

(5) The commission shall adopt rules providing for reexamination of applicants who have failed the examinations.

(6) All licensing examinations shall be conducted in such manner that the applicant shall be known to the department by number only until his examination is completed and the proper grade determined. An accurate record of each examination shall be made and that record, together with all examination papers, shall be filed with the secretary of the department and shall be kept for reference and inspection for a period of not less than 2 years immediately following the examination.

History.—s. 1, ch. 78-253.
cf.—s. 455.217 Examinations.

477.023 Schools of cosmetology; licensure; requisites; operation; inspection.—

(1) No school of cosmetology shall be permitted to operate without a license issued by the department. However, nothing herein shall be construed to prevent certification by the Department of Education of cosmetology training programs within the public school system or to prevent government operation of any other program of cosmetology in Florida.

(2) The commission shall adopt rules governing the licensure and operation of schools, required and optional curricula, instructors, facilities, safety and sanitary requirements, financial responsibility to students and the public, insurance coverage, contractual agreements, the license application and granting process, and school closings.

(3) Any person, firm, or corporation, other than the Department of Education, the public school system, or any other government entity in Florida, de-

siring to operate a school of cosmetology shall submit to the department an application upon forms provided by the department, such application to be accompanied by:

(a) A surety bond issued by the applicant as a principal and by a surety company as surety in an amount to be set by rule by the commission at no less than $10,000 or no more than $25,000 and payable to the state, such bond to continue in full force and effect for the lifetime of the school.

(b) Proof of ownership of or lease agreement for a building to house the school, together with a description of the building's location, size, and facilities and a floor plan of said building.

(c) A statement of the ownership structure of the proposed school, including names and addresses of stockholders, partnership alignment, and corporate status, if applicable.

(d) A statement of the proposed curriculum and number of instructors, safety and sanitary measures and equipment to be used, and insurance coverage for the proposed school.

(e) A statement covering provisions for financial responsibility and contractual agreements.

(f) A description of the proposed system for handling student records and transcripts.

(g) Any other relevant information requested by the department.

(h) An application fee determined by the department.

(4) Upon receiving the application, the department may cause an investigation to be made of the proposed school of cosmetology.

(5) When an applicant fails to meet all requirements provided herein, the department shall deny the application in writing and shall list the specific requirements not met. No applicant denied licensure because of failure to meet the requirements herein shall be precluded from reapplying for licensure.

(6) When the department determines that the proposed school of cosmetology may reasonably be expected to meet the requirements set forth herein, the department shall grant the license upon such conditions as it shall deem proper under the circumstances and upon payment of the original licensing fee.

(7) No license for operation of a school of cosmetology may be transferred from the name of the original licensee to another. It may be transferred from one location to another only upon approval by the department, which approval shall not be unreasonably withheld.

(8) Renewal of license registration for schools of cosmetology regulated herein shall be accomplished pursuant to rules adopted by the commission. The commission is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(9) The commission is authorized to adopt rules governing the periodic inspection of schools of cosmetology licensed under this chapter.

(10) Any school of cosmetology licensed under this chapter which closes shall transfer all student records to the department, which shall keep such records on file for a period of no less than 2 years.

History.—s. 1, ch. 78-253.
cf.—s. 455.213 General licensing provisions.

477.024 Student enrollment; permits; records.—The commission shall adopt rules governing student enrollment at schools of cosmetology licensed under this chapter, including the establishment of a student enrollment permit fee. Each school licensed under this chapter shall send to the department a monthly statement of each student's total hours of study. Such records shall be kept on file with the department for a period of no less than 5 years.

History.—s. 1, ch. 78-253.

477.025 Cosmetology salons; requisites; licensure; inspection.—

(1) No cosmetology salon shall be permitted to operate without a license issued by the department.

(2) The commission shall adopt rules governing the licensure and operation of salons and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(3) Any person, firm, or corporation desiring to operate a cosmetology salon in the state shall submit to the department an application upon forms provided by the department and accompanied by any relevant information requested by the department and by an application fee.

(4) Upon receiving the application, the department may cause an investigation to be made of the proposed cosmetology salon.

(5) When an applicant fails to meet all the requirements provided herein, the department shall deny the application in writing and shall list the specific requirements not met. No applicant denied licensure because of failure to meet the requirements herein shall be precluded from reapplying for licensure.

(6) When the department determines that the proposed cosmetology salon may reasonably be expected to meet the requirements set forth herein, the department shall grant the license upon such conditions as it shall deem proper under the circumstances and upon payment of the original licensing fee.

(7) No license for operation of a cosmetology salon may be transferred from the name of the original licensee to another. It may be transferred from one location to another only upon approval by the department, which approval shall not be unreasonably withheld.

(8) Renewal of license registration for cosmetology salons shall be accomplished pursuant to rules adopted by the commission. The commission is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(9) The commission is authorized to adopt rules governing the periodic inspection of cosmetology salons licensed under this chapter.

History.—s. 1, ch. 78-253.
cf.—s. 455.213 General licensing provisions.

477.026 Fees; disposition.—

(1) The commission shall set fees according to the following schedule:

(a) For cosmetologists and cosmetology instructors, fees for examination, reexamination, reciprocity application, original licensing, license renewal, and delinquent renewal shall not exceed $25.

(b) For schools of cosmetology regulated under this chapter, fees for license application, original licensing, license renewal, and delinquent renewal shall not exceed $300.

(c) For students at schools of cosmetology licensed under this chapter, the enrollment permit fee shall not exceed $15.

(d) For cosmetology salons, fees for license application, original licensing, license renewal, and delinquent renewal shall not exceed $50.

Such fees shall be set at levels adequate to insure the continued funding for the purposes provided herein.

(2) The department is authorized to charge the cost of any original license issuance or permit issuance fee set herein for the issuance of any duplicate license requested by any cosmetologist, cosmetology instructor, school of cosmetology, or cosmetology salon, or of any duplicate student enrollment permit requested by any student, to whom the original license or permit was granted.

(3) All moneys collected by the department from fees authorized by this chapter shall be paid into the [1]Professional and Occupational Regulation Trust Fund, which fund is created in the department. It is the intent of this provision that such fees collected, even to the exhaustion thereof, shall be directly applied by the department for the purposes provided in this act, with particular emphasis being placed upon enforcement of the provisions hereof. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter. The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

(4) The department, with the advice of the board, shall prepare and submit a proposed budget in accordance with law.

History.—s. 1, ch. 78-253.

[1]**Note.**—See s. 4, ch. 79-36, which created the Professional Regulation Trust Fund into which all fees, licenses, and other charges assessed by each board shall be deposited.

cf.—s. 455.219 Fees; receipts; disposition.

477.027 Complaints.—

(1) Any complaint that a licensee has violated a provision of this chapter or any rule promulgated hereunder shall be filed with the department. Subsequent to its investigation, the department shall determine whether there exists probable cause to believe the allegations contained in the complaint are true. If the department finds probable cause, it shall petition the board for a hearing, and the Department of Legal Affairs shall prosecute the complaint before the board. The hearing, and the board's determination subsequent to the hearing, shall be in accordance with the provisions of chapter 120.

(2) A complaint may be filed pursuant to the provisions of subsection (1) by any person.

(3) Any complaint filed pursuant to subsection (1) and all information obtained by the department pursuant to the investigation of the complaint shall be confidential and shall not constitute a public record unless and until the department files a petition for a hearing as provided in said subsection.

History.—s. 1, ch. 78-253.

cf.—s. 455.225 Disciplinary proceedings.

477.028 Disciplinary proceedings.—

(1) The board shall have the power to revoke or suspend the license of a cosmetologist or a cosmetology instructor licensed under this chapter or to reprimand, censure, deny subsequent licensure of, or otherwise discipline a cosmetologist or a cosmetology instructor licensed under this chapter in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the practice or instruction of cosmetology.

(2) The board shall have the power to revoke or suspend the license of a cosmetology salon or a school of cosmetology licensed under this chapter, to deny subsequent licensure of such salon or school, or to reprimand, censure, or otherwise discipline the owner of such salon or school in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the salon or school so licensed.

(3) Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120.

History.—s. 1, ch. 78-253.

cf.—s. 455.225 Disciplinary proceedings.
s. 455.227 Grounds for discipline; penalties; enforcement.

477.029 Penalty.—

(1) It is unlawful for any person to:

(a) Hold himself out as a cosmetologist or cosmetology instructor unless duly licensed as provided in this chapter, except that nothing herein shall be construed to prevent use of the title "cosmetology instructor" by persons certified by the Department of Education to teach in the public school system, or to prevent employment of instructors in other government-operated programs of cosmetology in Florida.

(b) Operate any school of cosmetology or cosmetology salon unless it has been duly licensed as provided in this chapter, except that nothing herein shall be construed to prevent the teaching of cosmetology within the public school system or through any other government-operated program in Florida.

(c) Permit an employed person to practice or teach cosmetology unless duly licensed as provided in this chapter.

(d) Present as his own the license of another.

(e) Give false or forged evidence to the department in obtaining any license provided for in this chapter.

(f) Impersonate any other license holder of like or different name.

(g) Use or attempt to use a license that has been

revoked.

(2) Any person violating the provisions of this section shall be liable for a civil penalty, not to exceed $500, as determined by the board.

History.—s. 1, ch. 78-253.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

477.031 Civil proceedings.—As cumulative of any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this chapter or the lawful rules or orders of the department.

History.—s. 1, ch. 78-253.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

[1]477.035 Specialty licenses; facials and shampooing.—Any person holding a specialty license in the practice of facials or shampooing as specified in this chapter, and who was licensed on January 1, 1979, shall be entitled to continue to engage in those practices without additional applications or fees.

History.—s. 1, ch. 79-201.
[1]Note.—Effective January 1, 1980.

477.038 Saving clause.—Any person registered pursuant to ss. 477.01-477.29 on January 1, 1979, and practicing or teaching cosmetology, as defined by s. 477.013(6), shall be entitled without additional application or fees to practice until June 30, 1980. Likewise, any school of cosmetology or cosmetology salon registered pursuant to ss. 477.01-477.29 on January 1, 1979, shall be entitled without additional application or fees to continue in operation until June 30, 1980.

History.—s. 4, ch. 78-253; s. 133, ch. 79-164.

477.039 Specialty licenses; rules.—The [1]Department of Professional and Occupational Regulation shall have the authority to adopt rules in accordance with chapter 120, extending for up to 1 year from January 1, 1979, any specialty licenses described in s. 477.06 and in effect on January 1, 1979. The department is further authorized to adopt rules in accordance with chapter 120 to provide for phasing out or upgrading of such specialty licenses.

History.—s. 5, ch. 78-253.
[1]Note.—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

CHAPTER 479

OUTDOOR ADVERTISING

[1]**479.01 Definitions.**—The following terms, wherever used or referred to in this chapter, shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing, whether placed individually or on a V-type, back-to-back, or double-faced display, designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate, federal-aid primary highway system or the state highway system.

(2) "Business of outdoor advertising" means the business of constructing, erecting, operating, using, maintaining, leasing, or selling outdoor advertising structures, outdoor advertising signs, or outdoor advertisements.

(3) "Department" means the Department of Transportation of the state.

(4) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state.

(5) "Person" means an individual, partnership, association, or corporation.

(6) "Post" means post, display, print, paint, burn, nail, paste, or otherwise attach.

(7) "Real property" means any property physically attached or annexed to real property in any manner whatsoever.

(8) "Town" means an incorporated town or city.

(9) "Commercial or industrial zone" means an area within 660 feet of the nearest edge of the right-of-way of the interstate, federal-aid primary system or state highway system zoned commercial or industrial under authority of state law.

(10) "Unzoned commercial or industrial area" means an area within 660 feet of the nearest edge of the right-of-way of the interstate, federal-aid primary system or state highway system not zoned by state or local law regulation or ordinance, in which there is located one or more industrial or commercial activities generally recognized as commercial or industrial by zoning authorities in this state, except that the following activities may not be so recognized:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities not visible from the main-traveled way.

(e) Activities more than 660 feet from the nearest edge of the right-of-way.

(f) Activities conducted in a building principally used as a residence.

(g) Railroad tracks and minor sidings.

Distances adjacent to the activity and other measurements for the purpose of this section shall be defined by agreement between the Federal Government and the department.

(11) "Urban area" means an urbanized area or an urban place, as designated by the United States Bureau of the Census, having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by the state Department of Transportation and approved by the United States Secretary of Transportation. Such boundaries shall, at a minimum, encompass the entire urban place designated by the Bureau of the Census.

(12) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into or establish; but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign structure.

(13) "Interstate highway" means any highway officially designated as part of the national system of interstate and defense highways by the Department of Transportation and approved by the appropriate authority of the Federal Government.

(14) "Federal-aid primary highway system" means any highway, other than an interstate highway, officially designated as a part of the federal-aid primary system by the Department of Transportation and approved by the appropriate authority of the Federal Government.

(15) "Maintain" means to allow to exist.

(16) "Main-traveled way" means the traveled

way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(17) "Visible" means that the advertising copy of informative contents, whether or not legible, is capable of being seen without visual aid by a person of normal visual acuity.

(18) "Motorist services directional signs" means signs, displays, and devices providing directional information about goods and services in the interest of the traveling public where such signs, displays, and devices were lawfully erected and in existence on or before May 6, 1976, and continue to provide directional information to goods and services in a defined area.

History.—s. 1, ch. 20446, 1941; s. 1, ch. 65-397; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 175, ch. 71-377; s. 1, ch. 71-971; s. 1, ch. 75-202; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 1, ch. 78-8.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.02 Enforcement of provisions by department.—

(1) It shall be the function and duty of the department, subject to current federal regulations, to:

(a) Administer and enforce the provisions of this chapter including, but not limited to, executing agreements in conjunction with the Governor in accordance with title I of the Highway Beautification Act of 1965 and Title 23, U.S. Code;

(b) Regulate size, lighting, and spacing of signs permitted in zoned and unzoned commercial and zoned and unzoned industrial areas;

(c) Determine unzoned commercial and industrial areas; and

(d) Regulate signs relating to food, lodging, camping, vehicle service, and attractions.

(2) It shall be the function and duty of the department to transmit exemption requests, which comply with the applicable state and federal criteria, with such supporting data as was received from the Division of Tourism and submit such data to the United States Secretary of Transportation for approval as provided in 23 U.S.C. s. 131(o).

History.—s. 2, ch. 20446, 1941; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 2, ch. 71-971; s. 1, ch. 72-274; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-8; s. 134, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.03 Territory to which act applies; entries, examinations and surveys.—The territory under the jurisdiction of the department for the purpose of this chapter shall include all the state. Employees of the department, in the performance of their functions and duties under the provisions of this chapter, may enter into and upon any land upon which advertising structures are standing or upon which advertising signs or advertisements are displayed and make such examinations and surveys as may be relevant.

History.—s. 3, ch. 20446, 1941; s. 7, ch. 22858, 1945; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 4, ch. 71-971; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.04 Licensed outdoor advertisers.—

(1) No person shall engage in or continue in the business of outdoor advertising in this state outside the corporate limits of any city or town without first obtaining a license therefor from the department; and no person shall construct, erect, operate, use, maintain, lease, or sell any neon, outdoor advertising structure or outdoor advertising sign or outdoor advertisement of any kind in this state outside the corporate limits of any city or town without first obtaining such license from the department. The fee for such license, hereby imposed for revenue for the use of the state, shall be $25 per annum for the operation in one county, $75 per annum for persons or corporations operating under this act in two to eight counties, and $200 per annum for those operating in more than eight counties, payable in advance, and $15 per annum, payable annually in advance for the use of the county, in each and every county within the state in which such licensee shall engage or continue in the business of outdoor advertising as aforesaid. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the department and shall contain such pertinent information as the department may require and shall be accompanied by the annual fee. All outdoor advertisement fees shall be payable January 1 of each year. If the licensee does not pay said fee or fees by January 1, the department shall send a notice to the licensee requiring payment within 30 days after receipt of such notice together with payment of a delinquency fee equal to 10 percent of the amount originally due. Fees for licenses to engage in the business of outdoor advertising shall not be prorated. Nothing in this section shall be construed to require any person to obtain a license who constructs, erects, operates, uses, or maintains an outdoor advertising structure or outdoor advertising sign or outdoor advertisement solely on his own property, as herein provided; nor shall any person be required to obtain the license provided for in this section to erect, use, or maintain signs at whatever location which relate solely to merchandise, services, or entertainment sold, produced, manufactured, or furnished by said person at a place of business or residence of which said person is the owner or lessee.

(2) No person shall be required to obtain the license provided for in this section to erect outdoor advertising signs or structures as an incidental part of a building construction contract.

History.—s. 4, ch. 20446, 1941; s. 1, ch. 26959, 1951; s. 1, ch. 63-237; s. 5, ch. 67-461; s. 1, ch. 69-331; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-138.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.05 Revocation of license.—The department shall have authority to revoke any license granted by it upon repayment of a proportionate part of the license fee, in any case where it shall find that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this chapter unless such licensee shall, before the expiration of 30 days, correct such

false or misleading information and comply with the provisions of this chapter. Any person whose license is so revoked may, within the time provided by the Florida Appellate Rules apply to the circuit court for a declaratory judgment as to the validity of said order of revocation as provided by chapter 86.

History.—s. 4, ch. 20446, 1941; s. 17, ch. 63-512; s. 5, ch. 67-461; s. 1, ch. 69-267; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 56, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.06 Bond required from out of state licensee.—No such license as is provided for in s. 479.04 shall be granted to any person not residing in this state or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the department a bond payable to the state, with surety approved by the department and in form approved by the Department of Legal Affairs, in the sum of $2,500, conditioned that such licensee shall fulfill all requirements of law and observe and obey all the requirements of this chapter. Such bond shall remain in full force and effect so long as any obligations of such licensee to the state shall remain unsatisfied.

History.—s. 5, ch. 20446, 1941; s. 5, ch. 67-461; ss. 11, 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.07 Individual device permits; fees; tags.—

(1) Except as in this chapter otherwise provided, no person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained any outdoor advertising structure, outdoor advertising sign or outdoor advertisement, outside any incorporated city or town, without first obtaining a permit therefor from the department, and paying the annual fee therefor, as herein provided. Any person who shall construct, erect, operate, use, or maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising structure, outdoor advertising sign, or outdoor advertisement along any federal aid primary highway or interstate highway within any incorporated city or town shall apply for a permit on a form provided by the department. A permanent permit tag of the kind hereinafter provided shall be issued by the department without charge and shall be affixed to the sign in the manner provided in subsection (4). The department shall not issue such a permit to any person in the business of outdoor advertising who has not obtained the license provided for in s. 479.04.

(2) Applications for permits for advertising structures, advertising signs or advertisements shall be made on forms provided by the department and shall be signed by the applicant, or his duly authorized representative. Said applications shall set forth the number of permits for which application is made, the sizes of all advertising structures, advertising signs or advertisements included in the application, and the amounts of the annual permit fees. Every application for permit shall be accompanied by payment of the fee for each advertising structure, advertising sign, or advertisement included in the application, which fee shall be based on the size of the advertising structure, advertising sign, or advertisement as follows: Four lineal feet or less, $1; over 4 lineal feet, $2 per 8 lineal feet or fraction thereof above 4. In addition thereto, the sum of $1 per advertising structure will be added. The size in lineal feet shall be determined by measuring the width or the height, whichever is greater, of the advertising structure, advertising sign, or advertisement, including all boards, lattice work, borders, flags, decorative parts, devices, or other attachments, except and exclusive of the essential structural supports. Application shall also be made in like manner for a permit to operate, use, maintain, or display any existing advertising structure, advertising sign, or advertisement. Applications for permits for advertising structures shall be acted upon by the department within 30 days of receipt of the application by the department. No fee may be prorated for a period less than the remainder of the permit year to accommodate short-term publicity features; however, all first-year fees may be prorated by the payment of an amount equal to one-fourth of the annual fee for each remaining whole quarter or part quarter of the permit year ending on January 1, provided that any aggregate payment of prorated fees amounting to less than $5 and submitted with a single application shall be accompanied by a service fee of $1. Replacement permit tags for advertising structures shall be accompanied by a service fee of $1. Applications for permits received by the department after September 30 must include fees for the last quarter of the current year and fees for the succeeding year.

(3) Fees for permits issued hereunder shall be payable on January 1 of each year. On or before November 1 of each year, the department shall prepare and send to each licensee and permittee a notice of fees due for all licenses and permits of said licensee or permittee which were issued prior to September 30. Such notice shall be itemized to indicate the amount of the state license fee, the amounts of county license fees, the names of all counties to which the county license fees are applicable, and the number of permits and permit fees of each size. The permittee shall, within 60 days of the receipt of the said notice, pay the fees due for each outstanding permit or return the permit to the department for cancellation. If the permittee does not pay such fees within the 60-day period, the department shall send a second notice to the permittee requiring payment within 30 days after the receipt of notice together with payment of a delinquency fee of 10 percent of the amount originally due. Permits not renewed or returned to the department shall be accounted for on a form furnished by the department, which shall be in affidavit form and returned with the payment of the annual fees. Permits for structures along any federal-aid primary highway or interstate highway within any incorporated city or town which shall not be renewed in the manner herein provided shall be returned for cancellation or accounted for in the same manner.

(4) For every permit issued the department shall deliver to the applicant a serially numbered permanent metal permit tag which shall indicate the size

of the advertising structure, advertising sign or advertisement. The tag shall be of a kind furnished by the department for the year 1974. The permittee shall attach a currently valid permanent permit tag to each advertising structure, advertising sign or advertisement which he owns and which is required to be permitted wherever located within the state. Such tag shall indicate the amount of permit fee for the advertising structure, advertising sign or advertisement to which it is attached. The tag shall be attached to the face of the advertising structure, advertising sign or advertisement on the end nearest the highway in a manner that shall cause it to be plainly visible. Permit tags issued for use in 1974 and thereafter shall be considered permanent permit tags and shall be maintained on the structure until returned to the department for cancellation. The construction, erection, use or maintenance of any advertising structure, advertising sign or advertisement which is required by this chapter to be permitted, without having affixed thereto a currently valid permanent permit tag shall be prima facie evidence that the same has been constructed or erected and is being operated, used or maintained in violation of the provisions of this chapter, and shall be subject to removal by legal representatives of the department. No person shall paint, alter, mutilate, deface or change the color of a permit tag and no one other than the owner of such tag or his lawful representative shall remove such tag from the advertising structure, advertising sign or advertisement to which it has been affixed. Any person violating this provision shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If more than one side of an advertising structure, advertising sign or advertisement is used for advertising, a fee for each such side shall be required. Advertisements sculptured in the round shall be treated as using three sides.

(6) No person shall erect or cause to be erected an advertising structure, advertising sign or advertisement upon the property of another without first securing the written permission of the owner or lessee of said property and applying for and receiving a current permit tag as herein provided.

(7) Any person who shall construct, erect, operate, use, or maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising structure, outdoor advertising sign, or outdoor advertisement as provided herein shall affix the name of such person or the owner thereof to the structure in such a manner as to be visible from the front surface of the structure.

History.—s. 6, ch. 20446, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 61-151; s. 2, ch. 63-237; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 427, ch. 71-136; s. 1, ch. 74-80; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-138.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.08 Revocation of permit.—

(1) The department may after 30 days' notice in writing to the permittee, revoke any permit issued by it under s. 479.07 upon repayment of a proportionate part of the fee in any case where it shall appear to the department that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of this chapter unless such permittee shall, before the expiration of said 30 days, correct such false or misleading information and comply with the provisions of this chapter. If the construction, erection, operation, use, maintenance and display of any advertisement, advertising sign or advertising structure for which a permit is issued by the department and the permit fee has been paid as above provided, shall be prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertisement, advertising sign or advertising structure or its site, the fee for such advertisement, advertising sign or structure shall be returned by the department and the permit revoked. But one-half of the fee shall be deemed to have accrued upon the erection of advertising sign or advertising structure or the display of an advertisement followed by an inspection by the representatives of the department.

(2) Any person aggrieved by any action of the department in refusing to grant or in revoking a permit under s. 479.07 may, within the time provided by the Florida Appellate Rules after the date of such refusal or revocation apply to the circuit court for a declaratory judgment as to the validity of said order of revocation as provided by chapter 86.

History.—s. 6, ch. 20446, 1941; s. 7, ch. 22858, 1945; s. 17, ch. 63-512; s. 5, ch. 67-461; s. 1, ch. 69-267; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.10 Removal.—All outdoor advertisements, advertising signs and advertising structures shall be removed by the permittee within 30 days after the date of the expiration or revocation of the permit for the same. Any permittee failing to remove any such advertisement, advertising sign or advertising structure within said 30 days shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 20446, 1941; s. 7, ch. 22858, 1945; s. 428, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.11 Certain outdoor advertising prohibited.—No advertisement, advertising sign or advertising structure shall be constructed, erected, used, operated or maintained:

(1) Within 660 feet of the nearest edge of the right-of-way of all portions of the interstate system or the federal-aid primary system except as provided in s. 479.111, or within 15 feet of the outside boundary of any other federal or state highway or within 100 feet of any church, school, cemetery, public park, public reservation, public playground, state or national forest, or railroad intersection outside the limits of any incorporated city or town.

(2) Beyond 660 feet of the nearest edge of the right-of-way of all portions of the interstate system or the federal-aid primary systems outside of urban areas that is erected with the purpose of its message being read from the main-traveled ways of such system, unless it is of a class or type permitted in subsection 479.111(1) or subsections 479.16(1) or (3).

(3) Which displays intermittent lights not em-

bodied in an outdoor advertising sign, or any rotating or flashing light within 100 feet of the state-owned right-of-way.

(4) Which uses the word "stop" or "danger," or presents or implies the need or requirement of stopping or the existence of danger, or which is a copy or imitation of official signs;

(5) Which is placed on the inside of a curve or in any manner that may prevent persons using the highway from obtaining an unobstructed view of approaching vehicles.

(6) No advertisement shall be nailed, fastened or affixed to any tree or upon any right-of-way of any state-maintained road.

(7) Which is erected or maintained in an unsafe, insecure or unsightly condition.

History.—s. 9, ch. 20446, 1941; s. 3, ch. 26959, 1951; s. 1, ch. 31413, 1956; s. 1, ch. 57-282; s. 2, ch. 61-151; s. 5, ch. 71-971; s. 2, ch. 75-202; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.111 Certain advertising signs permitted.—Only the following signs shall be permitted within controlled positions of the interstate and federal-aid primary systems:

(1) Directional or other official signs and notices which conform to 23 C.F.R. ss. 750.151-750.155.

(2) Signs in commercial and industrial zoned or commercial and industrial unzoned areas subject to agreement established by s. 479.02.

(3) The department, as authorized, may maintain a facility at safety rest areas to deposit or display maps, pamphlets, directories, or other materials approved by the department and furnished by those interested advertisers whose businesses or attractions are accessible from any interstate or primary highway; such information shall be available for public use; however, every advertiser must compensate the department a reasonable cost fee for such use.

(4) Motorist services directional signs in specific defined areas approved by the United States Secretary of Transportation as provided in 23 U.S.C.

History.—s. 6, ch. 71-971; s. 3, ch. 75-202; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-8.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.12 Outdoor advertising on highways.—Any person who willfully or maliciously displaces, removes, destroys or injures a mileboard, milestone, danger sign, signal, guide sign, guidepost, highway sign, or historical marker or any inscription thereon, lawfully within or adjacent to a highway, or who in any manner paints, prints, places, puts or affixes any advertisement upon or to any rock, stone, tree, fence, stump, pole, mileboard, milestone, danger sign, guide sign, guidepost, highway sign, historical marker, buildings, barns or other object lawfully within the limits of any highway, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 20446, 1941; s. 429, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.13 Written permission of owner required.—No person shall construct, erect, operate, use or maintain any outdoor advertising structure, outdoor advertising sign or advertisement without the written permission of the owner or other person in lawful possession or control of the property on which such structure or sign is located.

History.—s. 11, ch. 20446, 1941; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.14 Disposition of fees.—All moneys received by the department under the provisions of this chapter shall be paid by it into the state treasury, and placed in the state transportation trust fund for use, in the administration of this chapter and in the construction and maintenance of roads.

History.—s. 12, ch. 20446, 1941; s. 2, ch. 61-119; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.15 Harmony of regulations.—

(1) No zoning board or commission nor any other public officer or agency shall permit any advertisement or advertising structure which is prohibited under the provisions of this chapter nor shall the department permit any advertisement or advertising structure which is prohibited by any other public board, officer or agency in the lawful exercise of its or their powers.

(2) No municipality, county, local zoning authority, or other political subdivision shall remove, or cause to be removed, any advertisement or advertising structure without paying compensation in accordance with s. 479.24(1). Said compensation may, at the discretion of the political subdivision, be paid out of secondary road funds available to that political subdivision.

(3) The removal of outdoor advertisements or advertising structures adjacent to roads or highways on the federal interstate or primary highway systems shall be the sole responsibility of the Department of Transportation.

History.—s. 13, ch. 20446, 1941; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 1, ch. 74-273; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

479.155 Local outdoor advertising or sign ordinances.—The provisions of chapter 78-138, Laws of Florida, shall not be deemed to supersede the rights and powers of counties and municipalities to establish outdoor advertising or sign ordinances.

History.—s. 4, ch. 78-138.

[1]479.16 Certain advertisements excepted.—The following advertisements, advertising signs and the advertising structures, or parts thereof, upon which they are posted or displayed, are excepted from all the provisions of this chapter except those contained in s. 479.11(3)-(5):

(1) Those constructed by the owner or lessee of a place of business or residence on land belonging to said owner or lessee and not more than 100 feet from

such place of business or residence, and relating solely to merchandise, services or entertainment sold, produced, manufactured or furnished at such place of business or residence, are excepted from the permit fee, but do not exempt the license of a contractor who is engaged in the manufacture, erection or maintenance of such advertising sign;

(2) Those constructed, erected, operated, used or maintained on any farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, service or entertainment sold, produced, manufactured or furnished on such farm;

(3) Those upon real property posted or displayed by the owner or by the authority of the owner, stating that real property is for sale or rent, but if said advertisement carries any other wording not pertaining to said property, then the same shall be subject to the conditions of s. 479.07(2);

(4) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties, or by trustees under deeds of trust, deed of assignment or other similar instruments;

(5) Danger or precautionary signs relating to the premises on which they are, or signs warning of the condition of or dangers of travel on a highway, erected or authorized by the department; or forest fire warning signs erected under authority of the Division of Forestry of the Department of Agriculture and Consumer Services and signs, notices or symbols erected by the United States Government under the direction of the United States Forestry Service;

(6) Signs solely to denote route to any city, town, village or historic place or shrine;

(7) Notices of any railroad, bridge, ferry or other transportation or transmission company necessary for the direction or safety of the public;

(8) Signs, notices or symbols for the information of aviators as to location, directions and landings and conditions affecting safety in aviation erected or authorized by the department;

(9) Advertisements, advertising signs and advertising structures not visible from any highway or other public place;

(10) Signs or notices containing 2 square feet or less, placed at a junction of two or more roads in the state highway system denoting only the distance or direction of a residence;

(11) Signs or notices erected or maintained upon property giving the name of the owner, lessee or occupant of the premises;

(12) Advertisements, advertising signs and advertising structures within the corporate limits of cities or towns, adjacent to highways other than interstate and federal-aid primary systems;

(13) Historical markers erected by duly constituted and authorized public authorities;

(14) Highway markers and signs erected or caused to be erected by the department;

(15) Signs erected upon property warning the public against hunting and fishing or trespassing thereon;

(16) Signs erected by Red Cross authorities relating to Red Cross emergency stations;

(17) Advertisements, advertising signs and advertising structures relating to the facilities and activities of churches, civic organizations, fraternal organizations, charitable organizations, corporations not for profit, units of government or agencies of government shall be excluded from all the provisions of this chapter except those contained in s. 479.11(3)-(6), provided such signs are owned by the church, organization or agency to which they are related.

History.—s. 14, ch. 20446, 1941; s. 4, ch. 26959, 1951; s. 2, ch. 65-397; s. 5, ch. 67-461; ss. 14, 23, 35, ch. 69-106; s. 7, ch. 71-971; s. 4, ch. 75-202; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.17 Violation a nuisance; abatement.—Any advertisement, advertising sign, or advertising structure which is constructed, erected, operated, used, maintained, posted, or displayed in violation of this chapter is hereby declared to be a public and private nuisance and shall be forthwith removed, obliterated, or abated by the department, and for that purpose its representatives may enter upon private property without incurring any liability therefor: provided, however, that if any licensed or unlicensed outdoor advertising structure or outdoor advertising sign of the value of $100 or more bears thereon the name of the owner thereof, the said owner shall be given written notice of the alleged violation, and shall have 30 days after the receipt thereof within which to show that the said advertisement, advertising sign, or advertising structure does not violate the provisions of this chapter.

History.—s. 15, ch. 20446, 1941; s. 5, ch. 67-461; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-138.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.18 Penalties.—Any person, violating any provision of this chapter whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; and such person shall be guilty of a separate offense for each month during any portion of which any violation of this chapter is committed, continued or permitted. The existence of any advertising copy on any outdoor advertising structure or outdoor advertising sign or advertisement outside incorporated towns and cities shall constitute prima facie evidence that the said outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

History.—s. 16, ch. 20446, 1941; s. 430, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.19 Application of chapter.—The provisions of this chapter shall not apply to structures or shelters erected primarily for the comfort and convenience of the school children of the state or advertising thereon.

History.—s. 14A, ch. 20446, 1941; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]479.20 Duty of department.—The department shall enforce this law.

History.—s. 21, ch. 20446, 1941; ss. 23, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.21 Penalties for molesting licensed structures.—Any person who shall remove, destroy, damage, injure, deface or tamper with any advertising structure, or the advertisement thereon, which has been duly licensed under the terms of this chapter, without the consent of either the licensee or the owner of the real estate on which same is located, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $300, or by imprisonment for not more than 30 days, or by both such fine and imprisonment.

History.—s. 1, ch. 22757, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.22 Inapplicability of chapter.—The provisions of this chapter shall not apply to any political sign; provided, however, that no political sign shall be erected, posted, painted, tacked, nailed or otherwise displayed, placed or located on or above any state or county road right-of-way.

History.—s. 1, ch. 65-425; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.23 Removal of signs.—All signs which are lawfully in existence or are lawfully erected and which do not conform to the provisions of this chapter shall not be required to be removed by the department until after the end of the fifth year after they have become nonconforming.

History.—s. 8, ch. 71-971; s. 1, ch. 76-52; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]479.24 Compensation for removal of signs; eminent domain; exceptions.—

(1) Compensation shall be paid upon the removal of all signs lawfully in existence on December 8, 1971 or signs lawfully erected which later become nonconforming. Compensation for any sign erected or completed after December 8, 1971 shall be limited to the actual replacement value of the materials in such sign. It is the legislative intent that any person erecting or completing such a sign after December 8, 1971 shall be fully compensated by the method herein provided.

(2) Compensation shall be made pursuant to the state's eminent domain procedures, chapters 73 and 74.

(3) No sign, display, or device shall be required to be removed under this section if the federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment.

(4) The department is authorized to use the power of eminent domain when necessary to carry out the provisions of this chapter.

(5) It is presumed that any party erecting a sign after July 1, 1971, did so with the knowledge of the existing federal legislation and the pendency of this legislation. The measure of damages on condemnation of any such sign shall be limited to the replacement value of the materials used in construction of such signs.

(6) Lawfully erected outdoor advertising signs, displays, or devices prohibited by subsection 479.11(2) shall be removed upon the payment of just compensation. Notwithstanding any other provisions of this chapter, compensation shall be in the same manner and subject to the same limitations as for signs lawfully erected prior to July 1, 1971, within 660 feet of the nearest edge of the right-of-way.

History.—s. 9, ch. 71-971; s. 5, ch. 75-202; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—Chs. 73, 74 Eminent domain procedures.

CHAPTER 480

MASSAGE PRACTICE

480.031 Short title.—This act shall be known and may be cited as the "Massage Practice Act."

History.—s. 1, ch. 78-436.

480.032 Purpose.—The Legislature recognizes that the practice of massage is potentially dangerous to the public in that masseurs must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage in this state; however, restrictions shall be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

History.—s. 2, ch. 78-436.

480.033 Definitions.—As used in this act:

[1](1) "Board" means the Florida Board of Massage.

[2](2) "Department" means the Department of Professional and Occupational Regulation.

(3) "Commission" means the Florida Massage Practice Commission.

(4) "Massage" means the manipulation of the superficial tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy or thermal therapy, or any electrical or mechanical device, or the application to the human body of a chemical or herbal preparation.

(5) "Masseur" means a person, including a masseuse, certified as required by this act, who administers massage for compensation.

(6) "Apprentice" means a person approved by the board to study massage under the instruction of a licensed masseur.

(7) "Establishment" means a site or premises, or portion thereof, upon which a masseur practices massage.

(8) "Licensure" means the procedure by which a person, hereinafter referred to as a practitioner, applies for approval by the commission to operate an establishment, review by the commission of such application, and action by the commission on such application, as provided in this act and by rule of the commission.

History.—s. 3, ch. 78-436.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Florida Board of Massage" to "Board of Massage."

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

480.034 Exemptions.—

(1) Nothing in this act shall modify or repeal any provision of chapters 458-464, inclusive, or of chapter 476, chapter 477, or chapter 486.

(2) Athletic trainers employed by or on behalf of a professional athletic team performing or training within this state shall be exempt from the provisions of this act.

(3) The state and its political subdivisions are exempt from the registration requirements of this act.

(4) An exemption granted is effective to the extent that an exempted person's practice or profession overlaps with the practice of massage.

History.—s. 4, ch. 78-436.

480.035 Board of Massage.—

(1) The [1]Florida Board of Massage is created within the [2]Department of Professional and Occupational Regulation. The board shall consist of seven members who shall be appointed by the Governor and whose function it shall be to carry out the provisions of this act.

(2) Five members of the board shall be licensed masseurs and shall have been practicing massage for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. [3]Two members of the board shall be lay persons. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. Upon this act becoming law, the Governor shall make appointments to the board as herein provided. The appointments will be subject to confirmation by the Senate.

(3) The terms of the initial members appointed to the board shall expire as follows: Two members shall serve until January 1, 1980; two members shall serve until January 1, 1981; and three members shall serve until January 1, 1982. All appointments

thereafter shall be for 4-year terms. The Governor may at any time fill vacancies on the board for the remainder of unexpired terms. Each member of the board shall hold over after the expiration of his term until his successor shall have been duly appointed and qualified. No board member shall serve more than 2 terms, whether full or partial.

(4) Immediately, and before entering upon duties as a board member, appointees shall take the constitutional oath of office and shall file the same with the Department of State, which shall then issue to that member a certificate of his appointment.

(5) The board shall, as soon as organized, and annually thereafter in the month of January, elect from its number a chairman, a vice chairman, and a secretary-treasurer.

(6) The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chairman of the board shall have the authority to call other meetings at his discretion. A quorum of the board shall consist of not less than four members.

(7) Board members shall receive per diem and mileage as provided in s. 112.061 from the place of residence to the place of meeting and return.

History.—s. 5, ch. 78-436.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Florida Board of Massage" to "Board of Massage."

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[3]**Note.**—See ch. 78-431, which added an additional lay member to each examining and licensing board in the Department of Professional and Occupational Regulation. Also, see s. 2, ch. 79-36, which provides that each board with 5 or more members shall have at least two members who are not and have never been members or practitioners of the regulated profession or of any closely related profession.

cf.—s. 455.207 Boards; organization; meetings; compensation and travel expenses.

480.036 Accountability of board members.—Each board member shall be held accountable to the Governor for the proper performance of all duties and obligations of such board member's office. The Governor shall cause to be investigated any complaints or unfavorable reports received concerning the actions of the board or its individual members and shall take appropriate action thereon, which may include removal of any board member for malfeasance, misfeasance, neglect of duty, commission of a felony, incompetency, or permanent inability to perform official duties.

History.—s. 6, ch. 78-436.

cf.—s. 455.209 Accountability and liability of board members.

480.037 Rulemaking.—

(1) There is created the Florida Massage Practice Commission, consisting of the Secretary of [1]Professional and Occupational Regulation, or a representative designated in writing by the secretary, and the seven members of the board.

(2) The commission is authorized to adopt rules in accordance with chapter 120 to carry out the provisions of this act.

(3) The commission shall hold such meetings during the year as it may determine to be necessary. The chairman of the board shall also serve as chairman of the commission. A quorum of the commission shall consist of not less than five members, of whom one must be the secretary of the department or a representative designated in writing by the secretary. Commission meetings shall be considered official board business for purposes of compensation of board members as established herein. Commission members also shall receive per diem and mileage as provided in s. 112.061 from place of residence to place of meeting and return.

(4) Any proposed rule or any proposed amendment to or abolition of an existing rule shall, prior to any rulemaking process held pursuant to s. 120.54, be approved by a majority of the commission members present and the secretary of the department or a representative designated in writing by the secretary.

History.—s. 7, ch. 78-436.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

480.038 Legal services.—The [1]Department of Professional and Occupational Regulation shall provide all legal services needed to carry out the provisions of this act.

History.—s. 8, ch. 78-436.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

cf.—s. 455.221 Legal and investigative services.

480.039 Investigative services.—The department shall provide all investigative services required by the board, the department, or the commission in carrying out the provisions of this act.

History.—s. 9, ch. 78-436.

cf.—s. 455.221 Legal and investigative services.

480.041 Masseurs; qualifications; licensure; license renewal; endorsement.—

(1) Any person is qualified for licensure as a masseur under this act who:

(a) Is at least 16 years of age or has received a high school diploma or graduate equivalency diploma.

(b) Has completed a course of study at a state-approved massage school or has completed an apprenticeship program.

(c) Has received a passing grade on an examination administered by the department.

(2) Every person desiring to be examined for licensure as a masseur shall apply to the department in writing upon forms prepared and furnished by the department, after which the applicant may take a department examination.

(3) Upon an applicant passing the examination and paying the initial licensing fee, the department shall issue a license to practice massage to the applicant.

(4) Renewal of license registration shall be accomplished pursuant to rules adopted by the commission. As part of the license renewal procedure, the department shall periodically require licensees to demonstrate their current competency in massage. These requirements shall be reasonable and shall include, but shall not be limited to, attendance at continuing education programs and reexamination.

(5) The commission also shall adopt rules establishing a minimum training program for apprentices.

(6) The commission shall adopt rules specifying

procedures for the licensing of practitioners desiring to be licensed in Florida who have been licensed and are practicing in states which have licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

History.—s. 10, ch. 78-436.
cf.—s. 455.203 Department of Professional Regulation; renewal of licenses.
s. 455.213 General licensing provisions.
s. 455.217 Examinations.

480.042 Examinations.—

(1) The commission shall specify by rule the general areas of competency to be covered by examinations for licensure. These rules shall include the relative weight assigned in grading each area, the grading criteria to be used by the examiner, and the score necessary to achieve a passing grade. The commission shall insure that examinations adequately measure both an applicant's competency and his knowledge of related statutory requirements. Professional testing services may be utilized to formulate the examinations.

(2) The commission shall insure that examinations comply with state and federal equal employment opportunity guidelines.

(3) The department shall, in accordance with rules established by the commission, examine persons who file applications for licensure under this act in all matters pertaining to the practice of massage. A written and a practical examination shall be offered at least once yearly and at such other times as the department shall deem necessary.

(4) The commission shall adopt rules providing for reexamination of applicants who have failed the examination.

(5) All licensing examinations shall be conducted in such manner that the applicant shall be known to the department by number until his examination is completed and the proper grade determined. An accurate record of each examination shall be made, and that record, together with all examination papers, shall be filed with the secretary of the department and shall be kept for reference and inspection for a period of not less than 2 years immediately following the examination.

History.—s. 11, ch. 78-436.
cf.—s. 455.217 Examinations.

480.043 Massage establishments; requisites; licensure; inspection.—

(1) No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the commission.

(2) The commission shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(3) Any person, firm, or corporation desiring to operate a massage establishment in the state shall submit to the department an application upon forms provided by the department accompanied by any information requested by the department and an application fee.

(4) Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.

(5) If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the commission under subsection (2), the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.

(6) If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (2), the department shall grant the license under such restrictions as it shall deem proper as soon as the original licensing fee is paid.

(7) Once issued, no license for operation of a massage establishment may be transferred from one person to another or from one corporation to another. It may be transferred from one location to another only upon approval by the department.

(8) Renewal of license registration for massage establishments shall be accomplished pursuant to rules adopted by the commission. The commission is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(9) The commission is authorized to adopt rules governing the periodic inspection of massage establishments licensed under this act.

History.—s. 12, ch. 78-436.
cf.—s. 455.213 General licensing provisions.

480.044 Fees; disposition.—

(1) The commission shall set fees according to the following schedule:

(a) Application fee: Not to exceed $75.

(b) Licensure of an establishment: Not to exceed $50.

(c) Renewal fee for an establishment: Not to exceed $25 annually.

(d) Renewal fee or licensure of practitioner: Not to exceed $37.50 annually.

(e) Reexamination fee: Not to exceed $37.50.

(f) Fee for apprentice: Not to exceed $40.

(2) The department shall impose a late fee of $15 on a delinquent renewal.

(3) The department is authorized to charge the cost of any original license issuance or permit issuance fee set herein for the issuance of any duplicate license requested by any masseur or massage establishment.

(4) All moneys collected by the department from fees authorized by this act shall be paid into the [1]Professional and Occupational Regulation Trust Fund in the department.

(5) It is the intent of this section that any fees collected shall be directly applied by the department for the purposes provided in this act, with particular emphasis being placed upon use of such fees for enforcement of the provisions hereof. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this act. The Legislature also may appropriate any excess moneys from this fund to the General Revenue Fund.

(6) The department, with the advice of the board,

shall prepare and submit a proposed budget to the Legislature in accordance with law.

History.—s. 13, ch. 78-436.

[1]Note.—See s. 4, ch. 79-36, which created the Professional Regulation Trust Fund into which all fees, licenses, and other charges assessed by each board shall be deposited.

cf.—s. 455.219 Fees; receipts; disposition.

480.045 Complaints.—

(1) Any complaint that a licensee has violated a provision of this chapter or any rule promulgated hereunder shall be filed with the department. Subsequent to its investigation, the department shall determine whether there exists probable cause to believe the allegations contained in the complaint are true. If the department finds probable cause, it shall petition the board for a hearing, and the Department of Legal Affairs shall prosecute the complaint before the board. The hearing, and the board's determination subsequent to the hearing, shall be in accordance with the provisions of chapter 120.

(2) A complaint may be filed pursuant to the provisions of subsection (1) by any person.

(3) Any complaint filed pursuant to subsection (1) and all information obtained by the department pursuant to the investigation of the complaint shall be confidential and shall not constitute a public record unless and until the department files a petition for a hearing as provided in said subsection.

History.—s. 14, ch. 78-436.

cf.—s. 455.225 Disciplinary proceedings.

480.046 Disciplinary proceedings.—

(1) The board shall have the power to revoke or suspend the license of a masseur licensed under this act, or to reprimand, censure, deny subsequent licensure of, or otherwise discipline a masseur licensed under this act in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the practice of massage.

(2) The board shall have the power to revoke or suspend the license of a massage establishment licensed under this act, or to deny subsequent licensure of such an establishment, or to reprimand, censure, or otherwise discipline the owner of such establishment in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the establishment so licensed.

(3) Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120.

History.—s. 15, ch. 78-436.

cf.—s. 455.225 Disciplinary proceedings.
s. 455.227 Grounds for discipline; penalties; enforcement.

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself out as a masseur unless duly licensed as provided herein.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage within the public school system or through any other government-operated program in this state.

(c) Permit an employed person to practice massage unless duly licensed as provided herein.

(d) Present as his own the license of another.

(e) Allow the use of his license by an unlicensed person.

(f) Give false or forged evidence to the department in obtaining any license provided for herein.

(g) Falsely impersonate any other license holder of like or different name.

(h) Use or attempt to use a license that has been revoked.

(i) Otherwise violate any of the provisions of this act.

(2) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 16, ch. 78-436.

480.048 Prosecution of criminal violations.— All criminal violations of the provisions of this act, when reported to the department and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by the department, and, if the report is found to be true and the evidence substantiated, the department shall report such criminal violations to the proper prosecuting officer and request prompt prosecution.

History.—s. 17, ch. 78-436.

480.049 Civil proceedings.—As cumulative to any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this act or the lawful rules or orders of the department.

History.—s. 18, ch. 78-436.

cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

480.051 Occupational license.—A county or municipal official authorized to issue an occupational license shall, prior to issuing such license for the practice of massage, require the applicant for such license to produce the license issued by the department.

History.—s. 19, ch. 78-436.

480.052 Power of county or municipality to regulate massage.—A county or municipality may regulate the practice of massage within its jurisdiction. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act.

History.—s. 20, ch. 78-436.

480.053 Continuation of existing licenses.— Notwithstanding any other provision of this act, each licensed masseur, registered establishment, or apprentice who is duly licensed or registered as such by this state on June 30, 1978, shall be entitled to continue to hold such license without reexamination, and such license shall be renewed and held henceforth in accordance with the provisions of this act.

History.—s. 21, ch. 78-436.

CHAPTER 481

ARCHITECTURE AND LANDSCAPE ARCHITECTURE

PART I ARCHITECTURE (ss. 481.201-481.233)

PART II LANDSCAPE ARCHITECTURE (ss. 481.301-481.327)

PART I

ARCHITECTURE

[1]481.201 Purpose.—The Legislature finds that improper design and improper construction supervision by architects of buildings primarily designed for human habitation or use present a significant threat to the public.

History.—ss. 1, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.203 Definitions.—As used in this act:

(1) "Board" means the Board of Architecture.

(2) "Department" means the Department of Professional Regulation.

(3) "Registered architect" means a person who is licensed under this act to engage in the practice of architecture.

(4) "Certificate of registration" means a license issued by the department to engage in the practice of architecture.

(5) "Certificate of authority" means a license issued by the department to a corporation or partnership to practice architecture.

(6) "Architecture" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, architectural supervision, job-site inspection, and administration of construction contracts.

History.—ss. 2, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.205 Board of Architecture.—

(1) There is created in the Department of Professional Regulation a Board of Architecture. The board shall consist of seven members, five of whom shall be registered architects who have been engaged in the practice of architecture for at least 5 years, and two of whom shall be lay persons who are not and have never been architects or members of any closely related profession or occupation.

(2) Initially, the Governor shall appoint two members for a term of 4 years, two members for a term of 3 years, two members for a term of 2 years, and one member for a term of 1 year. Thereafter, members shall be appointed for 4-year terms.

(3) The members of the State Board of Architecture who are serving as of June 30, 1979, shall serve as members of the Board of Architecture until January 1, 1980, or until all members are appointed pursuant to subsection (1) and s. 20.30, whichever occurs first.

History.—ss. 3, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.207 Fees.—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $200. The biennial renewal fee shall not exceed $100. The board may also establish, by rule, a late renewal penalty. The board shall establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of architects. Fees shall be based on department estimates of the revenue required to implement this act and the provisions of law with respect to the regulation of architects.

History.—ss. 4, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.209 Examinations.—

(1) A person desiring to be licensed as a registered architect or architect intern shall apply to the department for licensure.

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a registered architect if the applicant:

(a) Is honest and trustworthy; [2]and

(b) Is a graduate from an approved architectural curriculum of 5 years or more, evidenced by a degree from a school or college of architecture which meets standards of accreditation adopted by the board by rule based on a review and inspection by the board of the curriculum of accredited schools and colleges of architecture in the United States, including those schools and colleges accredited by the National Architectural Accreditation Board.

History.—ss. 5, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "and" was inserted by the editors.

[1]481.211 Experience.—

(1) An applicant for licensure as a registered architect who passes the examination shall be entitled to be licensed as a registered architect pursuant to s. 481.213 if the applicant completes an internship of diversified architectural experience approved by the board in the design and construction of structures which have as their principal purpose human habitation or use for a period of:

(a) Three years for an applicant holding the degree of Bachelor of Architecture; or

(b) Two years for an applicant holding the degree of Master of Architecture.

(2) Any person who was engaged in a program consisting of 7 years or more of diversified training in an office of registered practicing architects on July 1, 1969, and who notified the board of his training within 1 year after July 1, 1969, shall, if otherwise qualified, be permitted to take the examination required by s. 481.209 only if diversified training is completed before July 1, 1985.

History.—ss. 6, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.213 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified for licensure.

(2) The board shall certify for licensure any applicant who satisfies the requirements of ss. 481.209 and 481.211.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 481.209; has passed a national, regional, state, or United States territorial licensing examination which is substantially equivalent to the examination required by s. 481.209; and has satisfied the experience requirements set forth in s. 481.211;

(b) Holds a valid license to practice architecture issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria which existed in this state at the time the license was issued; or

(c) Has engaged in the practice of architecture as a registered architect in another state for not less than 10 years.

(4) The board shall certify as qualified for licensure any applicant corporation or partnership which satisfies the requirements of s. 481.219.

(5) The board may refuse to certify any applicant who has violated any of the provisions of s. 481.225.

(6) The board may refuse to certify any applicant who is under investigation in another state for any act which would constitute a violation of this act or of chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

(7) The board shall adopt rules to implement the provisions of this act relating to the examination, internship, and licensure of applicants.

History.—ss. 8, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.215 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and renewal fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) A license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the qualifications for reactivation in s. 481.217.

(4) Sixty days prior to the automatic reversion of a license to inactive status, the department shall mail a notice of such reversion to the last known address of the licensee.

History.—ss. 9, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.217 Inactive status.—

(1) A license for which a renewal application is filed within 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 481.215 upon payment of the late renewal penalty.

(2) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50. The board may prescribe, by rule, continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive.

History.—ss. 10, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.219 Certification of partnerships and corporations.—

(1) The practice of or the offer to practice architecture by licensees through a corporation or partnership offering architectural services to the public, or by a corporation or partnership offering architectural services to the public through licensees under this act as agents, employees, officers, or partners, is permitted, subject to the provisions of this act, provided that:

(a) One or more of the principal officers of the corporation or one or more partners of the partnership and all personnel of the corporation or partnership who act in its behalf as architects in this state are registered as provided by this act; and

(b) The corporation or partnership has been is-

sued a certificate of authorization by the department as provided in s. 481.213.

(2) All final drawings, specifications, plans, reports, or other papers or documents involving the practice of architecture which are prepared or approved for the use of the corporation or partnership, for delivery to any person, or for public record within the state shall be dated and bear the signature and seal of the licensee who prepared or approved them.

(3) Nothing in this section shall be construed to mean that a certificate of registration to practice architecture shall be held by a corporation or partnership. Nothing herein prohibits corporations and partnerships from joining together to offer architectural, engineering, land surveying, and landscape architectural services or any combination of such services to the public, provided that each corporation or partnership otherwise meets the requirements of law.

(4) No corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing architecture, engineering, or land surveying be relieved of responsibility for professional services performed by reason of his employment or relationship with a corporation or partnership.

(5) For the purposes of this section, a certificate of authorization shall be required for a corporation, partnership, association, or person practicing under a fictitious name, offering architectural services to the public jointly or separately; however, when an individual is practicing architecture in his own given name, he shall not be required to register under this section.

(6) The fact that any registered architect practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him. Corporations shall be liable, and partnerships and all partners shall be jointly and severally liable, for the negligence, misconduct, or wrongful acts committed by their agents, employees, officers, or partners while acting in a professional capacity.

(7) Persons seeking to incorporate or corporations seeking a change of corporate name or amendment to articles of incorporation under the provisions of this section shall first obtain approval from the Department of Professional Regulation prior to filing articles of incorporation or amendments with the Department of State.

(8) Each certification of authorization shall be renewed every 2 years. Each partnership and corporation certified under this section shall notify the department within 1 month of any change in the information contained in the application upon which the certification is based.

(9) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered architect.

History.—ss. 7, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.221 Seals.—

(1) The board shall prescribe, by rule, a form of seal to be used by registered architects holding valid certificates of registration. Each registered architect shall obtain an impression-type metal seal, and all plans, specifications, or reports prepared or issued by the registered architect and being filed for public record shall be signed by the registered architect, dated, and stamped with his seal. The signature, date, and seal shall be evidence of the authenticity of that to which they are affixed.

(2) When the certificate of registration of a registered architect has been revoked or suspended by the board, the registered architect shall surrender his seal to the secretary of the board within a period of 30 days after the revocation or suspension has become effective. In the event the certificate of the registered architect has been suspended for a period of time, his seal shall be returned to him upon expiration of the suspension period.

(3) No registered architect shall affix, or permit to be affixed, his seal or name to any plan, specification, drawing, or other document which depicts work which he is not competent to perform.

(4) No registered architect shall affix his signature or seal to any plans, specifications, or architectural documents which were not prepared by him or under his responsible supervising control or by another registered architect and reviewed, approved, or modified and adopted by him as his own work with full responsibility as a registered architect for such documents.

(5) Plans, drawings, specifications and other related documents prepared by a registered architect as part of his architectural practice shall be of a sufficiently high standard to assure the users thereof against misunderstanding of the requirements intended to be illustrated or described by them. To be of the required standard, such documents should clearly and accurately indicate the design of the structural elements and of all other essential parts of the work to which they refer.

History.—ss. 12, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.223 Prohibitions; penalties.—

(1) No person shall knowingly:

(a) Practice architecture unless the person is a registered architect;

(b) Use the name or title "registered architect" or words to that effect when the person is not then the holder of a valid license issued pursuant to this act;

(c) Present as his own the license of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license;

(e) Use or attempt to use an architect license which has been suspended, revoked, or placed on inactive status;

(f) Employ unlicensed persons to practice architecture; or

(g) Conceal information relative to violations of this act.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 14, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.225 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 481.223 or s. 455.227(1);

(b) Attempting to procure a license to practice architecture by bribery or fraudulent misrepresentations;

(c) Having a license to practice architecture revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of architecture or the ability to practice architecture;

(e) Violation of any provision of s. 481.221;

(f) Using his seal, or performing any other act, as a licensee while his certificate of registration is suspended or when current renewals have not been obtained;

(g) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a registered architect;

(h) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(i) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of architecture;

(j) Violation of any rule adopted pursuant to this act or chapter 455;

(k) Practicing on a revoked, suspended, or inactive license;

(l) Offering or accepting anything of value for the purpose of securing a commission, influencing his engagement or employment, or influencing the award of a contract;

(m) Having any undisclosed significant financial interest which conflicts with the interests of his client or employer;

(n) Aiding, assisting, procuring, or advising any unlicensed person to practice architecture contrary to this chapter or to a rule of the department or the board; or

(o) Failing to perform any statutory or legal obligation placed upon a registered architect.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any registered architect guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the registered architect on probation for a period of time and subject to such conditions as the board may specify, including requiring the registered architect to attend continuing education courses or to work under the supervision of another registered architect.

(f) Restriction of the authorized scope of practice by the registered architect.

(4) The department shall reissue the license of a disciplined registered architect upon certification by the board that he has complied with all of the terms and conditions set forth in the final order.

History.—ss. 15, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.227 Prosecution of criminal violations.— The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 16, 19, ch. 79-273.

[1]**Note.**—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.229 Exceptions; exemptions from licensure.—

(1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of:

(a) Any building upon any farm for the use of any farmer, regardless of the cost of the building;

(b) Any one-family or two-family residence building or any domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost; or

(c) Any other type building costing less than $5,000, except a school, auditorium, or other building intended for the mass assemblage of people.

(2) Nothing contained in this act shall be construed to prevent any employee of an architect from acting in any capacity under the instruction, control, or supervision of the architect or to prevent any person from acting as a contractor in the execution of work designed by an architect.

(3) Notwithstanding the provisions of this act or of any other law, no registered engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to his engineering practice, nor is any registered architect, or employee or subordinate under the responsible supervision or control of such architect, precluded from performing engineering services which are purely incidental to his architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall

practice engineering or use the designation "engineer" or any term derived therefrom.

History.—ss. 11, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.231 Effect of ss. 481.201-481.233 locally.—(1) Nothing contained in this act shall be construed to repeal, amend, limit or otherwise affect any local building code or zoning law or ordinance now or hereafter enacted which is more restrictive, with respect to the services of registered architects, than the provisions of this act.

(2) Counties or municipalities which issue building permits shall not issue permits if it is apparent from the application for the building permit that the provisions of this act have been violated. However, this shall not authorize the withholding of building permits in any cases within the exempt classes set forth in this act.

History.—ss. 13, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]481.233 Registrations remain in force.—Registrations of architects in effect on June 30, 1979, shall remain in effect under this act.

History.—ss. 18, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

PART II

LANDSCAPE ARCHITECTURE

[1]481.301 Purpose.—The Legislature finds that the regulation of landscape architecture is necessary to assure proper landscape design, prevention of contamination of water supplies, barrier-free public and private spaces, conservation of natural resources through proper land and water management practices, prevention of erosion, aesthetically pleasing environmental contributions to man's psychological and sociological well-being, and an enhancement of the quality of life in a safe and healthy environment and to assure the highest possible quality of the practice of landscape architecture in this state.

History.—ss. 1, 18, ch. 79-407.

[1]Note.—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.303 Definitions.—As used in this chapter:

(1) "Board" means the Board of Landscape Architecture.

(2) "Department" means the Department of Professional Regulation.

(3) "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(4) "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.

(6) "Landscape architecture" means professional services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for buildings and structures or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; or

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

History.—ss. 2, 18, ch. 79-407.

[1]Note.—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.305 Board of Landscape Architecture.—(1) There is created in the Department of Professional Regulation a Board of Landscape Architecture. The board shall consist of seven members, five of whom shall be registered landscape architects and two of whom shall be lay persons who are not and have never been registered landscape architects or members of any closely related profession.

(2) Initially, the Governor shall appoint two members for a term of 4 years, two members for a term of 3 years, two members for a term of 2 years, and one member for a term of 1 year. Thereafter, members shall be appointed for 4-year terms.

(3) The members of the Florida Board of Landscape Architecture who are serving as of June 30, 1979, shall serve as members of the Board of Landscape Architecture until January 1, 1980, or until all

members are appointed pursuant to subsection (1) and s. 20.30, whichever occurs first.

(4) Within 60 days following the annual election of officers, the department shall mail an annual report to all registered landscape architects and other interested parties as determined by the board. This report may include, but not be limited to, the names of current board members, terms of appointment and office, chairman's letter to the Governor, board activities report, financial report, current law regulating landscape architects, current board rules, report of Council of Landscape Architectural Registration Board, and roster of registered landscape architects.

History.—ss. 3, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.307 Fees.—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination shall not exceed $200. The biennial renewal fee shall not exceed $100. The board may also establish, by rule, a late renewal penalty. The board shall establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of landscape architects. Fees shall be based on department estimates of the revenue required to implement this act and the provisions of law with respect to the regulation of landscape architects.

History.—ss. 4, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.309 Examinations.—

(1) A person desiring to be licensed as a registered landscape architect shall apply to the department for licensure.

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a registered landscape architect if the applicant:

(a) Has completed a professional degree program in landscape architecture as approved by the Landscape Architectural Accreditation Board; or

(b) Presents evidence of not less than 6 years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board. Each year of education completed in a recognized school shall be considered to be equivalent to 1 year of experience, with a maximum credit of 4 years.

History.—ss. 5, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.311 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to practice landscape architecture.

(2) The board shall certify for licensure any applicant who passes the examination required by s. 481.309.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 481.309; and has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 481.309; or

(b) Holds a valid license to practice landscape architecture issued by another state or territory of the United States, if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in this state at the time the license was issued.

(4) The board shall certify as qualified for a certificate of authority any applicant corporation or partnership who satisfies the requirements of s. 481.319.

(5) The board may refuse to certify any applicant who is under investigation in another state for any act which would constitute a violation of this act or of chapter 455, until the investigation is complete and disciplinary proceedings have been terminated.

(6) The board may refuse to certify any applicant who has violated any of the provisions of s. 481.325.

History.—ss. 7, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.313 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) A license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the qualifications for reactivation in s. 481.315.

(4) Sixty days prior to the automatic reversion of a license to inactive status, the department shall mail a notice of reversion to the last known address of the licensee.

History.—ss. 8, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.315 Inactive status.—

(1) A license for which a renewal application is filed within 1 year after the end of the biennium prescribed by the department may be renewed pursuant to [2]s. 481.313 upon payment of the late renewal penalty.

(2) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50. The board may prescribe, by rule, continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive.

History.—ss. 9, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]**Note.**—The cross-reference "s. 481.313" was inserted by the editors for "section 10" of ch. 79-407 to correct an apparent error evidenced by the context

of ss. 8, 9, and 10 of ch. 79-407.

[1]481.317 Temporary license.—

(1) The board may certify as qualified an applicant for a temporary license for work on a specified project in this state for a period not to exceed 1 year if the applicant is licensed in another state or territory to practice landscape architecture.

(2) The board may certify as qualified an applicant for a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).

(3) Upon certification by the board and payment of a fee not to exceed $50, the department shall issue a temporary license to the applicant.

(4) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of landscape architecture for which the temporary license was issued.

(5) Nothing in this section shall permit a landscape architect from outside the state to practice or offer to practice under the seal of a registered architect, engineer, or land surveyor in this state unless he is a full-time employee of the registered architect, engineer, or land surveyor.

History.—ss. 10, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.319 Corporate and partnership practice of landscape architecture; certificate of authorization; fees; revocation or suspension; rules.—

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects;

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect; and

(c) The corporation or partnership has been issued a certificate of authorization by the board as provided herein.

(2) All documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership shall bear the signature and seal of a registered landscape architect.

(3) An applicant corporation shall file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. An applicant partnership shall file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by said partnership in this state.

(4) Each partnership and corporation licensed under this act shall notify the department within 1 month of any change in the information contained in the application upon which the license is based. Any landscape architect who terminates his employment with a partnership or corporation licensed under this act shall notify the department of the termination within 1 month.

(5) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.

(6) Persons seeking to incorporate under the provisions of this section shall obtain approval from the Board of Landscape Architecture prior to filing their articles of incorporation with the Department of State.

(7) The fact that registered landscape architects practice landscape architecture through a corporation or partnership as provided in this section shall not relieve any landscape architect from personal liability for his professional acts, and each corporation, and stockholders as are landscape architects, or partnership shall be jointly and severally liable for the professional acts of agents, employees, officers, or partners.

History.—ss. 6, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.321 Seals.—No registered landscape architect shall affix or permit to be affixed his seal or name to any plan, specification, drawing, or other document which was not prepared by him or under his responsible supervising control or which was not reviewed, approved, or modified, and adopted by him as his own work with full responsibility as a landscape architect for such documents.

History.—ss. 13, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.323 Prohibitions; penalties.—

(1) No person shall knowingly:

(a) Practice landscape architecture unless the person is a holder of a valid license issued pursuant to this act;

(b) Use the name or title "landscape architect," "landscape architecture," "landscape designer," or "landscape architectural," or words to that effect, or advertise any title or description tending to convey

the impression that he is a landscape architect when the person is not then the holder of a valid license issued pursuant to this act;

(c) Present as his own the license of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license;

(e) Use or attempt to use a landscape architect license which has been suspended, revoked, or placed on inactive status;

(f) Employ unlicensed persons to practice landscape architecture;

(g) Aid and abet an unauthorized person in the practice of landscape architecture; or

(h) Conceal information relative to violations of this act.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 14, 18, ch. 79-407.

[1]Note.—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.325 Disciplinary proceedings.—

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 481.321, s. 481.323, or s. 455.227(1);

(b) Upon proof that the holder of a certificate or permit has aided or abetted in the practice of landscape architecture any person not authorized to practice landscape architecture;

(c) Attempting to procure a license to practice landscape architecture by bribery or fraudulent misrepresentations;

(d) Having a license to practice landscape architecture revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(e) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of landscape architecture or the ability to practice landscape architecture;

(f) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a registered landscape architect;

(g) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;

(h) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of landscape architecture;

(i) Violation of any rule adopted pursuant to this act or chapter 455;

(j) Practicing on a revoked, suspended, or inactive license;

(k) Aiding, assisting, procuring, or advising any unlicensed person to practice landscape architecture contrary to this act or to any rule of the department or of the board; or

(l) Failing to perform any statutory or legal obligation placed upon a licensed landscape architect.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any registered landscape architect guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the registered landscape architect on probation for a period of time and subject to such conditions as the board may specify, including requiring the registered landscape architect to attend continuing education courses or to work under the supervision of another registered landscape architect.

(f) Restriction of the authorized scope of practice by the registered landscape architect.

(4) The department shall reissue the license of a disciplined registered landscape architect upon certification by the board that he has complied with all of the terms and conditions set forth in the final order.

History.—ss. 15, 18, ch. 79-407.

[1]Note.—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.327 Prosecution of criminal violations.—

The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 16, 18, ch. 79-407.

[1]Note.—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.329 Exceptions; exemptions from licensure.—

(1) None of the provisions of this act shall prevent employees of those lawfully practicing as landscape architects from acting under the instructions, control, or supervision of their employers.

(2) None of the provisions of this act shall apply to supervision by builders or superintendents employed by such builders in the installation of landscape projects by landscape contractors.

(3) This act shall not be deemed to prohibit any person from making any plans, drawings, or specifications for any real or personal property owned by him so long as he does not use the title, term, or designation "landscape architect," "landscape designer," "landscape architectural," "landscape architecture," "landscape engineering," or any description tending to convey the impression that he is a landscape architect, unless he is registered as provided in this part or is exempt from registration under the provisions of this part.

(4) This part shall not be deemed to prohibit any nurseryman, nursery stock dealer, or agent as defined by chapter 581 who is required by chapter 581 to hold a valid license issued by the Division of Plant Industry of the Department of Agriculture and Con-

sumer Services and who does hold a valid license to engage in the business of selling nursery stock in this state, insofar as he engages in the preparation of plans or drawings as an adjunct to merchandising his product, so long as he does not use the title, term, or designation "landscape architect," "landscape designer," "landscape architectural," "landscape architecture," "landscape engineering," or any description tending to convey the impression that he is a landscape architect unless he is registered as provided in this part or is exempt from registration under the provisions of this part.

(5) This part shall not be construed to affect chapter 467, chapter 471, chapter 472, or chapter 492, respectively, except that no such person shall use the designation or term "landscape architect," "landscape architectural," "landscape architecture," "landscape engineering," "landscape designer," or any description tending to convey the impression that he is a landscape architect, unless he is registered as provided in this act.

(6) Persons who perform landscape architectural services not for compensation, or in their capacity as employees of state or local governments, shall not be required to be licensed pursuant to this act.

(7) Nothing herein contained under this act shall preclude, pursuant to law, the preparation of comprehensive plans or the practice of comprehensive urban or rural planning at the local, regional, or state level by persons, corporations, partnerships, or associations who are not licensed or registered as landscape architects.

History.—ss. 11, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]481.331 Construction of this act.—

(1) This act shall not empower a registered forester, architect, engineer, or land surveyor to practice or offer to practice landscape architecture, except where those listed services are an ordinary part of regulated forestry, architectural, engineering, or land surveying practice. A landscape architect shall not perform services as defined in this subsection for any registered architect, engineer, or land surveyor in this state unless that landscape architect is duly registered in this state or has obtained a temporary license as a landscape architect.

(2) This act shall not empower a registered landscape architect to practice or offer to practice architecture, engineering, or land surveying. Nothing herein shall prohibit a registered landscape architect from filing plans of work defined under this part for official recording.

History.—ss. 12, 18, ch. 79-407.

[1]**Note.**—Section 18, ch. 79-407, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

CHAPTER 482

PEST CONTROL

[1]**482.011 Short title.**—This act may be cited as the "Pest Control Act."

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**482.021 Definitions.**—For the purposes of this measure, and unless otherwise required by the context, the following definitions shall prevail, to wit:

(1) "Agricultural area" means any area upon which a ground crop, trees, or plants, are grown for commercial purposes; or where a golf course, park, nursery, or cemetery is located; or where farming of any type is performed, or livestock is raised.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Business location" means any advertised permanent location in or from which pest control business is solicited, accepted, or conducted.

(4) "Category" means a distinct branch or phase of pest control for which a pest control operator's certificate may be issued such as: Fumigation, general household pest control, rodent control, pest control with respect to termites and other wood-destroying organisms, lawn and ornamental pest control, and such a combination or division of such branches of pest control as the department may by rule establish.

(5) "Certified operator" means an individual holding a current valid pest control operator's certificate issued by the department.

(6) "Fumigation" means the use, within an enclosed space or in or under a structure or tarpaulins, of a fumigant in concentrations which may be hazardous to man.

(7) "Fumigant" means a chemical which, at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism. This definition implies that a fumigant acts as a gas in the strictest sense of the word. This definition excludes aerosols which are particulate suspensions of liquids or solids dispersed in air.

(8) "General household pest control" means pest control with respect to any structure, not including fumigation or pest control with respect to termites or other wood-destroying organisms.

(9) "Identification cardholder" means a person to whom a current card has been issued by the department appropriately identifying the holder to the public or to any officer or any agent of the department charged with, or entitled to exercise any function in connection with, the enforcement of this chapter and any rules made pursuant to this chapter.

(10) "Lawn" means the turf formed from grass or other plants.

(11) "Lawn and ornamental pest control" means pest control with respect to any lawn or ornamental, but specifically excluding the application of pest control to structures or reference thereto.

(12) "Licensee" means a person, partnership, firm, corporation, or other business entity having a license issued by the department for engaging in pest control.

(13) "This measure" means this law and rules of the department.

(14) "Ornamental" means any shrub, bush, tree or other plant used or intended for use in connection with the occupation or use of any structure or the use by man for purposes other than as an agricultural area.

(15) "Pest control" means all or any one or more of the following: The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn or ornamental; the identification of infestation or infections in, on, or under a structure, lawn or ornamental; the use of any pesticide, attractant, repellent, rodenticide, fumigant or mechanical device, for preventing, controlling, eradicating, identifying, mitigating, diminishing, or curtailing insects, vermin, rodents, weeds, or other pests, in, on or under a structure, lawn or ornamental, all phases of fumigation, including treatment of products by vault fumigation and the fumigation of boxcars, trucks, ships, airplanes, docks, warehouses and common carriers; also, the soliciting or acceptance of such work.

(16) "Pesticide or economic poison" means any substance or mixture of substances intended for pre-

venting, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(17) "Pests" means arthropods, wood-destroying organisms, rodents, or any other obnoxious or undesirable living plant or animal organism.

(18) "Rodent" means rats, mice, squirrels and flying squirrels, and any other animal of the order "rodentia," including bats, which may become a structure pest.

(19) "Rodent control" means application of remedial measures for the purpose of controlling rodents.

(20) "Special identification cardholder" means a person to whom an identification card has been issued by the department showing that he, the holder, is authorized to perform a particular function or functions of a certified pest control operator as may be specified thereon.

(21) "Structure" means any type of edifice or building, together with the land thereunder, together with the contents thereof; together with any patio or terrace thereof; also, that portion of land upon which work has commenced for the erection of an edifice or building; also, railway cars, motor vehicles, trailers, barges, boats, ships, aircraft, wharves, docks, warehouses, and common carriers.

(22) "Structural pest control" means pest control except with regard to lawns and ornamentals.

(23) "Termite or other wood-destroying organism control" means pest control with respect to any termite or other wood-destroying organisms, including fungi, by the use of any chemical or mechanical methods, including moisture control for the prevention or control of fungus in existing structures, but not including fumigation or general household pest control.

(24) "Advanced training or a major in entomology or horticulture" means completion of 20 semester hours or 30 quarter hours of college credits in these subjects.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 176, ch. 71-377; s. 3, ch. 76-168; s. 180, ch. 77-104; s. 370, ch. 77-147; s. 1, ch. 77-457; s. 1, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.032 Enforcement.—

(1) The Office of Entomology under the Assistant Secretary for Operations of the Department of Health and Rehabilitative Services is empowered to enforce this measure. The Administrator of the Office of Entomology shall be a graduate entomologist having college-level training in insect control, including pesticides, and a minimum of 5 years' experience in research or field work in insect control.

(2) It shall be the duty of every state attorney, sheriff, police officer, and other appropriate city and county officers to enforce, or to assist the office or any duly authorized inspector or other agent of the department in the enforcement of, this act and the rules promulgated by the department under the provisions of this measure.

(3) The department, through the Office of Entomology, may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

(a) To enforce its rules.

(b) To make application for injunction to the proper circuit court, and the judge of said court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this measure or from failing or refusing to comply with the requirements of this measure.

History.—s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 371, ch. 77-147; s. 1, ch. 77-457; s. 2, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.051 Rules.—

(1) The Department of Health and Rehabilitative Services is authorized, empowered, and directed to make rules to carry out the intent and purpose of this act. The department shall promulgate regulations for the protection of health and safety of pest control employees and the general public, in conformity with this act, by requiring that all pesticides, fumigants, and rodenticides shall be used only in accordance with the registered label, or otherwise accepted by the United States Department of Agriculture, the United States Food and Drug Administration, or the Department of Agriculture and Consumer Services.

(2) To formulate recommendations, the department may hold public hearings or counsel with members of the industry.

(3) The department shall promulgate regulations requiring that vehicles and trailers used in pest control be permanently marked for identification with the name that is registered with the department and that written contracts be required for control of termites and other wood-destroying organisms.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 14, 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 372, ch. 77-147; s. 1, ch. 77-161; s. 1, ch. 77-457; s. 19, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.061 Inspectors.—

To assist the Administrator of the Office of Entomology in the enforcement of this act, the Department of Health and Rehabilitative Services shall appoint two or more graduate entomologists as inspectors for the Office of Entomology. The inspectors shall make, or have made by representatives of the county or municipal health unit, inspections of licensees. The inspectors shall report all violations to the administrator, who shall be the chief inspector. Department inspectors shall be qualified to take the certified pest control examinations, and the annual renewal fees for their certificates shall be waived during the time that they serve as department inspectors.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 373, ch. 77-147; s. 1, ch. 77-457; s. 3, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.071 Licenses.—

(1) The Department of Health and Rehabilitative Services may issue licenses to qualified businesses to engage in pest control in this state. It is unlawful for

any person to operate a pest control business that is not licensed by the department. Before entering business and also annually thereafter, on or before an anniversary date to be set by the department for each licensee, each person, firm, partnership, or corporation engaged in pest control shall apply to the department for a license, or a renewal thereof, for each business location. Applications shall be on forms prescribed and furnished by the department. Each license expires the next anniversary date following issuance or renewal. The license fee is $25. A license shall cease to be in force when a licensee changes his business address and the old license shall be surrendered and a new license issued for a fee of $5. The department shall not issue a license to a pest control business unless its pest control activities shall be in charge of a certified operator or operators certified in the categories of the licensee and resident in the state. All fees collected by the department shall be deposited in the Pest Control Trust Fund and shall be used in carrying out the provisions of this measure.

(2) Each licensee shall display his license within his business location. Each business location must be licensed.

(3) No licensee shall operate a pest control business without carrying the required insurance coverage. Each person making application for a pest control business license or renewal thereof shall furnish to the department a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury and property damage consisting of:

(a) Bodily injury: $100,000 each person and $300,000 each occurrence; and

(b) Property damage: $50,000 each occurrence and $100,000 aggregate.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 1, ch. 74-74; s. 3, ch. 76-168; s. 374, ch. 77-147; s. 1, ch. 77-457; s. 4, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.081 Prerequisite for issuance of occupational license.—No municipality or county shall issue an occupational license to any pest control business coming under the provision of this act, unless a current license has been procured for each business location from the Department of Health and Rehabilitative Services. Upon presentation of a current business license from the department and the required fee an occupational license shall be issued in the county or municipality in which application is made.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 375, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.091 Identification cards.—

(1) No licensee shall assign any person to perform or be trained for pest control without first applying for an identification card for such person from the Department of Health and Rehabilitative Services, on a form prescribed by the department. The identification card shall be carried on the employee's person while performing or soliciting pest control and shall be presented on demand to the person for whom pest control is being performed or solicited or to any inspector, or to such other persons as may be prescribed by the rules of the department.

(2) The responsibility for obtaining identification cards for employees is jointly on the licensee and the certified pest control operator. However, no one shall perform pest control without being of good moral character and carrying on his person a current valid identification card and without having affixed thereto his signature and a current photograph of himself. No licensee or certified operator shall assign or use any employee to perform pest control without trained supervision unless said employee is trained and qualified. An identification card shall cease to be in force when the holder thereof ceases to be an employee of the licensee which secured the said card. In such case, the licensee or certified operator will obtain and destroy the old card and shall notify the department in writing of the date of termination within 10 days. Each card issued shall expire on the licensee's next anniversary date after issuance or upon change of licensee's business address. Each card shall be renewed annually thereafter on or before the licensee's anniversary date as set by the department for each licensee. The fee for each identification card is $2.

(3) An employee whose duties are confined to office secretarial, bookkeeping, office clerical, office filing, trenching, digging, raking, putting up or taking down tents, clamping, carrying away debris or such activities as specified by the department, shall be made exempt by the department from being required to hold an identification card.

(4) No person shall be issued or hold an identification card for more than one licensee at any one time, except a certified operator for the express and sole purpose of, and period for, obtaining experience to qualify for examination in a category for which such person is not certified and seeks certification.

(5) A licensee having more than one licensed business location may assign an identification cardholder to any of its licensed business locations without obtaining another identification card for such holder.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 5, ch. 67-520; ss. 19, 35, ch. 69-106; s. 2, ch. 74-74; s. 3, ch. 76-168; s. 376, ch. 77-147; s. 1, ch. 77-457; s. 5, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.111 Certificate; disposition of moneys received.—

(1) The Department of Health and Rehabilitative Services shall issue a pest control operator's certificate to each individual who qualifies under this measure.

(2) Before engaging in pest control work and on or before June 1, of each year, each individual qualified under the provisions of this act for a pest control operator's certificate and permitted to be in charge of the pest control activities of a licensee, shall apply to the department on forms of the department for a pest control operator's certificate or a renewal of such certificate. Each certificate will expire unless renewed on or before June 1, following the issuance thereof. Each certified operator in charge of pest control activities of a licensee must display his certif-

icate and current renewal form at the business location in his charge.

(3) Each category of each licensee shall be in the charge of a certified operator who is certified for the particular category. A certified operator may be in charge of one or more of all categories provided he is certified for said categories.

(4) No person shall be in charge of the performance of pest control activities of any category of any licensee unless such person is properly certified.

(5) No certified operator shall be in charge of the performance of pest control activities at more than one business location; however, the department shall prescribe by rule that, during the temporary absence of the certified operator currently in charge, the licensee may designate another certified operator, certified in the same category as the certified operator in charge, to perform those duties that require the physical presence of a certified operator, for a period not to exceed 30 days. In all such cases the certified operator temporarily in charge and the licensee shall jointly be held responsible for the pest control work performed.

(6) The issuance fee and the renewal fee for each certificate shall not exceed $25.

(7) A certified operator who is inactive in pest control for a period not exceeding 5 years may secure a renewal at any time during 5 years upon payment of all past fees.

(8) All moneys received by the department under this measure shall be deposited and expended pursuant to the provisions of s. 215.37, and shall be used by the department in carrying out the provisions of this measure and in the education of and of the promoting of the pest control industry. All expenditures authorized by this measure shall be paid upon presentation of vouchers approved by the department.

(9) Certificates issued by the department are not transferable to another person.

(10) In the event of death, loss of certified operator or other emergency, one or more emergency pest control certificates or special identification cards shall be issued upon the request of the licensee, to one or more designated, trained persons by the department for a period of 10 days. The department may renew the same for an additional period up to 90 days and for similar additional periods up to 1 year. The department may collect not more than $10 for each emergency certificate or card and not more than $10 for each renewal thereof. The department shall promulgate rules and prescribe forms for this purpose, provided that an emergency certificate shall not be issued in the category of fumigation.

History.—s. 1, ch. 59-454; s. 21, ch. 61-514; s. 1, ch. 65-295; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 377, ch. 77-147; s. 1, ch. 77-457; s. 6, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.121 False use of certificate.—

(1) No certified pest control operator shall allow his certificate to be used by any licensee to secure or keep a license unless such certified operator is in charge of the pest control activities of the licensee in the category or categories covered by his certificate and is a full-time employee of the licensee.

(2) No licensee shall use the certificate of any certified operator to secure or keep a license unless the holder of said certificate is in charge of the pest control activities in the category or categories of the licensee covered by his certificate.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.132 Qualifications for examination and certification.—

(1) The Department of Health and Rehabilitative Services may award a pest control operator's certificate or a renewal thereof to an individual who has passed the examinations prescribed by the department and who makes it appear to the department that he is not under the disabilities of minority and that he is domiciled in and a resident citizen of the state, is of good moral character and of good reputation for fair dealings, is qualified to be a certified operator with safety to persons and property, and is otherwise qualified under the provisions of this act and the rules made pursuant thereto.

(2) Each applicant for examination for pest control operator's certificate must possess one of the following basic qualifications:

(a) Three years as a service employee of a licensee who performs pest control in the category or categories in which the service employee seeks certification, 1 year of which employment must have been in this state immediately preceding application for examination, except that a maximum of 30 calendar days break in this 1-year requirement will be authorized; or

(b) A degree with advanced training or a major in entomology or horticulture from a recognized college or university. Those holding a degree with advanced training or a major in entomology are qualified for the examination in general household pest control, lawn and ornamental pest control, termite or other wood-infesting organisms control, and fumigation. Those holding a degree with advanced training or a major in horticulture are qualified for the examination in lawn and ornamental pest control.

(3) Each applicant must have knowledge of practical and scientific facts of pest control and, effective January 1, 1966, be a graduate of an accredited high school or submit to the Department of Health and Rehabilitative Services evidence satisfactory to it of equivalent education; however, those persons who have previously qualified and been accepted to take these examinations shall be exempted from the formal education requirement.

History.—s. 1, ch. 59-454; s. 1, ch. 63-48; ss. 1, 2, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; ss. 378, 379, ch. 77-147; s. 1, ch. 77-457; s. 8, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Subsections (2) and (3) former s. 482.133.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]482.141 Examinations.—

(1) Each individual seeking certification must satisfactorily pass an examination which must be written but which may include practical demonstration. A minimum of two examinations shall be held annually.

(2) Applications for examination shall be made in accordance with rules of the Department of

Health and Rehabilitative Services. Each application must be accompanied by a fee of not more than $25, to be set by the department, for each category in which the applicant desires to be examined. Any applicant who fails to pass one or more categories may reapply for examination upon the payment of additional fees as provided for in the original application.

(3) The department shall give an examination in each category testing the applicant's knowledge of pest control as applicable to the specific category applied for. Applicants may seek certification in one or more categories. The certificate shall state the categories allowed thereby.

(4) All provisions of this measure apply whenever a certified operator is certified in less than all categories except that the activities of each certified operator, and the categories in his charge of any licensee, are confined to the category or categories granted.

(5) No refunds of these fees shall be made unless the applicant can present written evidence that he was under military orders, on jury duty or otherwise subpoenaed, or under medical care which precluded his reporting to take the examination, in which case the department shall exercise its discretion on refunds.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 380, ch. 77-147; s. 1, ch. 77-457; s. 9, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.151 Special identification card.—

(1) The privilege of being a special identification cardholder may be available to individuals who qualify under this measure, but no one shall be required to become a special identification cardholder.

(2) The Department of Health and Rehabilitative Services in its rules, shall provide qualifications, privileges, duties and limitations regarding holders of special identification cards.

(3) The department may issue special identification cards to qualified individuals who pass written examinations which may include practical demonstration. Application forms shall be prescribed by the department.

The department, in its rules, shall provide for such matters as: Required qualifications for applications; phases or categories of examinations; time of examinations and fees for each time the examinations are taken which shall not exceed $10 per category. Application to the department for renewal of each special identification card must be made on or before June 1, following the issuance thereof. The issuance fee and the renewal fee of each special identification card is $5.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 381, ch. 77-147; s. 1, ch. 77-457; s. 10, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.152 Duties of certified pest control operator in charge of pest control activities of licensee.—A certified operator in charge of pest control operations of a licensee shall be a Florida resident whose primary occupation is in the structural pest control business, who is employed on a full-time basis by the licensee, and whose principal duty is the personal supervision of and participation in the pest control operations of the licensee as the same relate to the following:

(1) The selection of proper and correct chemicals for the particular pest control work to be performed.

(2) The safe and proper use of these pesticides.

(3) The correct concentration and formulation of pesticides used in all pest control work performed.

(4) The training of personnel in the proper and acceptable methods of pest control.

(5) The control measures and procedures used.

(6) The notification of the Department of Health and Rehabilitative Services within 24 hours of any knowledge of accidental human poisoning or death connected with pest control work performed on jobs he is supervising.

History.—s. 2, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 382, ch. 77-147; s. 1, ch. 77-457; s. 11, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.161 Grounds for suspension and revocation.—The Department of Health and Rehabilitative Services may suspend, revoke, or stop the issuance or renewal of any certificate, special identification card, license, or identification card coming within the scope of this measure, in accordance with the provisions of chapter 120, upon any one or more of the following grounds as the same may be applicable:

(1) Violation of any rule of the department or any provision of this act.

(2) Conviction in any court within this state of a violation of any provision of this act or any rule of the department.

(3) Habitual intemperance or addiction to narcotics.

(4) Conviction in any court in any state or in any federal court of a felony, unless civil rights have been restored.

(5) Knowingly making false or fraudulent claims; knowingly misrepresenting the effects of material or methods; or knowingly failing to use methods or materials suitable for the pest control undertaken.

(6) Performing pest control in a negligent manner.

(7) Failure to give to the department, or authorized representative thereof, true information upon request regarding methods and materials used, work performed, or other information essential to the administration of this measure.

(8) Fraudulent or misleading advertising or advertising in an unauthorized category.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 383, ch. 77-147; s. 1, ch. 77-457; s. 12, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.162 Other disciplinary measures and probation.—

(1) If, after appropriate hearing in accordance with the provisions of chapter 120, the Department of Health and Rehabilitative Services shall find that any identification cardholder, special identification

cardholder, certified operator, or licensee has committed any act set forth in s. 482.161, but shall further find that such violation is of such nature or under such circumstances that revocation or suspension of a certificate would either be detrimental to the public or be unnecessarily harsh under the circumstances, it may in its discretion, and in lieu of executing the order of suspension or revocation, either:

(a) Reprimand the party publicly or privately; or

(b) Place the party on probation for a period of not more than 2 years.

(2)(a) If the department shall find that the terms of any such probation have been violated, it may revoke such probation immediately and its initial order shall become effective.

(b) In the event that a party is found by the department to have violated any of the other terms of this measure, the department may declare such probation revoked, and, in its proceeding with regard to such additional violation, the department may consider the violation for which probation is in effect in determining the extent of its order with regard to such new violation.

History.—s. 2, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 384, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; s. 13, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.182 Offenses committed prior to this act.—Nothing in this act shall be construed to relieve an identification cardholder, special identification cardholder, certified operator or licensee of any violation of the terms of this chapter committed before the effective date of this act.

History.—s. 2, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.183 Limitations.—

(1) No person shall be charged with violation of this act or any rules effective or adopted pursuant hereto more than 3 years after the date of such violation.

(2) For the purpose of this section a charge of violation of this act or rules adopted pursuant hereto shall be construed to mean the issuance of a notice or citation by the Department of Health and Rehabilitative Services charging such violation.

History.—s. 2, ch. 65-295; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 387, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.191 Violation and penalty.—

(1) It is unlawful to solicit, practice, perform or advertise in pest control except as provided by this measure.

(2) Any person who violates any provision of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who violates any rule of the Department of Health and Rehabilitative Services relative to pest control is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; ss. 19, 35, ch. 69-106; s. 434, ch. 71-136; s. 3, ch. 76-168; s. 388, ch. 77-147; s. 1, ch. 77-457; s. 15, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.201 Liens on real and personal property.—

(1) A licensee may have and enforce a lien on real property improved for any money that shall be owing him for labor or services performed or materials furnished in accordance with his contract and with the direct contract, subject to the licensee's compliance with the provisions of mechanics' lien laws.

(2) A licensee may have and enforce a lien for labor and services on personal property upon which the licensee has performed pest control and the same may be enforced in accordance with the provisions of and subject to the licensee's compliance with the provisions of part I of chapter 713 and s. 713.58.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]482.211 Exemptions.—

(1) This act does not apply: To pest control performed by state, federal, or municipal agencies; to county governmental agencies while officially engaged; to state and educational agencies engaged in research pertaining to pest control; to the measure of control used in greenhouses, nurseries for plants, agricultural crops, trees, groves, orchards, or crop dustings; or to pest control, other than fumigation, performed by a person upon his own individual residence or property or by a yardman under rules and regulations as prescribed by the department concerning yardmen.

(2) This act shall not apply to lawn and ornamental pest control being performed on an agricultural area as defined.

(3) This act does not apply to the use of wood preservatives used only on wood, properly pretreated timber, properly pretreated lumber or to metal shields, when used in construction on structures.

(4) This act does not apply to the use of the antibiotic oxytetracycline hydrochloride for the control of lethal yellowing.

(5) Each person when performing pest control under an exemption shall employ all necessary equipment and materials in a manner that will avoid hazards to public health and safety and such person shall not be entitled to perform fumigation.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 5, ch. 75-178; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-292.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

482.225 Grandfather clause.—

(1) Each person holding a current valid Florida pest control operator's certificate on October 1, 1978, shall be entitled to continue to be certified in each of the categories for which he is presently certified.

(2) Each holder of a current special identification

card on October 1, 1978, shall continue to be entitled to a special identification card with qualifications and limitations contained on his special identification card which he had prior to October 1, 1978.

History.—s. 17, ch. 78-292.

482.226 Termite or other wood-destroying organism inspection report.—

(1) When an inspection for wood-destroying organisms is made, and the findings reported in writing, a termite or other wood-destroying organism inspection report shall be provided by a licensee or its representative certified to apply pesticide or economic poison for the purpose of controlling such termites or other wood-destroying organisms. The inspection report shall be in accordance with good industry practice and standards on a form prescribed by the department and furnished by the licensee.

(2) An inspection report based on an inspection of the visible and accessible areas of the property, and given without the application of pesticide or economic poison to said property, shall reveal the visual presence or absence of termites or other wood-destroying organisms during the inspection. Such report shall not be construed to constitute a guarantee of the absence of said organisms unless the report specifically states in writing the extent of said guarantee and the length of time said guarantee be in effect.

History.—s. 18, ch. 78-292.

[1]**482.231 Use of fogging machines permitted.**—Only certified operators certified in the category of general household pests, or authorized employees under the supervision thereof, may use thermal-aerosol fogging machines in general household pest control.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 19, ch. 78-292.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**482.241 Liberal interpretation.**—The provisions of this act shall be liberally construed in order to effectively carry out the provisions of this act in the interest of the public and its health, welfare, and safety.

History.—s. 1, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-292.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**482.242 Preemption.**—The provisions of this measure preempt any and all city and county ordinances which may differ with this act.

History.—s. 2, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-292.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**482.25 Application of law.**—This act does not apply to pending litigation or to any offense committed prior to effective date of passage of this act and any such offense is punishable as provided by the statutes in force at the time such offense was committed.

History.—s. 2, ch. 59-454; s. 1, ch. 65-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 483

HEALTH TESTING SERVICES

PART I CLINICAL LABORATORIES (ss. 483.011-483.25)

PART II MULTIPHASIC HEALTH TESTING CENTERS (ss. 483.28-483.328)

PART I

CLINICAL LABORATORIES

[1]483.011 Short title.—This part may be cited as "The Florida Clinical Laboratory Law."

History.—s. 1, ch. 67-248; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.021 Declaration of policy and statement of purpose.—The purpose of this part is to protect the public health, safety and welfare of the people of this state from the hazards of improper performance by clinical laboratories. Clinical laboratories provide essential services to practitioners of the healing arts by furnishing vital information which is essential to a determination of the nature, cause, and extent of the condition involved. Unreliable and inaccurate reports may cause unnecessary anxiety, suffering, financial burdens and even contribute directly to death. The protection of public and individual health requires licensure of clinical laboratories and certain of their employees, the meeting of certain minimum standards, as well as certain other necessary safeguards as authorized by this part.

History.—s. 2, ch. 67-248; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.031 Application of chapter; exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(1) Clinical laboratories operated by the United States Government.

(2) A clinical laboratory operated by five or less duly licensed practitioners of the healing arts exclusively in connection with the diagnosis and treatment of their own patients. However, if any referred work is received in the clinical laboratory or if any clinical laboratory work is done for patients referred by another practitioner, all provisions of this part shall apply. This exemption does not apply to a clinical laboratory operated by a practitioner of the healing arts who holds himself and the facilities of his laboratory out as available for the performance of diagnostic tests for other practitioners or their patients.

(3) Laboratories operated and maintained exclusively for research and teaching purposes, involving no patient or public health service whatsoever.

History.—s. 3, ch. 67-248; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 1, ch. 77-225; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.041 Definitions.—

(1) "Person" means any individual, firm, partnership, association, corporation, the State of Florida, any county, municipality, political subdivision or any other entity whether organized for profit or not.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Clinical laboratory" means a laboratory where microbiological, serological, chemical, hematological, immunohematological, biophysical, cytological or histopathological examinations are performed on materials or specimens taken from the human body to provide information or materials for use in the diagnosis, prevention or treatment of a disease or assessment of a medical condition.

(4) "Clinical laboratory trainee" means any person having qualifying education who is employed in a clinical laboratory approved for training and is seeking experience required to meet minimum qualifications for licensing in the state. Trainees may perform procedures under direct and responsible supervision of duly licensed clinical laboratory personnel.

(5) "Clinical laboratory personnel" includes the clinical laboratory director, supervisor, technologist or technician, but does not include trainees or persons employed by a clinical laboratory to perform clerical or other administrative responsibilities.

(6) "Clinical laboratory evaluation program" means a program of evaluating the proficiency of clinical laboratories by the department.

History.—s. 4, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 389, ch. 77-147; s. 1, ch. 77-457; s. 21, ch. 79-12; s. 135, ch. 79-164.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**483.051 Powers and rules of Department of Health and Rehabilitative Services.**—The Department of Health and Rehabilitative Services shall adopt rules, to effectuate the purposes and provisions of this part, which shall include, but not be limited to, the following subject matters:

(1) REGISTRATION AND LICENSING; QUALIFICATIONS.—The department shall register all clinical laboratories and license all clinical laboratory personnel meeting the requirements of this part, and shall prescribe the qualifications necessary for clinical laboratories to be registered and for clinical laboratory personnel to be licensed. Personnel qualifications may require appropriate education or experience or the passing of an examination in appropriate subjects or any combination of these; provided that practitioners of the healing arts licensed to practice in this state shall not be required to obtain any licenses under this part or to pay any fees hereunder except the fee required for clinical laboratory registration.

(2) EXAMINATIONS.—The department shall conduct examinations required by its rules to determine in part the qualification of clinical laboratory personnel for licensure.

(3) FEES.—The department shall establish a schedule of annual fees, which shall be reasonable in amount, for registration of clinical laboratories, for licensing of clinical laboratory personnel, for applicants required to take an examination and for registration of clinical laboratory trainees who are subject to this part. No registration fee shall be required for a clinical laboratory operated by any agency of the state, by any county or municipality, or by any hospital licensed under the laws of the state. No licensee shall be required to pay more than one fee. Fees collected shall be deposited in the State Treasury.

(4) ANNUAL REGISTRATION AND LICENSING.—The department shall provide for annual registration of clinical laboratories and licensing of clinical laboratory personnel as of July 1 each year. Those who have failed to pay the proper fee or have otherwise failed to qualify by the following September 1 shall be delinquent and their registration or license subject to cancellation. The registration or license of anyone delinquent on the following December 31 shall be canceled by the department without notice or further proceedings. Upon cancellation under this section the former holder may be reinstated only upon application and qualification as provided for initial applicants and payment of all delinquent fees.

(5) REGISTRATION OF TRAINEES.—The department shall provide for the registration of clinical laboratory trainees who are employed by laboratories registered pursuant to s. 483.091, which registration shall not be valid for a period in excess of 2 years except upon special authorization of the department.

(6) STANDARDS OF PERFORMANCE IN THE EXAMINATION OF SPECIMENS.—The department shall operate a clinical laboratory evaluation program and shall prescribe standards of performance in the examination of specimens. As part of the clinical laboratory evaluation program, it may require clinical laboratory personnel to analyze test samples submitted by it and report on the results of such analysis.

(7) SHIPMENT OF SPECIMENS; OUT-OF-STATE LABORATORIES.—The department may determine which tests may be performed on specimens shipped through the mail and may prescribe requirements for collection, transportation and preservation of such specimens. Specimens may be sent to any clinical laboratory outside of the state for examination, when the state in which the laboratory is licensed conducts physical inspection of the premises of the laboratory, which in the judgment of the department is equivalent to that conducted by the department or when it is otherwise determined by the department that such out-of-state laboratory would meet the requirements of this part. When the specimen has been referred for examination to an out-of-state laboratory the report shall bear or be accompanied by a clear statement that such findings were obtained in such other laboratory and shall specify its name and location.

(8) CONSTRUCTION OF CLINICAL LABORATORIES.—The department may establish standards for construction of new or modification of existing clinical laboratories including plumbing, heating, lighting, ventilation, electrical services and similar conditions which shall insure the conduct and operation of the laboratory in a manner which will protect the public health.

(9) SANITARY CONDITIONS WITHIN THE CLINICAL LABORATORY AND ITS SURROUNDINGS.—The department shall establish standards relating to sanitary conditions within the clinical laboratory and its surroundings including water supply, sewage, the handling of specimens, and general hygiene which shall insure the protection of the public health.

(10) EQUIPMENT.—The department shall establish minimum standards for clinical laboratory equipment essential to its proper conduct and operation.

(11) APPROVAL OF CURRICULUM IN SCHOOLS AND COLLEGES.—The department may approve the curriculum in schools and colleges offering education and training leading toward qualification for licensure under this part.

History.—s. 5, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 390, ch. 77-147; s. 1, ch. 77-457; s. 136, ch. 79-164.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]483.061 Inspection of all clinical laboratories.—The Department of Health and Rehabilitative Services is authorized to inspect the premises and operations of all clinical laboratories subject to registration under this part for the purpose of studying and evaluating the operation, supervision, and procedures of such facilities and to determine their effect upon the health and safety of the people of this state.

History.—s. 6, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 391, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.071 Approval of employment of laboratory trainees.—The Department of Health and Rehabilitative Services shall approve clinical laboratories desiring to employ clinical laboratory trainees for training purposes upon presentation of satisfactory evidence that such laboratories are staffed by qualified personnel and properly equipped to provide training in clinical laboratory technique adequate to prepare individuals to meet the requirements for licensure under this part.

History.—s. 7, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 392, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.091 Clinical laboratory registration.—No person shall conduct, maintain, or operate a clinical laboratory in this state unless a registration therefor has been obtained from the Department of Health and Rehabilitative Services, except laboratories exempt under s. 483.031. A registration shall be valid only for the person or persons to whom it is issued and shall not be the subject of sale, assignment, or transfer, voluntary or involuntary, nor shall a registration be valid for any premises other than those for which issued. However, a new registration may be secured for the new location prior to the actual change, provided the contemplated change is in compliance with the provisions of this part and the rules promulgated hereunder.

History.—s. 9, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 394, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.101 Application for clinical laboratory registration.—Application for a clinical laboratory registration shall be made under oath, by the owner or operator of the clinical laboratory or public official responsible for the operation of a state, city or county clinical laboratory or institution that contains a clinical laboratory, upon forms provided by the Department of Health and Rehabilitative Services. A registration shall be issued authorizing the performance of one or more clinical laboratory procedures or one or more categories of such procedures.

History.—s. 10, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 395, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.111 Limitations on registration.—A registration shall be issued to a clinical laboratory to perform only those clinical laboratory procedures and tests that are within the specialties or subspecialties in which the clinical laboratory personnel are qualified. A registration shall not be issued unless the Department of Health and Rehabilitative Services determines that the clinical laboratory is adequately staffed and equipped to operate in conformity with the requirements of this part and the rules promulgated hereunder.

History.—s. 11, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 396, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.131 Display of clinical laboratory registration.—A clinical laboratory registration shall specify, on the face thereof, the names of the owner or operator, the procedures or categories of procedures authorized, the period for which it is valid, and the location at which such procedures must be performed. The registration shall be displayed at all times in a prominent place where it may be viewed by the public.

History.—s. 13, ch. 67-248; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.141 Clinical laboratory personnel license.—No person shall conduct a clinical laboratory examination or report the results of such examination unless he is licensed under this part to perform such procedures. However, this provision shall not apply to any practitioner of the healing arts authorized to practice in this state. The Department of Health and Rehabilitative Services may grant temporary licenses to candidates it deems properly qualified for a period not to exceed 6 months and for such additional 6-month periods as it may decide.

History.—s. 15, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 397, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.151 Application for clinical laboratory personnel license.—Application for clinical laboratory personnel license shall be made under oath on forms provided by the Department of Health and Rehabilitative Services and shall be accompanied by payment of the first year's annual license fee. A license shall be issued authorizing the performance of procedures of one or more categories.

History.—s. 15, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 398, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.161 Qualifications of clinical laboratory personnel.—The Department of Health and Rehabilitative Services shall prescribe minimal qualifications for clinical laboratory personnel in microbiology, serology, chemistry, hematology, immunohematology, biophysics, cytotechnology, or histopathological technology and shall issue a license to any person who meets the minimum qualifications

and who demonstrates that he possesses the character, training and ability to qualify in those areas for which the license is sought. Examinations required shall be given by the department.

History.—s. 16, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 399, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.181 Acceptance, collection, identification, and examination of specimens.—

(1) A clinical laboratory shall examine human specimens at the request only of a practitioner of the healing arts or other person authorized by law to use the findings of clinical laboratory examinations.

(2) The results of a test shall be reported directly to the licensed practitioner or other authorized person who requested it. Such report shall state the name and address of the clinical laboratory in which the test was actually performed, except when such test was performed in a clinical laboratory located in a hospital and which report becomes an integral part of the hospital record.

(3) All specimens accepted by a clinical laboratory shall be tested on the premises except that specimens for infrequently performed tests may be forwarded for examination to another clinical laboratory approved under this part. This shall not be construed as prohibiting the referral of specimens to a clinical laboratory excepted under s. 483.031. However, the clinical laboratory director of the referring clinical laboratory shall assume complete responsibility.

History.—s. 18, ch. 67-248; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.191 Branch offices, representation of other laboratories.—No person shall represent or maintain an office or specimen collection station or other facility for the representation of any clinical laboratory situated in this state or any other state which makes examinations in connection with the diagnosis and control of diseases unless the clinical laboratory so represented shall meet or exceed the minimal standards promulgated by the Department of Health and Rehabilitative Services pursuant to this part and the rules promulgated hereunder.

History.—s. 19, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 400, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.201 Revocation and suspension of registrations.—A clinical laboratory registration may be denied, revoked, suspended, limited, annulled, or renewal thereof denied for any of the following reasons:

(1) Making false statements on an application for clinical laboratory registration or any other documents required by the Department of Health and Rehabilitative Services.

(2) Permitting unauthorized persons to perform technical procedures or to issue reports.

(3) Demonstrating incompetence or making consistent errors in the performance of clinical laboratory examinations and procedures or reporting which is erroneous.

(4) Performing a test and rendering a report thereon to a person not authorized by law to receive such services.

(5) Knowingly having professional connection with or knowingly lending the use of the name of the licensed clinical laboratory or its director to an unlicensed clinical laboratory.

(6) Violating or aiding and abetting in the violation of any provision of this part or the rules promulgated hereunder.

(7) Failing to file any report required by the provisions of this part or the rules promulgated hereunder.

History.—s. 20, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 401, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.21 Revocation and suspension of licenses.—The license of clinical laboratory personnel may be denied, revoked, suspended, limited, annulled, or renewal thereof denied for any of the following reasons:

(1) Making a false statement on an application for a license or any other document required by the Department of Health and Rehabilitative Services.

(2) Engaging or attempting to engage in or representing himself as entitled to perform any clinical laboratory procedure or category of procedures not authorized pursuant to his license.

(3) Demonstrating incompetence or making consistent errors in the performance of clinical laboratory examinations or procedures or reporting which is erroneous.

(4) Performing a test and rendering a report thereon to a person not authorized by law to receive such services.

(5) Having been convicted of a felony or of any crime involving moral turpitude under the laws of any state or of the United States. The record of conviction or a certified copy thereof shall be conclusive evidence of such conviction.

(6) Having been adjudged mentally or physically incompetent.

(7) Violating or aiding and abetting in the violation of any provision of this part or the rules promulgated hereunder.

History.—s. 21, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 402, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]483.23 Offenses.—It is unlawful for any person to:

(1) Operate, maintain, direct, or engage in the business of operating a clinical laboratory, as herein defined, unless he has obtained a clinical laboratory license from the division or is exempt under s. 483.031.

(2) Conduct, maintain, or operate a clinical laboratory, other than an exempt laboratory, unless such clinical laboratory is under the direct and responsible supervision and direction of a person licensed under this part.

(3) Allow any person to perform clinical laboratory procedures other than individuals licensed or registered under this part, except in the operation of exempt laboratories.

(4) Violate or aid and abet in the violation of any provision of this part or the rules promulgated hereunder.

History.—s. 23, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]483.24 Criminal penalties.—

(1) The performance of any of the acts specified in s. 483.23 shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any use or attempted use of a forged registration or license under this part shall constitute a felony punishable according to the laws of this state for the crime of forgery.

History.—s. 24, ch. 67-248; s. 435, ch. 71-136; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

483.245 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for patients referred to a clinical laboratory licensed under this chapter.

(2) The Department of Health and Rehabilitative Services shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the department, such penalties may include any disciplinary action available to the department under the appropriate licensing laws. In the case of an entity not licensed by the department, such penalties may include:

(a) A fine not to exceed $1,000;

(b) If applicable, a recommendation by the department to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106.

[1]483.25 Injunction.—The operation or maintenance of an unregistered clinical laboratory or the performance of any clinical laboratory procedures or operations in violation of this part is declared a nuisance, inimical to the public health, welfare, and safety. The Department of Health and Rehabilitative Services, or any State Attorney in the name of the people of the state, may, in addition to other remedies herein provided, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of any such clinical laboratory or the performance of any laboratory procedures or operations in violation of this part, until compliance with the provisions of this part or the rules promulgated hereunder has been demonstrated to the satisfaction of the department.

History.—s. 25, ch. 67-248; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-48; s. 404, ch. 77-147; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART II

MULTIPHASIC HEALTH TESTING CENTERS

483.28 Short title.—This part shall be known and may be cited as "The Florida Multiphasic Health Testing Center Law."

History.—s. 1, ch. 77-48.

483.282 Declaration of policy and statement of purpose.—The purpose of this part is to protect the health, safety, and welfare of the people of this state from the hazards of improper performance by multiphasic health testing centers. Multiphasic health testing centers provide to people certain health testing services which are either performed at the center or involve the sending of specimens to a clinical laboratory. Unreliable or inaccurate reports and findings thereby may cause unnecessary anxiety, suffering, and financial burden or a false and injudicious sense of security with respect to the state of personal health, and may even contribute directly to death. Therefore, the Legislature finds and declares that the protection of the public and individual health requires the licensing of such centers, the establishment of certain minimum standards, and other necessary safeguards as authorized by this part.

History.—s. 1, ch. 77-48.

483.285 Application of part; exemptions.—This part applies to all multiphasic health testing centers within the state, but does not apply to:

(1) An entity operated by the United States Government or by the state or any political subdivision of the state.

(2) An entity which limits screening to tests intended to identify specific physical disorders or conditions and which is operated by any public or private entity, and provides health services to the pub-

lic free of charge or for a donation to be used for charitable purposes.

(3) A hospital licensed under chapter 395.

(4) An ambulatory surgical center as defined in s. 768.54(1)(c).

(5) A home health agency licensed under part III of chapter 400.

(6) A health maintenance organization certified under part II of chapter 641.

(7) A clinical laboratory registered under part I.

(8) An office of a duly licensed practitioner of the healing arts for the diagnosis and treatment of his patients.

History.—s. 1, ch. 77-48; s. 207, ch. 79-400.

483.288 Definitions.—As used in this part:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Multiphasic Health Testing Center" or "center" means any fixed or mobile facility where specimens are taken from the human body for delivery to registered clinical laboratories for analysis and where certain measurements such as height and weight determinations, blood pressure determinations, limited audio and visual tests, and electrocardiograms are made.

(3) "Center personnel" includes all persons employed by a center, except persons employed to perform clerical or other administrative responsibilities.

History.—s. 1, ch. 77-48.

483.291 Powers and duties of Department of Health and Rehabilitative Services; rules.—By January 1, 1978, the department shall adopt rules to effect the purposes and provisions of this part, which shall include the following:

(1) LICENSING STANDARDS.—The department shall license all multiphasic health testing centers meeting the requirements of this part, and shall prescribe standards necessary for licensure.

(2) FEES.—The department shall establish an annual fee, which shall be reasonable in amount, for licensing of centers. The fee shall be sufficient in amount to cover the cost of the licensing and inspection of centers. Such fee shall be at least $300 annually.

(3) ANNUAL LICENSING.—The department shall provide for annual licensing of centers each year. Any center which fails to pay the proper fee or otherwise fails to qualify by the end of 60 days from the date of expiration of its license shall be delinquent, and its license shall be subject to cancellation. The license of any center delinquent for 90 days from the license's date of expiration shall be canceled by the department without notice or further proceedings. Upon cancellation of its license under this subsection, a center may have its license reinstated only upon application and qualification therefor as provided for initial applicants and upon payment of all delinquent fees.

(4) STANDARDS OF PERFORMANCE.—The department shall prescribe standards for the performance of health testing procedures.

(5) CONSTRUCTION OF CENTERS.—The department shall establish standards for the construction of new, or the modification of existing, centers which shall insure the conduct and operation of the centers in a manner which will protect the public health.

(6) SANITARY CONDITIONS WITHIN THE CENTER AND ITS SURROUNDINGS.—The department shall establish standards relating to sanitary conditions within the center and its surroundings, including standards relative to water supply, sewage, the handling of specimens, and general hygiene, which shall insure the protection of the public health.

(7) EQUIPMENT.—The department shall establish minimum standards for center equipment essential to the center's proper conduct and operation.

(8) PERSONNEL.—The department shall prescribe minimum qualifications for center personnel. A center may employ as a medical assistant a person with at least one of the following qualifications:

(a) Prior experience of not less than 6 months as a medical assistant in the office of a licensed medical doctor or osteopath or in a hospital or a health maintenance organization.

(b) Certification and registration by the American Medical Technologists Association or other similar professional association approved by the department.

(c) Prior employment as a medical assistant in a licensed center for at least 6 consecutive months at some time during the preceding 2 years.

History.—s. 1, ch. 77-48; s. 208, ch. 79-400.

483.294 Inspection of centers.—The department shall, at least once annually, inspect the premises and operations of all centers subject to licensure under this part, without prior notice to the centers, for the purpose of studying and evaluating the operation, supervision, and procedures of such facilities, to determine their compliance with departmental standards and to determine their effect upon the health and safety of the people of this state.

History.—s. 1, ch. 77-48.

483.297 Advisory council.—

(1) By July 1, 1977, there shall be established a Multiphasic Health Testing Center Advisory Council to advise the department in the fulfillment of its responsibilities under this part, including the preparation of rules and the formulation of policy and standards. The council shall consist of five persons, to be appointed by the Governor, who shall be:

(a) A physician licensed under chapter 458 who has no financial interest in any multiphasic health testing center;

(b) An osteopathic physician licensed under chapter 459 who has no financial interest in any multiphasic health testing center;

(c) A supervisor of a clinical laboratory registered under part I who has no financial interest in any multiphasic health testing center;

(d) A representative of the health testing industry; and

(e) A consumer member of the Statewide Health Coordinating Council.

(2) The expenses of the council shall not be paid

by the department.

(3) The council shall be abolished July 1, 1978.

History.—s. 1, ch. 77-48.

483.30 Licensing of centers.—After January 1, 1978, no person shall conduct, maintain, or operate a multiphasic health testing center in this state unless a license therefor has been obtained from the department. A license shall be valid only for the person or persons to whom it is issued and shall not be the subject of sale, assignment, or transfer, voluntary or involuntary, nor shall a license be valid for any premises other than the center for which issued. However, a new license may be secured for the new location for a fixed center prior to the actual change, provided the contemplated change is in compliance with the provisions of this part and the rules adopted hereunder.

History.—s. 1, ch. 77-48.

483.302 Application for license.—

(1) Application for a license as required by s. 483.30 shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee.

(2) The application shall contain:

(a) A determination as to whether the facility will be fixed or mobile and the location for a fixed facility.

(b) The name and address of the owner if an individual; if the owner is a firm, partnership, or association, the name and address of every member thereof; if the owner is a corporation, its name and address and the name and address of its medical director and officers and of each person having at least a 10 percent interest in the corporation.

(c) The name of any person whose name is required on the application under the provisions of paragraph (b) and who owns at least a 10 percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the center for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.

(d) The name by which the facility is to be known.

(e) The name, address, and Florida physician's license number of the medical director.

History.—s. 1, ch. 77-48.

483.305 Requirements for advertisement.—

(1) Every center shall prominently display on its report of the tests, on all advertising and promotional materials, and in a place that is in clear and unobstructed public view within the center, a notice in block letters which shall read: "Health screening tests may or may not alert you and your doctor to serious medical problems and are not intended to be a substitute for a physician's examination." The notice displayed within the center shall be made up of block letters not less than 1 inch in height.

(2) No center shall utilize advertisements or promotional materials having the tendency to deceive prospective purchasers concerning the personnel, equipment, care, and services, or the quality thereof, provided by the center.

(3) Any violation of this section shall be subject to the provisions of the Florida Deceptive and Unfair Trade Practices Act.

History.—s. 1, ch. 77-48.

483.308 Medical director of center.—

(1) Every center licensed under this part shall employ a medical director who shall be either a physician licensed under the provisions of chapter 458 or an osteopathic physician licensed under the provisions of chapter 459, who, as part of his usual medical practice, interprets electrocardiograms. The medical director shall not be required to be present at the center while it is in operation. However, the medical director shall be responsible for assuring the proper clinical operation of the center.

(2) The medical director shall sign all requests by the center for analyses to be conducted by clinical laboratories with respect to specimens collected at the center. The results of such analyses, together with the results of any measurements or other testing procedures performed at the center, including electrocardiographic interpretations, shall be forwarded to the medical director, who shall read, interpret, and sign such results before they are sent by the center to the patient.

History.—s. 1, ch. 77-48.

483.311 Display of license.—The license of a center shall specify, on the face thereof, the names and addresses of the owner and the medical director, the period for which such license is valid, and, in the case of fixed centers, the location at which such procedures must be performed. The license shall be displayed at all times in a prominent place at the center, where it may be viewed by the public.

History.—s. 1, ch. 77-48.

483.314 Collection and transmittal of specimens.—

(1) A center shall forward any human specimens collected by it to a clinical laboratory for such analyses as are authorized by the medical director of the center.

(2) The results of an analysis shall be reported directly to the medical director of the center that requested it.

History.—s. 1, ch. 77-48.

483.317 Revocation and suspension of licenses.—The license of a center may be denied, revoked, suspended, or annulled, or renewal thereof denied, for any of the following reasons:

(1) Making a false statement on an application for a license or on any other document required by the department pursuant to this part;

(2) Permitting unauthorized persons to perform health testing procedures or to issue reports;

(3) Demonstrating incompetence in the performance of health testing procedures or issuing erroneous reports;

(4) Rendering a report on the results of any measurement or test to a person not authorized by law to receive such information;

(5) Knowingly having professional connection with, or knowingly lending the use of the name of the licensed center or its medical director to, an unli-

censed multiphasic health testing center;

(6) Violating or aiding and abetting in the violation of any provision of this part or the rules adopted hereunder;

(7) Failing to file any report required by the provisions of this part or the rules adopted hereunder; or

(8) Engaging in false, misleading, or deceptive advertising.

History.—s. 1, ch. 77-48.

483.32 Revocation and suspension procedure.—The department shall adopt rules governing the procedure to be followed in proceedings before it for the denial, revocation, suspension, or annulment, or denial of renewal, of the license of a center.

History.—s. 1, ch. 77-48.

483.322 Offenses.—It is unlawful for any person to:

(1) Operate, maintain, direct, or engage in the business of operating a center unless he has obtained a license for the center.

(2) Conduct, maintain, or operate a center unless such center is under the direct and responsible supervision and direction of a medical director meeting the qualifications specified in s. 483.308(1).

(3) Violate, or aid and abet in the violation of, any provision of this part or the rules adopted hereunder.

History.—s. 1, ch. 77-48.

483.325 Criminal penalties.—

(1) The performance of any of the acts specified in s. 483.322 shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any use or attempted use of a forged license under this part shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 77-48.

483.328 Injunction.—The operation or maintenance of an unlicensed center or the performance of any health testing procedures or operations in violation of this part is declared a nuisance and inimical to the public health, welfare, and safety. The department, or any state attorney in the name of the people of the state, may, in addition to other remedies herein provided, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of any such center or the performance of any health testing procedures or operations in violation of this part, until compliance with the provisions of this part or the rules adopted hereunder has been demonstrated to the satisfaction of the department.

History.—s. 1, ch. 77-48.

CHAPTER 484

OPTICIANS

[1]484.001 Purpose; legislative findings; intent.—

(1) The Legislature finds that the practice of opticianry by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about opticians and that the consequences of a wrong choice could seriously endanger their health and safety. The only way to protect the public from the incompetent practice of opticianry is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The sole purpose of enacting this chapter is for the protection of the public health and safety.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.002 Definitions.—As used in this chapter:

(1) "Department" means the Department of Professional Regulation.

(2) "Board" means the Board of Opticianry.

(3) "Opticianry" means the preparation and dispensing of lenses, spectacles, eyeglasses, and other optical devices to the intended user or agent thereof, upon the written prescription of a medical doctor or optometrist who is duly licensed to practice or upon presentation of a duplicate prescription. The selection of frame designs, the actual sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, and other optical devices subsequent to performance of all services of the optician shall not be considered the practice of opticianry; however, such physical possession shall not be transferred until the optician has completed the fitting of the optical device upon the customer. The practice of opticianry also includes the duplication of lenses accurately as to power, without prescription.

(4) "Optician" means any person licensed to practice opticianry pursuant to this chapter.

(5) "Direct supervision" means supervision where the licensee remains on the premises while all work is being done and gives final approval to any work performed by an employee.

(6) "Licensed physician" means a medical doctor licensed under chapter 458 or chapter 459.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.003 Board of Opticianry; membership; appointment; terms.—

(1) The Board of Opticianry is created within the Department of Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board shall be licensed opticians. The remaining two members shall be residents of the state who never have been licensed as opticians and who are in no way connected with the practice of opticianry.

(3) Within 60 days after June 30, 1979, the Governor shall appoint two members for terms of 2 years each, two members for terms of 3 years each, and three members for terms of 4 years each. Thereafter, members shall be appointed for terms of 4 years. The members of the [2]board serving on the effective date of this chapter shall continue in office until their successors are appointed.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The "board" referred to here is presumably the Board of Dispensing Opticians; provisions concerning this board were repealed by s. 6, ch. 79-275.

[1]484.004 Board headquarters.—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.005 Authority to make rules.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon it by this chapter and as may be necessary to protect the health and safety of the public. Such rules shall include, but not be limited to, rules relating to:

(1) A standard of practice for opticians licensed pursuant to this chapter.

(2) Minimum equipment which shall be utilized to prepare, fit, measure, and dispense lenses, spectacles, eyeglasses, and other optical devices allowed under the practice of opticianry.

(3) Procedures for transfer of prescription files upon the going out of business of an optician, corporation, or other person.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.

[1]484.006 Certain rules prohibited.—

(1) No rule or policy of the board shall prohibit any optician from offering a discount in any form or manner in conjunction with the practice of opticianry or from advertising, either directly or indirectly by any means whatsoever, any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses, or other opticianry service.

(2) No rule or policy of the board shall prohibit any optician from practicing jointly with optometrists or medical doctors licensed in this state.

(3) No rule or policy of the board shall prohibit the sale of spectacles for reading purposes; toy glasses; goggles or sunglasses consisting of plano white, plano colored, or plano tinted glasses; or readymade nonprescription glasses; nor shall anything in this chapter be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any person engaged in the manufacturing or sale of plastic or glass artificial eyes.

(4) No rule or policy of the board shall prohibit any optician licensed under this chapter from engaging in the practice of opticianry with, or in the employ of, any partnership, corporation, lay body, organization, group, or individual.

(5) No rule or policy of the board shall prohibit the location of offices or branch offices by an optician.

(6) No rule or policy of the board shall prohibit the practice of opticianry under a trade name or service mark.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.007 Licensure.—

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies:

(a) Has completed the application form and remitted an examination fee set by the board, not to exceed $250;

(b) Is not less than 18 years of age;

(c) Is of good moral character;

(d) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education; and

(e)1. Has satisfactorily completed a 2-school-year course of study of not less than 1,000 hours per year in a recognized school of opticianry; or

2. Is a licensed optician, who has actively practiced in another state for more than 3 years immediately preceding application and who meets the examination qualifications as provided in this subsection; or

3. Has registered as an apprentice with the department and paid an annual registration fee not to exceed $20, as set by rule of the board. Such apprenticeship shall be for not less than 3 years of a continuous nature of a 40-hour workweek under the supervision of a licensed optician, a licensed physician, or a licensed optometrist. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein.

(2) The department may permit an applicant who has satisfied all requirements of subsection (1) to take the examination and shall issue a license to practice opticianry to any candidate who successfully completes the examination.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.008 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed $250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for the reactivation in s. 484.009.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.009 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 484.008 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 484.014.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "for all years" were inserted by the editors.

[1]484.011 Supportive personnel.—No person other than a licensed optician may engage in the practice of opticianry, except that a licensed optician may delegate to nonlicensed supportive personnel

those duties, tasks, and functions which do not fall within the purview of s. 484.002(3). All such delegated acts shall be performed under the direct supervision of a licensed optician who shall be responsible for all such acts performed by persons under his supervision.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.012 Prescriptions; filing; duplication of prescriptions; duplication of lenses.—

(1) Any prescription written by a duly licensed medical doctor or optometrist for any lenses, spectacles, eyeglasses, or other optical devices shall be kept on file for a period of 2 years with the licensed optician who fills such prescription.

(2) Upon request by the intended user of the prescribed lenses, spectacles, eyeglasses, or other optical devices, or by an agent of the intended user, the optician who fills the original prescription shall duplicate, on a form prescribed by rule of the board, the original prescription. However, for medical reasons only, the prescribing medical doctor or optometrist may, upon the original prescription, prohibit its duplication. Any duplication shall be considered a valid prescription to be filled for a period of 5 years from the date of the original prescription.

(3) Nothing in this chapter shall be construed to prohibit a licensed optician from accurately duplicating lenses as to power without a prescription.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.013 Violations and penalties.—

(1) It is unlawful for any person:

(a) To make a false or fraudulent statement, either for himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.

(b) To prepare or dispense lenses, spectacles, eyeglasses, or other optical devices when such person is not licensed as an optician in this state.

(c) To prepare or dispense lenses, spectacles, eyeglasses, or other optical devices without first being furnished with a prescription as provided for in s. 484.012.

(2) It is unlawful for any person other than an optician licensed under this chapter to use the title "optician" or otherwise lead the public to believe that he is engaged in the practice of opticianry.

(3) It is unlawful for any optician to engage in the diagnosis of the human eyes, attempt to determine the refractive powers of the human eyes, or, in any manner, attempt to prescribe for or treat diseases or ailments of human beings.

(4) Any person who violates a provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 5, ch. 79-275.

[1]Note.—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.014 Disciplinary actions.—

(1) The following acts relating to the practice of opticianry shall be grounds for disciplinary action as set forth in this section:

(a) Procuring or attempting to procure a license by misrepresentation, bribery, or fraud or through an error of the department or the board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records shall include only those which the person is required to make or file as an optician.

(d) Failing to make fee or price information readily available by providing such information upon request or upon the presentation of a prescription.

(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(f) Fraud or deceit, or negligence, incompetency, or misconduct, in the authorized practice of opticianry.

(g) A violation or repeated violations of this chapter or of chapter 455 or any rules promulgated pursuant thereto.

(h) Practicing with a revoked, suspended, or inactive license.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(j) Violation of any provision of s. 484.012.

(k) Conspiring with another licensee or with any person to commit an act, or committing an act, which would coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(l) Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

(m) Failing to keep written prescription files.

(n) Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board.

(o) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(p) Gross or repeated malpractice.

(q) Permitting any person not licensed as an optician in this state to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices which are part of the practice of opticianry.

(r) Having been convicted or found guilty, regardless of adjudication, in a court of this state or other jurisdiction, of a crime which relates to the ability to practice opticianry or to the practice of opticianry.

(s) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of Florida law or rules regulating opticianry.

(t) Being unable to practice opticianry with reasonable skill and safety by reason of illness or use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An optician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of opticianry with reasonable skill and safety to his customers.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the optician on probation for a period of time and subject to such conditions as the board may specify, including requiring the optician to submit to treatment or to work under the supervision of another optician.

(3) The board shall not reinstate the license of an optician it has deemed unqualified until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of opticianry.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.015 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any establishment in the state in which lenses, spectacles, eyeglasses, and any other optical devices are prepared and dispensed, for the purposes of:

(1) Determining if any provision of this chapter, or any rule promulgated under its authority, is being violated;

(2) Securing samples or specimens of any lenses, spectacles, eyeglasses, or other optical devices, after paying or offering to pay for such sample or specimen; or

(3) Securing such other evidence as may be needed for prosecution under this chapter.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.016 Prosecution of criminal violations.—The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.017 Reciprocity.—In order to ensure that opticians licensed in this state may be licensed in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]484.018 Exceptions.—

(1) Nothing in this chapter shall be construed to prevent a person licensed in this state as a physician or as an optometrist from performing those services he is licensed to perform.

(2) Nothing in this chapter shall be construed to mean that an employee of a licensed physician or a licensed optometrist shall be required to secure a license under this chapter, so long as the employee is working exclusively for, and under the direct supervision of, the licensed physician or optometrist and does not hold himself out to the public generally as an optician.

History.—ss. 1, 5, ch. 79-275.

[1]**Note.**—Section 5, ch. 79-275, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

484.019 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on the effective date of this act shall remain in full force and effect. Henceforth, all such licenses shall be renewed pursuant to this chapter.

History.—ss. 2, 4, ch. 79-275.

CHAPTER 485

MIDWIFERY

485.011 Midwifery; who may practice.—No person other than a duly registered and licensed physician shall practice midwifery or use the name or title of "midwife" unless such person shall be duly registered as a midwife with the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 14760, 1931; CGL 1936 Supp. 3403(1); ss. 19, 35, ch. 69-106; s. 405, ch. 77-147.
Note.—Former s. 457.01.

485.021 Application to practice midwifery.—No license to practice midwifery shall be issued unless written application therefor sponsored by two registered practicing physicians has been made in the form prescribed by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 14760, 1931; CGL 1936 Supp. 3403(2); ss. 19, 35, ch. 69-106; s. 406, ch. 77-147.
Note.—Former s. 457.02.

485.031 Qualifications of applicant to practice midwifery.—Every applicant for a license to practice midwifery must possess the following qualifications:

(1) Be not less than 18 years of age.

(2) Be able to read the manual for midwives intelligently and to fill out the birth certificates legibly; provided that in case of persons who have extended experience or in other exceptional circumstances, this requirement may be waived by the Department of Health and Rehabilitative Services.

(3) Be clean and constantly show evidence in behavior and in home habits of cleanliness.

(4)(a) Possess a diploma from a school for midwives recognized by the department; or

(b) Have attended under the supervision of a duly licensed and registered physician not less than 15 cases of labor and have had the care of at least 15 mothers and newborn infants during lying-in period of at least 10 days each; and shall possess a written statement from said physician that she has attended such cases in said 15 cases, with the date engaged and address of each; and that she is reasonably skilled and competent and establish the fact that she is reasonably skilled and competent to the satisfaction of the department; or

(c) Present other evidence satisfactory to the department showing her qualifications, and

(5) Present evidence satisfactory to the department of good moral character in such form as the department by rule and regulation may prescribe.

History.—s. 3, ch. 14760, 1931; CGL 1936 Supp. 3403(3); ss. 19, 35, ch. 69-106; s. 38, ch. 77-121; s. 407, ch. 77-147.
Note.—Former s. 457.03.
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

485.041 License good for 1 year.—Unless revoked every license to practice midwifery shall permit the holder thereof to practice only during the current calendar year, the term of said calendar year being from January 1.

History.—s. 4, ch. 14760, 1931; CGL 1936 Supp. 3403(4).
Note.—Former s. 457.04.

485.051 Department to make rules regulating practice of midwifery.—The Department of Health and Rehabilitative Services may make such rules and regulations as it may deem necessary for regulating the practice of midwifery within the state.

History.—s. 5, ch. 14760, 1931; CGL 1936 Supp. 3403(5); ss. 19, 35, ch. 69-106; s. 408, ch. 77-147.
Note.—Former s. 457.05.

485.061 Revocation of license.—The Department of Health and Rehabilitative Services may revoke the license of such persons practicing midwifery pursuant to this chapter, provided it has cause.

History.—s. 6, ch. 14760, 1931; CGL 1936 Supp. 3403(6); ss. 19, 35, ch. 69-106; s. 409, ch. 77-147; s. 19, ch. 78-95.
Note.—Former s. 457.06.

485.071 Midwives to conform to rules and regulations.—

(1) All midwives to whom licenses shall be issued pursuant to this chapter must conform to all rules and regulations of the Department of Health and Rehabilitative Services, the provisions of public health laws of the state, the rules and regulations of any local boards of health and all lawful orders and directions of the department or local boards of health or local health officers.

(2) Any violation on the part of any midwife of any of the rules and regulations of the department, the provisions of the public health laws or the rules and regulations of any local boards of health, or the disobedience of any lawful order of the department, or any local boards or health officers, shall be sufficient cause for the revocation of the license issued to the midwife, and shall also be sufficient cause for the withholding of license to practice midwifery from any midwife so offending in any manner as aforesaid by the department.

History.—s. 7, ch. 14760, 1931; CGL 1936 Supp. 3403(7); ss. 19, 35, ch. 69-106; s. 410, ch. 77-147.
Note.—Former s. 457.07.

485.081 Midwives to practice in normal cases only.—A duly licensed and registered midwife may practice midwifery in cases of normal labor and in no others. No midwife shall in any case use instruments of any kind, or assist labor by any artificial, forcible or mechanical manner or attempt to remove adherent placentae, or administer, prescribe, advise or employ any poisonous drug or herb or medicine or at-

tempt the treatment of disease except where the attendance of a physician cannot be speedily secured and in such cases, the midwife shall secure the attendance of the physician as soon as possible.

History.—s. 8, ch. 14760, 1931; CGL 1936 Supp. 3403(8).
Note.—Former s. 457.08.

485.091 Penalty for violation of chapter.—Any person who fails or neglects to register as required by the provisions of s. 485.011, or who shall violate the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 7, ch. 12005, 1927; CGL 7703; s. 437, ch. 71-136.
Note.—Former s. 457.09.

CHAPTER 486

PHYSICAL THERAPY PRACTICE

[1]**486.011 Short title.**—This chapter may be cited as the "Physical Therapy Practice Act."

History.—s. 1, ch. 57-67; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**486.021 Definitions.**—In this chapter, unless the context otherwise requires:

(1) "Physical therapy" means the treatment of any disability, injury, disease, or other condition of health of human beings, or the prevention of such disability, injury, disease or other condition of health and rehabilitation as related thereto by the use of the physical, chemical and other properties of air, cold, heat, electricity, exercise, massage, acupuncture only upon compliance with the criteria set forth by the Board of Medical Examiners, when no penetration of the skin occurs, radiant energy, including ultraviolet, visible and infrared rays, ultrasound, water and apparatus and equipment used in the application of the foregoing or related thereto, or the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition. The physical therapist may perform electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medical Examiners. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this chapter.

(2) "Physical therapist" means a person who practices physical therapy as defined in this chapter upon the oral or written prescription of a person licensed and registered in this state to practice medicine, surgery, or dentistry and whose license is in good standing.

(3) "Physical therapist assistant" means a person who applies physical therapy procedures as defined in this chapter under the direction of a registered physical therapist, and whose license in Florida is in good standing.

[2](4) "Board" means the State Board of Medical Examiners.

(5) Words importing the masculine gender may be applied to females.

History.—s. 2, ch. 57-67; s. 1, ch. 67-537; s. 1, ch. 73-354; ss. 1, 2, ch. 78-278; ss. 1, 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners. cf.—Ch. 458 Medical Practice.

[1]**486.031 Registration requirements.**—To be eligible for registration by the board as a physical therapist an applicant must:

(1) Be at least 18 years old;

(2) Be of good moral character, and

(3)(a) Have been graduated from a school giving a course in physical therapy, which course, as given by such school has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Council on Postsecondary Accreditation (formerly the National Commission on Accrediting and the Federation of Regional Accrediting Commissions of Higher Education) and the United States Commissioner of Education at the time of his graduation and passed to the satisfaction of the board an examination conducted by it to determine his fitness for practice as a physical therapist as hereinafter provided; or

(b) Have received a diploma from a program in physical therapy in a foreign country, which program has been approved by the appropriate agency as identified by the Division of Physical Therapy, [2]State Board of Medical Examiners, and passed to the satisfaction of the board an examination conducted by it to determine his fitness for practice as a physical therapist as hereinafter provided; or

(c) Be entitled to registration without examination as provided in s. 486.081.

History.—s. 3, ch. 57-67; s. 2, ch. 67-537; s. 39, ch. 77-121; s. 3, ch. 78-278; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand

repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]**Note**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners.
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.
s. 455.217 Examinations.

[1]486.041 Application for licensing.—A person who desires to be licensed as a physical therapist shall apply to the board in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by s. 486.031. He shall pay to the board at the time of filing his application, a fee not to exceed $75 as fixed annually by the board, no part of which shall be returned.

History.—s. 4, ch. 57-67; s. 2, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.051 Examination of applicants.—

(1) The board shall hold examinations for applicants for licensing as physical therapists at least once a year, and more often at the discretion of the board at a time and place to be determined by the board. Examination of applicants for licensing as physical therapists shall be made by the [2]State Board of Medical Examiners according to the methods deemed by it to be most practical and expedient to test the applicant's qualifications, including oral and written tests and practical demonstrations. In the written tests each applicant shall be designated by a number instead of by name so that his identity shall not be disclosed to the members of the board until after the examination papers are graded. Examinations shall be given in the following subjects: the applied sciences of anatomy, physiology, neuroanatomy, kinesiology, psychology, physics, physical therapy as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery, elementary gross pathology, medical ethics, and the technical procedures in the practice of physical therapy as defined in this chapter.

(2) The board shall employ three registered physical therapists for a term of 4 years each to whom it may delegate such powers and duties as it may deem proper to examine applicants and to carry out the mechanics and procedures necessary to effectuate this chapter. The board shall fix their compensation and pay their expenses; no registered physical therapist shall serve more than 2 successive terms, provided, however, that the registered physical therapists presently so employed shall serve until the expiration of their respective terms of employment or until their successors shall be employed. At any time there is a vacancy to be filled by the employment of a registered physical therapist, the Florida chapter of the American Physical Therapy Association shall recommend to the board in a number of not less than twice the vacancies to be filled, and the board may appoint from submitted list, in its discretion, any of those so recommended; provided, however, it shall insofar as possible appoint persons from different geographical areas and persons who are representational of various areas of physical therapy treatment.

History.—s. 5, ch. 57-67; s. 24, ch. 61-514; s. 3, ch. 67-537; s. 3, ch. 73-354; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]**Note**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners.
cf.—s. 455.217 Examinations.

[1]486.052 Annual fees.—

(1) An annual registration fee of $10 shall be required of all licensed physical therapists, the time and place of payment to be determined by the board.

(2) If a renewal fee for any physical therapist's certificate is not paid by December 31 of any year, the holder thereof may be reinstated as a licensed physical therapist only upon payment of a delinquency fee not to exceed $7.50, as fixed annually by the board, and all lapsed fees, and upon submitting proof, satisfactory to the board, of compliance with this section and all other provisions of this chapter.

(3) If any certificate is not reinstated as provided in subsection (2) and remains delinquent for a period exceeding 3 years, the certificate shall be automatically canceled and the board shall notify the physical therapist of the same. The certificate may not be reinstated or renewed until the physical therapist makes application for, and passes, the examination as provided by s. 486.051 and pays the fee therefor as provided in s. 486.041.

History.—s. 4, ch. 67-537; s. 4, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.061 Issuance of certificates to applicants passing examinations.—The board shall register as a physical therapist and shall furnish a certificate of registration to each applicant who successfully establishes his eligibility under the terms of this law, and any person who holds a certificate of registration pursuant to this section may use the words "physical therapist," "physiotherapist," or "registered physical therapist," and he may use the letters "P.T.," "Ph.T.," or "R.P.T.," in connection with his name or place of business to denote his registration hereunder.

History.—s. 6, ch. 57-67; s. 5, ch. 67-537; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.071 Registration required.—No person shall practice, nor hold himself out as being able to practice, physical therapy in this state unless he is licensed in accordance with the provisions of this law; provided, however, that nothing in this law shall prohibit any person licensed in this state under any other law from engaging in the practice for which he is licensed.

History.—s. 7, ch. 57-67; s. 1, ch. 67-406; s. 6, ch. 67-537; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.072 Disposition of fees.—All moneys received by the board under this chapter shall be de-

posited and expended pursuant to the provisions of s. 215.37. All such expenditures shall be paid upon presentation of vouchers approved by the president and secretary-treasurer of said board.

History.—s. 24, ch. 61-514; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.081 Issuance of licenses to persons passing examination of certain other examining boards; permits.—The board may license as a physical therapist and furnish a certificate of registration without examination to any applicant who presents evidence, satisfactory to the board, of having passed an examination before a similar lawfully authorized examining board in physical therapy of another state, the District of Columbia, a territory, or a foreign country, if the standards for registration in physical therapy in such other state, district, territory, or foreign country are determined by the board to be as high as those of this state. Any person who holds a certificate of registration and a license pursuant to this section may use the words "physical therapist," "licensed physical therapist," "physiotherapist," or "registered physical therapist," and he may use the letters "P.T.," "L.P.T.," "Ph.T.," or "R.P.T.," in connection with his name or place of business to denote his registration hereunder. If the board determines that the applicant has not passed such examination as to entitle him to a license and a certificate of registration without examination, the board may, if it determines the applicant possesses sufficient other qualifications for the practice of physical therapy, issue the applicant a permit allowing him to practice physical therapy pursuant to the terms of this chapter until the holding of the next examination provided for by this chapter. The permit shall be valid until notification of the results of examination, but not for a longer period of time. At the time of making application for licensure without examination, pursuant to the terms of this section, the applicant shall pay to the board a fee not to exceed $75 as fixed annually by the board, no part of which shall be returned.

History.—s. 8, ch. 57-67; s. 7, ch. 67-537; s. 5, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.091 Refusal, revocation, and suspension of registration.—The board may refuse to register any applicant and may suspend or revoke the registration of any registered person:

(1) Who is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate him for the performance of his professional duties.

(2) Who is guilty of fraud in the practice of physical therapy or deceit in obtaining his registration as a physical therapist.

(3) Who has been convicted in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which, if committed in the state, would constitute a felony under the laws of this state.

(4) Who is guilty of treating or undertaking to treat ailments of human beings otherwise than by physical therapy, as authorized by this chapter.

(5) Who has undertaken to practice physical therapy independently of the prescription of a person licensed by the state to practice medicine, surgery or dentistry.

(6) Who has been found by a court of competent jurisdiction to be a mentally ill person and has not thereafter been restored to legal capacity.

(7) Who is guilty of conduct unbecoming a person registered as a physical therapist or detrimental to the best interest of the public.

History.—s. 9, ch. 57-67; s. 8, ch. 67-537; ss. 36, 44, ch. 78-95; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

[1]486.101 False representation of registration prohibited.—It shall be unlawful for any person who is not registered under this chapter as a physical therapist or whose registration has been suspended or revoked, to use in connection with his name or place of business the words or letters "physical therapist," "physiotherapist," "registered physical therapist," or the letters "P.T.," "Ph.T.," or "R.P.T.," or any other words, letters, abbreviations or insignia indicating or implying that he is a physical therapist or who in any other way, orally, in writing, in print or by sign, directly or by implication represents himself as a physical therapist.

History.—s. 10, ch. 57-67; s. 9, ch. 67-537; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.102 Physical therapist assistant licensing requirements.—To be eligible for licensing by the board as a physical therapist assistant an applicant must:

(1) Be at least 18 years old.

(2) Be of good moral character.

(3) Have been graduated from a school giving a course of not less than 2 years for physical therapist assistants, which course, as given by such school, has been approved for training physical therapist assistants by the physical therapists employed by the board pursuant to s. 486.051(2).

(4) Pass, to the satisfaction of the board, an examination conducted by it to determine his fitness for practice as a physical therapist assistant as hereinafter provided.

History.—s. 10, ch. 67-537; s. 6, ch. 73-354; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.103 Physical therapist assistant application for licensing.—A person who desires to be licensed as a physical therapist assistant shall apply to the board in writing on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by s. 486.104. He shall pay to the board at the time of filing his application a fee not to exceed $75 as fixed annually by the board, no part of which shall be returned.

History.—s. 11, ch. 67-537; s. 7, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]Note.—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant

to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.104 Physical therapist assistant, examination of applicants.—The board shall hold examinations for applicants for licensing as physical therapist assistants at least once a year, and more often at the discretion of the board, at a time and place to be determined by the board. Examination of applicants for licensing as physical therapist assistants shall be made by the [2]State Board of Medical Examiners according to the methods deemed by it to be most practical and expedient to test the applicant's qualifications, including oral and written tests and practical demonstrations. Examinations shall be given in the following subjects: Human anatomy and physiology, chemistry and physics, electrotherapy and hydrotherapy, therapeutic exercises, rehabilitation, ethics, and clinical procedure. In the written tests each applicant shall be designated by a number instead of by name.

History.—s. 12, ch. 67-537; s. 8, ch. 73-354; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
[2]**Note**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners.
cf.—s. 455.213 General licensing provisions.
s. 455.217 Examinations.

[1]486.105 Physical therapist assistant annual registration fee.—

(1) An annual registration fee of $7.50 shall be required of all licensed physical therapist assistants, the time and place of payment to be determined by the board.

(2) If the renewal fee for any physical therapist assistant's certificate is not paid by December 31 of any year, the holder thereof may be reinstated as a licensed physical therapist assistant only upon payment of a delinquency fee not to exceed $5, as fixed annually by the board, and all lapsed fees, and upon submitting proof satisfactory to the board of compliance with this section and all other provisions of this chapter.

(3) If any certificate is not reinstated as provided in subsection (2) and remains delinquent for a period exceeding 3 years, the certificate shall be automatically canceled and the board shall notify the physical therapist assistant of the same. The certificate may not be reinstated or renewed until the physical therapist assistant makes application for, and passes, the examination as provided by s. 486.104 and pays the fee therefor as provided in s. 486.103.

History.—s. 13, ch. 67-537; s. 9, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.203 Department of Professional Regulation; powers and duties.

[1]486.106 Physical therapist assistants; issuance of certificates.—The board shall license as a physical therapist assistant and shall furnish a certificate of registration to each applicant who successfully establishes his eligibility under the terms of this law, and any person who holds a certificate of registration pursuant to this section may use the words "physical therapist assistant," "licensed physical therapist assistant," "registered physical therapist assistant," or "physical therapy technician," and he may use the letters "P.T.A.," "L.P.T.A.," "R.P.T.A.," or "P.T.T.," in connection with his name to denote his registration hereunder.

History.—s. 14, ch. 67-537; s. 10, ch. 73-354; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.107 Physical therapist assistants; issuance of certificates to persons passing examination of other examining boards; permits.—The board may license as physical therapist assistant and furnish a certificate of registration without examination to any applicant who presents evidence to the board, under oath, of having passed the examination for physical therapist assistants before a similar lawfully authorized examining board of another state, the District of Columbia, or a territory, if the standards for licensing for physical therapist assistants in such other state are determined by the board to be as high as those of this state. Any person who holds a certificate of registration pursuant to this section may use the words "physical therapist assistant," "registered physical therapist assistant," "licensed physical therapist assistant," or "physical therapist technician," and he may use the letters "P.T.A.," "R.P.T.A.," "L.P.T.A.," or "P.T.T.," in connection with his name to denote his registration hereunder. If the board determines that the applicant has not passed such examination as to entitle him to a license without examination, the board may, if it determines the applicant possesses sufficient other qualifications for the practice as a licensed physical therapist assistant, issue the applicant a permit allowing him to practice as a licensed physical therapist assistant pursuant to the terms of this chapter until the holding of the next examination provided for by this chapter. The permit shall be valid until notification of the results of the examination, but not for a longer period of time. At the time of making application for registration without examination, pursuant to the terms of this section, the applicant shall pay to the board a fee not to exceed $75 as fixed annually by the board, no part of which shall be returned.

History.—s. 15, ch. 67-537; s. 11, ch. 73-354; s. 4, ch. 78-278; s. 2, ch. 79-116.
[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.
cf.—s. 455.213 General licensing provisions.

[1]486.121 Powers and duties of Board of Medical Examiners.—The [2]State Board of Medical Examiners may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this chapter. The board is authorized to adopt only those rules and regulations needed to carry out the mechanics and procedures to effectuate this chapter and may amend and revoke such rules. If the board determines an applicant for registration is qualified to practice physical therapy, the board may issue the applicant a permit allowing him to practice physical therapy pursuant to the terms of this chapter until the holding of the next examination provided for by this chapter, but not for a longer period of time. The board shall have power to pass upon the good standing and reputability of any school or college offering courses in physical therapy, and whether the courses of such school or college

in physical therapy meet the standards fixed by the board. In determining the standing and reputability of any such school and whether the courses can be approved by the board, the board may investigate and make personal inspection of the same. The powers and duties of the board, as set out in this chapter, shall in no way limit or interfere with its powers and duties as set forth in chapter 458. All powers and duties of the board, as set forth in this chapter, shall be supplemental and additional powers and duties to those conferred upon the board by chapter 458.

History.—s. 12, ch. 57-67; ss. 36, 44, ch. 78-95; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note**—See ch. 79-302, which repealed provisions relating to the State Board of Medical Examiners and created the Board of Medical Examiners.

[1]486.141 Fraudulent representation to obtain registration unlawful.—It shall be unlawful for any person to obtain or attempt to obtain registration under this chapter by any willful misrepresentation or any fraudulent representation.

History.—s. 14, ch. 57-67; s. 18, ch. 67-537; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.151 Penalties for violations.—Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 57-67; s. 438, ch. 71-136; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.161 Exemptions.—No provision of this chapter shall be construed to prohibit the following persons from using physical agents as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession: chiropractors, podiatrists, doctors of medicine, masseurs, nurses, osteopathic physicians and surgeons, and naturopaths.

History.—s. 16, ch. 57-67; s. 2, ch. 65-170; s. 5, ch. 78-278; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.171 Current valid certificates effective.—(1) Any person holding a certificate of registration to practice physical therapy issued by the board which is valid when this law takes effect shall be deemed to be licensed as a registered physical therapist under the provisions of this chapter.

(2) Any person employed by or assisting the physical therapist as an aide shall be considered eligible to continue to perform his duties, provided he was so employed prior to the 1973 amendments to this act. He shall not be eligible for licensure as a physical therapist assistant or to call himself an assistant until he meets the requirements of this chapter.

History.—s. 17, ch. 57-67; s. 16, ch. 67-537; s. 12, ch. 73-354; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]486.172 Application of ss. 455.014 and 455.11.—The provisions of ss. 455.014 and [2]455.11 shall also be applicable to the provisions of this chapter.

History.—s. 7, ch. 78-278; s. 2, ch. 79-116.

[1]**Note.**—Section 2, ch. 79-116, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The cross-reference "455.11" was substituted for "455.016" by the editors to conform to renumbering by s. 5, ch. 79-36, and reassignment.

CHAPTER 487

PESTICIDES

487.011 Short title.—This law may be cited as the "Florida Pesticide Law."

History.—s. 1, ch. 65-457.

487.021 Definitions.—For the purpose of this chapter:

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior, of ornamental or crop plants or the produce thereof.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Added ingredient" means any plant nutrient or plant regulator added to the mixture which is not an active pesticidal ingredient, but which the manufacturer wishes to show on the label.

(3) "Adulterated" applies to any pesticide if its strength or purity falls below or is in excess of the professed standard of quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(4) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of pesticides.

(5) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.

(6) "Antidote" means the most practical immediate treatment for poisoning and includes first aid treatment.

(7) "Brand" means the name, number, trademark, or any other designation which distinguishes one pesticide product from another.

(8) "Deficiency" means the amount of an active ingredient of a pesticide by which it fails to come up to its guaranteed analysis when analyzed.

(9) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Department" means the Department of Agriculture and Consumer Services.

(11) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(12) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating, any pest or other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(13) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(14) "Excess" means the amount of an active ingredient of a pesticide by which it exceeds its guaranteed analysis when analyzed.

(15) "Experimental use permit" means a permit issued by the department or by the United States Environmental Protection Agency as authorized in s. 5 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(17) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi, except those

on or in living man or other animals.

(18) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(19) "Highly toxic" means any highly toxic pesticide as determined by the rules and regulations promulgated pursuant to this act.

(20) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered.

(21) "Inert ingredient" means an ingredient which is not an active ingredient.

(22) "Ingredient statement" means:

(a) A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients in the pesticides, and

(b) When the pesticide contains arsenic in any form, a statement which shall also include percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(23) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six legs, usually in winged form (as, for example, beetles, bugs, bees, and flies) and to other allied classes and arthropods whose members are wingless and usually have more than six legs (as, for example, spiders, mites, ticks, centipedes, and wood lice).

(24) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(25) "Label" means the written, printed, or graphic matter on or attached to a pesticide, device, or immediate and outside container or wrappers of such pesticide or device.

(26) "Labeling" means all labels and other written, printed, or graphic matter upon the pesticide or device or any of its containers or wrappers, or accompanying the pesticide or device at any time, but does not include accurate, nonmisleading reference to current official publications of the United States Departments of Agriculture or Interior, the Environmental Protection Agency, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(27) "Land" means all land and water areas, including airspace.

(28) "Manufacturer" means a person engaged in the business of importing, producing, preparing, mixing, or processing pesticides.

(29) "Misbranded" applies:

(a) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(b) To any pesticide:

1. If it is an imitation of, or is offered for sale under the name of, another pesticide.

2. If its labeling bears any reference to registration under this chapter.

3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public.

4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals.

5. If the label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

6. If any word, statement, or other information required by or under authority of this law to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

7. If, in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

8. If, in the case of a plant regulator, defoliant, or desiccant, when used as directed, it shall be injurious to living man or other vertebrate animals, or vegetation, to which it is applied, or to the person applying such pesticide. However, physical or physiological effects on plants or parts thereof shall not be deemed to be injury when this is the purpose for which the plant regulator, defoliant, or desiccant was applied in accordance with the label claims and recommendations.

9. If any ingredient which is present in amounts which are not likely to be effective when used according to directions is given undue prominence or conspicuousness, as compared with ingredients which are present in effective amounts, in its labeling. Such ingredient shall appear only in the ingredient statement.

(30) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(31) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda (that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts), and may also be known as nemas or eelworms.

(32) "Official sample" means any sample of a pesticide taken by the department in accordance with the provisions of this law or rules adopted hereunder and designated as official by the department.

(33) "Percent" means one one-hundredth part by weight or volume.

(34) "Persistent pesticide" means a pesticide which will persist in the environment beyond 1 year

from the date of application.

(35) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(36) "Pest" means all insects, fungi, bacteria, weeds, rodents, predatory animals, or any other form of plant or animal life, including viruses, which may infest or be detrimental to vegetation, man, animals, or households, except viruses or fungi on or in living man or other animals, present in any environment where not desired, or which may be declared to be a pest by the department.

(37) "Pesticide" or "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals, which the department shall declare to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(38) "Plant nutrient" mean any ingredient that furnishes nourishment to the plant or promotes its growth in a normal manner.

(39) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof; but does not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(40) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

(41) "Registrant" means the person registering any pesticide pursuant to the provisions of this law.

(42) "Restricted-use pesticide" means a pesticide which, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of the United States Environmental Protection Agency.

(43) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal, in any environment whatsoever, which the department declares to be a pest.

(44) "Sell or sale" includes exchanges.

(45) "Special local need registration" means a state registration issued by the department as authorized in s. 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(46) "Tolerance" means the deviation from the guaranteed analysis permitted by law.

(47) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(48) "Weed" means any plant which grows where not wanted.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 1, ch. 69-376; s. 1, ch. 70-52; s. 178, ch. 71-377; s. 1, ch. 73-63; s. 1, ch. 79-210.

487.031 Prohibited acts.—It is unlawful:

(1) To distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of s. 487.041, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration.

(b) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

1. The name and address of the manufacturer or the registrant;
2. The name brand, or trademark under which said article is sold;
3. The net weight or measure of the contents, subject, however, to such reasonable variations as the department may permit; and
4. All other mandatory labeling requirements.

However, the delivery of pesticides in bulk, on permit of the department, is deemed to comply with the unbroken container and labeling provision of this paragraph when safely transported, transferred, deposited, and labeled in a manner provided by technical rule.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in s. 487.051, unless the label shall bear, in addition to any other matter required by this chapter:

1. The skull and crossbones;
2. The word "POISON" prominently, in red, on a background of distinctly contrasting color;
3. A statement of an antidote for the pesticide;
4. Specific directions for removing and destroying all waste pesticides from containers and decontamination of empty containers;
5. A warning that all waste pesticide shall be removed from containers and that empty containers shall be either burned or buried or decontaminated thoroughly before disposal in any other manner.

(d) Any pesticide highly toxic to man if its container is not closed and made of such material as will prevent leakage or dusting out when shipped, stored or handled.

(e) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in

accordance with this law, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the department may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(f) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) To detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this law or regulations promulgated hereunder, or to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this chapter.

(3) For any person to use for his own advantage or to reveal any information relative to formulas of products acquired by authority of s. 487.041, other than to the department, proper officials or employees of the state, the courts of this state in response to a subpoena, physicians, to pharmacists in emergencies and other qualified persons, for use in the preparation of antidotes.

(4) To disseminate any false advertisement.

(5) For any person to dispose of in any manner a pesticide that has been placed under stop sale, stop use, removal or hold order by the department without a written release order from the department or to remove stop sale, stop use, removal or hold order from article so detained.

(6) To hold or offer for sale, sell, or distribute in this state restricted-use pesticides without a dealer's license and unless the person to whom the sale is made holds a valid applicator's license to purchase and use such restricted-use pesticides or holds a valid purchase authorization card, in which case the use of the restricted-use pesticide shall be by a licensed applicator or employee under his direct supervision.

(7) For any person to purchase any restricted-use pesticide unless he is the holder of a valid dealer's license, applicator's license, or purchase authorization card or to use a restricted-use pesticide unless he is the holder of a valid applicator's license or unless he is using the restricted-use pesticide under the direct supervision of a licensed applicator.

(8) For any person to use any pesticide, including a restricted-use pesticide, or to dispose of any pesticide containers in a manner other than those stated in the labeling or on the label or as specified by the department or the United States Environmental Protection Agency. However, it shall not be unlawful to:

(a) Apply a pesticide at any dosage, concentration, or frequency less than that specified on the label or labeling, provided that the efficacy of the pesticide is maintained and further provided that when a pesticide is applied by a commercial applicator, any deviation from label recommendations must be with the consent of the purchaser of the pesticide application services;

(b) Apply a pesticide against any target pest not specified in the labeling if the application is to a crop, animal, or site specified on the label or labeling, provided that the label or labeling does not specifically prohibit the use on pests other than those listed on the label or labeling;

(c) Employ any method of application not prohibited by the labeling;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the label or labeling; or

(e) Use in a manner determined by rule not to be an unlawful act.

(9)(a) To use within the state any persistent pesticide without reporting such use as described in paragraphs (b) and (c).

(b) The Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services, when emergency use is authorized, shall file with the Department of Environmental Regulation a report of action taken, including:

1. Name and amount of pesticide used;
2. Manner of application;
3. Disposal of container; and
4. Method of cleaning equipment.

(c)1. The Department of Agriculture and Consumer Services shall file with the Department of Environmental Regulation an annual report for each calendar year, not later than March 1 of the following year, of the amount and kind of persistent pesticides sold in the state.

2. Registrants selling persistent pesticides shall report to the Department of Agriculture and Consumer Services the name and the amount of each persistent pesticide sold by them in this state during each calendar year. The report shall be filed with the department not later than January 31 following the said reporting year.

(10) For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger man or his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticides.

(11) For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or pollinating insects or to pollute any water supply or waterway.

History.—s. 1, ch. 65-457; s. 1, ch. 69-19; ss. 14, 35, ch. 69-106; s. 2, ch. 69-376; s. 2, ch. 70-52; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 1, ch. 72-166; ss. 2, 3, ch. 73-63; s. 183, ch. 77-104; s. 412, ch. 77-147; s. 1, ch. 78-154; s. 88, ch. 79-65; s. 137, ch. 79-164; s. 2, ch. 79-210.

cf.—s. 487.081 Exemptions.

487.041 Registration.—

(1) Every pesticide which is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the department, and such registration shall be renewed annually. The registrant shall file with the department a statement including:

(a) The name and street address of the registrant;

(b) The name of the pesticide;

(c) An ingredient statement and a complete copy

of the labeling accompanying the pesticide which shall conform to the registration and a statement of all claims to be made for it including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient" contained therein.

(2) For the purpose of defraying expenses of the department in connection with carrying out the provisions of this chapter, each person shall pay a registration fee of $10 for each and every brand registered annually, for the first 10 brands, and $2.50 for each and every brand in excess thereof. All registrations expire on December 31 of each year and new registrations must be filed before January 15 of the current year. Nothing in this section shall be construed as applying to jobbers or retail dealers selling pesticides when such pesticides are registered.

(3) The department, whenever it deems it necessary in the administration of this chapter, may require the registrant to submit the complete formula, evidence of the efficacy, and evidence of the safety of any pesticide. In addition, each application for a special local need registration shall be supported by evidence of efficacy which shall be submitted with the application for registration. This evidence as to efficacy shall be examined by the technical council and any other governmental agency or higher education institution designated by the department, which shall make recommendations to the department as to whether or not the application for registration should be accepted or rejected. The department may issue a temporary acceptance or rejection pending receipt of the recommendation of the evaluating groups. After the technical council and other evaluating groups have made their recommendation, the department shall register or refuse to register the pesticide. However, before registration is refused, the department shall notify the applicant of its intention to refuse, giving its reasons therefor. The applicant shall have 15 days thereafter in which to request a hearing on his application for registration, and upon his failure to do so within said time, refusal shall become final without further procedure. The department, for reasons of adulteration, misbranding, or other good cause, may refuse or revoke the registration of any pesticide, upon notice to the applicant or registrant of its intention to so refuse or revoke, giving its reasons therefor. The applicant shall have 15 days thereafter in which to request a hearing on the department's intention to refuse or revoke registration, and, upon his failure to do so within said time, refusal or revocation shall become final without further procedure. In no event shall registration of a pesticide be construed as a defense for the commission of any offense prohibited under s. 487.031.

(4) When a registrant discontinues the distribution of a pesticide which has been registered in this state, he will be required to continue registration of this pesticide until no more remains on the retailer's shelves, or not to exceed 2 years after written notice to the department of date of discontinuance; provided such continued registration or sale is not specifically prohibited by the department or the United States Environmental Protection Agency.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 4, ch. 73-63; s. 2, ch. 78-154; s. 3, ch. 79-210.

487.042 Restricted-use pesticides; rules and licenses.—

(1) The department shall adopt rules which govern the purchase and use of restricted-use pesticides. Such rules may prescribe the area, time, amount, and other conditions deemed necessary to avoid injury under which a restricted-use pesticide may be used. However, such rules shall not impose rules which will constitute a violation of federal law.

(2) Restricted-use pesticides may be purchased or used by any person who holds a valid applicator's license or who holds a valid purchase authorization card issued by the department or by a licensee under chapter 482 or chapter 388, except that a nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. Such applicator's license shall be issued by the department on a form supplied by it in accordance with the requirements listed in s. 487.155.

(3) Each person holding or offering for sale, selling, or distributing restricted pesticides shall obtain a dealer's license from the department. Such license shall expire on June 30 of each year and shall be renewed on or before July 1 of each year.

(4) A record of each sale of a restricted-use pesticide shall be maintained by the licensed dealer for a period of 1 year.

(5) The department may deny, cancel, or suspend the license of anyone who violates any of the provisions of this chapter or rules promulgated thereunder.

History.—s. 3, ch. 69-376; ss. 14, 35, ch. 69-106; s. 3, ch. 78-154; ss. 2, 4, ch. 79-210.

487.051 Administration; rules; procedure.—

(1) This chapter and all rules and regulations adopted and promulgated hereunder shall be administered and enforced by the department.

(2) The department is authorized by technical rule, to implement, make specific and interpret the provisions of this chapter and specifically:

(a) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles or substances;

(b) To determine whether pesticides are highly toxic to man;

(c) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of s. 487.031(1)(e);

(d) To determine the composition and use of pesticides as defined in this chapter, including, without limiting the foregoing general terms, the taking and handling of samples, the establishment of tolerances and deficiencies where not specifically provided for in this chapter, to prohibit the sale or use in pesticides of any material proven detrimental to agriculture or of questionable value; to provide for the incorporation into pesticides of such other substances as plant nutrients and proper labeling of such mixture; to prohibit the sale of pesticides in tablet, pellet

or capsule form or combined with human food so as to be dangerous to human beings; and to prescribe the information which shall appear on the label other than specifically set forth in this chapter.

(e) To determine pesticides, and quantities of substances contained in pesticides, which are injurious to the environment. The department shall be guided by the environmental protection agency regulations in this determination.

(3) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end, the department is authorized to adopt by regulation such regulations applicable to and in conformity with primary standards established by this chapter, as have been or may be prescribed in the environmental protection agency with respect to pesticides.

(4) The department shall have full and complete power and authority to make, adopt, promulgate, amend, and repeal all rules which it shall deem necessary or helpful in the efficient administration and enforcement of this chapter.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 179, ch. 71-377; ss. 5, 6, ch. 73-63; s. 6, ch. 78-95.

[1]487.061 Pesticide Technical Council.—

(1) COMPOSITION.—The Pesticide Technical Council in the Department of Agriculture and Consumer Services shall be composed of 13 members as follows: a representative of each of the Divisions of Chemistry and Inspection of the Department of Agriculture and Consumer Services; the dean for research and the dean of extension services, Institute of Food and Agricultural Sciences, University of Florida; the field crops, citrus, vegetable, and beef cattle members of the State Agricultural Advisory Council; one member each from the Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Department of Health and Rehabilitative Services; and a member representing the pesticide industry. The Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Department of Health and Rehabilitative Services shall appoint members of their respective staffs that are best qualified to perform the technical advice as it relates to their own agency. The industry member shall be a manufacturer of commercial pesticides earning a major portion of his income from the said manufacturing and shall be appointed by the department subject to the same procedure as prescribed in s. 570.23. The term of office of the industry member shall be for a period of 2 years. The state chemist shall serve as secretary of the Pesticide Technical Council.

(2) MEETINGS.—The technical council shall meet at the call of its chairman or secretary.

(3) OFFICIAL ACTION.—Official action of the technical council requires a majority vote of the council.

(4) POWERS AND DUTIES.—The Pesticide Technical Council, with respect to its field of work and that of the Department of Agriculture and Consumer Services, shall have the powers and duties to consider and study the entire field of pesticides; to review and make recommendations to the department on any pesticide registration submitted to it by the department; to advise, counsel and consult with the department upon its request in connection with the promulgation, administration and enforcement of all laws, rules and regulations relating to pesticides; to consider all matters submitted to it by the department or its secretary or other members of the council and to offer suggestions and make recommendations to the department on its own initiative in regard to changes in the laws, rules and regulations relating to pesticides, as may be deemed advisable to secure the effective administration and enforcement of said laws and rules and regulations; to suggest or recommend, on its own initiative, policies or practices for the administration of this chapter, which suggestions and recommendations the department shall duly consider.

(5) RECORDS OF MEETINGS.—In conducting its meetings, the technical council shall use accepted rules of procedure and the secretary shall keep a complete record of the proceedings of each meeting of the technical council, which proceedings shall show the names of the members present at each meeting and the actions taken at council meetings. Such record of proceedings of the council shall be kept on file with the secretary and in the department, and all such records and other documents relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

History.—s. 1, ch. 65-457; s. 1, ch. 69-93; ss. 14, 35, ch. 69-106; s. 133, ch. 73-333; s. 4, ch. 77-108; s. 413, ch. 77-147; s. 4, ch. 78-323; s. 89, ch. 79-65.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

487.071 Enforcement, inspection, sampling and analysis.—

(1) The department, or its agent, is authorized to enter upon any public or private premises or carrier during regular business hours in the performance of its duties relating to pesticides and records pertaining to same.

(2) The department, or its agent, is authorized and directed to sample, test, inspect, and make analyses of pesticides sold, offered for sale, distributed, or used within this state, at a time and place and to such an extent as it may deem necessary, to determine whether such pesticides are in compliance with the provisions of this chapter and the provisions of the pesticide label or labeling.

(3) The official analysis shall be made from the official sample. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis is completed on the official sample. Provided, however, that the registrant may obtain upon request a portion of said official sample. If the official analysis conforms with the provisions of this chapter, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this chapter, then the official check

sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample.

(4) If a pesticide or device fails to comply with the provisions of this chapter with reference to the ingredient statement reflecting the composition of the product, as required on the registration and labeling, and the department contemplates possible criminal proceedings against the person responsible because of such violation, the department shall, after due notice accord such person an informal hearing or an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the department the facts so warrant, the department may refer the facts to the state attorney for the county in which the violation occurred, with a copy of the results of the analysis or the examination of such article; provided, however, that nothing in this chapter shall be construed as requiring the department to report for prosecution minor violations whenever it believes that the public interest will be subserved by a suitable notice of warning in writing.

(5) It shall be the duty of each state attorney to whom any such violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(6) The department shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 26, ch. 73-334; s. 5, ch. 79-210.

487.081 Exemptions.—

(1) The penalties provided for violations of s. 487.031(1)(a) shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the department or its designated agent to copy all records showing the transactions in and movement of the articles;

(b) Public officials of this state and the federal government engaged in the performance of their official duties;

(c) The manufacturer or shipper of a pesticide for experimental use only; by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the department.

(2) No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser.

(3) Notwithstanding any other provision of this chapter, registration and labeling is not required in the case of a pesticide stored or shipped from one manufacturing plant within this state to another manufacturing plant within this state operated by the same person or from one manufacturer to another manufacturer, provided they are properly labeled whenever poison labels are required under s. 487.031(1)(c).

(4) Nothing in this chapter shall be construed to apply to persons duly licensed or certified under chapter 388 or chapter 482 in their performing any pest control or other operation for which they are licensed or certified under said statutes.

History.—s. 1, ch. 65-457; s. 4, ch. 65-295; ss. 14, 35, ch. 69-106; s. 6, ch. 79-210.

487.091 Tolerances, deficiencies and penalties.—

(1) No deficiency shall exist in connection with the analysis or report on the analysis of any sample of a pesticide unless the deficiency is greater than 3 percent of the amount guaranteed of one or more of the active ingredients or added ingredients claimed except as provided by the department by regulation.

(2) Any person violating s. 487.031(1)(a) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person violating any provision of this chapter other than s. 487.031(1)(a) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 439, ch. 71-136.

487.101 Stop sale, stop use, removal, or hold orders.—

(1) When a pesticide or device is being offered or exposed for sale, used, or held in violation of any of the provisions of this law, the department, through its authorized representative, may issue and enforce a stop sale, stop use, removal, or hold order, in writing, to the owner or custodian of said pesticide or device, ordering it to be held at a designated place until the law has been complied with and said pesticide or device is released, in writing, by the department or its authorized representative or said violation has been disposed of by court order.

(2) Such written notice is warning to all persons whomsoever, including, but not limited to, the owner or custodian thereof or his agents or employees, to scrupulously refrain from moving, bothering, altering, or interfering with said pesticide or device or from altering, defacing, or in any way interfering with such notice itself or permitting the same to be done. The willful violation of these provisions is a misdemeanor, subjecting said violator to the penalty provisions of s. 487.091(3).

(3) The department or its authorized representative shall release the pesticide or device so withdrawn when the provisions of this law have been complied with.

(4) Such owner or custodian, with authorization and supervision of the department, may relabel said pesticide or device so that the label will conform to the product, or transfer and return said product to the manufacturer or supplier thereof for the purpose of bringing the product in compliance with the law.

History.—s. 1, ch. 65-457; s. 1, ch. 67-527; s. 1, ch. 69-12; ss. 14, 35, ch. 69-106; s. 440, ch. 71-136; s. 7, ch. 73-63; s. 7, ch. 79-210.

487.111 Seizure, condemnation and sale.—

(1) Any lot of pesticide or device not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to the circuit court in the county in which said pesticide or device is located. In the event the court finds said pesticide or device to be in violation of this chapter and orders it condemned, it shall be disposed of as the court may direct; provided, that in no instance

shall the disposition of said pesticide or device be ordered by the court without first giving the owner or custodian an opportunity to apply to the court for release of said pesticide or device or for permission to process or relabel it to bring it into compliance with this chapter.

(2) If the court finds that a condemned pesticide or device may be disposed of by sale, the proceeds, less legal costs, shall be paid to the General Inspection Trust Fund.

(3) When a decree of condemnation is entered against the pesticide or device, court costs, fees and storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 8, ch. 73-63.

487.13 Cooperation.—The department is authorized and empowered to cooperate with and enter into agreements with any other agency of this state, the United States Department of Agriculture, the environmental protection agency, and any other state or federal agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 10, ch. 73-63.

487.14 Injunction.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter or any rule or regulation adopted hereunder, such injunction to be issued without bond. A single act in violation of the provisions of this chapter shall be sufficient to authorize the issuance of an injunction.

History.—s. 1, ch. 65-457; ss. 14, 35, ch. 69-106.

487.151 Short title; administration.—This act shall be known as the "Florida Pesticide Application Act of 1974" and shall be administered by the Department of Agriculture and Consumer Services, herein referred to as the "department."

History.—ss. 1, 2, ch. 74-247.

487.152 Declaration of purpose.—The purpose of this act is to regulate, in the public interest, the use and application of restricted-use pesticides, except as such application is regulated under chapters 388 and 482, and to designate the Department of Agriculture and Consumer Services under the authority granted herein and by chapter 487 as the agency responsible for administering a certification and licensing plan for applicators of restricted-use pesticides and to cooperate with the Environmental Protection Agency as prescribed in s. 4 of Pub. L. No. 92-516, the Federal Environmental Pesticide Control Act of 1972.

History.—s. 3, ch. 74-247; s. 8, ch. 79-210.

487.153 Definitions.—For the purpose of this act:

(1) "Aircraft" means any machine designed for flight for use in applying pesticides.

(2) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(3) "Certification" means the recognition by a state that a person is competent and thus, upon completion of all requirements for licensing as an applicator, shall be authorized to use or supervise the use of restricted-use pesticides.

(4) "Certified applicator" means any person who is licensed to use or supervise the use of any restricted-use pesticide covered by his license.

(5) "Commercial applicator" means a licensed applicator, whether or not he is a private applicator with respect to some uses, who uses or supervises the use of any restricted-use pesticide for any purpose or on any property, other than as provided by the definition of "private applicator."

(6) "Council" means the Pesticide Application Council.

(7) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man or other than bacteria, virus, or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power used to apply any pesticide on land and on anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(11) "Fungi" means any nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(12) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi, except those on or in living man or other animals.

(13) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(14) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six legs,

usually in winged form, as, for example, beetles, bugs, bees, flies, and to other allied classes and arthropods whose members are wingless and usually having more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(15) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(16) "Land" means all land and water areas, including airspace.

(17) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(18) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematode, that is, unsegmented roundworms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts, and also known as nemas or eelworms.

(19) "Person" means any individual, partnership, association, corporation, organized group of persons, whether incorporated or not, or governmental agency.

(20) "Pest" means:

(a) Any insect, rodent, nematode, fungus, weed; or

(b) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living man or other living animals,

which is declared to be a pest by the Administrator of the Environmental Protection Agency under s. 25(c)(1) of Pub. L. No. 92-516, or which may be declared to be a pest by the department.

(21) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals, which the department shall declare to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(22) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(23) "Private applicator" means a licensed applicator who uses or supervises the use of any restricted-use pesticide for purposes of producing any agricultural commodity on property owned, rented, or controlled by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person, subject to rules adopted under authority granted by this law.

(24) "Public applicator" means a licensed applicator who uses or supervises the use of restricted-use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.

(25) "Restricted-use pesticide" means a pesticide which, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of the United States Environmental Protection Agency.

(26) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals, in any environment whatsoever, which the department declares to be a pest.

(27) "Under the direct supervision of a certified (licensed) applicator" means, unless otherwise prescribed by its label or labeling, that a restricted-use pesticide shall be considered to be applied under the direct supervision of a certified (licensed) applicator if it is applied by a competent person acting under the instructions and control of a certified (licensed) applicator who is the employer of such person and who is available if and when needed, even though such certified (licensed) applicator is not physically present at the time and place the restricted-use pesticide is applied.

(28) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(29) "Weed" means any plant which grows where not wanted.

(30) "Wildlife" means all living things that are neither human, domesticated, nor pests as defined in this act.

History.—s. 4, ch. 74-247; s. 9, ch. 79-210.

487.154 Rules.—

(1) The department shall have authority to adopt rules to carry out the provisions of this act and in such rules may define classifications or subclassifications of commercial, private, and public applicators and prescribe methods to be used in the application of restricted pesticides. When the department finds that rules are necessary to carry out the purpose and intent of this act, such rules may relate to the time, place, manner, and method of application of the pesticides and restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

(a) Plants, including forage plants, on adjacent or nearby lands.

(b) Wildlife in the adjoining nearby areas.

(c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated.

(d) Pollinating insects, animals, or persons.

(2) In adopting rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the Federal Government.

History.—s. 5, ch. 74-247; s. 6, ch. 78-95.

487.155 Licensing, classification, fee, applications, examination, issue of license, nonresident licensee.—It is unlawful for any person after October 21, 1977, to engage in the business of applying restricted pesticides, except as defined in chapters 388 and 482, without a certified applicator's license issued by the department.

(1) CLASSIFICATION.—The department may classify licenses to be issued under this act. Separate classifications and subclassifications may be specified by the department as deemed necessary to carry out the provisions of this act. Each classification may be subject to separate requirements or testing procedures. In specifying classifications, the department may consider, but is not limited to, the following:

(a) Commercial, public, or private applicator status;

(b) Ground or aerial methods of application;

(c) The specific crops upon which pesticides are applied;

(d) The proximity of populated areas to the land upon which restricted pesticides are applied;

(e) The acreage under the control of the licensee;

(f) The pounds of technical restricted toxicant applied per acre per annum by the licensee.

(2) FEES.—

(a) The department may require an initial fee, not to exceed $100, for processing the application and issuing a person a license as a "certified applicator." Such fee shall not represent more than the approximate cost of certification for the applicant and may vary in amount depending on the classifications or subclassifications for which the certification is made, as provided by rules and regulations promulgated under this act.

(b) The department may require a fee, not to exceed $5 per annum, for renewal of a certified applicator's license.

(c) Fees collected under the provisions of this act shall be deposited with the State Treasurer in the General Inspection Trust Fund and shall be used to defray expenses in the administration of this act.

(3) APPLICATION.—Application for license shall be made in writing to the department on a form furnished by the department. Each application shall contain information regarding the applicant's qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

(4) EXAMINATION.—The department shall require each applicant for a certified applicator's license to demonstrate competence by a written or oral examination, or such other equivalent procedure as may be adopted by rule under this act, that he possesses adequate knowledge concerning the proper use and application of pesticides in each classification for which application for license is made. Examination or other equivalent procedure may be prepared, administered, and evaluated by the department. Although not limited to such, each applicant for a certified applicator's license shall demonstrate competence as to:

(a) The proper use of the equipment.

(b) The environmental hazards that may be involved in applying the pesticides.

(c) Calculating the concentration of pesticides to be used in particular circumstances.

(d) Identification of common pests to be controlled and the damages caused by such pests.

(e) Protective clothing and respiratory equipment required during the handling and application of pesticides.

(f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.

(g) Applicable state and federal pesticide laws and regulations.

(5) ISSUE OF LICENSE.—If the department finds the applicant qualified in the classification for which he has applied, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Department of Transportation of this state to operate the equipment described in the application, the department shall issue a certified applicator's license, limited to the classifications for which he is qualified, which shall expire as required by rules and regulations promulgated under this act unless it has been revoked or suspended prior thereto by the department for cause as hereinafter provided. The license shall be conspicuously displayed at the principal business address of the licensee or kept on the person of the licensee while performing work as a certified applicator.

(6) NONRESIDENT LICENSEE.—Any nonresident applying for a license under this act to operate in the state shall file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be prepared in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant. However, any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

History.—s. 6, ch. 74-247; s. 1, ch. 76-40; s. 10, ch. 79-210.

487.156 Governmental agencies; exemption from fees.—All governmental agencies shall be subject to the provisions of this act and rules adopted thereunder except for payment of fees. Public applicators using or supervising the use of restricted-use pesticides shall be subject to examination as provided in s. 487.155(4). The department shall issue an applicator's license without fee to a public applicator which license shall be valid only when such public

applicator is performing under the authority of a governmental agency.

History.—s. 7, ch. 74-247; s. 11, ch. 79-210.

487.157 License renewals; penalty, retesting.—The department shall require renewal of a certified applicator's license at least every 3 years. If the application for renewal of any license provided for in this chapter is not filed on time according to rules of the department, a penalty may be assessed not to exceed 10 percent of the initial license fee. However, such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in business subsequent to the expiration of his license for a period not exceeding 60 days. A license may be renewed without taking another examination unless the department determines that new knowledge related to the classification for which the applicant has applied makes a new examination necessary; however, the department may require the applicant to provide evidence of continued competency, as determined by rule. However, if the license is not renewed within 60 days of the expiration date, then such licensee may again be required to take another examination unless there is some unavoidable circumstance which results in the delay of the renewal of any license issued under this act which was not under the applicant's control.

History.—s. 8, ch. 74-247; s. 12, ch. 79-210.

487.158 Denial, suspension, revocation of license.—The department may deny, suspend, revoke, or modify the provisions of any license issued under this act, if it finds that the applicant or licensee has committed any of the following acts applicable to him, each of which is declared to be a violation of this act:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Made a pesticide recommendation or application not in accordance with the label, except as provided in s. 487.031(8), or not in accordance with recommendations of the United States Environmental Protection Agency or not in accordance with the specifications of a special local need registration;

(3) Operated faulty or unsafe equipment;

(4) Operated in a faulty, careless, or negligent manner so as to cause damage to property or person;

(5) Applied any pesticide that is harmful to human beings to fields where persons are engaged in work;

(6) Failed to disclose to an agricultural crop grower, at the time pesticides are applied to a crop, full information regarding the possible harmful effects to human beings or animals and the earliest safe time for workers or animals to reenter the treated field;

(7) Refused or, after notice, neglected to comply with the provisions of this act, the rules adopted hereunder, or any lawful order of the department;

(8) Refused or neglected to keep and maintain the records required by this act or to make reports when and as required;

(9) Made false or fraudulent records, invoices, or reports;

(10) Used fraud or misrepresentation in making an application for a license or renewal of same;

(11) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;

(12) Aided or abetted a licensed or unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land; or

(14) Made false or misleading statements with regard to any known illness or injury to persons caused by the application of pesticides; or

(15) Impersonated any state, county, or city inspector or official.

History.—s. 9, ch. 74-247; s. 6, ch. 78-95; s. 13, ch. 79-210.
cf.—ss. 120.50 et seq. Administrative Procedure Act.

487.159 Damages to property or animal except man, report of loss, time for filing, failure to file.—

(1) The person claiming damages to property or animal except man from pesticide application shall file with the department a written statement claiming that he has been damaged, on a form prescribed by the department, within 60 days after the date that such damages occurred or prior to the time that 25 percent of a crop damaged shall have been harvested, whichever occurs first. Such statement shall contain, but shall not be limited thereto, the name of the person responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which such damages are claimed, and the date on which it is alleged that such damages occurred. The department shall prepare a form to be furnished to persons to be used in such cases, and such form shall contain such other requirements as the department may deem proper. The department shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility for such damages claimed and furnish copies of such statements as may be requested by other interested parties. The department shall investigate the alleged damages and notify all concerned parties of its findings. If the findings reveal a violation of the provisions of this act, the department shall institute suspension or revocation proceedings, as provided in s. 487.158. The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(2) The failure to file such a report shall not be a violation of this act. However, if the person failing to file such a report is the only one injured from such use or application of a pesticide by others, the department may, when in the public interest, refuse to conduct proceedings for the denial, suspension, or revocation of a license issued under this act until such report is filed.

(3) When damage to property or animal except man is alleged to have been done, the claimant shall permit the licensee and his representatives to ob-

serve within reasonable hours the property or nontarget organism alleged to have been damaged, in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged property shall automatically bar the claim against the licensee.

(4) No punitive regulations shall be levied by the department except revocation or suspension of license, but the records required under s. 487.160 and any other relevant data or information collected by the department may be turned over to the state attorney.

History.—s. 10, ch. 74-247; s. 6, ch. 78-95.

487.160 Records.—Commercial and public licensees shall maintain records with respect to application of restricted pesticides. Such relevant information as the department may deem necessary may be specified by regulations. Such records shall be kept for a period of 2 years from date of the application of the pesticide to which such records refer, and the department shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee.

History.—s. 11, ch. 74-247; s. 4, ch. 78-154.

487.161 Exemptions, nonagricultural pest control and research.—

(1) Any person duly licensed or certified under chapter 482, or under the supervision of chapter 388 is exempted from the licensing provisions of this act.

(2) The use of the antibiotic, oxytetracycline hydrochloride, for the purpose of controlling lethal yellowing is exempted from the licensing provisions of this act.

(3) The personnel of governmental, university, or industrial research agencies are exempted from the provisions of this act when doing applied research within a laboratory, but shall comply with all the provisions of this act when applying restricted-use pesticides to experimental or demonstration plots.

History.—s. 12, ch. 74-247; s. 6, ch. 75-178; s. 1, ch. 77-174; s. 14, ch. 79-210.

487.162 Pesticide Application Council.—

(1) COMPOSITION.—The Pesticide Application Council shall be composed of the members of the Pesticide Technical Council, as defined in s. 487.061, and two certified commercial applicators, one of whom shall be an aerial applicator, who shall be appointed by the department subject to the same procedure as prescribed in s. 570.23.

(2) MEETINGS.—The council shall meet at the call of its chairman or secretary.

(3) OFFICIAL ACTION.—Official action of the council requires a majority vote of the council.

(4) POWERS AND DUTIES.—The council shall have the power and duty:

(a) To consider and study the entire field of pesticide application.

(b) To advise, counsel, and consult with the department upon its request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to pesticide application.

(c) To consider all matters submitted to it by the department or any member of the council and to offer suggestions and make recommendations to the department on its own initiative, in regard to changes in the laws, rules, and regulations relating to pesticide application, as may be deemed advisable to secure the effective administration and enforcement of said laws and rules and regulations.

(d) To suggest or recommend, on its own initiative, policies or practices for the administration of this chapter, which suggestions and recommendations the department shall duly consider.

(5) RECORDS OF MEETINGS.—In conducting its meetings, the council shall use accepted rules of procedure, and the secretary shall keep a complete record of the proceedings of each meeting of the council, which proceedings shall show the names of the members present at each meeting and the actions taken at council meetings. Such record of proceedings of the council shall be kept on file with the secretary and in the department, and all such records and other documents relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

History.—s. 13, ch. 74-247; s. 1, ch. 75-35.

487.163 Information; interagency cooperation.—

(1) The department may, in cooperation with the University of Florida or other agencies of government, publish information and conduct short courses of instruction in the safe use and application of pesticides for the purpose of carrying out the provisions of this act.

(2) The department may cooperate or enter into formal agreements with any other agency or educational institution of this state or its subdivisions or with any agency of any other state or of the Federal Government for the purpose of carrying out the provisions of this act and of securing uniformity of regulations.

History.—ss. 14, 15, ch. 74-247.

487.164 Enforcement and inspection; injunctions.—

(1) The department shall enforce the provisions of this act and rules adopted thereunder to the extent that resources are made available for the administration and the enforcement of this act. In carrying out the provisions of this act, the department's duly authorized inspectors may enter upon any public or private premises at reasonable times, in order to have access for the purpose of inspecting records or any equipment subject to this act and such premises on which such records or equipment is kept or stored, to inspect lands actually or reported to be exposed to pesticides, to inspect storage or disposal areas, to inspect or investigate complaints of injury to humans or land, or to sample pesticides being applied or to be applied.

(2) The department may bring an action without bond to enjoin the violation or threatened violation of any provision of this act in the circuit court of the county in which such violation occurs or is about to occur.

History.—ss. 16, 17, ch. 74-247; s. 6, ch. 78-95.

487.165 Penalty.—Any person violating any provisions of this act or rule adopted hereunder shall be guilty of a misdemeanor of the second degree and upon conviction shall be punishable as provided in ss. 775.082 and 775.083. For a subsequent violation, such person shall be guilty of a misdemeanor of the first degree and upon conviction shall be punishable as provided in ss. 775.082 and 775.083.

History.—s. 18, ch. 74-247; s. 64, ch. 74-383; s. 1, ch. 77-174.

487.166 Application of law.—This act does not apply to pending litigation or to any offense committed prior to the effective date of this act, and any such offense is punishable as provided by a statute in force at the time such offense was committed.

History.—ss. 19, 20, ch. 74-247; ss. 2, 3, ch. 76-40.

CHAPTER 488

COMMERCIAL DRIVING SCHOOLS

488.01 License required to conduct driver's school.—Every person desiring to engage in the business of conducting a driver's school, shall prior to engaging in such business secure a license for such purpose. All applications for such license, both original and renewal, must be made to the Department of Highway Safety and Motor Vehicles on a form prescribed therefor by the department.

History.—s. 1, ch. 28142, 1953; ss. 24, 35, ch. 69-106.

488.02 Rules and regulations.—The Department of Highway Safety and Motor Vehicles shall promulgate such rules and regulations controlling commercial driving schools in Florida as are necessary and proper.

History.—s. 2, ch. 28142, 1953; ss. 24, 35, ch. 69-106.

488.03 License fee; expiration; renewal.—

(1) Every application for an original license must be accompanied by an application fee of $10, which shall in no event be refunded. If the application is approved, a further fee of $240 must be paid before the Department of Highway Safety and Motor Vehicles will issue the license. The funds collected pursuant to this chapter shall be used to further the purpose of this chapter by the Department of Highway Safety and Motor Vehicles. The license shall be valid for a period of 1 year from date of issuance. Licenses shall not be transferable. In the event of any change in ownership or interest in the business, an application for a new license, together with all instructors' certificates issued thereunder, must be surrendered to the department before a license will be issued to a new owner of the business. The fee for annual renewal of licenses shall be $50 per annum.

(2) All revenue received from the applications for and the issuance of licenses under the provisions of this chapter shall be deposited into the general revenue fund of the state. The department shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

History.—s. 3, ch. 28142, 1953; s. 1, ch. 61-281; s. 1, ch. 63-21; ss. 24, 35, ch. 69-106.

488.04 Instructors, qualifications; certificates.—No person shall receive compensation for giving instructions in the operation of motor vehicles unless such person is the holder of an instructor's certificate issued for such purpose by the Department of Highway Safety and Motor Vehicles. Such certificate shall be valid for use only in connection with the business of the driver's school or schools listed thereon by the department, or in connection with a driver education course offered by a district school board. An applicant for an instructor's certificate will be required to take special eye, written, and road tests, and may be required to furnish additional proof of his qualifications and ability as an instructor.

History.—s. 4, ch. 28142, 1953; ss. 24, 35, ch. 69-106; s. 31, ch. 75-284.

488.05 Motor vehicle identification certificates.—No motor vehicle owned or controlled by a driver's school may be used for the purpose of giving driving instructions until the licensee has obtained from the Department of Highway Safety and Motor Vehicles a school vehicle identification certificate, which certificate shall be carried in such vehicle at all times. No school vehicle certificate will be issued by the department unless and until such vehicle is equipped in accordance with safety requirements as established by the department.

History.—s. 5, ch. 28142, 1953; ss. 24, 35, ch. 69-106.

488.06 Revocation or suspension of licenses.—The Department of Highway Safety and Motor Vehicles may suspend or revoke any license or certificate mentioned in this law if such revocation or suspension shall be for the purpose of enforcing the safety requirements essential to effect the purpose of this law.

History.—s. 6, ch. 28142, 1953; ss. 24, 35, ch. 69-106.

488.07 Penalties for violation.—Any person who shall violate or fail to comply with any of the provisions of this chapter or any of the rules or regulations promulgated thereunder, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 28142, 1953; s. 441, ch. 71-136.

CHAPTER 489

CONTRACTING

PART I CONSTRUCTION CONTRACTING (ss. 489.101-489.131)

PART II ELECTRICAL CONTRACTING (ss. 489.501-489.537)

PART I

CONSTRUCTION CONTRACTING

[1]**489.101 Purpose.**—The Legislature recognizes that the construction and home improvement industries are significant industries. Such industries may pose significant harm to the public when incompetent or dishonest contractors provide unsafe, unstable, or short-lived products or services. Therefore, it is necessary in the interest of the public health, safety, and welfare to regulate the construction industry.

History.—ss. 1, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**489.103 Exemptions.**—This act does not apply to:

(1) Contractors in work on bridges, roads, streets, highways, railroads, or utilities and services incidental thereto.

(2) Any employee of a licensee who is a subordinate of such licensee if the employee does not hold himself out for hire or engage in contracting except as an employee.

(3) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.

(4) An officer appointed by a court when he is acting within the scope of his office as defined by law or court order. When construction projects which were not underway at the time of appointment of the officer are undertaken, the officer shall employ or contract with a licensee.

(5) Public utilities on construction, maintenance, and development work performed by their employees, which work is incidental to their business.

(6) The sale or installation of any finished products, materials, or articles of merchandise which are not fabricated into and do not become a permanent fixed part of the structure, except for in-ground or above-ground swimming pools with a capacity in excess of 500 gallons.

(7) Owners of property building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale, or building or improving commercial buildings at a cost of under $25,000 on such property for the occupancy or use of such owners and not offered for sale or lease. In all actions brought under this act, proof of the sale or lease, or offering for sale or lease, of more than one such structure by the owner-builder within 1 year after completion of same is presumptive evidence that the construction was undertaken for purposes of sale or lease.

(8) Any construction, alteration, improvement, or repair carried on within the limits of any site the title to which is in the United States or with respect to which federal law supersedes this act.

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than $1,000, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than $500 for the purpose of evading this act or otherwise.

(b) To a person who advertises that he is a contractor or otherwise represents that he is qualified to engage in contracting.

(10)(a) Any construction or operation incidental to the construction or repair of irrigation and drainage ditches;

(b) Regularly constituted irrigation districts, reclamation districts; or

(c) Clearing or other work on the land in rural districts for fire prevention purposes or otherwise except when performed by a licensee.

(11) A registered architect, engineer, or residential designer acting in his professional capacity or any person exempted by the law regulating architects and engineers.

(12) Any person who only furnishes materials or supplies without fabricating them into, or consum-

ing them in the performance of, the work of the contractor.

(13) Any person who is licensed under chapter 527.

(14) Any person who sells, services, or installs heating or air conditioning units which have a capacity no greater than 3 tons or 36,000 Btu and which have no ducts.

History.—ss. 11, 17, ch. 79-200.

[1]Note.—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]**489.105 Definitions.**—As used in this act:

(1) "Board" means the Construction Industry Licensing Board.

(2) "Department" means the Department of Professional Regulation.

(3) "Contractor" means the person who is qualified for and responsible for the entire project contracted for and means, except as exempted in this act, the person who, for compensation, undertakes to, submits a bid to, or does himself or by others construct, repair, alter, remodel, add to, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(l):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he may do, except as provided in this act.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which commercial or residential buildings do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two stories in height and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repair, servicing, or design, when not prohibited by law, of ferrous or nonferrous metal work of U. S. No. 10 gauge or its equivalent or lighter gauge and of other materials used in lieu thereof and of air-handling systems including the setting of air-handling equipment and reinforcement of same and including the balancing of air-handling systems.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, when not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing and waterproofing.

(f) "Class A air conditioning contractor" means any person whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigeration, heating, and ventilating [2]systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith and to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, and installation of a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(g) "Class B air conditioning contractor" means any person whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigeration, heating, and ventilating [2]systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system being installed under this classification, and to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, and installation of a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system.

(h) "Class C air conditioning contractor" means any person whose business is limited to the servicing of air conditioning, heating, or refrigeration systems, including duct alterations in connection with those systems he is servicing.

(i) "Mechanical contractor" means any person whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigeration, heating, and ventilating [2]systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith

and to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, and installation of a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(j) "Commercial pool contractor" means any person whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any swimming pool, whether public, private, or otherwise, regardless of use. The scope of such work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, construction of equipment rooms or housing for pool equipment, and installation of package pool heaters. However, the scope of such work does not include direct connections to a sanitary sewer system or to potable waterlines.

(k) "Residential pool contractor" means any person whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any residential swimming pool, regardless of use. The scope of such work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, installation of housing for pool equipment, and installation of package pool heaters. However, the scope of such work does not include direct connections to a sanitary sewer system or to potable waterlines.

(l) "Swimming pool servicing contractor" means any person whose scope of work involves the servicing, repair, water treatment, and maintenance of any swimming pool, whether public or private. The scope of such work may include any necessary piping and repairs, replacement and repair of existing equipment, or installation of new additional equipment as necessary. The scope of such work includes the reinstallation of tile and coping, repair and replacement of all piping, filter equipment, and chemical feeders of any type, replastering, repouring of decks, and reinstallation or addition of pool heaters.

(4) "Qualifying agent" means a person who possesses the requisite skill, knowledge, and experience to supervise, direct, manage, and control the contracting activities of the business entity with which he is connected and whose technical and personal qualifications have been determined by investigation and examination as provided in this act, as attested to by the department.

(5) "Contracting" means, except as exempted in this act, engaging in business as a contractor.

(6) "Certificate" means a certificate of competency issued by the department as provided in this act.

(7) "Certified contractor" means any contractor who possesses a certificate of competency issued by the department and who may contract in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.

(8) "Registration" means registration with the department as provided in this act.

(9) "Registered contractor" means any contractor who has registered with the department pursuant to fulfilling the competency requirements in the jurisdiction for which the registration is issued. Registered contractors may contract only in these areas.

(10) "Certification" means the act of obtaining or holding a certificate of competency from the department as provided in this act.

(11) "Specialty contractor" means any contractor who does not fall within the categories established in paragraphs (a)-(l) of subsection (3).

(12) "Licensee" means a holder of a certificate issued pursuant to this act or a person registered pursuant to this act.

History.—ss. 2, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]**Note.**—The word "systems" was inserted by the editors.

[1]489.107 Construction Industry Licensing Board.—

(1) To carry out the provisions of this act, there is created within the Department of Professional Regulation the Construction Industry Licensing Board. Members and alternate members shall be appointed by the Governor, subject to confirmation by the Senate. Initially, the Governor shall appoint seven members and three alternate members, each for a term of 4 years, and seven members and two alternate members, each for a term of 3 years. Thereafter, successors shall be appointed for 4-year terms. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member shall serve more than two consecutive terms on the board.

(2) The board shall consist of:

(a) Fourteen regular members, of whom:

1. Three are primarily engaged in business as general contractors;

2. Three are primarily engaged in business as building contractors or residential contractors;

3. One is primarily engaged in business as a roofing contractor;

4. One is primarily engaged in business as a sheet metal contractor;

5. One is primarily engaged in business as an air conditioning contractor;

6. One is primarily engaged in business as a mechanical contractor;

7. One is primarily engaged in business as a pool contractor;

8. Two are lay persons who are not, and have never been, members or practitioners of a profession regulated by the board or members of any closely related profession; and

9. One is a building official of a municipality or county; and

(b) Five alternate members, of whom:

1. One is primarily engaged in business as a roofing contractor;

2. One is primarily engaged in business as a sheet metal contractor;

3. One is primarily engaged in business as an air conditioning contractor;

4. One is primarily engaged in business as a mechanical contractor; and

5. One is primarily engaged in business as a pool contractor.

(3) To be eligible for appointment, each contractor member and alternate member shall be certified by the board to operate as a contractor in the category with respect to which he is appointed, be actively engaged in the construction business, and have been so engaged for a period of not less than 5 consecutive years before the date of his appointment. Each appointee shall be a citizen and resident of the state.

(4) An alternate member may attend any meeting of the board, and, if the member and the corresponding alternate member are both present and voting, each shall have only one-half vote; however, if either the member or the corresponding alternate member is absent, the member or alternate member present shall have one vote.

(5) The board shall be divided into two divisions, Division I and Division II.

(a) Division I shall be comprised of the general contractor, building contractor, residential contractor, and building official members of the board, and one of the members appointed pursuant to subparagraph (2)(a)8. and shall have jurisdiction over the examination and regulation of general contractors, building contractors, and residential contractors.

(b) Division II shall be comprised of the regular and alternate mechanical contractor, pool contractor, roofing contractor, sheet metal contractor, air conditioning contractor, and building official members of the board and one of the members appointed pursuant to subparagraph (2)(a)8. and shall have jurisdiction over the examination and regulation of mechanical contractors, pool contractors, roofing contractors, air conditioning contractors, and sheet metal contractors.

The building official member shall serve as a member, with full voting rights, of both Division I and Division II.

(6) Five members of Division I constitute a quorum, and four votes of Division II constitute a quorum. The combined divisions shall meet together, at such times as the board deems necessary, but neither division, nor any committee thereof, shall take action on any matter under the jurisdiction of the other division.

(7) The members of the Florida Construction Industry Licensing Board who are serving as of June 30, 1979, shall serve as members of the Construction Industry Licensing Board until January 1, 1980, or until all members are appointed pursuant to this section and s. 20.30(5), whichever occurs first.

History.—ss. 3, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.109 Fees.—

(1) The board, by rule, shall establish reasonable fees to be paid for applications, examination, certification and renewal, registration and renewal, and recordmaking and recordkeeping. Effective October 1, 1979, the fees shall be established as follows:

(a) With respect to an applicant for a certificate, the initial application and examination fee shall not exceed $250, and the biennial renewal fee shall not exceed $100; and

(b) With respect to an applicant for registration, the initial application fee shall not exceed $50, and the biennial renewal fee shall not exceed $50.

The fees required by the board on June 30, 1979, shall remain in effect through September 30, 1979. The board, by rule, may also establish penalty fees for late renewal not to exceed $20 for certification and $10 registration. The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this act and the provisions of law with respect to the regulation of the construction industry.

(2) A certificate or registration which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee, if the application for restoration is made within 90 days after June 30 of the renewal year. If the application for restoration is not made within the 90-day period, the fee for restoration shall be equal to the original application fee plus the renewal fee for each additional period the license has been delinquent; and in addition, the board may require reexamination of the applicant.

(3) A person who is registered or holds a valid certificate from the board may go on inactive status during which time he shall not engage in contracting but may retain his certificate or registration on an inactive basis on payment of a biennial renewal fee during the inactive period, not to exceed $20 per biennial period.

(4) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all licensees shall pay a fee of $4 to the department at the time of application or biennial renewal. The funds shall be transferred at the end of each biennial licensing period to the Department of Education for distribution in the following manner:

(a) Fifty percent shall be allocated to fund research projects relating to the building construction industry in a graduate program in building construction in a Florida university.

(b) Fifty percent shall be apportioned among all accredited private and state universities and community colleges within the state offering approved courses in building construction, with each university or college receiving a pro rata share of such funds based upon the number of full-time building construction students enrolled at the institution. Each institution receiving funds under this subsection shall utilize such funds for research projects relating

to the building construction industry or for continuing education programs to be offered to those engaged in the building construction industry in Florida.

History.—ss. 4, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.111 Examinations.—

(1) Any person who desires to be certified shall apply to the department in writing to take the certification examination.

(2) A person shall be entitled to take the examination for the purpose of determining whether he is qualified to engage in contracting throughout this state if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this act, a minimum of 2,000 man-hours shall be used in determining full-time equivalency.

2. Has at least 3 years of active experience as a workman who has learned his trade by serving an apprenticeship or as a skilled workman who is able to command the rate of a mechanic in his particular trade, and has at least 1 year of active experience at the level of foreman who is in charge of a group of workmen and usually is responsible to a superintendent or a contractor or his equivalent.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled workman, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified residential contractor is eligible to take the general contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

c. An active certified building contractor is eligible to take the general contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

5.a. An active certified air conditioning Class C contractor is eligible to take the air conditioning Class B contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified air conditioning Class C contractor is eligible to take the air conditioning Class A contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

c. An active certified air conditioning Class B contractor is eligible to take the air conditioning Class A contractors' examination if he possesses a minimum of 1 year of proven experience in the classification in which he is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

c. An active certified residential swimming pool contractor is eligible to take the commercial swimming pool contractors' examination if he possesses a minimum of 1 year of proven experience in the classification in which he is certified.

(3)(a) The board may refuse to certify an applicant for failure to satisfy [2]this requirement only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 5, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]**Note.**—Prior to House Amendment 3 to C.S. for S.B. 302 (see 1979 Senate Journal, p. 883), "this requirement" referred to the requirement of "good moral character," a definition of which was deleted from this subsection by the amendment.

[1]489.113 Qualifications for practice; restrictions.—

(1) Any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his competency and qualifications to be certified pursuant to this act. To establish his competency, a person shall pass the appropriate examination administered by the department. Any person who desires to engage in contracting on other than a statewide basis shall, as a prerequisite thereto, be registered pursuant to this act, unless exempted by this act. Registration shall be required of specialty contractors when licensing is required by a county or municipality in which the specialty contractor practices.

(2) No person who is not a licensee shall engage in the business of contracting in this state.

(3) A contractor shall subcontract the electrical, mechanical, plumbing, roofing, sheet metal, and air conditioning work for which a local examination for a certificate of competency or a license is required, unless such contractor holds a state certificate of competency or license of the respective trade category, as required by the appropriate local authority.

However, a general, building, or residential contractor shall not be required to subcontract the installation of shingle roofing materials. This subsection does not apply if the local authority does not require a certificate of competency or license for such trade. Nothing in this act shall be construed to require the subcontracting of asphalt roofing shingles.

(4) When a certificate holder desires to engage in contracting in any area of the state, as a prerequisite therefor, he shall be required only to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area, evidence of holding a current certificate and to pay the fee for the occupational license and building permit required of other persons.

(5) The certificate is not transferable.

(6) The board shall, by rule, designate those types of specialty contractors which may be certified under this act.

(7) If an eligible applicant fails any contractor's written examination, except the general and building contractors' examination, and provides the board with acceptable proof of lack of comprehension of written examinations, the applicant may petition the board to be administered a uniform oral examination, subject to the following conditions:

(a) The applicant documents 10 years of experience in the appropriate construction craft.

(b) The applicant files written recommendations concerning his competency in the appropriate construction crafts.

(c) The applicant is administered only one oral examination within a period of 1 year.

(8) Any public record of the board, when certified by the executive director of the board or his representative, may be received as prima facie evidence in any administrative or judicial proceeding.

History.—ss. 6, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.115 Certification and registration; endorsement; renewals.—

(1) The department shall issue a certificate or registration to each person qualified by the board and upon receipt of the original license fee.

(2) The board shall adopt rules prescribing procedures for the certification or registration of contractors who have been licensed in states which have standards substantially similar to, or more stringent than, the standards of this state and who meet the other requirements established pursuant to this act.

(3)(a) Each licensee who desires to continue as a licensee shall renew his certificate or registration every 2 years. The department shall mail each licensee an application for renewal.

(b) The licensee shall complete, sign, and forward the renewal application to the department, together with the appropriate fee. Upon receipt of the application and fee, the department shall renew the certificate or registration.

(4) As a prerequisite to issuance of a certificate, the applicant shall submit satisfactory evidence that he has obtained public liability and property damage insurance for the safety and welfare of the public in amounts determined by rule of the board, and the applicant shall furnish evidence of financial responsibility, credit, and business reputation of either himself or the business organization he desires to qualify. The board shall adopt rules defining financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy or assignment of receivers. Such rules shall specify the financial responsibility grounds on which the board may refuse to qualify an applicant for certification. If, within 60 days from the date the applicant is notified that he has qualified, he does not provide the evidence required, he shall apply to the department for an extension of time which shall be granted upon a showing of just cause.

(5) An initial applicant shall, along with his application, and a licensee shall, upon requesting a change of status, submit to the board a credit report from a nationally recognized credit agency that reflects the financial responsibility of the applicant or licensee. The credit report required for the initial applicant shall be considered the minimum evidence necessary to satisfy the board that he is financially responsible to be certified, that he has the necessary credit and business reputation to engage in contracting in the state, and that he has the minimum financial stability necessary to avoid the problem of diversion of funds. The board shall, by rule, adopt guidelines for determination of financial stability.

History.—ss. 7, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.117 Registration.—

(1) Any person engaged in the business of contracting in the state shall be registered in the proper classification, unless he is certified. Any person entering the business of contracting shall be registered prior to engaging in contracting, unless he is certified. To be initially registered, the applicant shall submit the required fee and file evidence, in a form provided by the department, of holding a current local occupational license issued by any municipality, county, or development district for the type of work for which registration is desired and evidence of successful compliance with the local examination and licensing requirements, if any, in the area for which registration is desired. No examination shall be required for registration.

(2) Registration allows the registrant to engage in contracting only in the counties, municipalities, or development districts where he has complied with all local licensing requirements and only for the type of work covered by the registration.

(3) Upon findings of fact supporting the need therefor, the board may grant a limited nonrenewable registration to a contractor not domiciled in the state, for one project. During the period of such registration the board may require compliance with this and any other statute of the state.

(4) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of contracting for which the temporary license was issued.

(5) A special registration shall be granted to a

specialty contractor whose work is limited to a specific phase of construction and whose responsibility is likewise limited to that particular phase of construction, provided local licensing is required for that phase of construction.

History.—ss. 8, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.119 Business organizations; qualifying agents.—

(1) If an individual proposes to engage in contracting in his own name, registration or certification may be issued only to that individual.

(2) If the applicant proposes to engage in contracting as a partnership, corporation, business trust, or other legal entity, the applicant shall apply through a qualifying agent; the application shall state the name of the partnership and of its partners, the name of the corporation and of its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members; and the applicant shall furnish evidence of statutory compliance if a fictitious name is used. Such application shall also show that the qualifying agent is legally qualified to act for the business organization in all matters connected with its contracting business and that he has authority to supervise construction undertaken by such business organization. The registration or certification, when issued upon application of a business organization, shall be in the name of the qualifying agent, and the name of the business organization shall be noted thereon.

(3)(a) The qualifying agent shall be certified or registered under this act in order for the business organization to be certified or registered in the category of the business conducted for which the qualifying agent is certified or registered. If any qualifying agent ceases to be affiliated with such business organization, he shall so inform the department. In addition, if such qualifying agent is the only certified or registered individual affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and shall have a minimum of 60 days from the termination of the qualifying agent's affiliation with the business organization in which to employ another qualifying agent. The business organization may not engage in contracting until a qualifying agent is employed.

(b) The qualifying agent shall inform the department in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization, and he or such new business organization shall supply the same information to the department as required of applicants under this act.

(c) Upon a favorable determination by the board, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without an examination, a new certificate or registration in the qualifying agent's name, and the name of the new business organization shall be noted thereon.

(4) When a certified qualifying agent, on behalf of a business organization, makes application for an occupational license in any municipality or county of this state, the application shall be made with the tax collector in the name of the qualifying agent and the name of the business organization, and the license, when issued, shall be issued to the qualifying agent and the business organization, upon payment of the appropriate licensing fee and exhibition to the tax collector of a valid certificate issued by the department, and the state license number shall be noted thereon.

(5) Each registered or certified contractor shall affix the number of his registration or certification to all his contracts and bids. Any official issuing building permits shall affix such number to each application for a building permit and on each building permit issued and recorded.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for certification or registration of a new business entity. If the qualifying agent desires to qualify more than two business entities, he may be required by the board to appear before the board and present evidence of ability and financial responsibility of each such entity. The issuance of such certification or registration shall be discretionary with the board.

History.—ss. 9, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.121 Emergency registration upon death of contractor.—If an incomplete contract exists at the time of death of a contractor, the contract may be completed by any person even though not certified or registered. Such person shall notify the board, within 30 days after the death of the contractor, of his name and address. For purposes of this section, an incomplete contract is one which has been awarded to, or entered into by, the contractor before his death, or on which he was the low bidder and the contract is subsequently awarded to him, regardless of whether any actual work has commenced under the contract before his death.

History.—ss. 10, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.123 Reports of certified and registered contractors to local licensing boards.—Upon request, the board shall inform local licensing boards or agencies annually during October of the names of those contractors certified or registered and the status of the certificates or registrations.

History.—ss. 10, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.125 Certificate holders eligible to participate in projects under s. 235.31.—Notwithstanding any provisions to the contrary in s. 235.31 relating to prequalification of bidders, any person holding a certificate shall be deemed qualified to participate in any project thereunder.

History.—ss. 10, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976.

[1]489.127 Prohibitions; penalties.—

(1) No person shall:

(a) Falsely hold himself out as a licensee;

(b) Falsely impersonate a licensee;

(c) Present as his own the certificate or registration of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a certificate or registration; or

(e) Use or attempt to use a certificate or registration which has been suspended or revoked.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 13, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]489.129 Disciplinary proceedings.—

(1) The board may revoke, suspend, or deny the issuance or renewal of the certificate or registration of a contractor or impose an administrative fine not to exceed $1,000, place the contractor on probation, reprimand or censure, a contractor if the contractor is found guilty of any of the following acts:

(a) Upon proof that a certificate or registration has been obtained by fraud or misrepresentation.

(b) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.

(c) Violation of chapter 455.

(d) Willful or deliberate disregard and violation of the applicable building codes or laws of the state or of any municipalities or counties thereof.

(e) Aiding or abetting any uncertified or unregistered person to evade any provision of this act.

(f) Knowingly combining or conspiring with an uncertified or unregistered person by allowing one's certificate or registration to be used by any uncertified or unregistered person with intent to evade the provisions of this act. When a certificate holder or registrant allows his certificate or registration to be used by one or more companies without having any active participation in the operations, management, or control of said companies, such act constitutes prima facie evidence of an intent to evade the provisions of this act.

(g) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificate holder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificate holder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this act.

(h) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when as a result of the diversion the contractor is or will be unable to fulfill the terms of his obligation or contract.

(i) Disciplinary action by any municipality or county, which action shall be reviewed by the state board before the state board takes any disciplinary action of its own.

(j) Failure in any material respect to comply with the provisions of this act.

(k) Abandonment of a construction project in which the contractor is engaged or under contract as a contractor. A project is to be considered abandoned after 90 days if the contractor terminates said project without notification to the prospective owner and without just cause.

(l) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that [2]workmen's compensation and public liability insurance are provided.

(m) Upon proof and continued evidence that the licensee is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the practice of contracting.

(2) The board may specify, by rule, the acts or omissions which constitute violations of this section.

History.—ss. 12, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[2]**Note.**—See ch. 79-40, which redesignated the "Workmen's Compensation Law" as the "Workers' Compensation Law."

[1]489.131 Applicability.—

(1) Nothing in this act limits the power of a municipality or county to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which are designed to secure compliance with and aid in the implementation of state and local building laws or the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(2) Nothing in this act limits the power of a municipality or county to collect occupational license and inspection fees for engaging in contracting or examination fees from persons who are registered with the board pursuant to local examination requirements. However, nothing in this act shall be construed to require general contractors, building contractors, or residential contractors to obtain additional occupational licenses for specialty work when such specialty work is performed by employees of such contractors on projects for which they have substantially full responsibility and such contractors do not hold themselves out to the public as being specialty contractors.

(3) Nothing in this act limits the power of municipalities or counties to adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work.

(4) Nothing in this act shall be construed to waive any requirement of any existing ordinance or resolution of a board of county commissioners regulating the type of work required to be performed by a specialty contractor.

(5) Any official authorized to issue building or other related permits shall, before issuing a permit,

ascertain that the applicant contractor is certified or is registered in the area where the construction is to take place.

(6) Municipalities or counties may continue to provide examinations for their territorial area, provided that:

(a) To engage in contracting in the territorial area, an applicant shall also be registered with the board;

(b) Each local board or agency which licenses contractors transmits annually during May to the board a report of any disciplinary action taken against the licensee; and

(c) No examination is given the holder of a certificate.

(7) The right to create local boards in the future by any municipality or county is preserved.

(8) This act applies to any contractor performing work for the state or any county or municipality. Officers of the state or any county or municipality shall determine compliance with this act before awarding any contract for construction, improvement, remodeling, or repair.

(9) No provision of this act shall be construed to permit a contractor to perform mechanical or plumbing work for which an examination for a certificate of competency or a license is required, unless such contractor holds such certificates of competency or such licenses as may be required by the appropriate local authority. If the appropriate local authority does not require a certificate of competency or a license for such trade, the provisions of this subsection do not apply.

(10) The state or any county or municipality may require that bids submitted for construction, improvement, remodeling, or repair of public buildings be accompanied by evidence that the bidder holds an appropriate certificate or registration.

History.—ss. 10, 17, ch. 79-200.

[1]**Note.**—Section 17, ch. 79-200, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

PART II

ELECTRICAL CONTRACTING

[1]**489.501 Purpose.**—The Legislature finds that electrical contracting is an important service and potentially dangerous if not properly provided and, therefore, deems it necessary in the interest of public health, safety, and welfare to regulate the electrical contractors in this state.

History.—ss. 1, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**489.503 Exemptions.**—This act does not apply to:

(1) A subcontractor or specialty contractor not otherwise certified under the provisions of this act whose work is limited to a specific phase of construction and whose responsibility is likewise limited to that particular phase of construction.

(2) Employees and subordinates of any person engaged in contracting who is certified to engage in contracting, if the employees do not hold themselves out for hire or engage in contracting except as an employee.

(3) An authorized employee of the United States, this state, or any municipality, county, irrigation district, reclamation district, or other municipal or political subdivision of this state, as long as the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.

(4) An officer appointed by a court when he is acting within the scope of his office as defined by law or court order.

(5) Public utilities, on construction, maintenance, and development work performed by their forces and incidental to their business.

(6) The sale or installation of any finished products, materials, or articles of merchandise which are not actually fabricated into, and do not become a permanent fixed part of, the structure.

(7) An owner of property making application for permit, supervising, and doing the work in connection with the construction, maintenance, repair, and alteration of and addition to a single-family or duplex residence for his own use and occupancy and not intended for sale.

(8) Any construction, alteration, improvement, or repair carried on within the limits of any site the title to which is in the United States or any construction, alteration, improvement, or repair on any project when federal law supersedes this act.

(9) Any construction or operation incidental to the construction or repair of irrigation and drainage ditches; regularly constituted irrigation districts; reclamation districts; or clearing or other work on the land in rural districts for fire prevention purposes or otherwise, except when performed by a certificate holder under this act.

(10) A registered architect, professional engineer, or residential designer acting in his professional capacity or any person exempted by the law regulating architects or engineers.

(11) Any person who only furnishes materials or supplies without fabricating them into, or consum-

ing them in the performance of, the work of the contractor.

(12) Any person as defined and licensed under chapter 527.

History.—ss. 12, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.505 Definitions.—As used in this act:

(1) "Applicant" means a business entity making application for certification or registration as an electrical contractor.

(2) "Board," except "local board," means the Electrical Contractors' Licensing Board created by this act.

(3) "Certificate" means a geographically unlimited certificate of competency license issued by the department as provided in this act.

(4) "Certification" means the act of obtaining or holding a certificate as provided in this act.

(5) "Certified electrical contractor" means an electrical contractor who possesses a certificate of competency issued by the department.

(6) "Contracting" means, except as herein exempted, engaging in business as an electrical contractor pursuant to a certificate or registration issued by the department.

(7) "Department" means the Department of Professional Regulation.

(8) "Electrical contractor" or "contractor" means a person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws, and regulations. The term means any person, firm, or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.

(9) "License" means either certification or registration, or both, under the provisions of this act.

(10) "Qualifying agent" means a person who possesses the requisite skill, knowledge, and experience to supervise, direct, manage, and control the electrical contracting activities of the business entity for whom he is a qualifying agent and whose technical and personal qualifications have been determined by the department, as attested to by the board.

(11) "Registered electrical contractor" means an electrical contractor who possesses a geographically limited registration license issued by the department.

(12) "Registration" means a limited license as provided in this act.

(13) "Registrant" means a person who has registered with the department pursuant to the requirements of this act.

(14) "Specialty electrical contractor" means a person whose scope of practice is limited to a specific segment of electrical contracting including, but not limited to, maintenance of electrical fixtures, and installation and maintenance of elevators, electrical outdoor advertising signs, and air-handling controls.

History.—ss. 2, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.507 Electrical Contractors' Licensing Board.—

(1) There is created in the Department of Professional Regulation an Electrical Contractors' Licensing Board. The board shall consist of nine members, seven of whom shall be certified electrical contractors and two of whom shall be lay persons who are not, and have never been, electrical contractors or members of any closely related profession or occupation.

(2) Initially, the Governor shall appoint three members for a term of 4 years, three members for a term of 3 years, and three members for a term of 2 years. Thereafter, members shall be appointed for 4-year terms.

(3) The members of the Florida Electrical Contractors' Licensing Board who are serving as of June 30, 1979, shall serve as members of the Electrical Contractors' Licensing Board until January 1, 1980, or until all members are appointed pursuant to subsection (1) and s. 20.30(5), whichever occurs first.

History.—ss. 3, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.509 Fees.—The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination for certification shall not exceed $150. The initial application fee for registration shall not exceed $20. The biennial renewal fee shall not exceed $150 for certificate holders and $20 for registrants. The board may also establish, by rule, a late renewal penalty. The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this act and the provisions of law with respect to the regulation of electrical contractors.

History.—ss. 4, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.511 Certification; application; examinations; prerequisites; endorsement.—

(1) Any person desiring to be licensed as a certified electrical contractor shall apply to the department in writing to take the certification examination.

(2) A person shall be entitled to take the certification examination for the purpose of determining whether he is qualified to contract throughout the state as an electrical contractor if the person is of good moral character and is otherwise qualified as provided in this section.

(3) The board shall investigate the financial responsibility and credit and business reputation of

the applicant, as well as the education and experience as provided in s. 489.521 of the applicant's qualifying agent. The board shall adopt rules defining financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy or assignment of receivers. Such rules shall specify the financial responsibility grounds on which the board may refuse to qualify an applicant for certification. Within 30 days from the date of the examination, the board shall inform the applicant in writing whether or not its qualifying agent has qualified and, if the applicant's qualifying agent has qualified, that it is ready to certify competency subject to compliance with the requirements of subsection (4).

(4) As a prerequisite to the issuance of a certificate, the board shall require the applicant to submit satisfactory evidence that it has obtained public liability and property damage insurance in an amount to be determined by rule by the board. Thereupon, the board shall certify to the department that the applicant is competent and the certificate shall be issued forthwith; however, this subsection does not apply to inactive certificates.

(5) If the qualifying agent of an applicant for an original certificate, after having been notified to do so, does not appear for examination within 1 year from the date of filing its application, the fee paid by it shall be credited as an earned fee. New application for a certificate shall be accompanied by another application fee fixed pursuant to this act. Forfeiture of a fee may be waived by the board for good cause.

(6) When a certificate holder desires to engage in contracting in any area of the state, as a prerequisite therefor, it shall only be required to exhibit to the local building official, tax collector, or other authorized person in charge of the issuance of licenses and building or electrical permits in the area evidence of holding a current state certificate of competency, accompanied by the fee for the occupational license and permit required of other persons.

(7) The certificate is not transferable.

(8) The board shall, by rule, designate those types of specialty electrical contractors who may be certified under this act.

(9) The board shall adopt rules specifying procedures for the licensing of practitioners desiring to be licensed in this state who have been licensed and are practicing in states which have licensing standards substantially similar to, equivalent to, or more stringent than, the standards of this state.

(10)(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for laws of this state and nation.

(b) The board may refuse to certify an applicant for failure to satisfy this requirement only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

History.—ss. 5, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.513 Registration; application; requirements; temporary registration.—

(1) Any person desiring to be registered as an electrical contractor shall apply to the department for registration.

(2) Any electrical contractor may be registered to contract in the area specified in such registration if the contractor is qualified as provided in this section.

(3) All persons contracting in the state shall be registered with the department unless they are certified. To be registered, the applicant shall file evidence of holding a current occupational license or a current license issued by any municipality or county of the state for the type of work for which registration is desired, on a form provided by the department, together with evidence of successful compliance with the local examination and licensing requirements, if any, in the area for which registration is desired, accompanied by the registration fee fixed pursuant to this act. No state-level examination is required for registration.

(4) Registration permits the registrant to engage in contracting only in the area and for the type of work covered by the registration, unless local licenses are issued for other areas and types of work or unless certification is obtained. When a registrant desires to register in an additional area of the state, he shall first comply with any local requirements of that area and then file a request with the department, together with evidence of holding a current occupational license or license issued by the county or municipality for the area or areas in which he desires to be registered, whereupon his evidence of registration shall be endorsed by the department to reflect valid registration for the new area or areas.

(5) The department may receive an application on prescribed forms with supporting data; and upon finding of fact by the board supporting the need and justification for and reasonable proof of competency of the applicant, the board may authorize the department to grant a limited and restricted registration for one project to a contractor not domiciled in the state. Renewal application or registration cannot be granted. During such registration, the board shall have complete authority to require compliance with this and other statutes of the state relating to electrical contracting.

(6) The application for a temporary registration constitutes the appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with, or incidental to, the practice of electrical contracting for which the temporary registration was issued.

History.—ss. 6, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the

Regulatory Reform Act of 1976, as amended.

[1]489.515 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified to become a certified or registered electrical contractor.

(2) The board shall certify for licensure any applicant who satisfies the requirements of this act. The board may refuse to certify any applicant who has violated any of the provisions of ss. 489.533 and 489.535.

History.—ss. 7, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.517 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 489.519.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 8, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.519 Inactive status.—

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not to exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to s. 489.517 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall they exceed 120 classroom hours [2]for all years. Any license which is inactive for more than 10 years shall be automatically suspended. One year prior to the suspension, the department shall give notice to the licensee. A suspended license may be reinstated as provided in s. 489.533.

History.—ss. 9, 17, ch. 79-272.

[1]Note.—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The words "for all years" were inserted by the editors.

[1]489.521 Business organizations; qualifying agents.—

(1) When an applicant proposes to do business as a sole proprietorship, certification, when granted, shall be issued only in the name of that applicant.

(2) If the applicant proposing to engage in contracting is a partnership, corporation, business trust, or other legal entity, the application shall state the name of the corporation and of its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members and furnish evidence of statutory compliance if a fictitious name is used. The application shall also show that the proposed qualifying agent is legally qualified to act for the business organization in matters connected with its contracting business and concerning regulations by the board and that he has authority to supervise work undertaken by the business organization. The person must possess the required skill, knowledge, and experience, as evidenced by 3 years' proven experience in the trade or education equivalent thereto, or a combination thereof, but not more than one-half of such experience may be educational equivalent, except that the board may, upon receipt of satisfactory proof of at least 6 years of comprehensive, specialized training, education, or experience associated with the business concerned, accept such proof in lieu of other prerequisites heretofore enumerated in this subsection, and, among other things, but not limited thereto, registration as a professional engineer shall be accepted as such proof to plan, lay out, supervise, and do the work of his trade, and who passed an examination and possesses a valid certificate of competency. The certificate, when issued upon application of a business organization, shall have the name of the qualifying individual or individuals noted thereon.

(3) At least one member or supervising employee of the business organization must be qualified under this act in order for the business organization to hold a current certificate in the category of the business conducted for which the member or supervising employee is qualified. If any individual so qualified on behalf of the business organization ceases to be affiliated with the business organization, he shall notify the board and the department thereof within 30 days after such occurrence. In addition, if the individual is the only qualified individual affiliated with the business organization, the business organization shall notify the board and the department of the individual's termination, and it shall have a period of 60 days from the termination of the individual's affiliation with the business organization in which to qualify another person under the provision of this act, failing which, the certification of the business organization shall be subject to revocation by the board. The individual shall also inform the board in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization, and he, or such new business organization, shall supply the same information to the board as required for applicants under this act. After an investigation of the financial responsibility, credit, and business reputation of the individual or the new

business organization and upon a favorable determination, the board shall certify the business organization as qualified, and the department shall forthwith issue, without charge or examination, a new certificate in the individual's name or in the name of the new business organization, as provided in this section.

(4) When a certified business organization makes application for an occupational license in any municipality or county of this state, the application shall be made with the tax collector in the name of the business organization, and the license, when issued, shall be issued to the business organization upon payment of the appropriate licensing fee and exhibition to the tax collector of a valid certificate issued by the department.

History.—ss. 10, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.523 Emergency registration upon death of contractor.—If an incomplete contract exists at the time of death of a contractor, the contract may be completed by any person even though not certified. The person shall notify the appropriate board of his name and address within 30 days after the death of the contractor. The board shall then issue an emergency registration which shall expire upon the completion of the contract. For purposes of this section, and upon written approval of the board, an incomplete contract may be one which has been awarded to, or entered into by, the contractor before his death, or on which he was the low bidder and the contract is subsequently awarded to him, regardless of whether any actual work has commenced under the contract before his death.

History.—ss. 11, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.525 Reports of certified contractors to local building officials.—

(1) The department shall inform all local boards or building officials prior to October of each year of the names of those certified and the status of the certificates.

(2) The department shall include in the report of certified contractors provided in subsection (1) a report to all county tax collectors, local boards, and building officials, containing:

(a) The contents of this act; and

(b) The contents of the rules of the board and the contents of the rules of the department which affect local government as determined by the department.

History.—ss. 11, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.527 Certificate holders qualified to participate in projects under s. 235.31.—Notwithstanding any provisions to the contrary in s. 235.31 concerning prequalification of bidders, any person holding a certificate is qualified to participate in any project contemplated by the section.

History.—ss. 11, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.531 Prohibitions; penalties.—

(1) No person shall knowingly:

(a) Practice electrical contracting unless the person is certified or registered;

(b) Use the name or title "electrical contractor" or words to that effect when the person is not then the holder of a valid certification or registration issued pursuant to this act;

(c) Present as his own the certification or registration of another;

(d) Use or attempt to use a certification or registration which has been suspended, revoked, or placed on inactive status;

(e) Employ unlicensed persons to practice electrical contracting;

(f) Give false or forged evidence to the department, the board, or a member thereof for the purpose of obtaining a certification or registration;

(g) Use or attempt to use an electrical contractor's certification or registration which has been suspended or revoked; or

(h) Conceal information relative to violations of this act.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 13, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.533 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violation of any provision of s. 489.531 or chapter 455;

(b) Attempting to procure a certificate or registration to practice electrical contracting by bribery or fraudulent misrepresentations;

(c) Having a certificate or registration to practice electrical contracting revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of electrical contracting or the ability to practice electrical contracting;

(e) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed electrical contractor;

(f) Upon proof that the licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct in the practice of electrical contracting;

(g) Violation of chapter 455;

(h) Practicing on a revoked, suspended, or inactive certificate or registration;

(i) Willfully or deliberately disregarding and violating the applicable building codes or laws of the

state or any municipality or county thereof;

(j) Aiding or abetting any person to evade any provision of this act;

(k) Knowingly combining or conspiring with any person by allowing one's certificate to be used by any uncertified person with intent to evade the provisions of this act. When a licensee allows his license to be used by one or more companies without having any active participation in the operations or management of said companies, such act constitutes prima facie evidence of an intent to evade the provisions of this act;

(l) Acting in the capacity of a contractor under any license issued hereunder except in the name of the licensee as set forth on the issued certificate or registration or in accordance with the personnel of the licensee as set forth in the application for the certificate or registration or as later changed as provided in this act;

(m) Diverting funds or property received for prosecution or completion of a specified construction project or operation when as a result of the diversion the contractor is or will be unable to fulfill the terms of his obligation or contract;

(n) Disciplinary action by any municipality or county, which action shall be reviewed by the board before the board takes any disciplinary action of its own; or

(o) Failing in any material respect to comply with the provisions of this act.

(2) When the board finds any electrical contractor guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the electrical contractor on probation for a period of time and subject to such conditions as the board may specify, including requiring the electrical contractor to attend continuing education courses or to work under the supervision of another electrical contractor.

(f) Restriction of the authorized scope of practice by the electrical contractor.

(3) The department shall reissue the license of a disciplined electrical contractor upon certification by the board that he has complied with all of the terms and conditions set forth in the final order.

(4) The board may restrain any violation of this act by action in a court of competent jurisdiction.

History.—ss. 14, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.535 Prosecution of criminal violations.—The board shall report any criminal violation of this act to the proper prosecuting authority for prompt prosecution.

History.—ss. 15, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]489.537 Application of act.—

(1) Nothing in this act limits the power of a municipality or county to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which are designed to secure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety.

(2) Nothing in this act limits the power of a municipality or county to collect fees for occupational licenses and inspections for engaging in contracting or examination fees from persons who are registered with the local boards pursuant to local examination requirements.

(3) Nothing in this act limits the power of municipalities or counties to adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work.

(4) Nothing in this act shall be construed to waive any requirements of any existing local ordinance or resolution of a board of county commissioners regulating the type of work required to be performed by specialty contractors.

(5) Any official authorized to issue building or other related permits shall ascertain that the applicant contractor is certified or registered and duly qualified according to any local requirements in the area where the construction is to take place before issuing the permit. The evidence shall consist only of the exhibition to him of current evidence of proper certification or registration and local qualification.

(6) Municipalities or counties may continue to provide examinations for their territorial area if a certificate has not been issued by the board. Any disciplinary action by a municipality, county, or other local unit of government against an electrical contractor for an act or omission relating to electrical contracting shall be reported to the board within 30 days after such final action.

(7) The right to create local boards in the future by any municipality or county is preserved.

(8) This act applies to any contractor performing work for the state or any county or municipality.

(9) The scope of electrical contracting shall apply to private and public property and shall include any excavation, and paving, and other related work incidental thereto and shall include the work of all specialty electrical contractors. However, such contractor shall subcontract the work of any other craft for which an examination for a certificate of competency or registration or a license is required, unless such contractor holds a certificate of competency or registration or license for the respective trade category as required by the appropriate local authority.

History.—ss. 11, 17, ch. 79-272.

[1]**Note.**—Section 17, ch. 79-272, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 490

PSYCHOLOGICAL PRACTICE

[1]490.12 Short title.—This chapter shall be known as the "Florida Psychological Practice Act."

History.—s. 1, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.13 Objects and purposes of chapter.—The practice of psychology is declared to be a profession affecting the public welfare and subject to regulation and control in the public interest. The profession of psychology must merit and receive the confidence of the public, and only qualified psychologists must be permitted to practice the profession of psychology in the state. All provisions of this chapter relating to the practice of psychology shall be liberally construed to carry out these objects and purposes.

History.—s. 2, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.14 Definitions and application.—

(1) A person represents himself to be a psychologist when he holds himself out to the public by any title or description of services incorporating the word "psychology," "psychologist," or "psychological" or offers to render or renders psychological services to individuals, groups, organizations, or the public.

(2) The practice of psychology and the rendering of psychological services within the meaning of this chapter is defined as rendering to individuals, groups, organizations, or the public any service involving the application of principles, methods, and procedures of understanding, predicting and influencing behavior. Included are the principles pertaining to learning, perception, motivation, thinking, emotion, and interpersonal relationships.

(3) Psychologists licensed under this chapter may, within the limits of their individual competence and preparation, apply the methods and procedures of interviewing and counseling and the methods and procedures of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, and motivations. The application of such principles, methods, and procedures includes, but is not restricted to psychological diagnostic assessment, prevention and amelioration of adjustment problems and behavioral disorders of individuals and groups, psychological hypnosis, educational and vocational counseling, personnel selection and management development, evaluation and planning for effective work and learning situations, advertising and market research, the resolution of interpersonal and social conflict, lecturing on or teaching of psychology, and the design and conduct of psychological research.

(4) Nothing in this chapter shall be construed to limit or obstruct the practice of other recognized businesses and professions or to prevent qualified members of other professional groups from doing work of a psychological nature consistent with their training and with any code of ethics of their respective professions designed for the protection of the public if they do not hold themselves out to the public by any title or description incorporating the words "psychological," "psychologist," or "psychology."

History.—s. 3, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.15 Board of Examiners of Psychology; membership, duties, powers, etc.—

(1) There is created the Florida State Board of Examiners of Psychology, hereinafter referred to as the board, with duties and powers as hereinafter defined and provided.

(2) The board shall consist of five licensed psychologists appointed by the Governor for terms of 4 years, provided the members of the Florida State Board of Examiners of Psychology serving under the provisions of chapter 490 on July 1, 1970, shall continue in office as members of the board until their respective terms expire or are otherwise terminated. The board shall organize by electing a president, a vice president, and a secretary. All appointments to fill vacancies created other than by expiration of a term shall be for the unexpired term, and all terms shall expire on December 31 of the last year of the term.

(3) On or before December 1 of each year, the Florida Psychological Association shall nominate three candidates from among its membership, who shall be licensed psychologists, for the next occur-

ring vacancy on the board, and from these nominees, when regularly submitted and certified by the president and secretary of the association, the Governor may make his appointment for the vacancy or vacancies occurring in the board. Each appointee to the board shall, before entering upon the discharge of his official duties, take the oath of office prescribed by the Constitution for officers of the state.

(4) The board may employ agents, an attorney, clerical help, and others for the proper conduct of the office and for such other purposes as may be deemed necessary.

(5) The president of the board shall preside at all meetings, and in his absence or inability to preside the vice president shall so act. In their absence or inability to preside, the remaining member who was first appointed to the board shall so act.

(6) The secretary of the board shall be the executive officer in charge of the board's office. He shall receive a salary to be fixed by the board. He shall make, keep, and be in charge of all records and record books required to be kept by the board, attend to the correspondence of the board, mail to each applicant for registration by examination a notice stating whether or not the applicant has satisfactorily passed the examination, and perform such other duties as the board may require, in keeping with the office of secretary. He shall receive and give a receipt for all fees collected under this chapter.

(7) The secretary of the board shall furnish a bond, in an amount to be fixed by the board, conditioned upon the faithful performance and discharge of the duties of the office according to law.

(8) The board is authorized to make such rules and regulations not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety and welfare of the public. The board may, by rule or regulation, adopt, amend or repeal rules of professional ethics appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession.

History.—ss. 4, 16, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.16 Meetings of the board; expenses of members.—The board shall hold meetings for the examination of applicants for a license as a psychologist and for the transaction of such other business as may legally come before it at least twice in each calendar year, and shall hold such additional meetings as may be deemed necessary by the president of the board. Three members shall constitute a quorum for the transaction of business. Due notice of all meetings shall be given at least 30 days in advance of the meetings. Publication of the time and place of meetings in the journal of the Florida Psychological Association or in any newspaper, magazine, or other periodical in general circulation to Florida psychologists, or written notice by the secretary to the members of the board and to others who have filed with the secretary of the board a written request for the notice, of the time and place of meetings, shall constitute due notice. Each member of the board shall be paid compensation not to exceed $35 per day for actual expenses incurred incident to attendance at board meetings or to the performance of other duties as a member of the board, and, in addition, shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 5, ch. 70-294; s. 1, ch. 74-354; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.17 License required.—It shall be unlawful for anyone to practice psychology in the state without first procuring a license and license certificate in accordance with the provisions of this chapter.

History.—s. 10, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.18 Application for examination.—All applications for examination as a psychologist shall be made on a form to be supplied by the board and filed with the secretary of the board at least 90 days before any meeting of the board at which examinations are to be held. Each application shall be accompanied by an examination fee of $100. No examination fee shall be refundable.

History.—s. 6, ch. 70-294; s. 2, ch. 74-354; s. 1, ch. 75-173; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.19 Qualifications of applicants for examination; examination of applicants; subjects, etc.—

(1) The board shall examine by written or oral examination, or both, under such rules and regulations as the board may prescribe, every applicant for examination as a psychologist who has paid the fees specified in s. 490.18 and satisfied the board that he:

(a) Is of good moral character;

(b) Conforms to the ethical standards of the profession as adopted by the board;

(c) Has received a doctoral degree with a major in psychology from a university that has a program approved by the American Psychological Association or has received a doctoral degree in psychology from a university maintaining a standard of training comparable to those universities having programs approved by the American Psychological Association;

(d) Has had at least 2 years' or 4,000 hours' full-time experience in the field of psychology, in association with, or under the supervision of, a psychologist meeting the academic and experience requirements of this chapter. The experience requirement may be met by work performed on or off the premises of the supervising psychologist. No more than 1 year of predoctoral experience may be utilized in satisfying the experience required.

(2) Examination papers shall be designated by number and not by name of applicant, so that the identity of the applicant will not be disclosed to members of the board until after the examination papers are graded.

(3) A list of subjects in which examinations are to be given will be available upon request.

(4) The minimum passing grade shall be established by the board.

(5) All examination papers shall be filed with the secretary of the board who shall make a record of the grade of each applicant on each subject, and the grade shall be a part of the examination papers which shall be preserved for 2 years.

History.—s. 7, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-247; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.20 Licenses; license certificates.—If an applicant makes a passing grade on the examination for psychologists, he shall be granted a license by the board, and a license certificate signed by a majority of the board shall be issued, which certificate shall be evidence of his right to practice psychology. Any applicant failing to pass the examination shall be entitled to a reexamination upon the payment of an additional fee of $40 for the psychology examination, but two such reexaminations shall exhaust the privilege under the original application.

History.—s. 8, ch. 70-294; s. 3, ch. 74-354; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.21 Certificate to be displayed.—Each person to whom a certificate is issued by renewal, upon examination, or by reissue of the board shall keep the certificate conspicuously displayed in his office or place of business and shall, whenever required, exhibit the certificate to any member or authorized representative of the board. It is unlawful for any licensing agency, either state, county, or municipal, to issue an occupational license to any person to practice psychology unless the applicant therefor shall first exhibit to such official a current license issued by the board showing the applicant is qualified in all regards to practice psychology in accordance with the terms of this chapter.

History.—s. 9, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.22 Licensing under special conditions.—

(1) The board may waive the examination for applicants who have been recognized as diplomates in a field of psychology by the American Board of Professional Psychology, and such applicants shall be entitled to the issuance of a license and license certificate upon payment of the fees provided in s. 490.18.

(2) The board may waive the examination for applicants who present proof of current certification or license in a state which has standards at least equal to those for licensure in Florida, and such applicants are entitled to receive a license and license certificate upon payment of the fees provided for in s. 490.18.

History.—s. 11, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.23 Exemptions.—

(1) Nothing in this chapter shall be construed to restrict or prevent activities of a psychological nature on the part of:

(a) Psychologists who are salaried employees of accredited academic institutions, governmental agencies, and research institutions if such employees are performing those duties for which they were hired and are performing those duties solely within the confines of such organization.

(b) Psychologists who are salaried employees of accredited academic institutions, governmental agencies, and research institutions who consult, offer their findings, or provide scientific information to other such accredited academic institutions, governmental agencies, and research institutions for a fee, monetary or otherwise. Such persons may also offer lectures to the public for a fee, monetary or otherwise. However, psychologists who are salaried employees of accredited academic institutions, governmental agencies, or research institutions must be licensed under the provisions of this chapter if they are providing psychological services to the public for considerations over and above the salary that they receive for the performance of their regular duties with such organizations.

(2) Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at a college or university and working in a training center if these activities and services constitute a part of his supervised course of study and such persons are designated by such title as "psychological intern," "psychological trainee," or other such title clearly indicating the training status appropriate to his level of training. The term "psychological intern," however, shall be reserved for persons enrolled in the doctoral program in psychology at a college or university.

(3) Nothing in this chapter shall be construed as restricting a psychologist from another state offering his psychological services in this state if such services are performed for no more than 5 days in any calendar year. However, a psychologist who is not a resident of this state but:

(a) Is licensed or certified by a similar board of another state or territory of the United States or of a foreign country or province whose standards at the date of his certification or licensure, in the opinion of the board, are equivalent to or higher than the requirements of this chapter, or

(b) Meets the training and experience requirements stated in s. 490.19 and resides in another state or territory of the United States or a foreign country or province which does not grant a certification or license to psychologists, or

(c) Has been granted a diploma of the American Board of Professional Psychology,

may offer professional psychological services in this state for a total of not more than 30 days in any calendar year without being licensed under this chapter.

(4) Nothing in this chapter shall be construed as restricting the use of the term "social psychologist" by any person:

(a) Who has been graduated with a doctoral degree in sociology or social psychology from an educational institution offering accredited courses in sociology or social psychology,

(b) Who has passed comprehensive examinations

in the field of social psychology as part of the requirement for the doctoral degree or has had equivalent specialized training in social psychology, and

(c) Who has filed with the board a statement of the facts demonstrating his compliance with the conditions expressed in paragraphs (a) and (b).

However, if such a "social psychologist" offers psychological services or holds himself out to the public as practicing psychology as defined in this chapter, he must be licensed under the provisions of this chapter.

History.—s. 12, ch. 70-294; s. 3, ch. 76-168, s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.24 Person certified under prior laws.—All persons heretofore certified as psychologists in Florida according to the provisions of law existing at the time of such certification shall be deemed to be licensed as psychologists under the provisions of this chapter.

History.—s. 13, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.25 Renewal of licenses.—

(1) Every person lawfully engaged in the practice of psychology on July 1, 1970, and every person hereafter duly licensed to practice psychology shall, on or before January 1 of each year, apply to the secretary of the board for a license certificate upon a blank form to be furnished by the secretary and shall pay at that time a renewal fee, not to exceed $50, with the exact amount to be determined by the board each year. The license of any psychologist who fails or neglects to renew his license by January 1 of any year as required herein shall be automatically suspended until such time as the psychologist shall register and pay the regular annual fee plus a delinquency fee of $20 for each year or fraction thereof that he fails to register.

(2)(a) The secretary of the board, on or before October 1 of each year, shall mail or cause to be mailed to each licensed psychologist a blank form of application for registration addressed to the last known post-office address of such psychologist.

(b) Every psychologist licensed under the provisions of this chapter shall be responsible for keeping on file with the secretary of the board his latest mailing address. The address on file shall be considered correct for the purposes of this subsection.

(3) The secretary shall issue to any duly licensed psychologist in this state upon his application therefor, in accordance with the provisions hereof, a renewal certificate under the seal of the board for the 1 year ensuing and ending December 31.

History.—s. 14, ch. 70-294; s. 4, ch. 74-354; s. 2, ch. 75-173; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.26 Refusal to grant or renew licenses; revocation, suspension, reinstatement; civil penalties.—

(1) The board may refuse to grant or renew, or may revoke or suspend, a license on any of the following grounds:

(a) Use of fraud or deception in applying for a license or in taking the examination required by this chapter.

(b) Practice of psychology under a false or assumed name, impersonation of a licensed psychologist of like or different name, or permitting an unlicensed person to practice psychology in the name of the licensee or to use his license for that purpose.

(c) Conviction of a felony or any offense which, if committed in this state, would constitute a felony under the laws of Florida.

(d) Habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to impair the performance of professional duties.

(e) Violations of any provision of this chapter or rule, regulation, or code of ethics promulgated by the board, or failure to comply with a cease and desist order.

(f) Negligence or misconduct in the performance of his professional duties as a licensed psychologist.

(2) In lieu of the suspension or revocation of licenses or permits, the Florida State Board of Examiners of Psychology may impose a civil penalty against any licensee for violation of this chapter or any rule or regulation promulgated by the board. No penalty so imposed shall exceed $500 for each count or separate offense, and all penalties imposed and collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

(3) Application may be made to the board for reinstatement at any time after the expiration of 1 year from the date of the refusal to grant or renew, or the revocation or suspension of, a license. The application shall be in writing. The board shall not reinstate any applicant unless satisfied that he is competent to engage in the practice of psychology and has paid a reinstatement fee of $100, and if it deems it necessary for such determination, the board may require the applicant to pass an examination.

History.—s. 15, ch. 70-294; s. 5, ch. 74-354; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 47, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979, except for the possible effect of laws affecting this section prior to that date. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.27 Authority to enjoin violations; temporary restraining orders; investigations.—

(1) If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this chapter or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The board is not required to post a bond in any court proceedings.

(2) If the board determines that a person has violated any provision of this chapter or any lawful order or rule of the board, it may issue an order requiring the person to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the board will carry out the purposes of this chapter.

(3) If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the cease and desist order, the board, whenever possible, by telephone or otherwise, shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be promptly held to determine whether or not the order becomes permanent.

(4) No action shall be maintained to enforce any liability created under this section unless brought within 3 years after the alleged violation of any provision of this chapter or lawful order of the board or rules hereunder.

(5) The board may make necessary public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

History.—s. 4, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 47, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979, except for the possible effect of laws affecting this section prior to that date. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.28 Report to Governor and state psychological association.—The board shall make a written report annually to the Governor and to the Florida Psychological Association of its proceedings and receipts and disbursements under this chapter during the previous year. The names of all registrants licensed to practice under this chapter during the previous year shall also be included.

History.—s. 17, ch. 70-294; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.29 Records are prima facie evidence.—The books, registers, and records of the board, as made and kept by the secretary or under his supervision subject to the direction of the board, shall be prima facie evidence of the matter therein recorded in any court of law.

History.—s. 18, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.30 Disposition of fees; expenditures.—All moneys received by the board under this chapter shall be deposited and expended pursuant to s. 215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the secretary of the board.

History.—s. 19, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.31 Penalties.—It is unlawful for any person not licensed under the provisions of this chapter to advertise or render the services covered under s. 490.14. Any person convicted of violating a provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 20, ch. 70-294; s. 443, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]490.33 Construction as to licensee's authority to practice medicine.—Nothing contained in this chapter shall be construed to permit a licensee hereunder to engage in the practice of medicine as defined in chapter 458.

History.—s. 22, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

CHAPTER 492

FORESTRY PRACTICE

[1]492.01 General provisions.—

(1) Any person practicing or offering to practice the profession of forestry in this state as a registered forester shall be required to submit evidence that he is qualified so to practice, and may be registered as hereinafter provided; and it is unlawful for any person to practice the profession of forestry in this state as a registered forester unless such person is duly registered, and to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a registered forester, as hereinafter defined, unless such person has been duly registered.

(2) Except as hereinafter specifically authorized, no person shall engage in the practice of professional forestry as defined in s. 492.02(2), or in any manner advertise or hold himself out as engaged in such practice, without first having been duly registered as a forester under this chapter.

(3) Notwithstanding subsection (2) or any other provisions of this act, nothing herein shall be construed as preventing or prohibiting any person from managing, or otherwise conducting forestry practices on, lands owned, leased, rented, or held by such person; nor shall anything herein prohibit any regular employee or official of any person, corporation, agency, institution, or other entity from engaging in professional or other forestry practices on lands owned, leased, rented, or held by such person, corporation, agency, or other entity; nor shall anything herein prohibit any graduate of a school of forestry from practicing forestry under supervision as hereinafter authorized, so as to qualify for licensing as provided in s. 492.12.

History.—s. 1, ch. 61-260; s. 1, ch. 74-24; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.02 Definitions.—

(1) The term "registered forester" as used in this act means a person who, by reason of his knowledge of the natural sciences, mathematics, economics, and the principles of forestry, acquired by professional training or practical experience, is qualified to engage in forestry practices as herein defined, and has been duly registered.

(2) The terms "professional forestry" or "practice of forestry" shall mean any professional service relating to forestry, such as consultation, investigation, appraisal and evaluation, development of forest management plans or responsible supervision of forest management, forest production, silviculture, forest utilization, forest economics, or other forestry activities in connection with any public or private lands.

(3) The term "board" as used in this act means the State Board of Registration for Foresters.

(4) The term "responsible charge" as used in this act means the direction of professional foresters' services in evaluation, investigation, or research, requiring initiative, technical knowledge, professional skill, and independent judgment in the practice of forestry.

History.—s. 2, ch. 61-260; s. 2, ch. 74-24; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.03 State Board of Registration for Foresters; appointment of members; terms.—A State Board of Registration for Foresters is hereby created within the Division of Professions of the Department of Professional and Occupational Regulation whose duty it is to administer the provisions of this act. The board shall consist of five foresters who shall be appointed by the Governor. Nominees for appointment to the board may be recommended to the Governor by the offices of the Florida Chapter of the Society of American Foresters, which nominees shall be at least three in number for each position, and who shall have the qualifications required by s. 492.04, and the Governor may make appointments from the persons so nominated. Every member of the board shall be commissioned by the Governor and before beginning his term of office shall file with the Department of State his written oath or affirmation for the faithful discharge of his duties. The five members of the board shall be appointed for terms as follows: one for 1 year, one for 2 years, one for 3 years and two for 4 years. On the expiration of the term of any member of the board the Governor shall, in the manner herein provided, appoint for a term of 4 years a registered forester having the qualifications required by s. 492.04 to take the place of the member whose term on said board is expiring. Each member shall hold office until the expiration of the term for which such member has been appointed or until his

successor shall have been duly appointed and qualified. Appointments to fill vacancies caused by death or resignation shall be for the unexpired term only.

History.—s. 3, ch. 61-260; ss. 10, 30, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.04 Qualifications of members of the board.—Each member of the board shall be a citizen of the United States and a citizen and resident of this state, and shall have been engaged in the practice of forestry as herein defined, or in the teaching of forestry, for at least 10 years, during at least 5 years of which he shall have been in responsible charge of such activity, and after the initial appointment to the board shall be registered under the provisions of this act.

History.—s. 4, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.05 Compensation and expenses of board members.—The members of the board shall receive no compensation for their services but shall be entitled to any per diem or travel expenses as provided by s. 112.061.

History.—s. 5, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.06 Removal of members of the board.—The Governor may remove any member of the board as prescribed under s. 7 of Art. IV of the State Constitution.

History.—s. 6, ch. 61-260; s. 6, ch. 69-216; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.07 Organization and meetings of the board.—The board shall have its headquarters in Tallahassee, Leon County. It shall hold at least two regular meetings each year. The two regular meetings shall be held in Tallahassee, Leon County. Special meetings of the board shall be held at such time and place within the state as the bylaws of the board shall provide. The board shall elect or appoint annually the following officers: a chairman and a vice chairman from the board; and a secretary who need not be a member of the board. A quorum of the board shall consist of three members.

History.—s. 7, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.08 General powers of the board.—The board shall have the power to make all bylaws and rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The board shall adopt and have an official seal. In carrying into effect the provisions of this act, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, documents, etc., in a case involving the revocation or suspension of registration. Any member of the board may administer oaths or affirmations to witnesses.

History.—s. 8, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.09 Receipts and disbursements.—

(1) The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same to the State Treasurer, who shall keep such moneys in a separate fund to be known as the Registered Foresters Licensing Fund. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrant of the Comptroller upon the Treasurer, upon itemized vouchers, approved by the chairman and attested by the secretary of the board. The Comptroller is hereby authorized to retain and withdraw out of the funds collected hereunder 10 percent of the gross amount collected, as a service charge. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the Registered Foresters Licensing Fund. The board is authorized to negotiate with the director of the Division of Forestry of the Department of Agriculture and Consumer Services to act as secretary of the board and furnish such clerical assistance as is needed to carry out the duties of the board. The board is further authorized to reimburse the department for such clerical services in accordance with procedures prescribed in this section.

(2) The board may employ counsel and clerical or other assistants as are necessary for the proper performance of its work and may make expenditures of this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this act. Under no circumstances shall the total amount of warrants issued by the comptroller in payment of the expenses and compensation provided for in this act exceed the amount in the hands of the State Treasurer known as the Registered Foresters Licensing Fund, and such appropriations as may be made by the Legislature.

History.—s. 9, ch. 61-260; s. 182, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.10 Records and reports.—The board shall keep a record of its proceedings and a register of all applications for registration and of any action taken thereon. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of December 31, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of

the receipts and expenditures of the board, attested by its chairman and secretary.

History.—s. 10, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.11 Roster of registered foresters.—A roster of the names and places of business of all registered foresters qualified hereunder shall be prepared annually by the secretary of the board. Copies of this roster shall be placed on file with the Department of State, and furnished to the public upon request.

History.—s. 11, ch. 61-260; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.12 General requirements for registration.—

(1) Any graduate with a bachelor's, master's or doctor's degree from a school or college of forestry accredited by the National Society of American Foresters and who in addition to such education, shall have a specific record of two years or more of active practice of forestry work, indicating that the applicant is qualified to be placed in responsible charge of such work, and who is of good moral character and integrity, shall be eligible.

(2) Any person who is not a graduate of a school or college of forestry accredited by the National Society of American Foresters shall be eligible to take a written or oral examination or both to determine his qualifications for registration as a registered forester provided he submits to the board evidence verified by oath and satisfactory to the board that he:

(a) Is 18 years of age or older;

(b) Is of good moral character and integrity;

(c) Has been employed or engaged in the practice of forestry for at least 7 years and during that time has been in responsible charge of forestry work for at least 2 years.

Any applicant who shall pass such written or oral examination, or both, in a manner satisfactory to the board shall be eligible for registration as a registered forester.

(3) Any person, who, on the effective date of this act, has been engaged in the active practice of forestry, as defined in s. 492.02, for at least 7 years, with no substitution of education for active practice, and who is of good moral character and integrity, shall be eligible for registration as a registered forester without reference to the requirements set forth in subsections (1) and (2), provided that he file application for registration with the board within 2 years from the effective date of this act, or men in military service within 1 year after release.

(4) In considering the qualifications of applicants under subsections (1) and (2), responsible charge of forestry teaching in a department, school, or college of forestry may be regarded as responsible charge of forestry work. The satisfactory completion of each year of an approved course in forestry in a ranger school or college of forestry shall be considered the equivalent of 1 year of active practice.

History.—s. 12, ch. 61-260; s. 3, ch. 76-168; s. 42, ch. 77-121; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.13 Application and registration fees.—Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing among other things, the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, who possess professional qualifications necessary for such membership, and who have personal or professional knowledge of his forestry experience. The application fee for a certificate of registration as a registered forester shall be $5, which shall accompany the application. An additional fee of $5 shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within 30 days after being notified in the usual manner that the applicant has successfully qualified, he shall forfeit the right to have the certificate so issued and said applicant may be required to again submit an original application fee therefor. Should the board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the board.

History.—s. 13, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.14 Examinations.—Examinations shall be held at such time and place as the board shall determine. The method of procedure for examinations shall be prescribed by the board and shall test the applicant's knowledge of natural sciences, mathematics, economics and principles of forestry, and his ability to conduct forestry practices as herein defined. A candidate failing an examination may apply for reexamination at the expiration of 6 months and will be reexamined upon payment of an additional fee of $5.

History.—s. 14, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]492.15 Certificate.—The board shall issue a certificate of registration upon payment of registration fee as provided for in this act to any applicant who has satisfactorily met all the requirements of this act. The certificate shall authorize the practice of forestry. Certificates of registration shall show the full name of the registrant, shall have a registration number, and shall be signed by the chairman and the secretary of the board under seal of the board. The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all rights and privileges of a registered forester, while the said certificate remains unrevoked or unexpired. Plans, maps, specifications, reports, and other instruments issued by a regis-

trant shall be endorsed with his name and registration number.

History.—s. 15, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**492.16 Expiration and renewals.**—All certificates of registration shall expire on December 31 following their issuance or renewal and shall become invalid on that date unless renewed. The board shall, each year, fix the annual renewal fee for certificates of registration, which fee shall not exceed the sum of $25. Renewal of certificates of registration for the following year may be effected at any time during the month of December of the year in which such certificate has been issued by the payment of the renewal fee so fixed by the board. Such certificates may be later renewed by the payment of an additional fee of 50 cents for each month, or fraction thereof, that payment of the fixed renewal fee is delayed beyond the month of December. The board, in its discretion, may make an exception in meritorious cases.

History.—s. 16, ch. 61-260; s. 3, ch. 74-24; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**492.17 Reciprocity.**—A person not a resident and having no established place of business in Florida, or who has recently become a resident thereof, may use the title of registered forester provided:

(1) Such person is legally licensed as a registered forester in his own state or county, and has submitted evidence to the board that he is so licensed.

(2) The state or county in which he is so licensed observes these same rules of reciprocity in regard to persons licensed under the provisions of this act.

(3) Requirements for registration in his own state or county are comparable to those set forth in this act and acceptable to the board.

History.—s. 17, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**492.18 Revocations and reissuance of certificates.—**

(1) The board shall have the power to revoke, or to suspend for such period less than 1 year as the board may determine, the certificate of registration of any registrant who is found guilty of violating the code of ethics adopted by the board, gross negligence, incompetency, or professional misconduct in the practice of forestry.

(2) The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency, or professional misconduct in connection with any forestry practices against any registrant as may come to its attention. Any person preferring such charges against any registrant shall submit them in writing and under oath to the secretary of the board. All charges, unless dismissed by the board as unfounded and trivial, shall be determined by the board. If a majority of the board present votes in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered forester.

(3) The board, upon petition being filed by the applicant for restoration, may reissue a certificate of registration to any person whose certificate has been revoked, or may restore the certificate of any person whose certificate has been suspended, by vote of three or more members of the board who favor such reissuance or restoration. A new certificate of registration, to replace any certificate revoked or suspended, may be issued subject to the rules of the board, and a charge of $5 made for such reissuance. A new certificate, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of $1 made for such reissuance.

History.—s. 18, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 32, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979, except for the possible effect of laws affecting this section prior to that date. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**492.19 Violations.**—It is unlawful for any person to practice or offer to practice the profession of forestry as a registered forester in this state, without being registered in accordance with the provisions of this act; or to present or attempt to use as his own the certificate of another; or to give any false or forged evidence of any kind to the board or any member thereof in obtaining a certificate of registration; or to use or attempt to use in any manner an expired, revoked, or suspended certificate of registration; or to endorse any plan, specification, estimate, map or other instrument as a registered forester unless he shall have actually prepared such plan, specification, estimate, map or other instrument, or shall have been in actual responsible charge of the preparation thereof, or to violate any other provisions of this act. The board, or such person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any of the violations of this title in any court of any county of this state having jurisdiction. Nothing contained in this act shall be construed as preventing any landowner, lessee, or owner of any timber rights, whether as an individual, firm, partnership, or corporation from managing his own timberlands, woodlands, or forest, or from operating the removal of any products therefrom, in any lawful manner desired. It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act to prosecute any persons, firms, partnerships, or corporations violating the same, by using the title "Registered Forester" without being duly registered. The Department of Legal Affairs shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of this act. The board may, at its discretion, employ such other legal assistance as it may deem necessary.

History.—s. 19, ch. 61-260; ss. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

[1]**492.20 Penalties.**—Any person, firm, partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor of the sec-

ond degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 20, ch. 61-260; s. 445, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979. Republished here for reference, pending deletion from the Florida Statutes by act of the Legislature.

CHAPTER 493

INVESTIGATIVE AGENCIES; DECEPTION DETECTORS

PART I PRIVATE INVESTIGATIVE AGENCIES, PATROL AGENCIES, ETC.
(ss. 493.01-493.28)

PART II REGULATION OF DETECTION OF DECEPTION EXAMINERS
(ss. 493.40-493.56)

PART I

PRIVATE INVESTIGATIVE AGENCIES, PATROL AGENCIES, ETC.

[1]**493.01 Definitions, part I.**—As used in this act:

(1) "Private investigative agency" means and includes any person, firm, company, partnership or corporation, engaged in the business of furnishing for hire private investigations and which employs one or more full-time or part-time private investigators.

(2) "Watchman," "guard," or "patrol agency" means and includes any person, firm, company, partnership or corporation, engaged in the business of furnishing for hire watchman, guard or patrolman services and which employs one or more full-time or part-time watchmen, guards or patrolmen.

(3) "Private detective" means and includes any person engaged in the business of private investigations but who does not employ any full-time or part-time private investigators.

(4) "Watchman," "guard," or "patrol contractor" means and includes any person who, as an independent contractor, and not as an employee, engages in the business of furnishing for hire watchman, guard or patrol service which is performed by himself and who does not hire any full-time or part-time watchman, guard or patrolman.

(5) "Private investigator" means and includes anyone who performs the services of private investigation, or who directly supervises others in the performance of such services.

(6) "Private investigation" means and includes investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

(a) Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigations;

(b) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other group of persons or partnership or corporation;

(c) The credibility of witnesses or other persons;

(d) The whereabouts of missing persons;

(e) The location or recovery of lost or stolen property, including the business of repossessing or finance adjusting;

(f) The causes and origin of, or responsibility for fires, or libels, or slanders, or losses, or accidents, or damage, or injuries to real or personal property;

(g) The affiliation, connection or relation of any person, partnership or corporation with any union organization, society or association or with any official member represented hereof;

(h) With reference to any person seeking employment in the place of any person who has quit work by reason of any strike;

(i) With reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors;

(j) The business of securing evidence to be used before investigating committees, boards of award, or arbitration; or in the trial of civil or criminal cases and the preparation therefor;

(k) The conducting of studies or surveys to determine methods and means of providing security for the person requesting the studies or surveys;

(l) The giving of detection of deception examinations;

(m) Service of court process for consideration by persons other than employees of federal, state, county, or municipal police agencies.

(7) "Watchman," "guard," or "patrolman" means and includes persons who directly supervise others who, or who themselves, separately or collectively, guard persons or property or attempt to prevent theft or unlawful taking of goods, wares and merchandise, or attempt to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents, papers and articles of value, or to procure the return thereof, or who perform the services of such watchman, guard or patrolman, or other person for any of said purposes, but exempting armored car services when such armored car services are regulated in any manner by the Florida Public Service Commission.

(8) "Licensee" means and includes any person, firm, company, partnership or corporation licensed under this chapter.

(9) The personal pronoun "he" implies the impersonal pronoun "it."

(10) Department means the Department of State.

History.—s. 1, ch. 63-340; s. 1, ch. 65-390; s. 1, ch. 65-52; ss. 19, 35, ch. 69-106; s. 183, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 76-170; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.02 Powers and duties of Department of State.—

(1) The department is hereby vested with the power, jurisdiction and authority to issue and revoke licenses to private investigative agencies, watchman, guard or patrol agencies, private detectives, watchmen, guards, patrolmen, and watchman, guard or patrol contractors therefor, to deny such applicants a license or to suspend a license for reasonable period, or to assess a civil penalty against the licensee in an amount not to exceed $1,000. The department shall have the power, jurisdiction and authority to promulgate reasonable rules and regulations for its own government and in the exercise of its powers hereunder, for the conduct of the business of private investigative agencies, private detective, and watchman, guard or patrol contractors, watchman, guard or patrol agencies, not in conflict with the Constitution and laws of the United States or of this state and may amend same as provided in chapter 120.

(2) No person, firm, company, partnership or corporation shall furnish private investigations, watchman, guard or patrolman services, nor shall he advertise, solicit nor in any way promise nor inform anyone that he will perform such services without receiving from the Department of State a license as provided herein.

(3) In order to carry out the duties of the department prescribed in this part, designated employees of the Division of Licensing of the department shall have access to the information in criminal justice information systems and to criminal justice intelligence information, as defined in s. 943.07.

History.—s. 2, ch. 63-340; s. 2, ch. 65-390; ss. 10, 35, ch. 69-106; s. 1, ch. 75-230; s. 3, ch. 76-168; s. 2, ch. 76-170; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.03 Application for license.—

(1) Each person, partner, or, in the case of corporations, each corporate officer, must qualify separately for a license under this part and shall file with the department a written application accompanied by a fee of $25 to cover costs, except that an applicant for a Class "F" or a Class "G" license shall not be required to pay the $25 application fee. The fee shall not be rebatable. The written application shall be in accordance with the following provisions:

(a) If the applicant is an individual, the application shall be signed and verified by the individual.

(b) If the applicant is a firm or partnership, a separate application shall be signed and verified by each individual composing or intending to compose, in the immediate future, such firm or partnership.

(c) If the applicant is a corporation, a separate application shall be signed and verified by each officer (not including assistant secretaries or assistant treasurers) thereof.

(d) The application shall contain the following information concerning the individual signing the same:

1. Full name and title of position held with applicant;
2. Age, date and place of birth;
3. The present residence address and the residence addresses within the 5 years immediately preceding the submission of the application;
4. Occupations held presently and within the 5 years immediately preceding the submission of the application;
5. A statement that he is 18 years of age or older;
6. The address of the principal place in which the business is to be conducted;
7. The address of all branch offices within the state;
8. The name under which the business is to be conducted;
9. The names and addresses of all partners or officers and directors, as the case may be;
10. A full set of fingerprints and a photograph of the signatory taken within 2 years immediately preceding the submission of the application;
11. A statement of the experience of the signatory which he believes would qualify him, his firm or his corporation for a license under this chapter;
12. A statement of any or all arrests of the signatory; and
13. Such further facts as may be required by the department to show that the person signing the application is competent, honest, truthful, trustworthy, of good character and bears a reputation for fair dealing.

(2) The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff,

auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and Training Commission when he is performing duties approved by his superiors.

History.—s. 3, ch. 63-340; s. 3, ch. 65-390; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 3, ch. 76-170; s. 1, ch. 76-267; s. 1, ch. 77-116; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.04 License requirements.—

(1) Every corporation applying for a license hereunder must be organized, or authorized to do business, under the laws of this state and shall have the capacity to make valid contracts and to sue and be sued in this state. Each person, each partner, the president of a corporation, and the officer or manager of the corporation who actively directs the business of the corporation, shall have had at least 3 years' experience performing the type of service permitted under the license applied for or the equivalent thereof in related fields, except that this requirement does not apply to applicants for a Class "F" or a Class "G" license. One year of such experience shall be within this state.

(2) Every person shall, before being employed as a watchman, guard, or patrolman, as defined herein, by any person, firm, company, partnership, or corporation, make application to the department for a Class "F" license. An unarmed watchman, guard, or patrolman may be employed by any person, firm, company, partnership, or corporation before such application is approved. If the department denies, suspends or revokes a license after issuance, the employment of such person shall be terminated immediately. Each person, firm, company, partnership, or corporation shall, upon the employment or termination of employment of a watchman, guard, or patrolman, report such employment or termination immediately to the department. During the period of employment of any person who has a Class "F" or Class "G" license, or a temporary Class "G" license, the licensee shall keep the license in his possession. No Class "F" or Class "G" licensee is authorized to do business except as an employee of another person, firm, company, partnership, or corporation; nor is such licensee authorized to use any fictitious or assumed name unless he qualifies under the Fictitious Name Statute.

(3) The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff, auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and Training Commission when he is performing duties approved by his superiors.

History.—s. 4, ch. 63-340; s. 1, ch. 67-522; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 3, ch. 76-170; s. 2, ch. 76-267; s. 1, ch. 77-116; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.05 Notification to Department of State of new partner or corporate officer.—After filing the application, unless the department declines to issue the license, or revokes it after issuance, all private investigative agencies, and all watchman, guard or patrolmen agencies, shall notify the department within 10 days of the removal, replacement or addition of any or all partners and officers of the corporate agency, and upon receipt of application forms from the department, shall cause the same to be completed by the new partner or officer and the same shall be filed with the department and an application fee of $25 paid. The agency's good standing under this part shall be contingent upon the department's approval of any such new partner or officer.

History.—s. 5, ch. 63-340; s. 4, ch. 65-390; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.06 License and other fees.—

(1) The license fees applicable to the seven types of licenses provided for under this part are:

(a) Class A. Private investigative agency: $100.

(b) Class B. Watchman, guard, or patrolman agency: $100.

(c) Class C. Private detective: $50.

(d) Class D. Watchman, guard, or patrolman contractor: $25.

(e) Class E. Branch office: $25.

(f) Class F. Unarmed watchman, guard, or patrolman employee: $10.

(g) Class G. Statewide gun permit: $25. Issuance of this permit shall not authorize the possession of a concealed weapon.

(2) The fees set forth in this section shall be paid by certified check or money order or, at the discretion of the department, by company check at the time the license is issued, except that the applicant for a Class "F" or Class "G" license shall pay the license fee at the time the application is made. Once a license is issued, if it is subsequently revoked, the license fee shall not be returned to the licensee. The holders of all types of licenses may furnish only the services described under the definition for that type of license contained in s. 493.01.

(3) The department may charge the following fees:

(a) Replacement of a Class "F" or Class "G" laminated card: $5.

(b) Transfer of Class "G" license: $10.

History.—s. 6, ch. 63-340; s. 5, ch. 65-390; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 4, ch. 76-170; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.07 Investigation of applicants by Department of State.—

(1) Prior to the issuance of licenses under this part, the department shall make individual investigations of the general fitness and suitability, including the mental and physical fitness, of applicants for licenses. The investigations shall include:

(a) A thorough background investigation of the individual's general character and reputation for honesty, truthfulness, integrity, moral fitness, and fair dealing.

(b) An examination of fingerprint records and police records.

(c) Such other investigation of individuals as the department may deem necessary.

(2) Prior to the issuance of permits under s. 493.21 to armed watchmen, guards, or patrolmen, the department shall make an additional investiga-

tion of applicants, which shall include:

(a) Fingerprint records.

(b) Police records.

(c) General mental and physical fitness to carry a weapon or firearm.

History.—s. 7, ch. 63-340; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 5, ch. 76-170; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.08 Issuance of license.—

(1) When the department shall be satisfied of the good character, competency and integrity of the applicant, or, if the applicant be a firm or partnership, the individual members thereof, or, if the applicant be a corporation, the officers thereof, it shall inform the applicant of its findings and that license shall be issued upon the applicant's posting a licensee's bond as provided for in s. 493.09. Upon the posting of such licensee's bond, the department shall issue and deliver to such applicant a license to conduct the type of business applied for at the premises stated in the application. Such license shall not be transferable and shall be revoked or canceled only by the department.

(2) Grounds for denial of license shall be:

(a) Conviction of a felony in this or any other state where civil rights have not been restored;

(b) Conviction of a crime involving moral turpitude or dishonest dealings;

(c) Has not reached his 18th birthday;

(d) Failure to meet the experience qualifications required under the provisions of this part;

(e) Failure to meet character qualifications;

(f) Falsifying application for license;

(g) Conducting business without benefit of proper license; and

(h) Failure to meet any qualification or requirement prescribed in this part, or for any cause which, if the applicant had already been licensed hereunder, would be grounds for revocation of such license.

History.—s. 8, ch. 63-340; s. 6, ch. 65-390; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 43, ch. 77-121; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]493.09 Licensee's bond and insurance.—

(1) The licensee's bond referred to in s. 493.08 shall be a surety bond executed by the applicant and two or more sureties, or by a surety company authorized to do business in this state, payable to the Governor of this state in the sum of $5,000 conditioned upon the faithful and honest conduct and performance by the licensee of the business so licensed. If any person shall be aggrieved by the misconduct of any such licensed agency, such person may maintain an action in his own name upon the bond of said agency, in any court having jurisdiction of the amount claimed. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist. No bond shall be required for those persons who receive a Class "F" or Class "G" license.

(2) No license shall be issued unless the applicant files with the department a certificate of insurance evidencing comprehensive general liability coverage for death, bodily injury, and personal injury. Coverage shall include false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation of the right of privacy in the amount of $100,000 per person and $300,000 per occurrence and property damage in the amount of $100,000 per occurrence. The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior written notice is given to the department. However, this subsection shall not apply to those who receive a Class "E," Class "F," or Class "G" license.

History.—s. 9, ch. 63-340; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 6, ch. 76-170; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.091 Supervision of agencies.—Each agency must be under the direct supervision of the owner or corporate officer upon whose qualifications the agency is licensed.

History.—s. 2, ch. 67-522; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.10 License; contents; posting.—

(1) All licenses issued pursuant to this part shall be in a form prescribed by the department. The license shall specify the name under which the applicant is to operate, the address of the principal place of business, the expiration date, the full names and titles of the persons who submitted application forms, the number of the license, and any other information the department deems necessary. All licenses, except Class "F" and Class "G" licenses, expire at midnight on June 30 of each year. Class "F" and Class "G" licenses expire each year at midnight on the date of birth of the licensee. The department may prorate license fees.

(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.

(3)(a) The department shall upon application and payment of fee issue a separate license for each branch office mentioned in the application. Said license shall be in a form designed by the department but it shall at least specify the name under which the licensee operates, its license number and the address of the location to which the license applies. Each branch office must be under the direct supervision of a licensed owner, partner, corporate officer or other person licensed to perform the services offered by the agency. The agency shall provide proper surety bond as provided by s. 493.09 for each branch office.

(b) No license shall be valid to protect any business transacted at any place other than that designated in the license unless consent is first obtained from the department and until written consent of the surety or sureties on the bond required to be filed by s. 493.09 to such transfer be filed with the original bond and the change of location of licensee provisions of s. 493.13 of this part be complied with. Such license shall not be valid to protect any licensee who engages in the business under any name other than that specified in said license. A license issued under this part shall not be assignable and no licensee shall conduct a business under a fictitious name unless

and until it has obtained the written authorization of the department to do so. The department shall not authorize the use of a fictitious name which is so similar to that of a public officer or agency, or of that used by another licensee, that the public may be confused or misled thereby. The authorization for the use of a fictitious name shall require as a condition precedent to the use of such name the filing of a certificate of doing business under a fictitious name under s. 865.09. No licensee shall be permitted to conduct business under more than one name except as licensed. A licensee desiring to change its licensed name at any time except upon renewal of license shall notify the department and pay a fee of $10 for each authorized change of name; and upon returning the license to the department with a certificate from his surety on the bond provided for in s. 493.09 to the effect that said bond covers the licensee's new name, the newly authorized name shall then be entered upon the license and same returned to the licensee.

(4) It shall be the duty of every licensee to furnish all of its partners and officers, as the case may be, and all employees who are private investigators or watchmen, guards and patrolmen, and to furnish himself in the case of a private detective or watchman, guard or patrolman contractor, an identification card. Such card shall be in a form and design as may be approved by the Department of State, but shall specify at least the name of the holder of the card, the name and number of the licensee, and be signed by a representative of the licensee and by the holder of the card. Such card shall be in the possession of each partner, officer, or employee while on duty. Upon suspension or revocation of a license, it shall be the duty of each partner, officer, or employee to return the card to his employer.

(5) Each Class "F" or Class "G" license shall remain in the custody and control of the employee. Upon termination of employment, the employer shall immediately notify the department on the form provided.

(6) Each person to whom a license and card have been issued shall be responsible for the safekeeping of same and shall not loan, or let or allow any other person to use or display, said license or card.

History.—s. 10, ch. 63-340; s. 7, ch. 65-390; s. 3, ch. 67-522; ss. 10, 35, ch. 69-106; s. 3, ch. 75-230; s. 3, ch. 76-168; s. 7, ch. 76-170; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.11 Inapplicability of part I of this chapter.—

(1) This part shall not apply:

(a) To any detective or officer belonging to the agencies of the United States or this state, or any county or municipality of this state, while any such officer is engaged in the performance of his official duties.

(b) To special police officers appointed by the state or by the police department of any city or county within the state while any such officer is engaged in the performance of his official duties.

(c) To insurance investigators or adjusters licensed as such.

(d) To any person employed as an unarmed special agent, detective, or private investigator exclusively in connection with the affairs of that employer or to an unarmed watchman, guard, or patrolman employed exclusively to do work on the premises, and in connection with the affairs, of that employer, when there exists an employer-employee relationship.

(e) To any person, firm, company, partnership, corporation, or any bureau or agency whose business is exclusively the furnishing of information as to the business and financial standing, and credit responsibility of persons, firms, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit.

(f) To any corporation duly authorized by the state to operate a central burglar or fire alarm protection business.

(g) To attorneys or counselors at law in the regular practice of their profession, but such exemption shall not inure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law.

(h) To any state or national bank or bank holding company, credit union, or small loan company under chapters 516, 519, and 520; consumer credit reporting agency regulated under 15 U.S.C. ss. 1681 et seq.; or collection agency.

(2) No person, firm, company, partnership, corporation or any bureau or agency, exempted hereunder from the application of this part, with the exception of any state or national bank or bank holding company, credit union, small loan company, consumer credit reporting agency, or collection agency, shall perform any manner of private investigator or watchman, guard or patrol agency service for any person, firm, company, partnership, corporation, bureau or agency whether for fee, hire, reward, other compensation, remuneration, or consideration or as an accommodation without fee, reward or remuneration or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this section shall constitute a violation thereof.

History.—s. 11, ch. 63-340; s. 1, ch. 72-117; s. 7, ch. 75-230; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.12 Renewal of license.—

(1) A license granted under the provisions of this part may be renewed by the department.

(2) No less than 90 days prior to the expiration date of the license, the department shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the department.

(3) A licensee shall renew his license prior to expiration by filing with the department, at least 45 days prior to expiration, the renewal form accompanied by:

(a) Payment of the fee prescribed in s. 493.06, except that the Class "G" renewal fee shall be $15.

(b) Posting of the surety bond required in s. 493.09.

(4) A licensee who fails to renew his license before it expires may renew his license by fulfilling the requirements of subsection (3) and paying a late fee

equal to the amount of the license fee.

(5) No license shall be renewed 6 months or more after the expiration date.

(6) No person, firm, company, partnership, or corporation shall carry on any business regulated by this part during any period which may exist between the date of expiration and the date of renewal of a license.

(7) Before a Class "G" license is renewed, the licensee shall fulfill health and training requirements which the department shall promulgate by rule.

History.—s. 12, ch. 63-340; s. 8, ch. 65-390; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 8, ch. 76-170; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.13 Change of location of licensee.—In the event the licensee desires to change the location of any place of business indicated in his application on file with the Department of State, he shall notify the department. The Department of State shall send to him suitable forms designed by the Department of State, the purpose of which shall be to record in the office of the department the fact that there has been a change by way of substitution of the licensee's place or places of business. Upon completion of such form the licensee shall return it to the Department of State, together with a fee of $10 for each changed location, and a certificate from his surety on the bond mentioned in s. 493.09, to the effect that said bond covers the licensee's business at the changed location. The department shall thereupon send to the licensee a certificate of registration of each changed location. Said certificate shall be in a form designed by the Department of State, but it shall at least specify the name under which the licensee operates, its license number and the address of the location to which the certificate of registration applies. The holder of a Class "F" or Class "G" license shall not be required to pay the $10 fee for each change of location.

History.—s. 13, ch. 63-340; ss. 10, 35, ch. 69-106; s. 4, ch. 75-230; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.14 Power of department to deny, suspend or revoke license.—

(1) The department may deny, refuse to renew, or may suspend or may revoke a license for any one or more of the following grounds:

(a) Fraud or willful misrepresentation in application for or in obtaining a license;

(b) Willfully and knowingly violating any of the provisions of this part by the licensee or any of his employees;

(c) If the licensee or anyone in his employ has been adjudged guilty of the commission of a crime involving moral turpitude;

(d) A false statement by the licensee that any person is or has been in his employ;

(e) If the licensee or any of his or its employees is found guilty of willful betrayal of a professional secret;

(f) If the licensee or any of his employees is incompetent, or is guilty of conduct against the interest of the general public, or has been convicted of a felony in this, or any other state, and has not had his civil rights restored;

(g) Failure of the licensee to maintain in full force and effect the surety bond referred to in s. 493.09;

(h) Upon the disqualification or insolvency of the sureties of the bond referred to in s. 493.09, unless such licensee files a new bond with sufficient sureties within 30 days after notice from the Department of Insurance of this state or of the surety company's home state;

(i) If the licensee impersonated, permitted, or aided and abetted an employee to impersonate, a law enforcement officer or any employee of this state, United States, or any political subdivision thereof;

(j) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(k) Committed assault, battery, or kidnapping; or used force or violence on any person except in self-defense or in the defense of a client;

(l) Knowingly violated or advised, encouraged or assisted the violation of any court order or injunction in the course of business as a licensee;

(m) Acted as a runner or a capper for any attorney;

(n) Committed any act which is a ground for a denial of an application for license under this chapter and these acts.

If committed by the applicant prior to issuance of license, the foregoing shall be grounds for the refusal by the department to issue such license.

(2) Upon revocation or suspension of license, the licensee shall forthwith return the license which was suspended.

(3) The Department of State shall hold as confidential any information of a personal nature or that relating to the conduct of the trade or profession.

History.—s. 14, ch. 63-340; s. 9, ch. 65-390; ss. 10, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.15 Cancellation of license.—In the event the licensee desires to cancel the license, he shall notify the Department of State and the department shall supply him with proper forms as designed by the Department of State to effectuate the cancellation of said license. Upon cancellation of said license, the licensee shall forthwith return to the Department of State the license so canceled.

History.—s. 15, ch. 63-340; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.17 Death of licensee; carrying on of business.—

(1) Upon the death of an individual or individuals, of whose qualification a license under this part has been obtained, the business with which the decedent was connected may be carried on for a period of 90 days by the following:

(a) In the case of an individual licensee the surviving spouse, or, if there be none, the executor, or administrator of the estate of the decedent.

(b) In case of a partnership, the surviving partners.

(c) In case of an officer of a firm, company, association, organization or corporation, the other officers thereof.

(2) Upon the authorization of the Department of State the business may be carried on for a further period of time when necessary to complete any investigation or contract, or assist in any litigation pending at the death of the decedent.

(3) Nothing in this section shall be construed to restrict the sale of a business licensed pursuant to this part; provided, however, the vendee qualifies for a license under the provisions of this part.

History.—s. 17, ch. 63-340; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.18 Trust fund.—

(1) All funds derived from renewal of Class "G" license fees paid under this part shall be deposited into a trust fund to be known as the Private Investigative Agency Licensing Law Trust Fund, to be used by the Division of Licensing of the department to employ personnel and pay expenses to carry out the provisions of this chapter.

(2) The unencumbered balance in the trust fund at the beginning of each fiscal year shall not exceed $50,000, and any excess shall be transferred to the General Revenue Fund.

History.—s. 18, ch. 63-340; s. 3, ch. 76-168; s. 9, ch. 76-170; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.19 Divulging information; prohibited; false reports; penalty.—No licensee or any employee of such licensee shall divulge to any person, except as otherwise provided by law, other than to his principal or his employer any information acquired as a result of any investigation, surveillance, or other employment performed by such licensee or employee. Provided, however, that the provisions of this section shall not apply to any employer who is also the holder of a license issued pursuant to this part who has the written consent of the client or principal to divulge any information falling within the terms of this section, and further provided, that the provisions of this section will not apply to the taking of testimony or the receiving of evidence in any judicial proceeding. Any person violating this section or any employee who shall willfully make a false report to his employer concerning his employment or work shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 19, ch. 63-340; s. 1, ch. 67-487; s. 446, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.20 Exclusion of tax.—Payment of the license fee provided for hereunder authorizes the licensee to practice his profession anywhere in Florida without obtaining any additional license, permit, registration, or identification card, except as required by s. 493.21, any municipal or county ordinance or resolution to the contrary notwithstanding. However, all licensees hereunder, except those issued a Class "F" or Class "G" license, shall be required to obtain a city and county occupational license in each city and county where the licensee maintains a physical office.

History.—s. 20, ch. 63-340; s. 4, ch. 75-230; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.21 Weapons and firearms; training requirements; permit.—

(1) It is hereby specifically provided that nothing in this part shall be construed to authorize any licensee or his employees to carry any weapon or firearm without first complying fully with the requirements of subsection (2) and paragraph 493.06(1)(g).

(2) The department shall issue a Class "G" statewide permit to persons licensed under the provisions of this part to carry a weapon or firearm to be owned and issued by their employers upon:

(a) Satisfactory completion of a thorough background investigation of the individual's police record and general character made by the department, which investigation indicates that the individual is a fit person to carry a weapon or firearm;

(b) The meeting of minimum training criteria for weapons and firearms, not to exceed 10 hours, which shall be promulgated by the department.

(3) No employee shall carry or be furnished a weapon or firearm unless required by his duties; nor shall an employee carry such weapon or firearm except in connection with said duties. The weapon or firearm shall be encased in view at all times when carried pursuant to this subsection, unless the employee complies with ss. 790.05 and 790.06 as they pertain to concealed weapons or firearms.

(4)(a) No employee shall carry or be furnished a weapon or firearm until he has received a Class "G" statewide permit, or a temporary Class "G" license, to carry such weapon or firearm under the provisions of this section. However, nothing in this act shall abrogate the provisions of paragraph 790.25(3)(n). The statewide permit shall remain in effect only during the period the applicant is employed as a guard.

(b) The department shall issue a Class "G" statewide permit to security personnel upon receiving proof from the employer that the applicant meets the criteria as set forth herein, and said permit shall remain in effect during the period the applicant is employed. It shall be the responsibility of the employer immediately to notify the Department of State of the employee's termination of employment, at which time the department shall revoke said permit.

(c) The department may issue a 45-day temporary Class "G" license which may be renewed. This temporary license may be issued only after:

1. Completion of an investigation of the individual's Florida police record by the department, which investigation indicates that the individual is a fit person to carry a weapon or firearm; and

2. The meeting of minimum physical fitness cri-

teria and minimum training criteria for weapons and firearms, not to exceed 10 hours, which criteria shall be promulgated by the department.

(d) The department shall revoke the temporary Class "G" license if it finds that the individual has a police record in another state or is otherwise unfit to carry a firearm.

(5) A licensee who has been issued a Class "G" statewide permit pursuant to this section is exempt from the requirements of ss. 790.05 and 790.06 while carrying out the duties he is licensed to perform under this act, provided he does not carry a concealed weapon or firearm.

(6) The only firearm a Class "G" licensee may carry is a standard police .38 caliber revolver with standard ammunition, unless otherwise approved by the department.

History.—s. 21, ch. 63-340; s. 4, ch. 75-230; s. 3, ch. 76-168; s. 10, ch. 76-170; s. 1, ch. 77-174; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.22 Violation; penalty.—Any person who violates any provisions of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 22, ch. 63-340; s. 447, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.23 Enforcement of part I; investigation.—

(1) The department shall have the power to enforce the provisions of this part irrespective of the place or location in which said violation occurred and upon complaint of any person or on its own initiative to cause to be investigated any violation thereof or to cause to be investigated the business and business methods of any licensee, applicant or employee thereof.

(2) In any such investigation caused to be made by the department each such licensee, applicant or employee thereof shall be obliged to submit information as to his business practices or methods. For purposes of enforcing the provisions of this part and in making investigations relating to any violation thereof, for the purposes of investigating the character, competence or integrity of any such applicant, licensee or employee thereof, and for purposes of investigating practices and business methods thereof, the department shall have the power to subpoena and bring before it any person in the state and may require the production of any papers it deems necessary and administer oaths and take depositions of any such persons so subpoenaed. Failure or refusal of any person duly subpoenaed to be examined or to answer any legal or pertinent question as to his qualifications or the business methods or business practices of such person under investigation shall be grounds for revocation of license, or refusal to issue such license, as the case may be. The testimony of witnesses in any such proceeding shall be under oath before the department or its agent, and willful false swearing in such proceedings shall be punishable as perjury.

[2](3) The department shall designate an advisory council to be composed of nine members. Said advisory council shall insofar as possible be geographically distributed and representative of the various segments of the profession. The council shall organize, elect a chairman and thereafter meet upon call of the chairman through the department. The council shall counsel and advise with the department and make recommendations relative to the operation and regulation of the industry. Such advisory council members as are appointed by the department shall serve without pay; however, state per diem and travel allowances may be claimed for attendance at officially called meetings of the council as provided by s. 112.061.

History.—s. 23, ch. 63-340; s. 11, ch. 65-390; ss. 10, 35, ch. 69-106; s. 5, ch. 75-230; s. 3, ch. 76-168; s. 11, ch. 76-170; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

[1]493.231 Department of Legal Affairs; enforcement.—The Department of Legal Affairs shall be attorney for the Department of State in the enforcement of this part and shall conduct any investigations incident to its legal responsibility.

History.—s. 12, ch. 65-390; ss. 10, 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.25 Acts prohibited by licensees or employees acting as repossessors.—Licensees and employees acting as repossessors shall be prohibited from:

(1) RECOVERING VEHICLES SOLD UNDER CONDITIONAL SALES AGREEMENT OR CHATTEL MORTGAGE WITHOUT AUTHORIZATION.—Recovering personal property including personal property registered under the motor vehicle code, which has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner of such property or from the mortgagee when such personal property is subject to the terms of a chattel mortgage.

(2) SOLICITING RECOVERY OF A VEHICLE OR OTHER PERSONAL PROPERTY AFTER IT HAS BEEN LOCATED.—Soliciting from the legal owner the recovery of specific personal property after such property has been seen or located on public or private property.

(3) CHARGING UNINCURRED EXPENSES.—Charging for expenses not actually incurred in connection with the recovery, transportation and storage of personal property.

(4) USING PROPERTY FOR PERSONAL BENEFIT.—Using personal property which has been recovered for the personal benefit of a licensee or officer, director, partner, manager or employee of a licensee.

(5) SALE OTHER THAN AT PUBLIC AUCTION OR UNDER WRITTEN AUTHORIZATION.—Selling personal property recovered under the provisions of this part while acting as a repossessor or finance adjuster except at public auction or with written authorization from the legal owner or the mortgagee thereof.

(6) NOTIFICATION TO POLICE OR SHERIFF'S

DEPARTMENT.—Failure to notify police or sheriff's department of the jurisdiction in which the personal property is recovered within 24 hours.

History.—s. 13, ch. 65-390; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.26 Requirement of inventory by recoverer of personal property.—If personal effects or other personal property not recovered by a conditional sales agreement or by a chattel mortgage are contained in or on personal property at the time it is recovered, a complete and accurate inventory shall be made of such personal effects or other personal property. The date and time the inventory is made shall be indicated and it shall be signed by the person or persons who recovered the personal property on behalf of the legal owner or mortgagee. The inventory shall be filed in the permanent records of the licensee and shall be made available to representatives of the department upon demand during normal business hours. Falsification or alteration of an inventory shall be grounds for suspension or revocation of license.

History.—s. 14, ch. 65-390; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.28 Association with government not to be implied.—

(1) No licensee shall use any designation or trade name which implies or gives an impression he is associated with any municipal, county, state, or federal government or any agency thereof, nor shall a licensee wear any badge or uniform capable of being associated with or confused with the badge or uniform of any governmental law enforcement organization in the operating area of the licensee.

(2) Use of the words "police," "sheriff," or "deputy sheriff" and the use of the official seal, or any facsimile thereof, of the state or of any political subdivision of the state is specifically prohibited on badges, cap shields, patches, automobiles, decals, or advertisements.

(3) The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff, auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and Training Commission when he is performing duties approved by his superiors.

History.—s. 6, ch. 75-230; s. 3, ch. 76-168; s. 3, ch. 76-267; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

PART II

REGULATION OF DETECTION OF DECEPTION EXAMINERS

[1]493.40 Definitions, part II.—The following terms shall, unless the context otherwise indicates, have the following respective meanings:

(1) "Detection of deception examiner" shall mean, and include any person who uses any device or instrument which records as minimum standards, permanently and simultaneously, the examinee's cardiovascular (blood pressure and pulse) and respiratory (breathing) patterns, in order to examine individuals for the purpose of detecting truth or deception. Such an instrument may record additional physiological changes pertinent to the detection of truth or deception.

(2) "Intern" means the study of detection of deception and the administration of detection of deception examinations by a trainee under the personal supervision and control of an examiner.

(3) "Licensee" means only natural persons.

(4) "Department" means Department of State.

(5) "Polygraph" means an instrument which combines a continuous permanent recording and means of measuring and recording at least two of the physiological reactions to emotions.

(6) "Employee examiner" means a qualified detection of deception examiner employed wholly and exclusively by a single employer.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 184, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.41 Powers and duties of Department of State.—

(1) The Department of State is hereby vested with the power, jurisdiction and authority to issue and revoke licenses to detection of deception examiners. The department shall have the power, jurisdiction and authority to promulgate rules and regulations for its own government and the exercise of its power hereunder for the conduct of the business or practice of administering examinations for the purpose of detecting truth or deception (lie detector examinations) not in conflict with the Constitution and laws of the United States or this state and may amend same at its pleasure.

(2) No person shall administer examinations for the purposes of detecting truth or deception without first receiving from the Department of State a license as provided herein.

(3) This part is not applicable to a detection of

deception examiner employed by a municipal, county, state or federal agency as long as his sole use of the instrument described in s. 493.40(1) is in the performance of his official duties.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.42 Application for license.—

(1) Every person administering detection of deception examinations must qualify individually for a license under this part and shall file with the department a written application accompanied by a fee of $25 to cover costs. The fee shall not be rebatable.

(2) The written application shall be in accordance with the following provisions, and the application shall be signed and verified by the individual and shall contain the following information:

(a) Full name and title of position;

(b) Age, date and place of birth;

(c) The present residence address and the residence addresses within the 5 years immediately preceding the submission of the application;

(d) Occupations held presently and within the 5 years immediately preceding the submission of the application;

(e) A statement that he is 18 years of age or older;

(f) The address of the principal place in which the business is to be conducted;

(g) Statement of educational qualifications as provided in s. 493.43;

(h) The name under which the business is to be conducted;

(i) Statement of formal polygraph training as provided in s. 493.43;

(j) A full set of fingerprints and a photograph of the signatory taken within 2 years immediately preceding the submission of the application;

(k) A statement of the experience of the signatory which he believes would qualify him for a license under this part;

(l) A statement of any or all arrests of the signatory; and

(m) Such further facts as may be required by the department to show that the person signing the application is competent, honest, truthful, trustworthy, of good character and bears a reputation for fair dealing.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 44, ch. 77-121; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.43 License requirements.—An applicant is qualified to receive a license as a detection of deception examiner:

(1) Who is at least 18 years of age; and

(2) Who establishes that he is a person of honesty, truthfulness, integrity, moral fitness, and has a reputation for fair dealing; and

(3) Who has not been convicted of a misdemeanor involving moral turpitude or a felony or has not been released or discharged under any other than honorable conditions from any of the armed forces of the United States; and

(4) Who has a bachelor's degree from a full 4-year university or college recognized as such by the department. This requirement may be waived for those persons who have a high school diploma and 5 years' experience as an investigator or detective with a municipal, county, state or federal agency; and

(5) Who has satisfactorily completed a formal training course of at least 6 weeks' duration at an examiner's school instructing in the use of an instrument as described in s. 493.40(5), which school must be recognized and approved by the department; and

(6) Who has completed a period of a minimum of 1 year as licensed intern examiner under the supervision of a qualified examiner in this state.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 45, ch. 77-121; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]493.44 Fees.—The license fees applicable to the two types of licenses provided under part II of this chapter are as follows:

(1) Detection of deception examiners—$50.

(2) Detection of deception intern—$10.

History.—s. 1, ch. 67-144; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.45 Investigation of applicant by Department of State.—The department shall make such individual investigations of applicants for licenses under part II of this chapter as it may deem necessary.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.46 Licensee's bond.—Each individual licensee shall be required to post bonds as required by s. 493.09.

History.—s. 1, ch. 67-144; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.47 Issuance of license.—

(1) When the Department of State shall be satisfied of the good character, competency and integrity of the applicant for a detection of deception examiner's license, it shall inform such applicant of its findings and that license shall be issued upon the applicant's posting a licensee's bond as provided for in s. 493.09. Upon the posting of such licensee's bond, the department shall issue and deliver to such applicant a license to conduct the type of business applied for at the premises stated in the application. Such license shall not be transferable, and shall be revoked or canceled only by the department.

(2) A polygraph internship license shall be issued to an applicant who has met all the qualifications set forth in ss. 493.42 and 493.43, for the purpose of permitting this applicant to receive training as a detection of deception examiner. Upon the posting of such licensee's bond, the department shall issue and deliver to such applicant a license to conduct the type of business applied for at the premises stated in the application. Such license shall not be transferable and shall be revoked or canceled only by the department. Internship license for a period of 1 year

shall be issued to such applicant who has met all the qualifications as set forth above and who has paid license fee as prescribed for the purpose of permitting such applicant to receive training as a detection of deception examiner and to comply with the requirements of ss. 493.04 and 493.43, of this chapter requiring 1 year's experience within the state.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.48 License, contents and posting.—
(1) The license issued pursuant to part II of this chapter shall be for a period of 1 year and shall be in such form as may be determined by the Department of State, but shall at least specify the applicant's name, the type and number of the license, the address of the principal place of business and the date on which it will expire.
(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.49 Reciprocity.—A person who is a detection of deception examiner, licensed under the laws of another state or territory of the United States, may be issued a license by the department, at its discretion, upon payment of the fee as provided under s. 493.44, and the production of satisfactory proof that:
(1) The applicant is at least 18 years of age;
(2) He is of good moral character;
(3) The requirements for the licensing of examiners in such particular state or territory of the United States were, at the date of licensing, substantially equivalent to the requirements then in force in this state;
(4) The applicant had lawfully engaged in the administration of detection of deception examinations under the laws of such state or territory for at least 5 years prior to his application for a license hereunder; and
(5) Such other state or territory grants similar reciprocity to license holders in this state.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 46, ch. 77-121; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.50 Renewal of licenses.—Licenses granted under part II of this chapter may be renewed by the Department of State in the same manner and under the same provisions provided by s. 493.12.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.51 Power of Department of State to deny, suspend, or revoke licenses.—The Department of State may deny, refuse to renew or may suspend or may revoke licenses issued under part II of this chapter upon the same grounds as set forth in s. 493.14.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.53 Advisory council.—Advisory council as set forth in s. 493.23(3), shall also be the advisory council for part II of this chapter; provided, however, that an additional member be appointed to the council representing detection of deception examiners.

History.—s. 1, ch. 67-144; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]493.54 Violation; penalty.—Any person who violates any provisions of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 67-144; s. 448, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]493.56 Construction of part II; admissibility of evidence.—This part does not authorize or imply the admissibility into evidence of the results of polygraph examination in judicial proceedings.

History.—s. 2, ch. 67-144; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

TITLE XXXII

REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

CHAPTER 494

MORTGAGE BROKERAGE

494.01 Short title.—This act may be cited as "Mortgage Brokerage Act."

History.—s. 1, ch. 59-309.

494.02 Definition of terms.—In this act unless the context or subject matter otherwise requires:

(1) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(2) "Mortgage loan" means any loan secured by a mortgage on real property or any loan secured by collateral which has a mortgage lien interest in real property.

(3) "Mortgage broker" means any person not exempt under s. 494.03 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires or sells, or offers to make, negotiate, acquire or sell a mortgage loan. This subsection shall not apply to transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration by the department.

(4) "Mortgage solicitor" means any individual not licensed as a mortgage broker, who performs any of the functions set out under subsection (3) and who is employed by a mortgage broker or whose business policies and acts are under the direction, control or management of a mortgage broker.

(5) "Department" means the Department of Banking and Finance.

(6) "Licensee" means a person, whether mortgage broker or mortgage solicitor, under any of the provisions of this act.

(7) "License" means a license issued under the provisions of this act.

(8) "Principal mortgage broker" means an individual, officer of a corporation, or member of a partnership designated as the primary broker in the application.

(9) "Lender" means any person who either lends or invests money in mortgage loans.

History.—s. 2, ch. 59-309; s. 1, ch. 63-58; ss. 12, 35, ch. 69-106; s. 185, ch. 71-377; s. 9, ch. 77-397.

494.03 Exempt persons.—This act does not apply to the following:

(1) Banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, small loan companies, federally licensed small business investment companies, or securities dealers registered under the provisions of s. 517.12, servicing corporate clients in the normal course of business.

(2) Any person making or acquiring a mortgage loan with his own funds for his own investment without intent to resell said mortgage loan.

(3) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as an attorney at law.

History.—s. 3, ch. 59-309; s. 2, ch. 63-58; s. 1, ch. 65-431; s. 1, ch. 77-397.

494.04 Licensing of mortgage brokers and mortgage solicitors.—

(1) No person shall act as a mortgage broker or mortgage solicitor in this state, or in, out of, or from offices in this state, without a license therefor as provided in this act.

(2) No mortgage broker's or mortgage solicitor's

license shall be granted to any person unless he has been a bona fide resident of the state for a period of at least 6 months immediately preceding the date of application for license and is a citizen of the United States, or has presented a notarized declaration of intention to become a United States citizen.

(3) Application for license as mortgage solicitor must be accompanied by the recommendation of the mortgage broker who is to be applicant's employer and who is to be responsible for applicant's actions. A mortgage solicitor shall negotiate mortgage loans only for and on behalf of the broker with whom he is employed.

(4) Each application for a license or for a renewal thereof shall be made in writing, on such forms and in such manner and accompanied by such evidence in support of such application as prescribed by the department. An investigation fee of $50, which shall not be subject to refund, shall be paid by each new applicant, other than for a branch office. The department shall require such information with regard to the applicant as it may deem desirable, with due regard to the paramount interests of the public, as to the experience, background, honesty, truthfulness, integrity, and competency of the applicant as to financial transactions involving primary or subordinate mortgage financing, and where the applicant is a person other than an individual, as to the honesty, truthfulness, integrity, and competency of any officer or director of such corporation, association, or other group, or the members of such partnership. For examination purposes, the department may prepare a handbook for mortgage brokers and distribute same on request to applicants, provided a reasonable charge shall be made therefor. Each applicant, including designated officers or members as otherwise provided in this section, shall file a complete set of fingerprints taken by an authorized law enforcement officer. Said fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing.

(5) The license fee for a license year or part thereof ending the following August 31 shall be the sum of $75 for the mortgage broker and $40 for a mortgage solicitor. All fees or charges under this section shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the Division of Finance of the department.

(6) If the licensee is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association, or other group, to engage in the business of mortgage broker, and such officer or member to be designated in the application for license. For each officer or member other than the officer so designated, through whom it engages in the business of mortgage broker, the annual fee shall be $40 in addition to the fee paid for the first license.

(7) Upon the filing of such application, and the payment of said fees, the department shall, upon determination of proper qualifications issue a license to the applicant to act as a mortgage broker or mortgage solicitor under and in accordance with the provisions of this act for a period which shall expire the last day of August next following the date of its issuance. Such license shall not be transferable or assignable.

(8) When a mortgage broker's license is issued to a person other than an individual, if it desires any of its officers or members other than the officer or member designated by it to act on behalf of the corporation, partnership, association or other group, as a mortgage broker, it may procure an additional license to so employ each of such additional officers or members. Each additional officer or member so licensed shall be licensed only to act as a mortgage broker for and on behalf of the corporation, partnership, association or other group.

(9) The licenses of both mortgage broker and mortgage solicitor shall be prominently displayed in the office of the mortgage broker. The mortgage solicitor's license shall remain in the possession of the licensed mortgage broker employer until canceled or until the mortgage solicitor leaves the employ of the mortgage broker.

(10) Immediately upon the mortgage solicitor's withdrawal from the employ of the mortgage broker, the mortgage broker shall return the mortgage solicitor's license to the department for cancellation.

(11) Every licensed mortgage broker shall have and maintain a principal place of business in the state for the transaction of business. The license shall specify the address of said principal place of business and shall be conspicuously displayed therein. In the event the mortgage broker shall maintain a branch office or offices, the department shall, upon application and the payment of a fee of $75, issue a branch office license specifying thereon the address of such office, which license shall be conspicuously displayed therein. Each mortgage brokerage office or branch thereof shall be operated under the full charge, control and supervision of a designated mortgage broker employed at such office or branch on a regular and full-time basis to supervise and perform the rendition of mortgage brokerage services. No mortgage broker may serve as the licensed person in charge of more than one office or branch thereof. In case the address of the principal place of business or of any branch office shall be changed, the department shall endorse the change of address on the license without charge.

History.—s. 4, ch. 59-309; s. 3, ch. 63-58; s. 1, ch. 65-215; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 1, ch. 73-209; s. 3, ch. 73-326; s. 1, ch. 77-116; s. 1, ch. 77-174; ss. 2, 16, ch. 77-397; s. 17, ch. 79-8; s. 141, ch. 79-164.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

494.041 Brokers and solicitors offering mortgages by land developers licensed pursuant to the Florida Uniform Land Sales Practices Law; requirements; prohibitions.—No mortgage loan which has a face amount of $35,000 or less and is secured by vacant land registered under the Florida Uniform Land Sales Practices Law, chapter 478, shall be sold to a mortgagee, except a financial institution, by a mortgage broker or solicitor unless all of the following requirements are met:

(1) Each mortgage securing a note or other obligation sold or offered for sale shall be eligible for a recordation as a first mortgage.

(2) Each mortgage negotiated pursuant to this section must include a mortgagee's title insurance policy or an opinion of title, from an attorney who is

licensed to practice law in this state, on each parcel of land which is described in the mortgage. The policy or opinion shall reflect that there are no other mortgages on the property. A notice stating the priority of the mortgage shall be placed on the face of each mortgage in an amount over $35,000 issued pursuant to this section.

(3) Contracts to purchase a mortgage loan shall contain, immediately above the purchaser's signature line, the statement in 10-point boldface type: "This mortgage is secured by vacant land subject to development at a future time." This statement shall also be typed or printed in 10-point type on the face of the note and mortgage sold.

(4) The most recent assessment for tax purposes made by the county property appraiser of each parcel of land described in the mortgage shall be furnished to each mortgagee.

(5) The mortgage broker shall record or cause to be recorded all mortgages or other similar documents prior to delivery of the note and mortgage to the mortgagee.

(6) All funds received by the mortgage broker pursuant to this section shall promptly be deposited in the broker's trust account where they shall remain until the note and mortgage are fully executed and recorded.

(7) Willful failure to comply with any of the above provisions shall subject the licensee to the penalties of s. 494.05.

History.—s. 3, ch. 77-397.

494.042 Mortgage Brokerage Guaranty Fund.—

(1) Effective September 1, 1977, the Treasurer shall establish a Mortgage Brokerage Guaranty Fund. A fee of $50 per license year shall be added to the license fee for both new licenses and renewal of licenses of a principal mortgage broker, and a fee of $10 per license year shall be added to the license fee for both new licenses and renewal of licenses by solicitors and additional brokers. This fee shall be in addition to the regular license fee and shall be transferred to or deposited in the Mortgage Brokerage Guaranty Fund. If the fund at any time exceeds $750,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $500,000 by disbursement made in accordance with s. 494.044.

(2) The Mortgage Brokerage Guaranty Fund shall be disbursed as provided in s. 494.044, upon approval by the Division of Finance of the Department of Banking and Finance, to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a mortgage broker or mortgage solicitor who was licensed under this chapter at the time the act was committed:

(a) A violation of any provision of this chapter.

(b) Making any false promises likely to influence, persuade, or induce or pursuing a course of misrepresentation or false promises through agents.

(c) Misrepresentation, circumvention, or concealment by the licensee, through whatever subterfuge or device, of any of the material particulars or the nature thereof, regarding a transaction to which he is a party, and of injury to another party thereto.

(d) Failure to disburse funds in accordance with agreements.

(e) Failure to account or deliver to any person any personal property, such as any money, fund, deposit, check, draft, mortgage, or other document or thing of value, which has come into his hands and which is not his property or which he is not in law or equity entitled to retain, under the circumstances and at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(f) Failure to place, immediately upon receipt, any money, fund, deposit, check, or draft entrusted to him by a person dealing with him as a broker, in escrow with an escrow agent located and doing business in this state, pursuant to a written agreement, or to deposit said funds in a trust or escrow account maintained by him with a bank or savings and loan association located and doing business in this state, wherein said funds shall be kept until disbursement thereof is properly authorized.

History.—s. 10, ch. 77-397.

494.043 Conditions for recovery.—Any person shall be eligible to seek recovery from the Mortgage Brokerage Guaranty Fund if:

(1) Such person has received final judgment in a court of competent jurisdiction in this state in any action wherein the cause of action was based on s. 494.042(2);

(2) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(3) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment;

(4) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court;

(5) Such person, at the time the action was instituted, gave notice thereof to the department by certified mail; and

(6) The act for which recovery is sought occurred on or after September 1, 1977.

History.—s. 10, ch. 77-397.

494.044 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 494.043 may apply to the department for payment to be made to such person from the Mortgage Brokerage Guaranty Fund in the amount equal to the unsatisfied portion of such person's

judgment or judgments or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. As to claims against any one mortgage broker or mortgage solicitor, payments shall be made to all persons meeting the requirements of s. 494.043 upon the expiration of 2 years from the date the first notice is received by the department pursuant to s. 494.043(5). Persons who give notice after 2 years from the date the first notice is received may recover up to the remaining portion of any of the $50,000 aggregate, with claims being paid in the order notice is received.

(2) Upon receipt by the claimant of the payment from the Mortgage Brokerage Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department.

(3) Payments for claims shall be limited in the aggregate to $50,000, regardless of the number of claimants involved, against any one mortgage broker or mortgage solicitor. If the total claims exceed the aggregate limit of $50,000, the department shall prorate the payment based on the ratio that the person's claim bears to the total claims filed.

(4) If at any time the money in the Mortgage Brokerage Guaranty Fund is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department.

(5) All payments and disbursements made from the Mortgage Brokerage Guaranty Fund shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate.

(6) The payment of any amount from the Mortgage Brokerage Guaranty Fund in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee.

History.—s. 10, ch. 77-397; s. 1, ch. 79-296; s. 209, ch. 79-400.

494.045 Investments of the fund.—The funds of the Mortgage Brokerage Guaranty Fund shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Mortgage Brokerage Guaranty Fund.

History.—s. 10, ch. 77-397.

494.05 Denial, suspension or revocation of licenses.—

(1) The department may, upon its motion, or upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a licensee under this act, within this state. The license of a licensee may be suspended for a period not exceeding 2 years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of facts showing that the licensee has been guilty of any of the following:

(a) Making any false promises likely to influence, persuade, or induce; or pursuing a course of misrepresentation or false promises through agents or solicitors, or advertising or otherwise.

(b) Misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof, regarding a transaction to which he is a party, and of injury to another party thereto.

(c) Failure to disburse funds in accordance with his agreements.

(d) A crime against the laws of this state or any other state or of the United States, involving moral turpitude or fraudulent or dishonest dealing, or if a final judgment has been entered against him in a civil action upon grounds of fraud, misrepresentation or deceit.

(e) Failure to account or deliver to any person any personal property such as money, fund, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands, and which is not his property, or which he is not in law or equity entitled to retain, under the circumstances, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(f) Failure to place, immediately upon receipt, any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as a broker, in escrow with an escrow agent located and doing business in Florida, pursuant to a written agreement, or, to deposit said funds in a trust or escrow bank account maintained by him with some bank located and doing business in Florida, wherein said funds shall be kept until the mortgage is recorded or the mortgage brokerage fee has been earned on the basis that the lender's commitment has been received by the mortgage broker according to the same terms and conditions contained in the brokerage agreement or otherwise accepted in writing by the mortgagor. The disbursement procedures herein prescribed shall not supersede the requirements of s. 494.041(6).

(g) Failure to comply with any of the provisions of this act, or with any lawful order, rule or regulation made or issued under the provisions of this act.

(h) Conduct which would be the cause for denial of a license.

(i) Insolvency.

(j) Failure to issue a satisfaction of mortgage when the mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when the mortgagor has fully paid the mortgage broker's costs and commission.

(2) The license of a licensee may be revoked, if the application for the license is found to contain a material misstatement, or the licensee demonstrates by a course of conduct negligence or incompetence in performing any act for which he is required to hold a license under this act, or if the licensee for a second time, shall be found guilty of any misconduct which warrants his suspension under subsection (1).

(3) If a licensee is a person other than an individ-

ual, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or members of the licensed corporation, partnership, association or other group, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(4) The department may refuse a license if it determines that an applicant does not meet all requirements of s. 494.04 or has violated any provision of this chapter.

History.—s. 5, ch. 59-309; s. 4, ch. 63-58; s. 5, ch. 63-512; s. 1, ch. 69-267; ss. 12, 35, ch. 69-106; s. 2, ch. 73-209; ss. 4, 11, ch. 77-397; s. 7, ch. 78-95.

494.051 Evidence; examiner's worksheet, investigative reports, other related documents.— In any hearing in which the financial examiner acting under authority of this act is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said financial examiner, after being duly authenticated by said examiner, may be admitted as competent evidence upon the oath of said examiner that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a mortgage broker or other person, conducted pursuant to the authority of this act.

History.—s. 5, ch. 77-397.

494.06 Investigations and complaints; books, accounts, records, etc.—

(1) Every principal broker shall maintain, at the place of business designated in the license certificate, such books, accounts, records and documents of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(2) A licensee operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of the offices, or at any other licensed office maintained by the licensee, upon the filing of a written request with the department designating therein the office at which such control records are maintained.

(3) All books, accounts, records and documents of licensees, including a closing statement signed by the borrower shall be preserved and available for examination by the department for at least 5 years from date of original entry.

(4) The department is authorized to prescribe the minimum information to be shown in the books, accounts, records and documents of licensees so that such records will enable the department to determine compliance with the provisions of this act.

(5) The department may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this act. For such purposes, it may examine the books, accounts, records and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of this act. Examinations conducted under the provisions of this act shall be confidential with the department except as required in the administration, enforcement and prosecution of violations under this act.

(6) Any party having reason to believe that this act has been violated, or that a license is subject to suspension or revocation, may file with the department a written complaint setting forth the details of such alleged violation or grounds for suspension or revocation.

History.—s. 6, ch. 59-309; s. 2, ch. 65-215; ss. 12, 35, ch. 69-106.

494.07 Powers of department.—

(1) The department, or its duly authorized representative, shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any matter over which it has jurisdiction under this act. The department, or its duly authorized representative, shall have power to administer oaths and affirmations to any person.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court having jurisdiction over that person may, upon application and proof of such refusal, make an order awarding process of subpoena duces tecum, for the witness to appear before the department, or its duly authorized representative, and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same or to give testimony or to produce evidence as required thereby, the department may apply to the circuit court having jurisdiction over the person for an attachment against such person.

(4) The department may issue and promulgate such rules and regulations as it may deem necessary in the administration of this act and not inconsistent therewith, which rules and regulations shall have the force and effect of law.

History.—s. 7, ch. 59-309; ss. 12, 35, ch. 69-106.

494.071 Injunction to restrain violations.—

(1) The department may investigate when it shall appear to it, either upon complaint or otherwise, that in the sale, promotion, negotiation, advertisement or hypothecation of mortgage transactions within this state, including any transaction consummated by parties under the provisions of s. 494.03, any person:

(a) Shall have employed, employs, or is about to employ, any device, scheme or artifice to defraud or for obtaining money or property involving a mortgage on real property by means of any false pretense, representation or promise; or

(b) Shall have made, makes, or attempts to make in this state fictitious or pretended loan commit-

ments or fraudulently accepts a deposit for a mortgage loan commitment; or

(c) Shall have engaged in, engages in, or is about to engage in any practice or transaction or course of business relating to the purchase or negotiation of a mortgage loan:

1. Which is in violation of the law; or
2. Which is fraudulent; or
3. Which has operated or which would operate as a fraud on the mortgagor or mortgagee.

(d) Is acting as broker or solicitor within this state without being duly registered as such broker or solicitor as provided in this chapter.

(2) Whenever any such person has engaged or is engaged or is about to engage in any of the practices or transactions which would be fraudulent and inconsistent with the intent of this chapter, or acts in violation of this chapter, or is acting as a broker or solicitor without being duly registered as provided in this chapter, the department may, in addition to any other remedies, by its own counsel bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this chapter, to enjoin such person from continuing such fraudulent practices or engaging therein or doing any act in furtherance thereof or in violation of this chapter.

(3) In any such court proceedings, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the production of documents, books and records that may appear necessary for the hearing of such petition, and the appearance of any defendant and his employees, solicitors or agents to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action the equity courts shall have jurisdiction of the subject matter and a judgment may be entered awarding such injunction as may be proper.

History.—s. 3, ch. 65-215; ss. 12, 35, ch. 69-106; s. 12, ch. 77-397.

494.072 Cease and desist orders; refund orders; administrative fines.—

(1) The department may issue and serve upon any mortgage broker a complaint stating charges whenever the department has reason to believe that the mortgage broker is violating or has violated any provision of this act.

(2) The department is authorized to issue a cease and desist order against any mortgage broker who is violating or has violated the provisions of this act. All procedural matters relating to issuance and enforcement of the cease and desist order shall be in accordance with the Administrative Procedure Act.

(3) The department may order the refund of any amounts assessed and charged on a mortgage loan transaction which exceeds the maximum fees and commissions provided by s. 494.08(4). Such order shall be issued in accordance with the procedural requirements of the Administrative Procedure Act. If the broker fails or refuses to comply with such order within 15 days after notice of the entry thereof, such failure or refusal shall constitute a violation of this chapter. The aforesaid remedies are in addition to any other legal remedies provided by law in such cases.

(4) The department may impose an administrative fine not to exceed $1,000 against any person found to have violated any cease and desist order of the department. All fines collected under this section shall be paid to the regulatory trust fund under the Division of Finance of the department.

History.—s. 6, ch. 77-397.

494.08 Requirements and prohibitions.—

(1) No person shall advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or broadcast, in any manner, any statement or representation with regard to the rates, terms or conditions pertaining to the making, negotiating, or sale of loans, which is false, misleading, or deceptive. No person who is not licensed under this act nor exempt under s. 494.03 shall use the word mortgage or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that he arranges real estate mortgage loans. No person not already registered under this act shall be granted a license in a name containing such words as insured, bonded, guaranteed, secured and the like. No person shall advertise or offer to sell insured or guaranteed mortgages unless the principal and interest of such mortgages is insured by an insurance company authorized by the Department of Insurance to write such insurance under the provisions of chapter 635, or unless such mortgages are wholly or partially insured or guaranteed by an agency of the Federal Government.

(2) No person in connection with or incidental to the making of any mortgage loan shall induce, require or permit the mortgage deed or note to be signed by a principal to the transaction if such instruments contain any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not then available.

(3) No person shall charge or exact directly or indirectly from the mortgagor a fee or commission in excess of the maximum fees or commissions as set forth herein. The maximum fees or commissions which may be charged for any mortgage loans shall be as follows:

(a) On mortgage loans of $1,000 or less: $250.

(b) On mortgage loans in excess of $1,000 and not more than $2,000: $250 for the first $1,000 of the mortgage loan, plus $10 for each additional $100 of the mortgage loan.

(c) On mortgage loans in excess of $2,000 and not more than $5,000: $350 for the first $2,000 of the mortgage loan, plus $10 for each additional $100 of the mortgage loan.

(d) On mortgage loans in excess of $5,000: $250 plus 10 percent of the entire mortgage loan.

For the purpose of determining maximum fees or commissions, the amount of the mortgage loan shall be based on the proceeds of said mortgage loan exclusive of the authorized maximum fees or commissions.

(4)(a) No unlicensed person shall charge or receive any commission, bonus or fee in connection

with arranging for, negotiating, selling, or purchasing a mortgage loan.

(b) No licensed broker or solicitor shall pay any commission, bonus or fee in connection with arranging for, negotiating, selling, or purchasing a mortgage loan to any person operating in Florida not licensed under the provisions of this act.

(5) No person shall accept a deposit or application for a mortgage loan without delivering to the borrower a statement in writing setting forth the total maximum costs to be charged, incurred, or disbursed in connection with processing and closing the mortgage loan.

(6) Mortgage loans insured or guaranteed by an agency of the Federal Government are exempt from the provisions of subsection (3).

(7) Each mortgage negotiated pursuant to this chapter shall include, with a copy delivered to the lender, a mortgagee's title insurance policy or an opinion of title from an attorney who is licensed to practice law in this state, unless waived in writing by the lender, on the land which is described in the mortgage. The policy or opinion shall reflect the priority of the mortgage.

(8) Each mortgage or instrument securing a note shall, unless waived in writing by the lender, be recorded before being delivered to a permanent lender.

(9) Each mortgage or instrument securing a note delivered to a lender on other than a first mortgage shall be accompanied by a statement showing the balance owed by the mortgagor on any existing mortgages prior to this investment and the status of such existing mortgages. The provisions of this subsection shall not apply to mortgages insured by an agency of the Federal Government.

History.—s. 8, ch. 59-309; ss. 5, 6, ch. 63-58; s. 4, ch. 65-215; s. 1, ch. 67-503; ss. 13, 35, ch. 69-106; ss. 7, 13, ch. 77-397; s. 2, ch. 79-296; s. 210, ch. 79-400.

494.081 Fees and charges not deemed interest or finance charge.—

(1) All fees and charges authorized by this act and received by a mortgage broker or mortgage solicitor licensed under this act shall not be deemed as interest or finance charges, but a licensed broker lending its own funds shall be subject to the provisions of chapter 687. A licensed mortgage broker who lends the funds of an affiliate lender shall not be deemed to be in violation of chapter 687 unless the department determines that the purpose of such action is designed to avoid the provisions of chapter 687. The department shall adopt rules for this section.

(2) When a mortgage broker or mortgage solicitor lends his own funds and charges the fees or commissions authorized by this act, those fees or commissions shall not be considered interest for the purposes of chapter 687 if such mortgage broker or mortgage solicitor assigns the loan to another lender within 90 days from the date the loan was made. Upon request, a licensee shall furnish to the department a written statement of ownership to determine compliance with this subsection.

History.—s. 8, ch. 77-397; s. 3, ch. 79-296; s. 211, ch. 79-400.

494.09 Applicability of act.—Failure to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, and no person acquiring a mortgage loan, as mortgagee or assignee, shall be required to ascertain whether or not the provisions of this act have been complied with.

History.—s. 9, ch. 59-309.

494.091 Liability in case of unlawful transaction.—In the event a mortgage transaction is made in violation of any of the provisions of this chapter, the person making the transaction and every director, officer, or agent who has personally participated in making the transaction shall be jointly and severally liable to the lender in an action for damages incurred by the lender.

History.—s. 14, ch. 77-397.

494.092 Statutory or common law remedies.—Nothing in this chapter shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business, or the right of the state to punish any person for any violation of any law.

History.—s. 14, ch. 77-397.

494.093 Prohibited practices.—It is unlawful, and a violation of the provisions of this chapter, for any person:

(1) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage transactions, including any transaction consummated by parties under the provisions of s. 494.03, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud.

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan.

(2) In any matter within the jurisdiction of the department, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, or make any false or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false or fraudulent statement or entry.

History.—s. 14, ch. 77-397.

494.10 Penalties.—

(1) Whoever violates any of the provisions of this chapter, except as provided in subsection (2), is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each violation of this chapter shall constitute a separate offense.

(2) Whoever violates any provision of s. 494.093, fails to comply with the requirements of s. 494.05(1)(f), or offers to negotiate a mortgage loan for compensation without being licensed as required by this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 10, ch. 59-309; s. 449, ch. 71-136; s. 15, ch. 77-397.

494.11 Waiver.—Any waiver of the provisions of this act shall be unenforceable and void.

History.—s. 11, ch. 59-309.

cf.—s. 494.08(7) and (8) Written waiver by lender.

CHAPTER 495

REGISTRATION OF TRADEMARKS AND SERVICE MARKS

495.011 Definitions.—As used in this chapter:

(1) "Trademark" means any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) "Service mark" means any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.

(3) "Certification mark" means a trademark or service mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) "Collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

(5) Unless the context otherwise requires, "mark" means any trademark, service mark, certification mark or collective mark.

(6) "Trade name" means any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify his business, vocation or occupation and to distinguish it from the business, vocation or occupation of others.

(7) "Person" means any individual, firm, partnership, corporation, association, union or other organization.

(8) "Applicant" embraces the person filing an application for registration of a mark under this chapter, his legal representatives, successors or assigns.

(9) "Registrant" embraces the person to whom the registration of a mark under this chapter is issued, his legal representatives, successors or assigns.

(10) "Related company" means any person who legitimately controls or is controlled by the registrant or owner of the mark in respect to the nature and quality of the goods or services in connection with which the mark is used.

(11) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, and a service mark shall be deemed to be "used" in this state when it is used or displayed in the sale or advertising of services in this state or in connection with services rendered in this state.

History.—s. 1, ch. 67-58.

495.021 Registrability.—

(1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of, comprises or includes immoral, deceptive or scandalous matter; or

(b) Consists of, comprises or includes matter which may disparage or falsely suggest a connection with persons, living or dead, corporations, firms, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(c) Consists of, comprises or includes the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) Consists of, comprises or includes the name, signature or portrait of any living individual, except with his written consent; or

(e) Consists of a mark which:

1. When applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or

2. When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them or their source or origin, or

3. Is primarily merely a surname, provided, however, that nothing in this paragraph shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services in this state or elsewhere.

The Department of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for 1 year next preceding the date of the filing of the application for registration; or

(f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Subject to the provisions relating to the regis-

tration of trademarks and service marks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks and service marks, by persons, and nations, states, municipalities, and the like, exercising control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks and service marks. The Department of State may establish a separate register for such collective marks and certification marks.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.031 Application for registration.—

(1) Subject to the limitations set forth in this chapter, any person who adopts and uses a trademark or service mark in this state may file with the Department of State, on a form to be furnished by the department, an application for registration of that trademark or service mark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration, and, if a corporation, the state of incorporation;

(b) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class or classes in which such goods or services fall;

(c) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business or a related company of the applicant or his predecessor; and

(d) A statement that the applicant is the owner of the mark and that no other person except a related company has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or confuse or to be mistaken therefor.

(2) Every applicant for registration of a certification mark in this state shall file with the Department of State, on a form to be furnished by the department, an application setting forth, but not limited to, the following information:

(a) The information required by subsection (1)(a);

(b) The date when the certification mark was first used anywhere and the date when it was first used in this state under the authority of the applicant;

(c) The manner in which and the conditions under which the certification mark is used in this state; and

(d) A statement that the applicant is exercising control over the use of the mark, that he is not himself engaged in the production or marketing of the goods or services to which the mark is applied, and that no person except the applicant or persons authorized by the applicant, or related companies thereof, has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or confuse or to be mistaken therefor.

(3) Every applicant for registration of a collective mark in this state shall file with the Department of State, on a form to be furnished by the department, an application setting forth, but not limited to, the following information:

(a) The information required by subsection (1)(a) and (b);

(b) The date when the collective mark was first used anywhere and the date when it was first used in this state by any member of the applicant or a related company of such member;

(c) The class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark; and

(d) A statement that no person except the applicant or members of the applicant, or related companies thereof, has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or confuse or to be mistaken therefor.

(4) Every application under this section shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation, association, union or other organization applying.

(5) Every application under this section shall be accompanied by a specimen or facsimile of such mark in triplicate.

(6) Every application under this section shall be accompanied by a filing fee of $15, payable to the Department of State, for each class of goods or services as specified in s. 495.111, in connection with which the mark is used.

History.—s. 1, ch. 67-58; s. 1, ch. 67-560; ss. 10, 35, ch. 69-106; s. 5, ch. 71-114.

495.041 Use by related companies.—Where a mark registered or unregistered is or may be used legitimately by related companies, such use shall inure to the benefit of the owner of the mark, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.

History.—s. 1, ch. 67-58.

495.051 Disclaimers.—

(1) The Department of State may require the applicant for registration to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(2) No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.061 Certificate of registration.—

(1) Upon compliance by the applicant with the requirements of this chapter, the Department of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark in this state, the

date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class or classes of goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(2) Any certificate of registration issued by the Department of State under the provisions hereof or a copy thereof duly certified by the Department of State shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state, and shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.071 Duration and renewal.—

(1) Registration of a mark hereunder shall be effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, on a form to be furnished by the Department of State, the registration may be renewed for a like term. A renewal fee of $15 for each class of goods or services with respect to which such renewal is sought, payable to the Department of State, shall accompany the application for renewal of the registration.

(2) A mark registration may be renewed for successive periods of 10 years in like manner.

(3) The Department of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last known address of the registrants.

(4) Any registration in force on the date on which this chapter shall become effective shall be effective for a term of 10 years from the date of the registration or of the last renewal thereof or 1 year after the effective date of this chapter, whichever is later, and may be renewed by filing an application with the Department of State on a form furnished by it and paying the aforementioned renewal fee therefor within 6 months prior to the expiration of the registration.

(5) All applications for renewals under this chapter shall include a statement that the mark is still in use in this state, or that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

History.—s. 1, ch. 67-58; s. 2, ch. 67-560; ss. 10, 35, ch. 69-106; s. 6, ch. 71-114.

495.081 Assignment.—Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Department of State upon the payment of a fee of $15, payable to the Department of State which, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless such assignment is recorded with the Department of State within 3 months after the date thereof or at any time after the expiration of such three month period, unless an assignment given in connection with any subsequent purchase is recorded with the Department of State prior to or within 10 days after such assignment is recorded.

History.—s. 1, ch. 67-58; s. 3, ch. 67-560; ss. 10, 35, ch. 69-106; s. 7, ch. 71-114.

495.091 Records.—The Department of State shall keep for public examination a record of all marks registered or renewed under this chapter.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.101 Cancellation.—The Department of State shall cancel from the register:

(1) After 1 year from the effective date of this chapter, all registrations under prior laws which are more than 10 years old and not renewed in accordance with this chapter.

(2) Any registration concerning which the Department of State shall receive a voluntary request for cancellation thereof from the registrant.

(3) All registrations granted under this chapter and not renewed in accordance with the provisions hereof.

(4) Any registration concerning which a court of competent jurisdiction shall find that:

(a) The registered mark has been abandoned;

(b) The registrant of a trademark or service mark is not the owner of the mark;

(c) The registration was granted improperly;

(d) The registration was obtained fraudulently,

(e) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled;

(f) In the case of a certification mark, that the registrant does not control or is not able to exercise control over the use of such mark; or engages in the production or marketing of any goods or services to which the certification mark is applied; or permits the use of the certification mark for purposes other than to certify; or discriminately refused to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.111 Classification.—

(1) The following general classes of goods and services are established for convenience of administration of this chapter:

(a) Goods:

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipments, portfolios, and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments, and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steamfitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Paints and painter's materials.
17. Tobacco products.
18. Medicines and pharmaceutical preparations.
19. Vehicles.
20. Linoleum and oilcloth.
21. Electrical apparatus, machines, and supplies.
22. Games, toys and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
26. Measuring and scientific appliances.
27. Horological instruments.
28. Jewelry and precious metalware.
29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus.
35. Belting, hose, machinery packing, and nonmetallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
39. Clothing.
40. Fancy goods, furnishings and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted and textile fabrics, and substitutes therefor.
43. Thread and yarn.
44. Dental, medical and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.
51. Cosmetics and toilet preparations.
52. Detergents and soaps.

(b) Services:

100. Miscellaneous.
101. Advertising and business.
102. Insurance and financial.
103. Construction and repair.
104. Communication.
105. Transportation and storage.
106. Material treatment.
107. Education and entertainment.

(2) The establishment of the classes of goods and services set forth in subsection (1) is not for the purpose of limiting or extending the rights of the applicant or registrant. A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in one or more of the classes listed, but in the event that a single application includes goods or services in connection with which the mark is being used which fall within different classes of goods or services, a fee equaling the sum of the fees for registration in each class shall be payable.

History.—s. 1, ch. 67-58.

495.121 Fraudulent registration.—Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark with the Department of State under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, and for punitive or exemplary damages, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

History.—s. 1, ch. 67-58; ss. 10, 35, ch. 69-106.

495.131 Infringement.—Subject to the provisions of s. 495.161, any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter on any goods or in connection with the sale, offering for sale, distribution or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale, offering for sale, distribution or advertising in this state of goods or services;

Shall be liable in a civil action by the owner of such registered mark for any or all of the remedies provided in s. 495.141, except that under subsection (2) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

History.—s. 1, ch. 67-58.

495.141 Remedies.—

(1) Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court

deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale and to pay the costs of the action; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty.

(2) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

History.—s. 1, ch. 67-58.

495.151 Injury to business reputation; dilution.—Every person, association, or union of workingmen adopting and using a mark, trade name, label or form of advertisement may proceed by suit, and all courts having jurisdiction thereof shall grant injunctions, to enjoin subsequent use by another of the same or any similar mark, trade name, label or form of advertisement if it appears to the court that there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services.

History.—s. 1, ch. 67-58.

495.161 Common law rights.—Nothing herein shall adversely affect or diminish the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

History.—s. 1, ch. 67-58.

495.171 Effective date; repeal of prior acts.—This chapter shall be in force and take effect October 1, 1967, after its enactment, but shall not affect any suit, proceeding or appeal then pending. Former ss. 495.01-495.14 are repealed on the effective date of this act, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this chapter takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.

History.—s. 1, ch. 67-58.

CHAPTER 496

SOLICITATION OF FUNDS

PART I SOLICITATION OF CHARITABLE FUNDS
(ss. 496.01-496.132)

PART II SOLICITATION OF LAW ENFORCEMENT FUNDS
(ss. 496.20-496.34)

PART I

SOLICITATION OF CHARITABLE FUNDS

[1]**496.01 Short title.**—This act shall be known and may be cited as the "Solicitation of Charitable Funds Act."

History.—s. 1, ch. 65-218; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**496.02 Definitions.**—As used in this part:

(1)(a) "Charitable organization" means a group which is or holds itself out to be a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization or any person who solicits or obtains contributions solicited from the public for charitable purposes after the effective date of this chapter. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state shall be a charitable organization for the purposes of this chapter.

(b) This definition shall not be deemed to include bona fide religious institutions which are defined and limited as follows:

1. "Religious institutions" means churches, ecclesiastical or denominational organizations, or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and shall also include those bona fide religious groups which do not maintain specific places of worship.

2. "Religious institutions" shall also include such separate groups or corporations which form an integral part of those institutions described in subparagraph 1. which are exempt from federal income tax as exempt organizations under the provision of s. 501(c)(3) of the Internal Revenue Code of 1954, or of a corresponding section of any subsequently enacted Federal Revenue Act, and which are not primarily supported by funds solicited outside its own membership or congregation.

(2) "Contributions" means the donation, promise, or grant of any money or property of any kind or value, except money or property received from any governmental authority.

(3) "Solicit" and "solicitation" mean the request directly or indirectly for money, credit, property, financial assistance, or other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value will be used for a charitable purpose as those purposes are defined in this section, and include the following methods of securing such money, credit, property, financial assistance, or other thing of value:

(a) Any oral or written request.

(b) The making of any announcement to the local press, over the radio or television, or by telephone or telegraph, concerning a local appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith.

(c) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other local publication which directly or by implication seeks to obtain public support.

(d) The sale of, offer of, or attempt to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable purpose, or when the name of any charitable person is used or referred to in such an appeal as an inducement or reason for making any such sale, or when, in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

Solicitation shall be deemed to have taken place when the request is made, whether or not the person making the request receives any contribution.

(4) "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social

welfare, arts and humanities or civic and public interests.

(5) "Income" means the gross amount of contributions received from the public by an organization during its fiscal year.

(6) "Federated fundraising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(7) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination of them.

(8) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person; however, no agent, servant, or employee of a professional solicitor shall be deemed to be a professional solicitor. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional solicitor. However, any bona fide salaried officer or employee of a charitable organization that engages in the solicitation of contributions in any manner for more than one charitable organization shall be deemed a professional solicitor. No attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization shall be deemed, as a result of such advice, to be a professional solicitor.

(9) "Parent organization" means that part of a charitable organization which coordinates, supervises, or exercises control over policy, fundraising, or expenditures, or assists or advises one or more chapters, branches, or affiliates in the state.

(10) "Gross contributions" and "cost of fundraising" shall be determined in accordance with a recognized uniform system of accounting which shall be prescribed or approved by the department.

History.—s. 2, ch. 65-218; s. 1, ch. 67-205; s. 1, ch. 74-332; s. 1, ch. 76-162; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.021 Powers and duties of the Department of State.—

(1) The Department of State is hereby vested with the power, jurisdiction, and authority to issue, deny, suspend, and revoke certificates to organizations which obtain contributions solicited from the public for charitable purposes and to professional solicitors who, for financial or other consideration, solicit contributions for, or on behalf of, a charitable organization. The department shall have the power, jurisdiction, and authority to promulgate reasonable rules and regulations pursuant to chapter 120, to prescribe forms for registration or other purposes, to make effective such rules, regulations, and procedures, and, when necessary, to hold hearings and make adjudications as provided in this part and make recommendations to the appropriate prosecuting attorney for enforcement of this part.

(2) In addition to the authority granted the department by this part, it may commence and maintain in a court of competent jurisdiction all proper and necessary actions and proceedings to enjoin and abate any act prohibited by this part.

(3) The department shall make such individual investigations of all applicants for certificates of registration as it may deem necessary.

(4) All financial records of any professional solicitor or charitable organization which records pertain to the solicitation and expenditure of contributions received shall, upon demand, be available to the department for inspection and investigation. However, names, addresses, and identities of contributors and amounts contributed by them shall be exempt from the provisions of s. 119.07(1), the public records law; shall not be disclosed by the department; and shall be removed from the records and the custody of the department at such time that such information is no longer necessary for the enforcement of this part and shall not be disclosed by the department.

(5) The Department of State may enter into reciprocal agreements with the appropriate federal or state authority for the purpose of exchanging information with respect to charitable organizations. Pursuant to such agreements, the Department of State may accept information filed by a charitable organization with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this part, if such information is substantially similar to the information required under this part. The Department of State shall also grant exemption from the requirement for the filing of annual registration statement to charitable organizations organized under the laws of another state having their principal place of business outside the state whose funds are derived principally from sources outside the state and which have been granted exemption from the filing of registration statements by the state under whose laws they are organized if such state has a statute similar in substance to the provisions of this part.

(6) For purposes of enforcing the provisions of this part and in making investigations relating to any violation thereof, for purposes of investigating the character, competence, or integrity of any organization, and for purposes of investigating practices and business methods thereof, the department shall have the power to subpoena and bring before it any person in the state and may require the production of any papers it deems necessary and administer oaths and take depositions of any such person so subpoenaed. Failure or refusal of any person duly subpoenaed to be examined or to answer any legal or pertinent question as to such organization under investigation shall be grounds for revocation of a certificate or refusal to issue such certificate as the case may be. The testimony of witnesses in any such proceeding shall be under oath before the department or its agent, and any person who willfully swears

falsely in such proceedings shall be subject to the penalties for perjury.

History.—s. 2, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 55, ch. 78-95; s. 2, ch. 78-229.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.03 Registration of charitable organizations.—

(1) Every charitable organization which intends to solicit contributions within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration application with the Department of State upon forms prescribed by it. The registration application shall contain the following information:

(a) The name of the organization and the purpose for which it was organized.

(b) The principal address of the organization and the address of any offices in this state; if the organization does not maintain an office, the name and address of the person having custody of its financial records.

(c) The names and addresses of any chapters, branches, or affiliates in this state.

(d) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.

(e) The names and addresses of the officers, directors, trustees, and the principal salaried executive staff officer.

(f) A copy of a financial statement prepared pursuant to a recognized uniform system of accounting which shall be prescribed or approved by the department, audited with an opinion from an independent certified public accountant, and covering complete disclosure of all the fiscal activities of the charitable organization during the preceding year. Such report shall also specifically identify the amount of funds raised and all costs and expenses incidental thereto, all publicity costs, and costs of allocation or disbursement of funds raised. Any governmental organization may file a copy of the Auditor General's report or a similar report approved by a governmental agency in lieu of a financial statement and audit with an opinion from a certified public accountant. Any charitable organization that does not actually raise or receive contributions from the public in excess of $25,000 in gross receipts during the organization's fiscal year may submit the information on forms approved by the Department of State in a statement signed by an authorized officer, verified under oath, and attested to by the chief fiscal officer of the organization. Such statement shall be in lieu of an audit by an independent certified public accountant.

(g) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.

(h) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.

(i) The general purpose or purposes for which the contributions to be solicited shall be used.

(j) The cost of fundraising incurred or anticipated to be incurred by the organization, including a breakdown of all expenses and a statement of such costs as a percentage of contributions received.

(k) The name or names under which it intends to solicit contributions.

(l) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.

(m) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.

(2) Except as otherwise herein provided, the registration forms and any other documents prescribed or approved by the Department of State shall be signed by an authorized officer and by the chief fiscal officer of the charitable organization, and such forms and documents shall be verified under oath and shall be accompanied by the registration fee of $10 from an organization with an annual income of less than $25,000, or $50 from an organization with an annual income of $25,000 or more.

(3) Upon approval of the registration application by the department, the department shall issue a certificate of registration to the applicant.

(4) It shall be the duty of every charitable organization to ensure that persons who solicit contributions from the public on behalf of the charitable organization have proper identification. Professional solicitors and their employees shall be required to have and produce or display, on demand, identification indicating that the said solicitor has been duly authorized by the organization for which he is soliciting. Such identification shall include, but not be limited to, the name of the holder of the identification and the name and number of the certificate of the charitable organization, if applicable.

(5) A chapter, branch, affiliate, or independent member, upon mutual agreement with the parent organization or federated fundraising organization, may report all of the required information to its parent organization or to the federated fundraising organization with which it is affiliated, which shall then transmit such information as to its affiliates, branches, chapters, or independent members to the Department of State along with its own statement. In addition, a list of officers and directors shall be filed, along with the necessary financial statement or audit with an opinion by a certified public accountant. However, each chapter, branch, affiliate, or independent member choosing to report separately the information required herein, or filing late, shall be required to pay a fee, in accordance with subsection (2). However, the chapter, branch, affiliate, or independent member shall have final responsibility for having all required information properly reported to the department.

(6) Every charitable organization shall pay a registration fee unless otherwise exempt by this chapter. A parent organization filing the registration statements of one or more of its chapters, branches, or affiliates along with its own statement, and a federated fundraising organization filing the statements of one or more of its independent member agencies along with its own statement shall pay the appropriate registration fee. However, when a chapter,

branch, or affiliate of a parent organization or an independent member agency of a federated fundraising organization solicits or receives contributions from any source other than the parent organization, federated fundraising organization, or a government agency, which contributions are not reported through a parent organization, such organization shall be required to register independently and pay its own filing fee, unless otherwise exempt by this part.

(7) An original application submitted by any organization shall be accompanied by a $10 charge to defray the administration cost. Each chapter, branch, affiliate, or member organization of a parent organization or federated fundraising organization shall also pay this single $10 original application fee.

(8) Any organization, chapter, branch, affiliate, or member organization contracting with a professional solicitor shall report the agreement in writing, with a copy of the contract, to the department within 10 days of the contract agreement and shall have the approval of the department prior to making any solicitations. In addition, any chapter, branch, affiliate, or member organization of a parent organization or federated fundraising organization shall file for renewal separately from the parent organization or federated fundraising organization when contracting with a professional solicitor. The affiliate shall also pay a separate registration fee and file a financial statement or audit with opinion as prescribed herein.

(9) Each charitable organization shall file all information required by this part with the Department of State within 6 months of the close of its fiscal year. The last day of the 6th month following the month in which the fiscal year of the organization ends shall be the anniversary date of the organization. All certificates of registration shall expire each year on the anniversary date of the organization. Each annual registration application shall be received by the department on or before the anniversary date.

(10) Any organization failing to renew its registration by the time of the expiration thereof shall be automatically suspended from the right to operate under the provisions of this part until the registration is renewed. All renewals of registration shall be made in the same manner and upon payment of the same fee as an original registration.

History.—s. 3, ch. 65-218; s. 2, ch. 67-205; ss. 10, 35, ch. 69-106; s. 3, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-229; s. 142, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.04 Exemptions from registration and from registration fees.—

(1) A charitable organization shall be exempt from the registration provisions of this part if it does not receive contributions from more than 10 persons, all of its functions, including fundraising activities, are carried on by persons who are unpaid for their services, and no part of the organization's assets or income inures to the benefit of or is paid to any officer or member; or if the solicitation occurs only within the membership of the organization by members thereof; or if it does not raise or receive contributions from the public in excess of $4,000 during its annual reporting period. Nevertheless, if the contributions raised from the public are in excess of $4,000, the charitable organization shall, within 30 days after the date it shall have received total contributions in excess of $4,000, register with and report to the Department of State as required by this part. Any such exempt charitable organization shall lose such exemption when it employs a professional solicitor. Nevertheless, such organization shall maintain such records as necessary to prove that the organization qualifies for such exemption. Upon demand, such records shall be made available to the department or an appropriate prosecuting attorney for inspection. However, names, addresses, and identities of contributors and amounts contributed by them shall be exempt from the provisions of s. 119.07(1), the public records law; shall not be disclosed by the department; shall be removed from the records and the custody of the department at such time that such information is no longer necessary for the enforcement of this part; and shall not be disclosed by the department.

(2) All little league baseball organizations affiliated with the parent organization which holds a certificate of federal charter as enacted by the Congress of the United States under Pub. L. No. 88-378 shall be exempt from the registration fee provisions of this part.

(3) Every scholarship fund which solicits and raises funds solely for the purpose of providing scholarships shall be exempt from the registration fees provided for in this part if all of the fund's functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of the organization's assets or income inures to the benefit of, or is paid to, any officer or member.

History.—s. 4, ch. 65-218; s. 4, ch. 67-205; ss. 10, 35, ch. 69-106; s. 5, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-229; s. 1, ch. 78-320; s. 1, ch. 79-277.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.045 Registration of professional solicitors.—

(1) No person shall act as a professional solicitor for a charitable organization subject to the provisions of this part unless he has first registered with the Department of State and received a certificate of registration. Application for registration shall be in writing under oath or affirmation in the form prescribed by the Department of State and contain such information as the Department of State may require. No person who has been convicted within the past 5 years for a violation of any part of this part and no person convicted of a felony in this or any other state shall be eligible for a certificate of registration or serve as an employee, member, officer, or agent of any professional solicitor until his civil rights have been restored.

(2) Every person shall, before being employed within this state by a professional solicitor for the purpose of making, supervising, or participating in any solicitation, make application to the Department of State for a certificate as an employee. However, no such application is required for employees making only telephone solicitations if such solicitations are made under the direct supervision of a professional solicitor who has a current certificate of

registration or an employee who holds a current certificate as an employee. Such application shall be in the same manner and shall require the same qualifications as set forth in subsection (1). The annual fee for an employee certificate shall be $10. If the Department of State declines to issue the certificate to such employee, the employment of such person shall be terminated.

(3) The applicant for registration as a professional solicitor shall, at the time of making application, file with and have approved by the Department of State, a bond in which the applicant shall be the principal obligor in the sum of $10,000 with one or more sureties, satisfactory to the Department of State, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall be payable to the State of Florida for the use of the Department of State and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance, or misfeasance in the conduct of solicitation activities. An individual, partnership or corporation, which is a professional solicitor, may file a consolidated bond on behalf of all its members, officers, and employees.

(4) The annual registration fee for every person who is a professional solicitor in this state shall be $500. The annual registration shall expire at midnight on December 31 of each year.

History.—s. 3, ch. 67-205; ss. 10, 35, ch. 69-106; s. 4, ch. 74-332; s. 2, ch. 76-162; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 496.031.

[1]496.05 Approval of registration.—The Department of State shall examine each application, and if it finds it to be in conformity with the requirements of this part and all relevant rules and regulations, it shall approve the registration.

History.—s. 5, ch. 65-218; s. 6, ch. 67-205; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 55, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.06 Limitation on activities of charitable organization.—No charitable organization subject to this part shall expend funds raised for charitable purposes for noncharitable purposes.

History.—s. 6, ch. 65-218; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.09 Records to be kept by charitable organizations.—Every charitable organization subject to the provisions of this part shall, in accordance with the rules and regulations prescribed by the Department of State, keep true fiscal records, including, but not limited to, all income and expenses, within the purview of this part, as to its activities in Florida as may be covered by this part in such form as will enable it accurately to provide the information required by this part. Upon demand, such records shall be made available to the Department of State or an appropriate prosecuting attorney for inspection. However, names, addresses, and identities of contributors and amounts contributed by them shall be exempt from the provisions of s. 119.07(1), the public records law; shall not be disclosed by the department; shall be removed from the records and the custody of the department at such time that such information is no longer necessary for the enforcement of this chapter; and shall not be disclosed by the department. Such records shall be retained for a period of at least 3 years after the end of the period of registration to which they relate.

History.—s. 9, ch. 65-218; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.095 Information filed to become public records.—Except as otherwise provided in this part, registration statements and applications, reports, and all other documents and information required to be filed under this part or by the Department of State shall become public records in the office of the Department of State, and shall be open to the general public for inspection at such times and under such conditions as the Department of State may prescribe. In addition, after approval and renewal of certificates, the department shall, upon request, send to any appropriate agency a supplemental list of registrants under this part.

History.—s. 8, ch. 65-218; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 496.08.

[1]496.105 Nonresident charitable organizations, designation of Secretary of State as agent for service of process; notice of such service to organization.—

(1) Any charitable organization or professional solicitor which has its principal place of business without the state, or which is organized under and by virtue of the laws of a foreign state, and which solicits contributions from people in this state, shall be subject to the provisions of this chapter and shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this part.

(2) Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at the capitol in Tallahassee. Such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent to such charitable organization or professional solicitor by registered or certified mail with return receipt requested at its office, as set forth in the registration form required to be filed with the Department of State pursuant to this part or, in default of the filing of such forms, at the last address known.

History.—s. 12, ch. 65-218; s. 8, ch. 67-205; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-229; s. 143, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]496.11 Prohibited acts.—

(1) No organization subject to the provisions of this part shall use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state; provided, however, that the use of the following statement shall not be deemed a prohibited exploitation: "Registered with the Florida Department of State as required by law. Registration does not imply endorsement of a public solicitation for contribution."

(2) No person shall, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(3) No person shall in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such person has not given written consent to the use of his name for these purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign.

(4) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(5) No professional solicitor or his agent, servant, or employee, or any other person shall solicit in the name of or on behalf of any charitable organization unless:

(a) Such solicitor has first obtained written authorization of two officers of such organization on a form approved by the Department of State, a copy of which authorization shall be filed with the Department of State. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed 1 year from the date issued.

(b) Such solicitor or his agent, servant, or employee carries such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or other law enforcement officials or agents of the Department of State, or, if such solicitations are made by telephone, such solicitor has, in his application for registration required pursuant to s. 496.045(1), expressly stated his intention to make telephone solicitations and has attached to the application the proposed text of any such telephone solicitations and all such solicitations are made substantially in accordance with the proposed text. Professional solicitors shall also submit a copy of any literature or written material used in solicitation.

(c) Prior to beginning any solicitation, such professional solicitor has filed with the Department of State a true copy of any written agreement or contract which may have been entered into between a charitable organization and the professional solicitor. If the agreement or contract is not in writing, a written statement of the agreement setting forth the terms and conditions of the agreement, including the solicitor's compensation, shall be filed with the Department of State within 10 days after the contract agreement and prior to beginning any solicitation. Within 24 hours after any change, modification, or termination of any agreement, notice of such change, modification, or termination shall be filed with the Department of State along with a true copy of any written change or modification or a statement in writing setting forth the terms and conditions of any change or modification not in writing.

(6) No person shall use the words "charity" or "charitable" as a part of its name, unless licensed or exempt under this part.

(7) A professional solicitor or his agent, servant, or employee shall not solicit any person for a charitable contribution without identifying himself as a professional solicitor or his agent, servant, or employee to the person so solicited.

(8) A professional solicitor's total fee shall not be in excess of 25 percent of the gross contributions which he solicits; all fundraising costs shall be included in such gross contributions.

(9) No person shall, in connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name "POLICE," "LAW ENFORCEMENT," "FIREFIGHTER," or "FIREMEN," unless properly authorized by a bona fide police, law enforcement, or firefighter organization or police or fire department or law enforcement agency. Such authorization must bear the signatures of two bona fide members of the organization, department, or agency.

History.—s. 11, ch. 65-218; s. 7, ch. 67-205; ss. 10, 35, ch. 69-106; s. 7, ch. 74-332; s. 3, ch. 76-162; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 10, 13, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.13 Enforcement and penalties.—

(1) No charitable organization or professional solicitor which fails to file any registration application, statement, report, or other information required to be filed with the Department of State under this part as a prerequisite to registration shall engage in any of the activities permitted duly registered persons or organizations under the provisions of this part. No organization or professional solicitor shall engage in charitable solicitation without a current registration certificate.

(2) The Department of State, upon its own motion or upon complaint of any person, may, if it has reasonable ground to suspect a violation, investigate

any charitable organization or professional solicitor to determine whether such person or organization, or any agent, servant, or employee thereof, has violated the provisions of this part or has filed any application or other information required under this part which contains false or misleading statements. If the Department of State finds that any application or other information contains false or misleading statements, or that a registrant under this part, or an agent, servant, or employee thereof, has violated the provisions hereof, it may move to suspend or cancel such registration.

(3) The registration of any charitable organization or professional solicitor knowingly making a false or misleading statement in any registration application or statement, report, or other information required to be filed by the Department of State or this part shall be revoked or suspended.

(4) All proceedings under this part shall be conducted in accordance with the Administrative Procedure Act and all adjudications shall be subject to review and appeal as provided therein.

(5) In addition to the foregoing, any person who willfully and knowingly violates any provisions of this part, or who shall willfully and knowingly give false or incorrect information to the Department of State in filing statements or reports required by this part, whether such report or statement is verified or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for the first offense and, for the second and any subsequent offense, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, any person who willfully and knowingly leaves this state for the purpose of avoiding prosecution for the violation of any of the provisions of this part shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In the event the Department of State or any prosecuting attorney shall have probable cause to believe that:

(a) Any charitable organization or professional solicitor is operating in violation of the provisions of this part or has knowingly and willfully made any false statements, report, or other information required to be filed by this part,

(b) Any charitable organization or professional solicitor has failed to file a registration statement or other information required by this part,

(c) There is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise,

(d) The officers or representatives of any charitable organization or professional solicitor have refused or failed after notice to produce any records of such organization, or

(e) The funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization,

an action shall be brought by the department or any prosecuting attorney against such charitable organization or professional solicitor and its officers, or any other person who has violated this part or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation, or promise, to defraud or obtain money or other property, to enjoin such charitable organization or other person from continuing such violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as to the court seems appropriate.

(7) The Department of State or its designee may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; and upon presentation of probable cause, said court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

History.—s. 13, ch. 65-218; s. 9, ch. 67-205; ss. 10, 35, ch. 69-106; s. 450, ch. 71-136; s. 8, ch. 74-332; s. 4, ch. 76-162; s. 3, ch. 76-168; s. 185, ch. 77-104; s. 1, ch. 77-457; s. 55, ch. 78-95; s. 11, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]496.132 More stringent local provisions not preempted.—This part shall not be construed to preempt any more stringent county or municipal provisions or to restrict local units of government from adopting more stringent provisions, and, in such case, such provisions shall be complied with if the registrant desires to solicit within the geographic district of the local unit of government.

History.—s. 9, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 78-229.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART II

SOLICITATION OF LAW ENFORCEMENT FUNDS

496.20 Short title.—This part shall be known and may be cited as the "Law Enforcement Funds Act."

History.—s. 1, ch. 78-124.

496.21 Definitions.—As used in this part:

(1) "Organization" means a group or person which is or holds itself out to be soliciting contributions from the public by the use of any name of any law enforcement person, body, agency, or association after October 1, 1978. A chapter, branch, area, office, or similar affiliate or any person soliciting contributions within the state by the use of any name of any law enforcement person, body, agency, or association which has its principal place of business outside the state shall be an "organization" for the purposes of this part.

(2) "Contributions" means the promise or grant of any money or property of any kind or value.

(3) "Law enforcement" means the words "police," "policemen," "policeman," "sheriff," "deputy sheriff," or any combination of words used to indicate that a person, body, agency, or association is affiliated in any way with a person, body, agency, or association of law enforcement personnel.

(4) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination of them.

(5) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, an organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees specially employed by or for an organization, who are engaged in the solicitation of contributions under the direction of such person; or a person who plans, conducts, manages, carries on, or advises an organization in connection with the solicitation of contributions; however, no agent, servant, or employee of a professional solicitor shall be deemed to be a professional solicitor. A bona fide salaried officer or employee of an organization maintaining a permanent establishment within the state shall not be deemed a professional solicitor. However, any bona fide salaried officer or employee of an organization that engages in the solicitation of contributions in any manner for more than one organization, charitable organization, or combination thereof shall be deemed a professional solicitor. "Professional solicitor" does not include a bona fide salaried officer or employee of a charitable organization established and operated by a Florida nonprofit law enforcement organization for the purpose of providing homes and care for needy and underprivileged children. No attorney, investment counselor, or banker who advises any person to make a contribution to an organization shall be deemed, as a result of such advice, to be a professional solicitor.

(6) "Gross contributions" and "cost of fundraising" shall be determined in accordance with a uniform system of accounting which shall be prescribed or approved by the Department of State.

History.—s. 2, ch. 78-124.

496.22 Powers and duties of the Department of State.—

(1) The Department of State is hereby vested with the power, jurisdiction, and authority to issue, deny, suspend, and revoke certificates to organizations which obtain contributions solicited from the public for any law enforcement related activities and to professional solicitors who, for financial or other consideration, solicit contributions for, or on behalf of, an organization. The department shall have the power, jurisdiction, and authority to promulgate reasonable rules pursuant to chapter 120 and to prescribe forms for registration or other purposes not in conflict with the Constitution and laws of the United States or of this state, and may amend same at its pleasure and make recommendations to the appropriate prosecuting attorney for enforcement of this part.

(2) In addition to the authority granted the department by this part, it may commence and maintain in a court of competent jurisdiction all proper and necessary actions and proceedings to enjoin and abate any act prohibited by this part.

(3) The department shall make such individual investigations of all applicants for certificates of registration as it may deem necessary.

(4) For purposes of enforcing the provisions of this part and in making investigations relating to any violation thereof, and for the purposes of investigating practices and business methods thereof, the department shall have the power to subpoena and bring before it any person in the state and may require the production of any papers it deems necessary and administer oaths and take depositions of any such person so subpoenaed. Failure or refusal of any person duly subpoenaed to be examined or to answer any legal or pertinent questions as to such organization under investigation shall be grounds for revocation of a certificate or refusal to issue such certificate as the case may be. The testimony of witnesses in any such proceeding shall be under oath before the department or its agent, and willful false swearing in such proceedings shall be punishable as perjury.

History.—s. 3, ch. 78-124.

496.23 Registration of organization.—

(1) Every organization which intends to solicit contributions within this state, or have funds solicited on its behalf, and which uses oral, printed, or visual words or any combination of the words "law enforcement," "police," "policemen," "policeman," "sheriff," or "deputy sheriff," or in any manner uses words to indicate that a person, body, agency, or association is affiliated in any way with a person, body, agency, or association of law enforcement personnel, shall, prior to any solicitation, file a registration statement with the department upon forms prescribed by it. The registration statement shall contain the following information:

(a) The name of the organization and the purpose for which it was organized.

(b) The principal address of the organization and the address of any offices in this state; if the organization does not maintain an office, the name and address of the person having custody of its financial records.

(c) The names and addresses of any chapters, branches, or affiliates in this state.

(d) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status, if any, under the Internal Revenue Code.

(e) The names and addresses of the officers, directors, trustees, and the principal salaried executive staff officer.

(f) A copy of a financial statement on forms approved by the department and audited by an independent certified public accountant which covers complete disclosure of all the fiscal activities of the organization during the preceding year. Such report shall also specifically identify the amount of funds raised and all costs and expenses incidental thereto, all publicity costs, and costs of allocation or disbursement of funds raised. Any organization that does not actually raise or receive contributions from the public in excess of $10,000 in gross receipts during the organization's fiscal year may submit the information on forms approved by the department in a statement signed by an authorized officer, verified under oath, and attested to by the chief fiscal officer of the organization. Such statement shall be in lieu of an audit by an independent certified public accountant.

(g) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.

(h) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.

(i) The general purpose or purposes for which the contributions to be solicited shall be used.

(j) The name or names under which it intends to solicit contributions.

(k) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.

(l) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.

(2) Except as otherwise provided herein, the registration forms and any other documents prescribed by the department shall be signed by an authorized officer and by the chief fiscal officer of the organization, and such forms and documents shall be verified under oath and shall be accompanied by a registration fee of $50.

(3) It shall be the duty of every organization to furnish identification to persons who solicit contributions from the public on behalf of the organization, including, but not limited to, those persons soliciting on behalf of an exempt organization or nonexempt organization and all professional solicitors. The solicitor shall be required to have and produce or display, on demand, identification indicating that said solicitor has been duly authorized by the organization for which he is soliciting. Such identification shall include, but not be limited to, the name of the holder of the identification and the name and number of the certificate of the organization.

History.—s. 4, ch. 78-124.

496.24 Registration of professional solicitors.—

(1) No person shall act as a professional solicitor for an organization subject to the provisions of this part unless he has first registered with the department and received a certificate of registration. Application for registration shall be in writing under oath or affirmation in the form prescribed by the department and contain such information as the department may require. No person who has been convicted within the past 5 years for a violation of any part of this part and no person convicted of a felony in this or any other state shall be eligible for a certificate of registration or shall serve as an employee, member, officer, or agent of any professional solicitor until his civil rights have been restored.

(2) Every person shall, before being employed within this state by a professional solicitor for the purpose of making, supervising, or participating in any solicitation, make application to the department for a certificate as an employee. However, no such application is required for employees making only telephone solicitations if such solicitations are made under the direct supervision of a professional solicitor who has a current certificate of registration or an employee who holds a current certificate as an employee. Such application shall be in the same manner and shall require the same qualifications as set forth in subsection (1). The annual fee for an employee certificate shall be $10. If the department declines to issue the certificate to such employee, the employment of such person shall be terminated.

(3) The applicant shall, at the time of making application, file with and have approved by the department, a bond in which the applicant shall be the principal obligor in the sum of $10,000 with one or more sureties, satisfactory to the department, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall be payable to the State of Florida for the use of the department and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance, or misfeasance in the conduct of solicitation activities. An individual, partnership, or corporation, which is a professional solicitor, may file a consolidated bond on behalf of all its members, officers, and employees.

(4) The annual registration fee for every person who is a professional solicitor in this state shall be $500. The annual registration shall expire at midnight on December 31 of each year.

History.—s. 5, ch. 78-124.

496.25 Certain persons and organizations exempt from registration.—The following groups or organizations shall be exempt from the registration provisions of this part:

(1) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

(2) Organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of $2,000 during

a calendar year or do not receive contributions from more than 10 persons during a calendar year, if all of their functions, including fundraising activities, are carried on by persons who are unpaid for their services and if no part of the organizations' assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any organization during any calendar year, shall be in excess of $2,000, the organization shall, within 30 days after the date it shall have received total contributions in excess of $2,000, register with and report to the department as required by this part.

(3) Organizations which solicit only within the membership of the organization by members thereof; however, the term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(4) Any nonprofit community club, civic club, garden club, women's club, or other similar civic group organized and in existence for more than 2 years, with no capital stock or salaried executive employees, officers, members, or agents, which has at least 25 members with annual dues collected of not less than $5 per member, and in which all of the funds collected, less reasonable expenses, are disbursed pursuant to the directions of the membership or the board of directors and with the membership being furnished at least one written report each year by the directors as to its charitable activities.

(5) Political committees, committees of continuous existence, and persons, as defined in s. 106.011, that are subject to provisions of chapter 106 shall be exempt from the provisions of this part.

History.—s. 6, ch. 78-124.

496.26 Manner of filing registration statement; fees.—

(1) Each chapter, branch, or affiliate of a parent organization or independent member agency of a federated fundraising organization may separately report the information required by s. 496.23, or report the information to its parent organization or to the federated fundraising organization with which it is affiliated, which shall then transmit such information as to its affiliates, branches, chapters, or independent agency members to the department along with its own statement.

(2) Every organization shall pay a registration fee of $50 unless otherwise exempt by this part. A parent organization filing the registration statements of one or more of its chapters, branches, or affiliates along with its own statement, and a federated fundraising organization filing the statements of one or more of its independent member agencies along with its own statement shall pay a single registration fee of $50 for itself and for such chapters, branches, affiliates, or independent member agencies whose statements are filed by it at the same time as its own statement. However, when an independent member agency of a federated fundraising organization solicits or receives contributions from any source other than the federal fundraising organization or a government agency, such independent member agency shall be required to register independently and pay its own filing fee, unless otherwise exempt by this part.

(3) Each organization shall file all information required by this part with the department within 6 months of the close of its fiscal year. The last day of the sixth month following the month in which the fiscal year of the organization ends shall be the anniversary date of the organization. All certificates of registration shall expire each year on the anniversary date of the organization. Each annual registration application shall be received by the department on or before the anniversary date.

(4) Any organization failing to renew its registration or exemption by the time of the expiration thereof shall be automatically suspended from the right to operate under the provisions of this part until the registration is renewed. All renewals of registration shall be made in the same manner and upon payment of the same fee as an original registration.

History.—s. 7, ch. 78-124.

496.27 Hearing on denial of registration.— The department shall examine each application, and if it finds it to be in conformity with the requirements of this part and all relevant rules, it shall approve the registration. Any applicant who is denied approved registration may, within 20 days from the date of notification of such denial, request, in writing, a hearing before the department, which hearing shall be held within 20 days from the date of the request, unless the applicant requests a longer period in writing.

History.—s. 8, ch. 78-124.

496.28 Information filed to become public records.—Registration statements and applications, reports, and all other documents and information required to be filed under this part or by the department shall become public records in the office of the department and shall be open to the general public for inspection at such times and under such conditions as the department may prescribe. In addition, the department shall within 10 days after approval and renewal send to the clerk of the circuit court in each county a list of registrants under this part which list shall be filed but not recorded.

History.—s. 9, ch. 78-124.

496.29 Records to be kept by organizations.—Every organization subject to the provisions of this part shall, in accordance with the rules prescribed by the department, keep true fiscal records, including, but not limited to, all income and expenses, within the purview of this part, as to its activities in Florida as may be covered by this part in such form as will enable it accurately to provide the information required by this part. Upon demand, such records shall be made available to the department or an appropriate prosecuting attorney for inspection. Such records shall be retained for a period of at least 3 years after the end of the period of registration to which they relate.

History.—s. 10, ch. 78-124.

496.30 Reciprocal agreements.—The department may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to organizations. Pursuant to such agreements, the department may accept information filed by an organization with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this part if such information is substantially similar to the information required under this part. The department shall also grant exemption from the requirement for the filing of an annual registration statement to organizations organized under the laws of another state having their principal place of business outside the state whose funds are derived principally from sources outside the state and which have been granted exemption from the filing of registration statements by the state under whose laws they are organized if such state has a statute similar in substance to the provisions of this part.

History.—s. 11, ch. 78-124.

496.31 Prohibited acts.—

(1) No organization subject to the provisions of this part shall use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Registered with the Florida Department of State as required by law. Registration does not imply endorsement of a public solicitation for contribution."

(2) No person shall, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization registered under this chapter, misrepresent to or mislead anyone by any manner, means, practice, or device whatsoever to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(3) No person shall in connection with the solicitation of contributions or the sale of goods or services represent to or lead anyone by any manner, means, practice, or device whatsoever to believe that any other person sponsors or endorses such solicitation of contributions or sale of goods or services or approves of the purposes of an organization connected therewith when such person has not given written consent to the use of his name for these purposes. Any member of the board of directors or trustees of an organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign.

(4) No person shall make any representation that he is soliciting contributions for or on behalf of an organization or shall use or display any emblem, device, or printed matter belonging to or associated with an organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the organization.

(5) No professional solicitor or his agent, servant, or employee shall solicit in the name of or on behalf of an organization unless:

(a) Such solicitor has first obtained written authorization of two officers of such organization on a form approved by the department, a copy of which authorization shall be filed with the department. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed 1 year from the date issued.

(b) Such solicitor or his agent, servant, or employee carries such authorization with him when making solicitation and exhibits the same on request to persons solicited or police officers or other law enforcement officials or agents of the department or, if such solicitations are made by telephone, such solicitor has, in his application for registration required pursuant to s. 496.23, expressly stated his intention to make telephone solicitations and has attached to the application the proposed text of any such telephone solicitations and all such solicitations are made substantially in accordance with the proposed text.

(c) Prior to beginning any solicitation, such professional solicitor has filed with the department a true copy of any written agreement or contract which may have been entered into between an organization and the professional solicitor. If the agreement or contract is not in writing, a written statement of the agreement setting forth the terms and conditions of the agreement, including the solicitor's compensation, shall be filed with the department prior to beginning any solicitation. Within 24 hours after any change, modification, or termination of any agreement, notice of such change, modification, or termination shall be filed with the department along with a true copy of any written change or modification or a statement in writing setting forth the terms and conditions of any change or modification not in writing.

(6) No person shall use the words "charity" or "charitable" as a part of its name.

(7) A professional solicitor or his agent, servant, or employee shall not solicit any person for a contribution without identifying himself as a professional solicitor to the person so solicited.

(8) A professional solicitor's total fee shall not be in excess of 25 percent of the gross contributions which he solicits. All fundraising costs shall be included in such gross contributions.

(9) Any organization registered and certified pursuant to this part shall not expend in excess of 25 percent of its gross contributions for fundraising costs.

(10) No organization shall, in the connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name of a city or county unless properly authorized to do so by an appropriate resolution adopted within 1 year of the proposed activities by the appropriate governmental body to adopt such resolutions and such resolution is filed with its application pursuant to s. 496.23.

(11) The organization, in every form of solicitation, whether it be oral, printed, or visual, shall disclose that it is not a charitable organization as defined by law.

History.—s. 12, ch. 78-124.

496.32 Nonresident organizations; designation of Secretary of State as agent for service of process; notice of such service to organization.—

(1) Organizations as defined by this part or professional solicitors which have their principal place of business without the state, or which are organized under and by virtue of the laws of a foreign state, and which solicit contributions from people in this state shall be subject to the provisions of this part and shall be deemed to have irrevocably appointed the Secretary of State as their agent upon whom may be served any summons, subpoena, subpoena duces tecum, or other process directed to such organization or professional solicitor or any partner, principal officer, or director thereof in any action or proceeding brought under the provisions of this part.

(2) Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at the Capitol in Tallahassee. Such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent to such organization or professional solicitor by registered or certified mail with return receipt requested at its office, as set forth in the registration form required to be filed with the department pursuant to this part or, in default of the filing of such forms, at the last address known.

History.—s. 13, ch. 78-124.

496.33 Enforcement and penalties.—

(1) No organization or professional solicitor which fails to file any registration application, statement, report, or other information required to be filed with the department under this part as a prerequisite to registration shall engage in any of the activities permitted duly registered persons or organizations under the provisions of this part. No organization or professional solicitor shall engage in solicitation as defined herein without a current registration certificate or letter of exemption.

(2) The department, upon its own motion or upon complaint of any person, may, if it has reasonable ground to suspect a violation, investigate any organization or professional solicitor to determine whether such person or organization, or any agent, servant, or employee thereof, has violated the provisions of this part or has filed any application or other information required under this part which contains false or misleading statements. If the department finds that any application or other information contains false or misleading statements, or that a registrant under this part, or an agent, servant, or employee thereof, has violated the provisions hereof, it may move to suspend or cancel such registration after notifying said registrant by registered or certified mail, return receipt requested, and affording an opportunity for hearing.

(3) The registration of any organization or professional solicitor knowingly making a false or misleading statement in any registration application or statement, report, or other information required to be filed by the department or this part shall be revoked or suspended.

(4) All proceedings under this part shall be conducted in accordance with the Administrative Procedure Act and all adjudications shall be subject to review and appeal as provided therein.

(5) In addition to the foregoing, any person who willfully and knowingly violates any provision of this part, or who willfully and knowingly gives false or incorrect information to the department in filing statements or reports required by this part, whether such report or statement is verified or not, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for the first offense and, for the second and any subsequent offense, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In the event the department or any prosecuting attorney shall have probable cause to believe that:

(a) Any organization or professional solicitor is operating in violation of the provisions of this part or has knowingly and willfully made any false statement, report, or other information required to be filed by this part,

(b) Any organization or professional solicitor has failed to file a registration statement or other information required by this part,

(c) There is employed or is about to be employed in any solicitation or collection of contributions for an organization any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise,

(d) The officers or representatives of any organization or professional solicitor have refused or failed after notice to produce any records of such organization, or

(e) The funds raised by solicitation activities are not devoted or will not be devoted to the stated purposes of the registration certificate,

an action shall be brought by the department or any prosecuting attorney against such organization or professional solicitor and its officers, or any other person who has violated this part or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation, or promise, to defraud or obtain money or other property, to enjoin such organization or other person from continuing such violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(7) The department or its designee may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; and upon presentation of probable cause, said court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

History.—s. 14, ch. 78-124.

496.34 More stringent local provisions not preempted.—This part shall not be construed to preempt any more stringent county or municipal provisions or to restrict local units of government from adopting more stringent provisions, and, in such case, such provisions shall be complied with if the registrant desires to solicit within the geographic district of such local unit of government.

History.—s. 15, ch. 78-124.

CHAPTER 498

LAND SALES PRACTICES

[1]498.001 Short title.—This chapter may be cited as the "Florida Uniform Land Sales Practices Law."

History.—s. 1, ch. 63-129; s. 1, ch. 67-229; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.011.

[1]498.003 Legislative intent.—

(1) It is expressly recognized by the Legislature that the disposition of any interest in subdivided lands has a vital impact on Florida's economy and that such land sales constitute a major industry within this state, employing many citizens, attracting thousands of visitors and new residents, and contributing countless dollars to the total annual gross income of the state. The Legislature also recognizes that the manner of conducting this type of business, including sales, financing, advertising, and promotional methods, is of direct concern not only to those engaged in the business but to the purchasers and public as well.

(2) The need to prohibit the use of false, misleading, and fraudulent methods in the conduct of disposition of any interest in subdivided lands, as well as the continued disclosure of such methods and their severe impact upon the land sales industry and upon the economic and political climate of the state, evidences a recognition of the probable detrimental effects of default by companies and persons engaged in the disposition of any interest in subdivided lands.

(3) It is therefore the intent of the Legislature to provide safeguards regulating the financial operations entered into by companies and persons regulated under the provisions of the Florida Uniform Land Sales Practices Law, thus preventing unsound financing techniques which could detrimentally affect not only remote land purchasers, but also the land sales industry, the public, and the state's economic well-being.

(4) This law is remedial as well as penal in purpose, and the remedial portions hereof shall be liberally construed to effectuate this purpose.

History.—s. 17, ch. 76-262; ss. 2, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.015.

[1]498.005 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Active registration" means a registered subdivision, except a registration classified as inactive.

(2) "Advertising" means the publication or causing to be published of any information offering for sale or for the purpose of causing or inducing any other person to purchase or to acquire an interest in the title to subdivided lands, including the land sales contract to be used and any photographs, drawings, or artist's representations of physical conditions or facilities on the property existing or to exist, by means of any:

(a) Newspaper or periodical;

(b) Radio or television broadcast;

(c) Written, printed, or photographic matter produced by any duplicating process producing 10 copies or more;

(d) Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone, or any other electronic means;

(e) Material used by subdividers or their agents, distributors, or any other persons to induce prospective purchasers to visit this state, particularly vacation certificates which involve a land sales presentation by a subdivider or his agents; or

(f) Billboards.

(3) "Broker" means any person who is employed or authorized by a subdivider to offer for disposition any interest in subdivided lands required to be registered pursuant to this chapter and who is responsible for the supervision of salesmen who offer for disposition any interest in subdivided lands.

(4) "Conviction" means any adjudication of guilt, a plea of guilty, a plea of nolo contendere, forfeiture of a bond when charged with a criminal offense prohibited by this chapter, or a finding of guilty for which adjudication has been withheld for an offense prohibited by this chapter.

(5) "Disposition" means any transaction involv-

ing any interest in subdivided lands which is entered into for profit, including any sale, resale, lease, assignment, or award by lottery of any interest in subdivided lands.

(6) "Division" means the Division of Florida Land Sales and Condominiums of the Department of Business Regulation.

(7) "Inactive registration" means a subdivision that has demonstrated to the satisfaction of the division that all requirements under the registration are current and there is no ongoing sales program.

(8) "Notice" means a communication in writing from the division executed by its director or other duly authorized officer. Notice to a subdivider shall be deemed complete when delivered to the subdivider's address currently on file with the division.

(9) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire any interest in subdivided lands, if undertaken for gain or profit.

(10) "Order of registration" means the license issued by the division as evidence of the granting of registration status to a specified registrant for specified subdivided lands.

(11) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or unincorporated association or two or more of any of the foregoing having a joint or common interest or any other legal or commercial entity.

(12) "Purchaser" means a person who acquires, attempts to acquire, or succeeds to an interest in subdivided land.

(13) "Registrant" means the person or persons specifically named in the order of registration.

(14) "Registration" means the completion of all application requirements and the furnishing of all required exhibits to the satisfaction of the division.

(15) "Salesman" means any person who is employed or authorized by a subdivider or broker to offer for disposition any interest in subdivided lands required to be registered pursuant to this chapter.

(16) "Subdivider" means a person who owns any interest in subdivided lands or is engaged in the disposition of subdivided lands either directly or through the services of a broker or salesman.

(17) "Subdivision" or "subdivided lands" means:

(a) Any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 50 or more lots, parcels, units, or interests; [2]or

(b) Any land, whether contiguous or not, which is divided or proposed to be divided into 50 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

History.—s. 2, ch. 63-129; s. 1, ch. 65-274; s. 2, ch. 67-229; ss. 16, 35, ch. 69-106; s. 1, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-53; s. 1, ch. 73-54; s. 131, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 76-262; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 3, ch. 78-366; ss. 3, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The word "or" was substituted for "and" by the editors.

Note.—Former s. 478.021.

[1]498.007 General powers and duties.—

(1) The division may adopt, amend, or repeal reasonable rules pursuant to the Administrative Procedure Act.

(2) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule or order hereunder, the division, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The division is not required to post a bond in any court proceedings.

(3) The division may intervene in any suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider shall promptly furnish the division a copy of the complaint and, if requested by the division, copies of all pleadings.

(4) The division may:

(a) Accept registrations filed in other states or with the Federal Government;

(b) Contract with agencies in this state or other jurisdictions to perform investigative functions; or

(c) Accept grants-in-aid from any source.

(5) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(6) The division shall adopt uniform accounting methods, in accordance with the standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants, to be used by all applicants for and holders of registrations of subdivided lands in the preparation of all financial documents, information, and reports required by, and in the transaction of all activities regulated under, this chapter.

History.—s. 4, ch. 63-129; s. 4, ch. 67-229; s. 2, ch. 71-98; s. 1, ch. 72-378; s. 2, ch. 73-108; s. 3, ch. 76-168; ss. 4, 5, ch. 76-262; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 4, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.041.

[1]498.009 Offices.—

(1) The executive offices of the division shall be established and maintained in Tallahassee.

(2) The division may establish and maintain branch offices.

History.—s. 6, ch. 63-129; s. 5, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; ss. 1, 7, ch. 76-262; s. 1, ch. 77-457; ss. 5, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.061.

[1]498.011 Employees of division.—The division shall employ, and at its pleasure discharge, such attorneys, inspectors, clerks, and other employees as are deemed necessary and shall outline their duties and fix their compensation. The amount of per diem and mileage and expense money paid to employees shall be as provided in s. 112.061, except that the division shall establish by rule the standards for reimbursement of actual verified expenses incurred in

connection with an inspection or examination of subdivided lands located outside of the state.

History.—s. 8, ch. 63-129; s. 7, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 30, 32, ch. 79-347.

[1]Note.—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.081.

[1]498.013 Seal and authentication of records.—The division shall adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in such records, when authenticated by such seal, shall be prima facie evidence thereof in all the courts of this state.

History.—s. 9, ch. 63-129; s. 8, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 30, 32, ch. 79-347.

[1]Note.—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.091.

[1]498.015 Advisory council; creation; functions.—

(1) There is created an advisory council composed of seven members, of which three members shall be citizens from the land development industry and four members shall be citizens representing the consumer public. Members of the advisory council shall be appointed by the Secretary of Business Regulation to serve at his pleasure.

(2) The council shall advise the division in land sales matters.

(3) The council, upon majority vote, may recommend that the division take administrative action against any person violating, or about to violate, the provisions of this chapter or the rules adopted hereunder or against any person engaging in unethical or misleading acts or sales promotions. The council may, in addition, recommend adoption of rules necessary to enforce, interpret, or implement this chapter.

History.—s. 19, ch. 76-262; s. 4, ch. 78-323; s. 4, ch. 79-4; ss. 8, 30-32, ch. 79-347.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.34.

[1]498.017 Fees.—The division shall charge fees as follows:

(1) A base fee of $400 per subdivision registration plus a fee of $2 for each lot, parcel, unit, or interest in the subdivision.

(2) Each registration shall be renewed annually not later than January 31 and shall be accompanied by the applicable fee. A delinquent renewal may be assessed a penalty fee of $10 per day and in addition is suspended by operation of law after the 10th day delinquent until the renewal fee and penalty are received by the division. In no event shall the penalty fee exceed $300.

(a) Registrants shall pay a base fee of $300 per active registration plus the following additional fee for each lot within a registered subdivision, except those deeded to bona fide purchasers:

1. Fifty cents per lot for the first 100 lots.
2. Twenty-five cents per lot for lots 101-500.
3. Ten cents per lot for each lot in excess of 500.

(b) Registrants shall pay $200 for each inactive registered subdivision.

(3) The division shall charge subdividers of out-of-state subdivisions disposed of or offered for disposition in this state an initial fee and an annual fee equal to the fees charged for subdivided lands located within the state. The application for registration required by s. 498.027 shall be accompanied by the initial fee, and when an inspection is to be made of subdivided lands situated outside of the state and being disposed of or offered for disposition in this state, the application for registration shall also be accompanied by an amount equivalent to the cost of travel from Florida to the location of the subdivided lands and return, as estimated by the division, and by a further amount estimated to be necessary to cover the additional expenses of such inspection, as prescribed by s. 498.011, for each day spent in the examination of the subdivided lands. Before acceptance of the registration, as provided in this law, the subdivider shall pay any other actual verified expenses incurred in such inspection and examination.

(4) The division shall charge subdividers who seek an exemption under this chapter an initial fee of $100. The application for exemption shall be accompanied by the initial fee, and when a field inspection or examination is to be made relative to subdivided lands for which an exemption is sought, the subdivider shall also pay all actual verified expenses incurred in such inspection or examination as prescribed by s. 498.011.

(5) The division may charge subdividers a fee of $100 for filing a material change, alteration, or modification of the offering pursuant to this chapter.

(6) Each request for release of assurances established for improvements shall be accompanied by a $50 fee; the subdivider shall also pay all actual verified expenses for onsite inspections or examinations as prescribed by s. 498.011.

(7) Each request for an exemption advisory opinion shall be accompanied by a $100 fee.

(8) Each filing of advertising material submitted for approval, other than advertising material submitted as part of an initial registration or exemption of subdivided lands, shall be accompanied by a fee of $10.

(9) Each salesman or broker required to be registered pursuant to this chapter shall pay an application fee of $10 and in the event of reissuance of a salesman's or broker's certificate shall pay an application fee of $10.

(10) The division may contract with any subdivider or others for reasonable charges for any extra or special service pertaining to any registration or application for registration.

History.—s. 13, ch. 63-129; s. 12, ch. 67-229; s. 3, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-366; ss. 9, 30, 32, ch. 79-347.

[1]Note.—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.131.

[1]498.019 Florida Land Sales and Condominiums Trust Fund.—There is created within the State Treasury the Florida Land Sales and Condominiums Trust Fund to be used for the administration and operation of the division. All funds col-

lected by the division and any amount paid for a license, fee, or penalty under this chapter shall be deposited in the State Treasury to the credit of the trust fund created by this section.

History.—ss. 10, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]498.021 Jurisdiction.—Dispositions of subdivided lands are subject to this chapter, and the circuit courts of this state have jurisdiction in claims or causes of action arising under this law, if:

(1) The subdivided lands offered for disposition are located in this state.

(2) The subdivider's principal office or any salesman or broker representing the subdivider is located in this state.

(3) The offer or disposition of any interest in subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History.—s. 24, ch. 67-229; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 11, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.27.

[1]498.023 Prohibitions on dispositions of interests in subdivided lands.—Unless the subdivided lands are exempt or the transaction is exempt pursuant to s. 498.025:

(1) No person may offer or dispose of, or participate in an offer or disposition of, any interest in subdivided lands located in this state, nor may any person offer or dispose of, or participate in an offer or disposition of, any interest in subdivided lands located without this state to persons in this state, unless such person has a valid order of registration therefor.

(2) No person may dispose of, or participate in the disposition of, any interest in subdivided lands unless a current public offering statement is delivered to the purchaser prior to the disposition, the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition, and the contract used contains a provision which authorizes any party thereto to cancel the agreement without cause within 72 hours after execution by the purchaser.

(3) When the principal solicitation of the disposition is by long distance telephone, no person may dispose of, or participate in the disposition of, any interest in subdivided lands which are required to be registered pursuant to this chapter unless:

(a) The prospective purchaser is given an unconditional 30-day refund privilege extending from the time the fully executed agreement to purchase is received by the purchaser;

(b) The subdivider includes such unconditional refund privilege in the agreement to purchase and in the public offering statement;

(c) The subdivider furnishes the prospective purchaser with a copy of a synopsis or summary of the sales script, which synopsis or summary has been approved by the division, and a current public offering statement, either by mail or personal delivery, prior to the execution of the agreement to purchase and the purchaser certifies in writing to the receipt thereof; and

(d) One of the following actions takes place subsequent to the solicitation of the disposition by long distance telephone:

1. The prospective purchaser personally inspects the property prior to the execution of the agreement to purchase and so certifies in writing; or

2. The purchaser or purchaser's agent has 6 months from the date the fully executed agreement to purchase is received by the purchaser in which to take a subdivider-guided personal inspection of the subdivided lands, and, at that time, if the purchaser is not satisfied with his property and the agreement to purchase is not in default, the purchaser may request in writing a refund of all moneys paid in under the agreement for purchase, and shall be entitled to such refund, even though the aforesaid 30-day period has expired. The subdivider must make available a guided personal inspection of the subdivision upon request by the purchaser. The documents mailed or delivered in accordance with this paragraph shall be governed by s. 498.037(4).

The division may establish, by rule, refund and solicitation forms and require the registrant to retain same in its official records for a prescribed period of time to evidence compliance with the requirements of this subsection.

(4) No person may offer or dispose of, or participate in an offering or disposition of, any evidence of indebtedness secured by a mortgage or deed of trust of any interest in subdivided lands through any means of advertising unless such offering is registered with and approved by the division. This subsection does not apply to the offer or disposition of such evidences of indebtednesses which are offered to not more than 20 purchasers; however, a person shall only avail himself of this exemption one time within any 12-month period. This subsection does not apply to the bona fide sale, transfer, or delivery of such evidences of indebtednesses by or to a bank, savings and loan association, trust company, insurance company, or real estate investment trust.

History.—s. 20, ch. 67-229; s. 6, ch. 69-393; s. 131, ch. 71-355; s. 1, ch. 73-175; s. 1, ch. 73-178; s. 3, ch. 76-168; ss. 2, 18, ch. 76-262; s. 1, ch. 77-457; ss. 12, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.23.

[1]498.025 Exemptions.—

(1) Unless the method of offer, disposition, or transfer is adopted for the purpose of evasion of this chapter, the provisions of this chapter do not apply to:

(a) An offer or disposition of any interest in subdivided land by a purchaser for his own account in a single or isolated transaction, except that this exemption shall not apply to subdivisions otherwise regulated under this chapter.

(b) An offer or disposition of an interest in land by any government or government agency.

(c) An offer or disposition of an interest in land as cemetery lots or interest.

(d) A subdivision as to which the plan of disposition is to dispose to 45 or fewer persons.

(e) An offer or transfer of securities currently registered with the Department of Banking and Finance or the United States Securities and Exchange Commission, except for situations in which the provisions of subsection (3) apply.

(f) Any offer or disposition constituting a single sale or offer to sell to a person when the sale and purchase price is $50,000 or more.

(g) The sale or lease of land to any person engaged in the business of construction of residential or commercial buildings or to any person who acquires such land for the purpose of resale or lease to a person engaged in any such business. This exemption shall not apply if the person who acquires land for the purposes stated herein sells such land to individuals as unimproved lots with no legal obligation on the part of the seller to construct a building on said lot within 2 years from the date of disposition, nor shall this exemption apply to persons otherwise regulated under this chapter.

(h) Any offer or disposition of an interest in land on which there is a residential, commercial, or industrial building or as to which there is a legal obligation on the part of the seller to construct such a building within 2 years from date of disposition.

(2) The provisions of this chapter do not apply to:

(a) Offers or dispositions of interests in lots, parcels, or units contained in a recorded subdivision plat, if all of the following conditions exist:

1. Each lot, parcel, or unit is situated on an existing paved and dedicated road or street constructed to the specifications of the board of county commissioners of the county or the governing body of the municipality, which board or governing body has voluntarily agreed to accept such road or street for maintenance and, if a waiting period is required, adequate assurances have been established with the county or municipality.

2. The subdivision has drainage structures and fill necessary to prevent flooding, which structures and fill have been approved by the board of county commissioners of the county or the governing body of the municipality.

3. Electric power is available at or near each lot, parcel, or unit.

4. Domestic water supply and sanitary sewage disposal meeting the requirements of the applicable governmental authority are available at or near each lot, parcel, or unit.

5. The subdivider is at all times prepared to convey title to the purchaser by general warranty deed unencumbered by any mortgages or other liens.

(b) Offers or dispositions of any interests in lots, parcels, or units contained in a subdivision plat that has been recorded or accepted for recordation by the board of county commissioners where:

1. Each lot, parcel, or unit is situated on a road dedicated or approved by the board of county commissioners and arrangements acceptable to the division have been made for the permanent maintenance of such roads;

2. All promised improvements are complete;

3. The promotional plan of sale is directed only to bona fide residents of this state whose primary residence is or will be located in the county in which the lots are platted of record;

4. The method of sale is by cash or deed and first mortgage with all funds escrowed in this state prior to closing. Closing shall occur within 120 days after execution of the contract for purchase, at which time the purchaser shall receive a general warranty deed unencumbered by any mortgages or other liens except the mortgage given by the purchaser; and

5. The purchaser has personally inspected the property to be purchased prior to the execution of the purchase contract and has so certified in writing.

(3) The division may also grant additional exemptions from the registration and reporting provisions of this chapter after the division has had demonstrated to its satisfaction that the subdivider has qualified for an order of exemption in those cases involving offers or dispositions of interests in subdivided lands where:

(a) The subdivider, at all times during the life of the contracts to purchase, has clear title to such subdivided lands and can convey title to the purchaser by general warranty deed unencumbered by any mortgages or other liens except the mortgage given by the purchaser, unless the subdivider is offering homesites and has submitted evidence satisfactory to the division that the following conditions exist:

1. A building permit may be obtained for construction of a residence; and

2. The method of sale is by cash or deed and first mortgage with all funds escrowed in a bank or trust company in this state prior to closing. Closing shall occur within 120 days after execution of the contract for purchase, at which time the purchaser shall receive a general warranty deed unencumbered by any mortgages or other liens except any first mortgage given by the purchaser;

(b) The subdivider has completed all improvements promised;

(c) The land is useful for the purpose for which it is offered;

(d) The purchaser has personally inspected the property to be purchased prior to the execution of the purchase contract and has so certified in writing; and

(e) Each lot, parcel, or unit is accessible by a street or road and provisions acceptable to the division have been made for perpetual maintenance thereof.

(4)(a) Additional exemptions may be granted by the division if the subdivider has demonstrated to the satisfaction of the division that the offers or dispositions consist of homesite lots, [2]parcels, or units contained in a recorded subdivision plat and:

1. All applicable permits have been obtained;

2. Each lot, parcel, or unit is situated on a paved and dedicated road or street constructed to the specifications for public roads of the board of county commissioners of the county or the governing body of the municipality and either the board of county commissioners or governing body has voluntarily accepted such road or street for maintenance or other provisions acceptable to the division have been made for perpetual maintenance;

3. The subdivision has drainage structures and fill necessary to prevent flooding, which structures

and fill have been approved by the board of county commissioners of the county or the governing body of the municipality;

4. Electric power is available at or near each lot, parcel, or unit;

5. Domestic water supply and sanitary sewage disposal meeting the requirements of the applicable governmental authority are available at or near each lot, parcel, or unit;

6. The subdivider is at all times prepared to convey title to the purchaser by general warranty deed unencumbered by any mortgages or other liens except a first mortgage given by the purchaser;

7. The method of sale is by cash or deed and first mortgage with all deposits escrowed in this state, pursuant to an escrow agreement acceptable to the division. All promised improvements shall be completed within 180 days of the date of the issuance of the order of exemption and prior to the closing of any sale. If the promised improvements are not completed within the 180 days, the purchaser shall have the right to terminate the purchase contract and receive a refund of all escrowed deposits and any accrued interest thereon;

8. The purchaser has personally inspected the property prior to the execution of the purchase contract and has so certified in writing; and

9. No closings occur until all promised improvements are complete and the board of county commissioners or governing body of the municipality has provided in writing evidence acceptable to the division that the improvements were constructed according to specifications and standards that were in existence at the time the exemption was granted and the board of county commissioners has provided evidence acceptable to the division of its voluntary acceptance of the dedicated improvements. In the case of a dispute over the acceptance of the dedicated improvements, the subdivider shall provide adequate assurances, as required by the division, that such improvements will be maintained until the dispute is resolved.

(b) As an alternative to having completed the improvements required by this subsection, the subdivider [3]may post a surety bond, irrevocable letter of credit, or other form of assurance acceptable to the division with the county or municipality pursuant to subdivision ordinances, acts, or regulations of the county or municipality in an amount necessary to ensure 100 percent completion of the uncompleted improvements.

(5) A registrant or other person may obtain an exemption advisory opinion from the division stating whether or not, in the opinion of the division, a particular method of disposition or offer is exempt from the provisions of this chapter. Any opinion request shall be accompanied by the required fee as provided in s. 498.017, a comprehensive statement of facts and applicable law under which the petitioner believes the method of disposition or offer to be exempt, and such other information as is required by rule or requested by the division. Within 30 days after the date adequate information has been provided by a registrant or other person, the division shall issue an exemption advisory opinion indicating whether or not, in the opinion of the division, the method of disposition or offer is exempt from the provisions of this chapter. Any such exemption advisory opinion shall not bind the division with regard to future action nor shall it affect any right which any purchaser may have under this chapter.

(6) Whenever the division determines, on the basis of the facts presented and any other relevant information reasonably calculated to protect the public interest or prospective purchasers, that an exemption is indicated, a letter may be issued within 30 days after the date adequate information has been provided stating that no action may be taken by the division. Any such letter shall not bind the division with regard to future action relating to such matters. Any such letter shall not affect any right which any purchaser may have under this chapter.

History.—s. 19, ch. 67-229; ss. 12, 35, ch. 69-106; s. 5, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-108; s. 3, ch. 76-168; ss. 14, 15, ch. 76-262; s. 178, ch. 77-104; s. 1, ch. 77-457; s. 6, ch. 78-366; ss. 13, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "parcels, or units" were inserted by the editors.

[3]**Note.**—The word "may" was substituted for "shall" by the editors.

Note.—Former s. 478.221.

[1]498.027 Application for registration.—

(1) The application for registration of subdivided lands shall be filed as prescribed by the rules of the division and shall contain such of the following documents and such information as may be required by the division:

(a) An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;

(b) If the subdivided lands offered for registration are located within this state, a recorded or proposed plat which meets the criteria required by applicable law or ordinance and a showing of the relation of the subdivided lands to existing streets, roads, and other offsite improvements. If such plat is unrecorded, it shall be recorded prior to the issuance of the order of registration;

(c) If the subdivided lands offered for registration are located within this state and are subdivided into lots, parcels, or units which are not required to be platted by local ordinance, special law, or general law of local application, there shall be submitted on the date of registration a proposed or recorded plat meeting the criteria prescribed in part I of chapter 177, and, if unrecorded, it shall be recorded in the situs county prior to the disposition of any lands unless prohibited by the county and evidence satisfactory to the division has been provided. If any improvements are included in the offer, arrangements acceptable to the division shall be made for their permanent maintenance;

(d) In addition to the requirements of paragraphs (b) and (c) as to subdivided lands located within this state which are required to be registered under this chapter, in which the minimum size of a lot, parcel, or unit is 2½ acres or less, or containing lots, parcels, or units, regardless of size, which are intended for use as homesites, evidence that the following conditions, taking into account the use for which the land is offered for disposition and the requirements of the local governing body, have been or will be met:

1. A plat has been recorded with provisions for

legal and physical access to each lot, parcel, or unit;

2. A showing is made that the access road to, and all streets within, the subdivided lands will be traversable by conventional automobile pursuant to specifications adopted by the appropriate local governing body and acceptable to the division; and

3. Arrangements acceptable to the division have been made for the perpetual maintenance of all roads and streets;

(e) As to lands within this state, a showing that such lands meet, or will meet at the time specified by the local governing bodies, all requirements of the local governing bodies in effect on the date of registration, including requirements relating to public roads and streets, drainage, telephone and electric utilities, domestic water supply, and sanitary sewage disposal;

(f) If the subdivided lands offered for registration are located outside this state, a proposed or recorded plat which meets the requirements of applicable state or local law or ordinance, which, if unrecorded, shall be recorded prior to the disposition of any lands, and a legal description of such lands, together with a map, showing the division proposed or made; the dimensions of the lots, parcels, and units; and the relationship of the subdivided lands to existing streets, roads, and other offsite improvements;

(g) If the subdivided lands offered for registration are located outside this state, and if no state or local law or ordinance for platting exists, a legal description of such subdivided lands, together with a map showing the existing or proposed dimensions of the lots, parcels, units, or interests and the relationship of such subdivided lands to existing streets, roads, and other offsite improvements;

(h) If the subdivided lands offered for registration are located outside this state and the minimum size lot or parcel is 2½ acres or less, or, regardless of the size of the lot or parcel, if the offering is for homesites, evidence that the following conditions, taking into account the use for which the subdivided lands are offered for disposition and the requirements of the local governing body [2]have been or will be met:

1. Provisions are made for legal and physical access to the subdivided lands;

2. A showing is made that the access street or road to, and all streets or roads within, the subdivided lands will be traversable by conventional automobile pursuant to specifications adopted by the appropriate local governing body and acceptable to the division; and

3. Arrangements acceptable to the division have been made for the perpetual maintenance of such streets or roads;

(i) If the subdivided lands offered for registration are located outside this state and the minimum size lot or parcel is more than 2½ acres and not offered as a homesite, evidence that arrangements acceptable to the division have been made for the perpetual maintenance of improvements, including, but not limited to, streets or roads;

(j) If the subdivided lands offered for registration are located outside this state, a showing that such subdivided lands meet or will meet, at the time specified by the local governing bodies, all requirements of the local governing bodies on the date of registration, including, but not limited to, streets or roads, drainage, telephone and electric utilities, domestic water supply, and sanitary sewage disposal;

(k) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each such jurisdiction or by any court;

(l) The applicant's name and address, the form, date, and jurisdiction of organization, and the address of each of its offices in this state;

(m) The name, home address, and principal occupation for the past 5 years of each director and officer of the applicant or person occupying a similar status or performing similar functions or other person who, in accordance with the rules of the division, is determined to be able to directly or indirectly control the operation of the business of the applicant; the name and home address of each shareholder holding a 10 percent or greater interest in the applicant; and the extent and nature of any interest in the applicant or the subdivided lands, as of a specified date within 30 days of the filing of the application, of every person whose interest exceeds a 10 percent interest in the subdivider;

(n) A statement, in a form acceptable to the division, of the condition of the title to the subdivided lands, including encumbrances, as of a specified date within 30 days of the date of application, by a title opinion of a licensed attorney who is not a salaried employee, officer, or director of the applicant or owner or by other evidence of title acceptable to the division;

(o) Copies of the instruments, in a form acceptable to the division, which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(p) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(q) If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(r) Copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

(s) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(t) A statement of the existing provisions for legal and physical access; a statement of the existing or proposed provisions for sewage disposal and potable water; a statement of other public utilities available in the subdivision; a statement of the improvements to be installed and the schedule for their com-

pletion; and a statement as to the provisions for perpetual maintenance of such improvements;

(u) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of any proposed advertising material;

(v) The proposed public offering statement;

(w) Any other information, including any current financial statement, which the division by its rules requires for the protection of purchasers; and

(x) Notice of any local or state land-use regulation or plan, and notice of any moratorium, the duration of which is 180 days or more, imposed by executive order, law, ordinance, regulation, or proclamation adopted by any governmental body or agency, if such land-use regulation plan or moratorium prohibits or restricts the development or improvement of property which would otherwise not be prohibited or restricted by applicable law, and the effect thereof on the proposed use of the property.

(2) An application for registration shall be accompanied by the application fee established in s. 498.017.

(3) If the applicant is not domiciled in this state, he shall file with such application his irrevocable written consent that, in suits, proceedings, and actions growing out of any violation of this chapter or rule or order of the division, the service on the division of any notice, process, or pleading therein, authorized by the laws of this state, shall be valid and binding as if due service had been made on the applicant.

History.—s. 12, ch. 63-129; s. 11, ch. 67-229, s. 2, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-51; s. 1, ch. 73-52; ss. 1, 2, 4, ch. 73-348; s. 1, ch. 74-179; s. 3, ch. 76-168; ss. 8-10, ch. 76-262; s. 177, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 4, ch. 78-366; ss. 15, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—The words "have been or will be met" were inserted by the editors.

Note.—Former s. 478.121(1).

[1]498.029 Notice of filing and registration.—

(1) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant. Within 30 days after the date of the notice of filing, the division shall examine the application and notify the applicant of any apparent errors or omissions or any additional information the division is authorized to require. Each application for registration shall be approved or denied within 45 days after the date of the notice of filing or within 30 days from receipt of the requested additional information, whichever occurs later. Any application for registration which is not approved or denied within the specified period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency, whichever is latest, shall be deemed approved unless the applicant has consented in writing to a delay.

(2) If the division, upon inquiry and examination, approves the application, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) If the division, upon inquiry and examination, disapproves the application, it shall enter an order disapproving the registration, which order shall include the findings of fact upon which the order is based and state with particularity the grounds for disapproval. If there has been no hearing, the division shall inform the applicant of his right to a hearing under s. 120.57.

(4) Notwithstanding the provisions of subsections (4) and (5) of s. 498.033, the division shall enter an order registering subdivided lands which are otherwise qualified for registration pursuant to this chapter when:

(a) The applicant submits evidence that he has applied for the permits required by chapters 253, 373, 380, and 403 and the certificates required by the Federal Water Pollution Control Act (Pub. L. No. 92-500); and

(b) The state agency charged with the responsibility of issuing such permits or certificates has failed, within 120 days of the filing of the applications, either:

1. To issue such a permit or certificate; or

2. To issue a denial of such application setting forth in writing:

a. The rules, guidelines, and criteria or standards used in evaluating the application;

b. The reasons for denial and the rules, guidelines, and criteria the application fails to satisfy; and

c. The action the applicant would have to take to satisfy the agency's permit or certificate requirements.

Any subdivider who is issued an order of registration under this subsection shall show in its public offering statement, in a manner prescribed by the division, that it has not been granted the necessary permit, certificate, or other authorization which must be granted prior to the construction of a specified improvement.

History.—s. 22, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 73-348; s. 1, ch. 74-226; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 14, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.25.

[1]498.031 Inquiry and examination.—

(1) Upon receipt of an application for registration in proper form, the division shall conduct an examination to determine whether:

(a) The subdivider can convey or cause to be conveyed the interest in any subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(b) There is reasonable assurance that all obligations imposed by this chapter and all obligations contained in the purchase contract, offering statement, and registration statement will be complied with by the subdivider;

(c) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the division in its rules and afford full and fair disclosure;

(d) The subdivider has not, or, if a corporation, its officers, directors, or principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country, or had a bond forfeited when charged with such a

crime, within the past 10 years;

(e) There is no evidence which would reasonably lead the division to believe that the subdivider is, or, if a corporation, its officers, directors, or principals are, contemplating a fraudulent or misleading sales promotion; and

(f) The public offering statement requirements of this chapter have been satisfied.

(2) The division may deny, suspend, or revoke the registration of any person who does not meet all of the requirements of subsection (1).

(3) The division may require, by rule, that each director and officer of the applicant or registrant or person occupying a similar status or performing similar functions, or other person who, in accordance with the rules of the division, is determined to be able to directly or indirectly control the operation of the business of the applicant or registrant, and each person who owns 10 percent or more of the outstanding stock or other form of equity interest in the applicant or registrant, furnish his fingerprints and answer questions and furnish supporting evidence relating to his qualifications. The division shall exchange information and fingerprints obtained under this subsection with the Department of Law Enforcement and the Federal Bureau of Investigation. This subsection shall not apply to any applicant or registrant who:

(a) Has been granted an order of registration or exemption at least 5 years prior to the effective date of this act; and

(b) Has not had a conviction of a criminal offense prohibited by this chapter and is not the subject of an indictment, information, or other formal charge relating to a criminal offense prohibited by this chapter.

The exemption provided by this subsection shall not extend to any individual who was not employed by or affiliated with the applicant or registrant prior to the effective date of this act.

History.—s. 14, ch. 63-129; s. 13, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 16, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.141

[1]498.033 Registration of subdivided lands.—

(1) If a subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan if the subsequent registration is contiguous to the earlier registration or is part of the same master plan.

(2) Each order of registration issued pursuant to this chapter shall contain a statement that the subdivider agrees to comply with all obligations of the subdivider contained in the purchase contract, offering statement, and registration statement.

(3) After an order of registration has been issued, no material change, alteration, or modification of the offering shall be made by the subdivider without first notifying the division in writing and obtaining written approval from the division. Such approval shall not be unreasonably withheld, and in any event a decision shall be rendered within 20 days from the date adequate information has been provided the division by the subdivider.

(4) If the subdivided lands, or any portion thereof, are subject to the permit requirements of chapter 253, chapter 373, chapter 380, or chapter 403, the subdivider shall, prior to the entry of an order registering the subdivided lands, furnish evidence satisfactory to the division that all permits required by law have been obtained. The applicant may submit an attorney's opinion, prepared by a member of The Florida Bar, which states that permits are not required for the subdivision by chapter 373, chapter 380, or chapter 403. The attorney's opinion shall include the factual basis upon which it was rendered and shall be accompanied by the evidence which documents the basis on which it was rendered. Notwithstanding receipt of such an attorney's opinion, the division may order that a public hearing be held pursuant to chapter 120 for the purposes of determining whether such permits are required. If a determination is made that permits are required, the division may require that the permits be obtained prior to the issuance of an order of registration. All permits required by this subsection shall be issued for a period of time which shall terminate not earlier than the scheduled completion date of the promised improvements for the subdivided lands being filed for registration. Extensions of the permits referred to herein shall be governed by the provisions of the relevant chapter. Revocation or suspension of any such permit shall require the subdivider to so notify the division within 7 days of such revocation or suspension. The division shall issue a notice to show cause and, upon request, provide for a hearing in accordance with the provisions of chapter 120.

(5) If the subdivided lands or any portion thereof are subject to the certification requirements of the Federal Water Pollution Control Act (Pub. L. No. 92-500), the subdivider shall, prior to the entry of an order by the division registering the subdivided lands, furnish evidence satisfactory to the division that state certificates required by the Federal Water Pollution Control Act have been obtained.

(6) The subdivider shall furnish the purchaser an agreement for deed in recordable form. If the subdivided lands or any portions thereof are subject to agreement for deed, the subdivider or purchaser may record this agreement for deed upon expiration of the refund provision contained in said contract agreement.

(7) Each registrant shall, unless the requirements of this subsection are waived by the division in writing, provide the division with financial statements, audited by an independent certified public accountant registered in a state of the United States, not later than 5 months after the end of the registrant's fiscal year. The registrant's statement shall be accompanied by the accountant's opinion of the statements. The requirement for filing financial statements that are audited may be waived by the division in writing if all promised improvements have been completed; the property is free and clear of any lien, mortgage, or other encumbrance; and the division determines that purchasers will not be required to rely upon the financial condition of the registrant for the fulfillment of contract obligations.

The division shall establish by rule the criteria for waiver. Such waiver, when granted, is valid for a period of 1 year and may be extended by the division upon a showing by the registrant that the original qualifying conditions for such waiver still exist. If the extension is not applied for and granted at least 30 days prior to the end of such 1-year period, the registrant shall submit audited financial statements in accordance with the provisions of this chapter. Upon the failure of any registrant to comply with the provisions of this subsection, the division shall issue a notice to show cause and, upon request, provide for a hearing in accordance with the provisions of chapter 120.

History.—s. 12, ch. 63-129; s. 11, ch. 67-229; s. 2, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-51; s. 1, ch. 73-52; ss. 1, 2, 4, ch. 73-348; s. 1, ch. 74-179; s. 3, ch. 76-168; ss. 8-10, ch. 76-262; s. 177, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 4, ch. 78-366; s. 87, ch. 79-65; ss. 15, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.121(2)-(8).

[1]498.035 Advertising material.—

(1) The division, by rule or order, shall require the filing for approval of advertising material relating to subdivided lands prior to distribution of such material and may charge a fee of $10 for the filing of such advertising material.

(2) Advertising submitted as part of the initial registration of land shall be treated as part of such initial registration and shall be reviewed for approval in accordance with the requirements of this chapter and rules hereunder. Advertising submitted subsequent thereto shall be deemed a subsequent filing, and the division may require such supporting data as it deems necessary at the time of the subsequent filing. Such subsequent filing shall be approved or disapproved within 10 days after the date of filing, but, if the division fails to approve or disapprove such information within such period, the subdivider may cause to be published or distributed all information which has been properly filed.

(3) In any communication wherein any subdivider solicits or attempts to induce, entice, or otherwise influence any person who has previously executed a contract to prepay or accelerate payments on the contract, the subdivider shall advise such person that such prepayment will not accelerate the seller's obligation to deliver a deed or the time for making improvements to the property.

(4) The division may require full disclosure of all pertinent information concerning a vacation or visitor campaign, including the terms and conditions of the campaign and the fact and extent of participation in such a campaign by a subdivider. The division may further require reasonable assurances that the obligations incurred by a subdivider or his agents in a certificate program can be met.

(5) "Advertising" shall not be deemed to include:

(a) Stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for prospectuses, property reports, offering statements, or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government;

(b) All communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands, except when directed to the sale of additional lands or the prepayment or acceleration of payments on any purchase contract; or

(c) Press releases or other communications delivered to newspapers or other periodicals for general information or public relations purposes, if no charge is made by such newspapers or other periodicals for the publication or use of any part of such communications.

(6) The division may establish, by rule, provisions for the deletion of advertising material no longer in use.

History.—ss. 17, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]498.037 Public offering statement.—

(1) Any public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and shall include the following, unless otherwise provided by the division:

(a) The name and principal address of the subdivider;

(b) A general description of the subdivided lands, stating the total number of lots, parcels, units, or interests in the offering;

(c) A map, which shall be physically separate from the public offering statement, but which shall be delivered to the purchaser with the public offering statement, indicating the location of the lots, parcels, or units being offered within the subdivision and the location of the subdivision in relation to the surrounding area;

(d) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each lot, parcel, or unit, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(e) A statement of the use for which the property is offered;

(f) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(g) Notice of any local or state land-use regulation or plan and notice of any moratorium, the duration of which is 180 days or more, imposed by executive order, law, ordinance, regulation, or proclamation adopted by any governmental body or agency if the land-use regulation, plan, or moratorium prohibits or restricts the development or improvement of property which development or improvement would otherwise not be prohibited or restricted by applicable law, and the effect thereof on the proposed use of the property;

(h) A statement that the developer shall provide the purchaser with a recordable agreement for deed and a statement as to what effect recording of the agreement for deed will have in providing the purchaser with legal protection; and

(i) Additional information required by the division to assure full and fair disclosure to prospective purchasers.

(2) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the division approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier, or different color type than the remainder of the statement unless the division so requires.

(3) The division may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the division in writing, without complying with the requirements of s. 498.033(3), and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

(4) The division may limit the amount and format of the promotional materials that are submitted to a prospective purchaser along with the public offering statement.

History.—s. 21, ch. 67-229; s. 2, ch. 71-98; s. 2, ch. 73-175; s. 3, ch. 76-168; s. 16, ch. 76-262; s. 1, ch. 77-457; ss. 18, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.24.

[1]498.039 Certain trust and escrow accounts required.—

(1) The division shall require each registered subdivider offering property subject to any lien, mortgage, or other encumbrance to establish and maintain a trust or escrow account in a financial institution located within the state if the division determines that:

(a) The encumbering instrument contains release clauses which are inadequate under the rules of the division;

(b) The encumbering instrument does not provide that the secured creditor's rights are subordinate to the rights of the purchaser and does not provide that the purchaser is able to obtain legal title or other interest provided for in the purchase contract or lease, free and clear of such encumbrance, upon compliance with the terms and conditions of such purchase contract or lease; or

(c) The registrant fails to submit the quarterly report to the division as required in subsection (3).

(2) Each registrant shall comply with the terms of any instrument encumbering subdivided lands, including requirements of timely payments for satisfaction of the encumbering instrument.

(3) Each registrant shall submit to the division quarterly encumbrance reports certifying:

(a) That he has complied with the terms of any encumbering instrument and that timely payments have been made for the satisfaction of any lien, mortgage, or other encumbrance upon subdivided lands or any portion thereof. The quarterly report shall include evidence satisfactory to the division of the subdivider's compliance; or

(b) That no lien, mortgage, or other encumbrance has been placed upon the subdivided lands or any portion thereof.

(4) The subdivider shall submit to the division a monthly statement from the appropriate financial institution indicating the status of the trust or escrow account.

(5) The division shall issue an order to show cause for any violation of the provisions of this section, and such order to show cause shall provide for a hearing, upon request, in accordance with chapter 120.

(6) The division shall adopt rules necessary to carry out the provisions of this section.

(7) Paragraphs (1)(a) and (b) shall not apply to registrations containing encumbering instruments approved prior to June 27, 1976, unless additional subdivided lands covered by such encumbering instruments are filed for registration under this chapter.

History.—s. 6, ch. 76-262; ss. 19, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.052.

[1]498.041 Annual renewal.—Each registration shall be renewed annually on an active basis until such time as the subdivision qualifies for inactive registration or termination. The division shall establish by rule the requirements for inactive registration and termination. Annual renewal fees shall be as provided by s. 498.017.

History.—s. 31, ch. 67-229; s. 9, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 20, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.33.

[1]498.043 Annual report by registrant.—

(1) Within 30 days after each annual anniversary date of an order registering subdivided lands, the registrant shall file, in the form prescribed by the rules of the division, a report which reflects any material changes in the information contained in the original application for registration.

(2) The division may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

History.—s. 23, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 21, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.26.

[1]498.045 Registration and regulation of salesmen and brokers.—

(1) No person shall dispose of or attempt to dispose of any interest in subdivided lands as a salesman or broker until he is registered with the division as a salesman or broker. However, registration shall

not be required of any person who is currently licensed by the [2]Florida Real Estate Commission as a broker or as a salesman in such a broker's employ if such broker and salesman do not engage in repeated and successive transactions of a similar character on behalf of a subdivider. This section does not apply to a salesman or broker in another state, territory, or country disposing of or offering to dispose of, in such other state, territory, or country, any interest in subdivided lands in this state, if such salesman or broker is authorized to make dispositions or offers of dispositions of real estate in the state, territory, or country in which he makes such dispositions or offers for dispositions.

(2) Each person desiring to be registered pursuant to this section shall apply to the division in writing upon forms prepared and furnished by the division. An application fee in the amount of $10 shall accompany the forms.

(3) A certificate of registration of a salesman or broker shall be renewed annually on a date prescribed by rule by the division. If, upon receipt of the application for renewal and the applicable fee, the applicant is found to be qualified, the division shall issue a renewal of registration.

(4) The division may establish by rule the qualifications for registration pursuant to this section and require applicants to answer questions and submit supporting evidence of their qualification for registration.

(5) The division shall provide each applicant for registration pursuant to this section with a copy of this chapter and any rules adopted hereunder. The division may also prepare and disseminate such other materials and questionnaires as it deems necessary to effectuate the registration provisions of this section.

(6) The division shall issue a certificate of registration to an applicant who has been determined, as provided by the rules of the division, to be qualified in accordance with this section. The certificate shall identify the registrant or broker for whom the holder of the certificate is authorized to sell.

(7) The division shall require the holder of a certificate of registration to provide the division with prior notification of his intent to dispose of subdivided land for any party other than those named on the certificate of registration. The division shall establish by rule the procedure and fee for such transfer and reissuance of a certificate of registration.

(8) The division may deny a registration if it determines that an applicant does not meet all requirements of this section or has violated any provision of this chapter. Any applicant aggrieved by such denial shall be entitled to a hearing, after reasonable notice thereof, upon filing a written request for such hearing.

(9) A certificate of registration of a salesman or broker may be suspended for a period of not more than 6 months and a fine of not more than $1,000 may be imposed upon a finding of fact that the salesman or broker has:

(a) Violated any provision of this chapter;

(b) Directly and knowingly engaged in any false, deceptive, or misleading promotion or sales method for the purpose of offering or disposing of any interest in subdivided lands;

(c) Made statements contrary to the information contained in the approved promotional material and the current public offering statement;

(d) Failed to deliver to a purchaser of subdivided land required to be registered pursuant to this chapter a copy of the current public offering statement prior to the disposition or failed to allow the purchaser a reasonable opportunity to examine such public offering statement;

(e) Failed to use, in the disposition of subdivided land required to be registered pursuant to this chapter, a purchase contract containing a 72-hour voidability clause; or

(f) Violated any lawful order or rule of the division.

(10) The registration of a salesman or broker may be revoked or suspended for a period of not more than 1 year and a fine of not more than $5,000 may be imposed upon a finding of fact that the salesman or broker has:

(a) Persisted in the doing of any act for which his registration could be suspended;

(b) Been convicted in any court of a crime involving fraud, deception, false pretenses, misrepresentation, or dishonest dealing in any business transaction or forfeited a bond when charged with such a crime;

(c) Disposed of, concealed, or diverted any funds or assets of a purchaser for his own use and benefit;

(d) Failed to account to his employer for any funds or assets received from a purchaser; or

(e) Obtained his registration certificate or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

History.—s. 29, ch. 67-229; ss. 7, 8, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-55; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 22, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—See ch. 79-239, which abolished the Florida Real Estate Commission and replaced it with the Board of Real Estate.

Note.—Former s. 478.31.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]498.047 Investigations.—

(1) The division may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder; and

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation under this chapter, any officer or employee designated by rule may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other mat-

ter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to circuit court for an order compelling compliance.

(4) The division may permit a subdivider, broker, or salesman registered with the division whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the subdivider, broker, or salesman.

(5) For the purpose of any investigation or proceeding under this chapter involving a person whose books or records are maintained outside of the state, such person shall either:

(a) Deliver the original books or records, together with any other documents requested by the division, to the designated office of the division in this state; or

(b) Pay to the division an amount equal to all expenses incurred by the division in conducting such investigation or proceeding at the location of the books or records.

History.—s. 15, ch. 63-129; s. 14, ch. 67-229; s. 4, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 23, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.151.

[1]498.049 Suspension; revocation; civil penalties.—

(1) A registration may be revoked or suspended upon findings that the registrant has:

(a) Failed to comply with the terms of any written order of the division;

(b) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions or forfeited a bond when charged with such a crime;

(c) Disposed of, concealed, or diverted any funds or assets of any person so as to adversely affect the interests of a purchaser of any interest in subdivided land;

(d) Failed to substantially comply with any written agreement made with the division; or

(e) Made intentional misrepresentations or knowingly concealed material facts in any written communication with the division.

(2) Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the division finds that the registrant has been guilty of a violation for which suspension or revocation could be ordered, it may issue a cease and desist order instead.

(4) In addition to revocation or suspension, the division may impose civil penalties against any person for violations of this chapter or rules relating hereto. No civil penalty so imposed shall exceed $10,000 for each offense, and all amounts collected shall be deposited with the Treasurer to the credit of the Florida Land Sales and Condominiums Trust Fund. If such person fails to pay the civil penalty, the division shall thereupon issue an order to such person directing him to cease and desist from further operation until such time as the civil penalty is paid. In order to permit such person an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order requiring the payment of a civil penalty shall not become effective until 20 days after the date of such order. Actions commenced by the division may be brought in the judicial circuit in which the division has its executive offices or where the violation occurred.

(5) If the division finds, after notice and hearing, that the registrant has been guilty of a violation for which revocation or suspension could be ordered, it may require the registrant to record such agreements for deed as may be necessary for the protection of the interests of contract purchasers.

(6) If the division finds, after notice and hearing, that the registrant has engaged in repeated instances of deceptive, misleading, or fraudulent practices in the disposition of subdivided lands when the method of disposition is by long distance telephone, the division may prohibit the registrant from engaging in further dispositions of subdivided lands when its promotional plan of sale includes solicitations or offers by long distance telephone.

History.—s. 16, ch. 63-129; s. 15, ch. 67-229; s. 2, ch. 71-98; s. 1, ch. 72-365; s. 3, ch. 76-168; s. 11, ch. 76-262; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 24, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.161

[1]498.051 Cease and desist orders.—

(1) If the division determines that a person has:

(a) Violated any provision of this chapter;

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of any interest in subdivided lands;

(c) Made any material change, alteration, or modification of the offering subsequent to the order of registration without obtaining prior written approval from the division, if such change, alteration, or modification is within the control of the registrant, or, if the change, alteration, or modification is not within the control of the registrant, failed to notify the division of the change within 7 days after its occurrence;

(d) Disposed of any interest in subdivided lands which have not been registered with the division; or

(e) Violated any lawful order or rule of the division;

it may issue an order requiring the person to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

(2)(a) If the division makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order.

(b) Prior to issuing the temporary cease and desist order, the division, whenever possible, by telephone or otherwise, shall give notice of the proposal to issue a temporary cease and desist order to the

person. Each temporary cease and desist order shall include in its terms a provision that, upon request, a hearing will be held in accordance with chapter 120 to determine whether or not it will become permanent.

History.—s. 17, ch. 63-129; s. 16, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 12, ch. 76-262; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 25, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.171.

[1]498.053 Notices to show cause.—

(1) If the division finds that another state or federal agency has suspended or revoked, or taken similar action against, the land sales registration of a subdivider, it shall issue a notice to show cause which shall provide for a hearing, upon request, in accordance with chapter 120.

(2) If the division finds that another state agency has suspended, revoked, or imposed a penalty against the holder of a salesman's or broker's certificate of registration for any practice involving subdivided land, it shall issue a notice to show cause which shall provide for a hearing, upon request, in accordance with chapter 120.

History.—ss. 25, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]498.055 Reports of disciplinary action to [2]Florida Real Estate Commission.—The division shall inform the [2]Florida Real Estate Commission of any disciplinary action the division has taken against any broker or salesman registered with the division. The [2]commission shall inform the division of any disciplinary action the [2]commission has taken against any registrant.

History.—ss. 25, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]**Note.**—See ch. 79-239, which abolished the Florida Real Estate Commission and replaced it with the Board of Real Estate.

[1]498.057 Service of process.—

(1) In addition to the methods of service provided for in the Rules of Civil Procedure and the Florida Statutes, service may be made by delivering a copy of the process to the director of the division, but process so served is not effective unless:

(a) The plaintiff, which may be the division in a proceeding instituted by it, forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address, and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this chapter, or any rule or order hereunder, and has not filed a consent to service of process, and personal jurisdiction over him cannot otherwise be obtained in this state, such conduct authorizes the director to receive service of process in any noncriminal proceeding against such person or his successor which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on such person personally. Notice shall be given as provided in subsection (1).

History.—s. 26, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.29.

[1]498.059 Penalties.—Any person who willfully violates any provision of this chapter or who willfully, in any written communication with the division, makes any untrue statement of a material fact or omits to state a required material fact is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 21, ch. 63-129; s. 18, ch. 67-229; s. 426, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.211.

[1]498.061 Civil remedy.—

(1) Any subdivider who disposes of any interest in subdivided lands in violation of s. 498.023, or who in disposing of any such interest makes an untrue statement of a material fact, or who in a registration statement or public offering statement makes an untrue statement of a material fact or omits a material fact required to be stated therein is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that the purchaser knew of the untruth or omission, that the subdivider did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser may, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment, sue in a court of competent jurisdiction to recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands, together with interest at the rate of 9 percent per year from the date of payment, property taxes paid, and court costs and reasonable attorney's fees to the prevailing party, less the amount of any income received from the subdivided lands. When attorney's fees are awarded under this section, the trial judge shall award the sum of reasonable costs incurred in the action plus a reasonable legal fee for hours actually spent on the case, as sworn to in an affidavit.

(3) Each person who materially participates in any disposition of any interest in subdivided lands in the manner specified in subsection (1), if such person directly or indirectly controls a subdivider or is a general partner, officer, director, broker, salesman, agent, or employee of a subdivider, shall also be liable jointly and severally with and to the same extent as the subdivider, unless such person otherwise liable did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by which such liability is alleged to exist. There is a right of contribution as in cases of contracts among persons so liable.

(4) Each person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public of-

fering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement if he did know or in the exercise of the reasonable care of a man in his occupation could have known of the existence of the facts by reason of which the liability is alleged to exist.

(5) Any stipulation or provision purporting to bind any person acquiring any interest in subdivided lands to waive his rights under this chapter or any rule or order under it is void.

(6) Any sale or contract for sale of any interest in subdivided lands, which sale or contract is in violation of this chapter, is voidable by the purchaser, and the purchaser may, in addition to any other remedy provided by law, recover from the subdivider the total amount paid on the contract or sale by the purchaser and a reasonable attorney's fee, if suit is brought and the purchaser prevails. No action shall be maintained to enforce any liability created under this section unless brought within 3 years after the discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence. In no event shall any action under this subsection be brought more than 5 years after the date the purchaser made his first payment to the subdivider.

History.—s. 19, ch. 63-129; s. 17, ch. 67-229; s. 26, ch. 74-382; s. 3, ch. 76-168; s. 13, ch. 76-262; s. 1, ch. 77-457; ss. 28, 30, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 478.191.

[1]**498.063 Saving clause.**—Any application for registration of subdivided lands for which the division has issued a notice of filing before July 1, 1979, shall meet the registration requirements provided by law before July 1, 1979. Any order of registration issued before July 1, 1979, shall remain valid until suspended, revoked, or terminated. Any application for exemption from the requirements governing the registration of subdivided lands which is received by the division in proper form before July 1, 1979, shall be subject to the requirements provided by law before July 1, 1979. Any exemption from the requirements governing the registration of subdivided lands which has been granted by the division prior to July 1, 1979, shall remain valid until terminated. Any certificate of registration of a salesman which was issued pursuant to s. 478.31 and which was valid on June 30, 1979, shall remain valid until suspended, revoked, or until the next annual renewal date for such certificate after June 30, 1979. Any violations of chapter 478 occurring before July 1, 1979, shall be subject to the proceedings and penalties provided by law on the date the violation occurred, and the division and the courts of this state shall have continuing jurisdiction over such actions until final judgment and satisfaction thereof.

History.—ss. 29, 32, ch. 79-347.

[1]**Note.**—Section 32, ch. 79-347, in effect provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 500

FOODS, DRUGS, AND COSMETICS

500.01 Short title.—This chapter may be cited as the "Florida Food, Drug, and Cosmetic Law."

History.—ss. 1, 26, ch. 19656, 1939; CGL 1940 Supp. 4151(664).

cf.—Ch. 465 Regulation of pharmacists.
s. 601.92 Arsenic on citrus trees prohibited.
Ch. 859 Poisons, adulterated drugs.

500.02 Purpose of chapter.—This chapter is intended:

(1) To safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and

(2) To provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of and regulations issued under the authority of the Federal Food, Drug and Cosmetic Act; and likewise uniform with the Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food, drugs, devices and cosmetics; and

(3) To promote thereby uniformity of such state and federal laws and their administration and enforcement, throughout the United States and in the several states.

History.—s. 1, ch. 19656, 1939; CGL 1940 Supp. 4151(665).

500.03 Definitions of terms used in chapter.—For the purpose of this chapter:

(1) The term "department" means the Department of Agriculture and Consumer Services.

(2) The term "person" includes individual, part-

nership, corporation and association.

(3) The term "food" means:

(a) Articles used for food or drink for man or other animals;

(b) Chewing gum; and

(c) Articles used for components of any such article.

(4) The term "drug" means:

(a) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(c) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any article specified in paragraphs (a), (b), or (c) but does not include devices or their components, parts or accessories.

(5) The term "device," except when used in subsection (11) and in ss. 500.04(10), 500.11(6), 500.15(3) and 500.18(3), means instruments, apparatus and contrivances, including their components, parts and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure of any function of the body of man or other animals.

(6) The term "cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of any such articles, except that such term shall not include soap.

(7) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(8) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(9) The term "immediate container" does not include package liners.

(10) The term "labeling" means all labels and other written, printed, or graphic matters:

(a) Upon an article or any of its containers or wrappers; or

(b) Accompanying such article.

(11)(a) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(b) If it is a food, and it is alleged to be misbranded, because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which are of material interest to consumers.

(12) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(13) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(14) The term "new drug" means:

(a) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(b) Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(15) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contamination.

(16) The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug or cosmetic establishment.

(17) The term "federal act" means the Federal Food, Drug and Cosmetic Act. (Title 21 U.S.C. s. 301

et seq.; 52 Stat. 1040 et seq.)

(18) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the Florida Pesticide Law, chapter 487, and which is used in the production, storage or transportation of raw agricultural commodities.

(19) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(20) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. s. 451 and the following); or the Meat Inspection Act of March 4, 1907, (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

(21)(a) The term "color additive" means a material which:

1. Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source, or

2. When added or applied to a food, drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempt under the federal act.

(b) The term "color" includes black, white and intermediate grays.

(c) Nothing in paragraph (a) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(22) The term "drug wholesaler" means every person who acts as a jobber, wholesale merchant, or broker, or agent thereof, who sells or distributes for resale any drug as defined by the Florida Food, Drug and Cosmetic Law. However, this shall not apply to persons who sell only patent or proprietary preparations as defined in the Florida Pharmacy Law. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

(23) The term "drug manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug as defined by the Florida Food, Drug and Cosmetic Law. However, this shall not apply to manufacturers of patent or proprietary preparations as defined in the Florida Pharmacy Law. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

History.—s. 2, ch. 19656, 1939; CGL 1940 Supp. 4151(666); s. 7, ch. 22858, 1945; s. 1, ch. 59-302; s. 1, ch. 63-259; s. 1, ch. 67-345; ss. 14, 19, 35, ch. 69-106; s. 1, ch. 71-261; s. 186, ch. 71-377; s. 134, ch. 73-333; s. 415, ch. 77-147.
cf.—s. 1.01 General definitions.

500.032 Declaration of policy and cooperation between departments in enforcement of chapter 500.—In order to more effectively utilize the agencies of the state, in the public interest and without unnecessary duplication and expense the provisions of this chapter shall be enforced by the Department of Agriculture and Consumer Services and the Department of Health and Rehabilitative Services as follows:

(1) The Department of Agriculture and Consumer Services shall be and is hereby charged with the administration and enforcement of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of food used for human consumption, and it is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation, and sale of foods used for man, as well as articles entering into and intended for use as an ingredient in the preparation of foods used for man;

(2) The Department of Health and Rehabilitative Services shall be and is hereby charged with the administration of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of drugs, devices and cosmetics and the said Department of Health and Rehabilitative Services is further charged to enforce the provision of this chapter relating to the production, manufacture, transportation and sale of drugs, devices and cosmetics as defined in this chapter;

(3) However, the specific delegation of authority granted above is to specifically place responsibility and should not be construed so as to cause the respective agencies to not cooperate each with the other by interchange of information and copies of reports where deemed advisable.

History.—s. 17, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 417, ch. 77-147.
Note.—Former 500.45.

500.04 Certain acts prohibited.—The following acts and the causing thereof within the state are prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of ss. 500.12 or 500.16.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by s. 500.21.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state from whom he received in good faith the food, drug, device or cosmetic.

(8) The removal, disposal, or use of a detained or embargoed article or food processing equipment in violation of s. 500.06.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act, with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter.

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under s. 500.16, or that such drug complies with the provisions of such section.

(12) The possession of any habit-forming, toxic, harmful or new drug in violation of s. 500.151.

History.—s. 3, ch. 19656, 1939; CGL 1940 Supp. 4151(667); s. 2, ch. 57-167; s. 1, ch. 70-994.

cf.—s. 500.24 Punishment for violations.

500.05 Injunction to restrain violations.—In addition to the remedies herein provided, the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services, as appropriate, may apply to a Circuit Court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of s. 500.04; irrespective of whether or not there exists an adequate remedy at law.

History.—s. 4, ch. 19656, 1939; CGL 1940 Supp. 4151(668); ss. 14, 19, 35, ch. 69-106; s. 418, ch. 77-147.

cf.—s. 500.32 Penalty for violation.

500.06 Embargoing, destroying, etc., of articles or processing equipment in violation of law or rule.—

(1) When a duly authorized agent of the department finds, or has probable cause to believe, that any food, food processing equipment, drug, device, or cosmetic is in violation of any provision of this chapter or rule adopted hereunder as to be dangerous, unwholesome, fraudulent, or insanitary, within the meaning of this chapter, he may issue and enforce a stop-sale, stop-use, removal, or hold-order which gives notice that such article or processing equipment is, or is suspected of being, in violation and has been detained or embargoed and warns all persons not to remove, use, or dispose of such article or processing equipment by sale or otherwise until permission for removal, use, or disposal is given by such agent or the court. It is unlawful for any person to remove, use, or dispose of such detained or embargoed article or processing equipment by sale or otherwise without such permission.

(2) When an article or processing equipment detained or embargoed under subsection (1) has been found by such agent to be in violation of law or rule, he shall, within a reasonable period of time after the issuance of such notice, petition the circuit court in whose jurisdiction the article or processing equipment is detained or embargoed for an order for condemnation of such article or processing equipment. When such agent has found that an article or processing equipment so detained or embargoed is not in violation, he shall rescind the stop-sale, stop-use, removal, or hold-order.

(3) If the court finds that a detained or embargoed article or processing equipment is in violation, such article or processing equipment shall, after entry of the decree, be destroyed or made sanitary at the expense of the claimant thereof under the supervision of such agent; and all court costs, fees, and storage and other proper expenses shall be taxed against the claimant of such article or processing equipment or his agent. However, when the violation can be corrected by proper labeling of the article or sanitizing of processing equipment and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed or such processing equipment so sanitized, has been executed, the court may by order direct that such article or processing equipment be delivered to the claimant thereof for such labeling, processing or sanitizing under the supervision of an agent of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article or processing equipment on representation to the court by the department that the article or processing equipment is no longer in violation of this chapter and that the expenses of such supervision have been paid.

(4) When the department or any of its authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound or contain any filthy, decomposed or putrid substances, or that may be poisonous or deleterious to health or otherwise unsafe, the

same being hereby declared to be a nuisance, the department, or its authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

History.—s. 6, ch. 19656, 1939; CGL 1940 Supp. 4151(669); s. 18, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 2, ch. 70-994.

500.07 Duty of prosecuting officer.—Each state attorney, county attorney, or city attorney to whom the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services or its designated agent reports any violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History.—s. 7, ch. 19656, 1939; CGL 1940 Supp. 4151(670); s. 1, ch. 65-402; ss. 14, 19, 35, ch. 69-106; s. 419, ch. 77-147; s. 6, ch. 78-95.

500.08 Minor violations not required to be reported.—Nothing in this chapter shall be construed as requiring the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services to report, for the institution of proceedings under this chapter, minor violations of this chapter, when it believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History.—s. 8, ch. 19656, 1939; CGL 1940 Supp. 4151(671); ss. 14, 19, 35, ch. 69-106; s. 420, ch. 77-147.

500.09 The department may promulgate regulations.—When in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department with the advice and consent of the state chemist shall promulgate regulations fixing and establishing for any food or class of food under its common or usual name so far as practicable a reasonable definition and standard of identity, or reasonable standard of quality or fill of container, or reasonable sanitary regulations governing the manufacture, processing or handling of such food products. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department with the advice and consent of the state chemist shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by s. 401 of the federal act.

History.—s. 9, ch. 19656, 1939; CGL 1940 Supp. 4151(672); ss. 14, 35, ch. 69-106.

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

(1)(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of s. 500.13(1); or

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of s. 408(a) of the federal act as amended or s. 500.13(1); or

(d) If it is or it bears or contains, any food additive which is unsafe within the meaning of s. 409 of the federal act as amended, or s. 500.13(1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under s. 408 of the federal act, or s. 500.13(1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of s. 500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(f) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughter house, or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2)(a) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(b) If any substance has been substituted wholly or in part therefor; or

(c) If damage or inferiority has been concealed in any manner; or

(d) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 percent, harmless natural gum, and pectin; provided, that this subsection shall not apply to any confectionery by reason of its containing less than one-half of 1 percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum

by reason of its containing harmless non-nutritive masticatory substances.

(4) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or s. 500.13.

History.—s. 10, ch. 19656, 1939; CGL 1940 Supp. 4151(678); s. 2, ch. 63-259.
cf.—s. 865.07 Adulterated syrup.

500.11 Food deemed misbranded.—A food is deemed to be misbranded:

(1) If its labeling is false or misleading in any particular; provided, however, that corn meal shall not be considered misbranded because of its being labeled "Water Ground," where such corn meal so labeled shall have been ground on rocks having a diameter of not less than 42 inches and which revolve during the grinding of same at a speed not greater than 186 revolutions per minute.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If in package form, unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer, or distributor;

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by s. 500.09; unless

(a) It conforms to such definition and standard; and

(b) Its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food.

(8) If it purports to be or is represented as:

(a) A food for which a standard of quality has been prescribed by regulations as provided by s. 500.09 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by s. 500.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subsection (7), unless its label bears:

(a) The common or usual name of the food, if any there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department with the advice and consent of the state chemist.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the department with the advice and consent of the state chemist.

(12) When soft drinks are offered for sale in sanitary returnable or nonreturnable containers, sealed or securely capped, impervious to contamination by leakage or contact with foreign substances, and when the trade name, net content and declaration of artificial flavor or color, when used, appear on the principal display panel, which may be the cap, crown, lid, or side of the container of said drinks, and when the manufacturer, at least once every year and oftener when required by the department, files with said department an affidavit stating the trade names of such drinks manufactured by him and the territorial limits in the state within which said drinks are offered for sale, the provisions of this chapter requiring additional labeling and branding of said drinks shall not apply. However, nothing in this subsection shall in any manner otherwise restrict, modify, or impair the jurisdiction and authority of the department over said drinks as food products and the conditions pertaining to the manufacture of same.

History.—s. 11, ch. 19656, 1939; CGL 1940 Supp. 4151(674); s. 1, ch. 26723, 1951; s. 1, ch. 28269, 1953; s. 30, ch. 63-572; s. 1, ch. 69-26; ss. 14, 35, ch. 69-106.
cf.—s. 601.99 Misbranding citrus fruit.

[1]500.12 Permits to manufacturers, processors or packers.—

(1) No person, firm, or corporation not operating under continuous inspection of a state or federal agency shall engage in the business of manufacturing, processing, or packing food in any manner without first obtaining a food manufacturer's, processor's and packer's permit from the department. The permit shall be issued upon application to the department on forms furnished by the department and

upon conditions prescribed by regulations of the department governing the manufacturing, processing, or packing of food as may be necessary to protect the public health and promote public welfare by protecting the purchasing public from injury by merchandising deceit. Such permit shall be issued January 1, 1971 and be renewed annually thereafter on or before January 1.

(2) The department may suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended may at any time apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(3) The state chemist or assistant state chemist or any officer or inspector duly designated by the department shall have access to any factory or establishment the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

(4) The department shall promulgate regulations exempting from any labeling requirement of this chapter:

(a) Small open containers of fresh fruits and fresh vegetables; and

(b) Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

History.—s. 12, ch. 19656, 1939; CGL 1940 Supp. 4151(675); ss. 14, 35, ch. 69-106; s. 3, ch. 70-994; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

500.121 Disciplinary procedures; retail food stores, food manufacturers, processors, or packers.—

(1) In addition to the suspension procedures provided in s. 500.12, the department may impose a fine not exceeding $5,000 against any retail food store, food manufacturer, processor, or packer, which fine, when imposed and paid, shall be deposited by the department in the General Inspection Trust Fund. In the alternative, the department may revoke or suspend the permit of any such retail food store, food manufacturer, processor, or packer when it is satisfied that it has:

(a) Violated any of the provisions of this chapter.

(b) Violated or aided or abetted in the violation of any law of Florida governing or applicable to retail food stores, food manufacturers, processors, or packers, or any lawful rules or regulations of the department.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby any other person, lawfully relying upon the word, representation, or conduct of a retail food store, food manufacturer, processor, or packer, acts to his injury or damage.

(d) Committed any act or conduct of the same or different character of that enumerated which constitutes fraudulent or dishonest dealing.

(2) Whenever any administrative order has been made and entered by the department imposing a fine pursuant to this section, said order shall specify the amount of fine and time limit for payment thereof, not exceeding 15 days, and, upon failure of the retail food store, food manufacturer, processor, or packer involved to pay the fine within said time, the permit of such retail food store, food manufacturer, processor, or packer shall be subject to suspension.

(3) In any court proceeding relating to administrative orders, the burden of proving violations of this chapter and of upholding administrative orders shall be with the department.

History.—s. 1, ch. 72-73; s. 6, ch. 78-95.

500.13 Addition of poisonous or deleterious substance to food.—

(1) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of s. 500.10(1)(b) with respect to any food, unless there is in effect a regulation pursuant to subsection (2) limiting the quantity of such substance, and the use or intended use of such substance conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of s. 500.10(1)(a).

(2) The department, whenever public interest in the state so requires, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act, prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes, upon his own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and a failure to comply with the request shall be sufficient grounds to deny the request. In adopting,

amending or repealing regulations relating to such substances the department shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(b) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, resulting from the use of such substance.

(c) The probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet.

(d) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(e) The availability of any needed practicable methods of analysis for determining the identity and quantity of such substance in or on an article, any substance formed in or on such article because of the use of such substance, and the pure substance and all intermediates and impurities, and

(f) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History.—s. 13, ch. 19656, 1939; CGL 1940 Supp. 4151(676); s. 3, ch. 63-259; ss. 14, 35, ch. 69-106.
cf.—s. 562.455 Adulterating liquor.

500.14 Drug or device deemed adulterated.—A drug or device is deemed to be adulterated:

(1)(a) If it consists in whole or in part of any filthy, putrid or decomposed substance; or

(b) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or

(c) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) If it is a drug and it bears or contains for purpose of coloring only, a color additive which is unsafe within the meaning of the federal act; or it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and it is unsafe within the meaning of the federal act.

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(3) If it is not subject to the provisions of subsection (2) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(4) If it is a drug and any substance has been:

(a) Mixed or packed therewith so as to reduce its quality or strength; or

(b) Substituted wholly or in part therefor.

History.—s. 14, ch. 19656, 1939; CGL 1940 Supp. 4151(677); s. 1, ch. 63-158.

500.15 Drug or device deemed misbranded.—A drug or device is deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer, or distributor. In the case of medicinal drugs as defined in s. 465.031(5), the label shall contain the name and place of business of the manufacturer of the finished dosage form of the drug and the name and the place of business of the packer or distributor. For the purpose of this paragraph, the finished dosage form of a medicinal drug is that form of the drug which is, or is intended to be, dispensed or administered to the patient and requires no further manufacturing or processing other than packaging, reconstitution, and labeling.

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Department of Health and Rehabilitative Services.

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substances, which derivative has been by the Department of Health and Rehabilitative Ser-

vices after investigation, found to be, and by regulations under this chapter, designated as habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning—May be habit-forming."

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(a) The common or usual name of the drug, if such there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Department of Health and Rehabilitative Services.

(6) Unless its labeling bears:

(a) Adequate directions for use; and

(b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of paragraph (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the Department of Health and Rehabilitative Services shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the Department of Health and Rehabilitative Services. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

(8) If it has been found by the Department of Health and Rehabilitative Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Department of Health and Rehabilitative Services shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Department of Health and Rehabilitative Services shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9) If it is a drug and its container is so made, formed, or filled as to be misleading; or if it is an imitation of another drug; or if it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(a) It is from a batch with respect to which a certificate has been issued pursuant to s. 506 of the federal act and

(b) Such certificate is in effect with respect to such drug.

(12) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivation thereof, unless:

(a) It is from a batch with respect to which a certificate has been issued pursuant to s. 507 of the federal act, and

(b) Such certificate is in effect with respect to such drug; provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under s. 507(c) or (d) of the federal act.

(13)(a) If it is a drug intended for use by man which is a habit-forming drug, to which subsection (4) applies; or which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drugs; or which is limited by an effective application under s. 505 of the federal act or s. 500.16 to use under the professional supervision of a practitioner licensed by law to administer such drug, unless it is dispensed only:

1. Upon the written prescription of a practitioner licensed by law to administer such drug, or

2. Upon an oral prescription of such practitioner which is reduced promptly to writing, and filled by the pharmacist, or

3. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug, shall be exempt from the requirements of this section, except subsections (1), (9), (11), (12), and the packaging requirements of subsections (7) and (8), if the drug bears a label containing the name and address of the dispenser or seller, the serial number and date of such prescription or its filling, the name of the prescriber and, if stated in the prescription, the name of the patient and the directions for use and cautionary statements. This exemption shall not apply to any drug dispensed in the course of the conduct of a business

of dispensing drugs pursuant to diagnosis by mail, or to any drug dispensed in violation of paragraph (a) of this subsection. Provided further, that the Department of Health and Rehabilitative Services may, by regulation, remove drugs subject to subsection (4) of this section and s. 500.16, from the requirements of paragraph (a) of this subsection when such requirements are not necessary for the protection of public health.

(14) If it is a drug which is subject to subsection (13)(a), unless at any time prior to dispensing, its label bears the statement, "Caution: Federal Law Prohibits Dispensing Without Prescription," or "Caution: State Law Prohibits Dispensing Without Prescription."

(15) If it is a drug which is not subject to subsection (13)(a), if at any time prior to dispensing its label bears the caution statement required in subsection (14).

(16) Nothing in subsection (13) shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

(17) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History.—s. 15, ch. 19656, 1939; CGL 1940 Supp. 4151(678); s. 1, ch. 22927, 1945; s. 1, ch. 25239, 1949; ss. 1, 2, ch. 28157, 1953; s. 2, ch. 63-158; ss. 19, 35, ch. 69-106; s. 1, ch. 74-90; s. 421, ch. 77-147.

500.151 Possession of habit-forming, toxic, harmful or new drugs without prescriptions unlawful; exemptions and exceptions.—

(1) No person shall possess any habit-forming, toxic, harmful or new drug subject to s. 500.15(13)(a), unless the possession of such drug has been obtained by a valid prescription of a practitioner licensed by law to administer such drug; provided that the provisions of this section shall not be applicable to the delivery of such drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice in the performance of their official duties, as the case may be; or to the possession of such drugs by such persons or their agents or employees for such use: pharmacists; practitioners; persons who procure such drugs for disposition by or under the supervision of pharmacists or practitioners employed by them or for the purpose of lawful research, teaching, or testing, and not for resale; hospitals and other institutions which procure such drugs for lawful administration by practitioners; officers or employees of federal, state, or local governments; manufacturers and wholesalers lawfully engaged in selling such drugs to authorized persons; and common carriers and warehousemen while engaged in lawfully transporting or storing such drugs for authorized persons.

(2) The possession of a drug under subsection (1) not properly labeled to indicate that possession is by a valid prescription of a practitioner licensed by law to administer such drug by any person not exempted under this section shall be prima facie evidence that such possession is unlawful.

(3) The penalty for the violation of this section shall be the same as that provided in s. 500.24, for the violation of the provisions of s. 500.04.

History.—s. 1, ch. 57-167; s. 3, ch. 63-158.

500.1515 Amygdalin (laetrile); manufacture, distribution, delivery, possession, sale, and use lawful; conditions.—Unless the [1]State Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of chapter 120, make a formal finding that amygdalin (laetrile) is harmful:

(1) Under specified conditions, the manufacture, distribution, delivery, possession, sale, and use of amygdalin (laetrile) is lawful within this state. No person, however, shall manufacture, distribute, sell, or deliver amygdalin (laetrile) for the purpose of transporting such substance to any other state, district, or territory beyond the borders of this state.

(2) Amygdalin (laetrile) may be delivered or sold only through a prescription issued by a physician licensed under chapter 458 or chapter 459. The label or other device affixed to a container containing amygdalin (laetrile) shall include a statement that such substance has not yet been approved as a treatment or cure for cancer by the Food and Drug Administration of the United States Department of Health, Education and Welfare.

History.—s. 1, ch. 79-57.

[1]**Note.**—Chapter 79-302 abolished the State Board of Medical Examiners and established the Board of Medical Examiners, and chapter 79-230 abolished the State Board of Osteopathic Medical Examiners and established the Board of Osteopathic Medical Examiners.

500.1518 Sodium pentobarbital; permits for use in euthanasia of domestic animals.—

(1) The Board of Pharmacy shall adopt rules providing for the issuance of permits authorizing the purchase, possession, and use of sodium pentobarbital by county or municipal animal-control agencies or humane societies registered with the Secretary of State for the purpose of euthanizing injured, sick, or abandoned domestic animals which are in their lawful possession. The rules shall set forth guidelines for the proper storage and handling of sodium pentobarbital and such other provisions as may be necessary to ensure that the drugs are used solely for the purpose set forth in this section. The rules shall also provide for an application fee not to exceed $50 and a biennial renewal fee not to exceed $50.

(2) Any county or municipal animal-control agency or any humane society registered with the Secretary of State may apply to the Department of Professional Regulation for a permit to purchase, possess, and use sodium pentobarbital pursuant to subsection (1). Upon certification by the board that the applicant meets the qualifications set forth in the rules, the department shall issue the permit.

(3) The board may revoke or suspend the permit upon a determination that the permittee is using sodium pentobarbital for any purpose other than that set forth in this section or if the permittee fails

to follow the rules of the board regarding proper storage and handling.

History.—s. 1, ch. 79-346.

500.152 Complimentary drugs; disposition of drugs unsuitable for dispensing.—

(1) No samples or complimentary packages of medicinal drugs as defined in s. 465.031 may be distributed unless requested in writing by a person authorized by law to prescribe or dispense such drugs. The request shall contain the name and quantity of the drug and the name of the company supplying the drug. A copy of the request shall be retained for 2 years by the company supplying the drug.

(2) The [1]Florida Board of Pharmacy shall be responsible for promulgating, and shall promulgate, rules providing for the distribution of medicinal drugs as permitted by subsection (1), as well as for the disposition of such drugs which by reason of physical condition or requirements of state or federal law are unsuitable for the purpose of being dispensed.

History.—s. 1, ch. 75-128; s. 1, ch. 79-393.

[1]Note.—Chapter 79-226 abolished the Florida Board of Pharmacy and established the Board of Pharmacy.

500.16 Sale, etc., of new drugs; exceptions.—

(1) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(a) An application with respect thereto has become effective under s. 505 of the federal act, or

(b) When not subject to the federal act, such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Department of Health and Rehabilitative Services an application setting forth:

1. Full reports of investigations which have been made to show whether or not such drug is safe for use;

2. A full list of the articles used as components of such drug;

3. A full statement of the composition of such drug;

4. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

5. Such samples of such drug and the articles used as components thereof as the Department of Health and Rehabilitative Services may require; and

6. Specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 60th day after the filing thereof, except that if the Department of Health and Rehabilitative Services finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) This section shall not apply:

(a) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "For investigational use only"; or

(b) To a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act; or

(c) To any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902, (U.S.C. 1958 ed. Title 42, chapter 6A, s. 262).

(d) To amygdalin (laetrile), unless the [1]State Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of chapter 120, have made a formal finding that amygdalin (laetrile) is harmful.

(4) An order refusing to permit an application under this section to become effective may be revoked by the Department of Health and Rehabilitative Services.

History.—s. 16, ch. 19656, 1939; CGL 1940 Supp. 4151(679); s. 4, ch. 63-158; ss. 19, 35, ch. 69-106; s. 422, ch. 77-147; s. 3, ch. 79-57.

[1]Note.—Chapter 79-302 abolished the State Board of Medical Examiners and established the Board of Medical Examiners, and chapter 79-230 abolished the State Board of Osteopathic Medical Examiners and established the Board of Osteopathic Medical Examiners.

500.17 Cosmetics deemed adulterated.—A cosmetic is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and subsection (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(3) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History.—s. 17, ch. 19656, 1939; CGL 1940 Supp. 4151(680); s. 7, ch. 22858, 1945; s. 5, ch. 63-158.

500.18 Cosmetics deemed misbranded.—A cosmetic is deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer, or distributor; and

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Department of Health and Rehabilitative Services with the advice and consent of the state chemist.

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined in the last sentence of s. 500.17(1).

History.—s. 18, ch. 19656, 1939; CGL 1940 Supp. 4151(681); s. 6, ch. 63-158; ss. 19, 35, ch. 69-106; s. 423, ch. 77-147.

500.19 Advertisement of food, etc., deemed false.—

(1) An advertisement of a food, drug, device, or cosmetic is deemed to be false if it is false or misleading in any particular.

(2) For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (1) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that when the Department of Health and Rehabilitative Services determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Department of Health and Rehabilitative Services shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as it may deem necessary in the interests of public health; provided that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History.—s. 19, ch. 19656, 1939; CGL 1940 Supp. 4151(682); ss. 19, 35, ch. 69-106; s. 424, ch. 77-147.

500.20 Department may promulgate regulations for enforcement of chapter as it relates to foods; analytical work.—

(1) The authority to promulgate regulations for the efficient enforcement of this chapter as it relates to foods is vested in the department. The department may promulgate such regulations as will conform with those promulgated under the federal act in regard to foods, and to this end may promulgate by reference any regulations promulgated under the federal act insofar as applicable and practicable.

(2) Any regulation so promulgated shall become effective on a date fixed by the department, which date shall not be prior to 90 days after its adoption.

(3) The analytical work incident to the proper enforcement of this law in regard to foods and rules and regulations promulgated by the department in regard to foods shall be done under the direction of the state chemist or his assistants, when properly verified, shall be prima facie evidence in any court of law or equity in this state.

History.—s. 20, ch. 19656, 1939; CGL 1940 Supp. 4151(683); s. 2, ch. 59-302; s. 4, ch. 63-259; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

500.201 The Department of Health and Rehabilitative Services may promulgate regulations for enforcement of chapter as it relates to drugs, devices, and cosmetics; analytical work.—

(1) The authority to promulgate regulations for the efficient enforcement of the chapter as it relates to drugs, devices, and cosmetics is vested in the Department of Health and Rehabilitative Services. The Department of Health and Rehabilitative Services may make such regulations promulgated by said authority conform with those promulgated under the federal act in regard to drugs, devices, and cosmetics and to this end may promulgate by reference any regulations under the federal act insofar as applicable and practicable.

(2) The analytical work incident to the proper enforcement of this law in regard to drugs, devices, and cosmetics and rules and regulations promulgated by the Department of Health and Rehabilitative Services in regard to drugs, devices, and cosmetics shall be done under the direction of the Department of Health and Rehabilitative Services, and the certificate of analysis of the Department of Health and Rehabilitative Services, when properly verified, shall be prima facie evidence in any court of law or equity in this state.

History.—s. 3, ch. 59-302; s. 7, ch. 63-158; ss. 14, 19, 35, ch. 69-106; s. 425, ch. 77-147; s. 19, ch. 78-95.

500.21 Inspection of factories, warehouses, etc., by departments.—

(1) The Department of Agriculture and Consumer Services or its duly authorized agent and the Department of Health and Rehabilitative Services or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed or held for

introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter, or any regulation promulgated under its authority, are being violated, and to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample, and to see that all sanitary regulations promulgated by the Department of Agriculture and Consumer Services or by the Department of Health and Rehabilitative Services are complied with.

(2) The Department of Agriculture and Consumer Services or its duly authorized agent and the Department of Health and Rehabilitative Services or its duly authorized agent may appoint inspectors for making such inspections and taking such samples as are necessary for the proper enforcement of this chapter. The Department of Agriculture and Consumer Services and the Department of Health and Rehabilitative Services shall make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History.—s. 21, ch. 19656, 1939; CGL 1940 Supp. 4151(684); s. 4, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 426, ch. 77-147.

500.22 Reports and dissemination of information by departments.—

(1) The Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services may also cause to be disseminated such information regarding food, drugs, devices and cosmetics as either deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services from collecting, reporting and illustrating the results of these investigations.

(3) The Department of Health and Rehabilitative Services shall, upon the request of any institutional or community pharmacy, furnish such pharmacy with the manufacturer's drug prices as filed with the Department of Health and Rehabilitative Services pursuant to s. 500.341(2).

History.—s. 22, ch. 19656, 1939; CGL 1940 Supp. 4151(685); ss. 14, 19, 35, ch. 69-106; ss. 3, 5, ch. 76-47; s. 427, ch. 77-147.

500.23 Employment of help, expenses and salaries.—

(1) The department may employ all help necessary to carry out and enforce the provisions of this chapter relating to foods and may designate any employee of the department to perform any duties necessary to carry out the said provisions. All expenses and salaries shall be paid out of the General Inspection Trust Fund.

(2) The Department of Health and Rehabilitative Services may employ all help necessary to carry out and enforce the provisions of this chapter relating to drugs, devices and cosmetics and may designate any employee of the said Department of Health and Rehabilitative Services to perform any duties necessary to carry out the said provisions. All expenses and salaries shall be paid out of the special fund hereby created in the office of the State Treasurer to be known as "The Drug, Device and Cosmetic Trust Fund."

History.—s. 23, ch. 19656, 1939; CGL 1940 Supp. 4151(686); s. 5, ch. 59-302; s. 2, ch. 61-119; ss. 14, 19, 35, ch. 69-106; s. 428, ch. 77-147.

500.24 Punishment for violations of Food, Drug and Cosmetic Law.—

(1) Any person who violates any of the provisions of s. 500.04 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; but if the violation is committed after a conviction of such person under this section has become final, such person shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) No person shall be subject to the penalties of subsection (1), for having violated s. 500.04 (1) or (3), if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state or the manufacturer from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(3) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services, to furnish the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the state, who caused him to disseminate such advertisement.

History.—s. 5, ch. 19656, 1939; CGL 1940 Supp. 7678(1); ss. 14, 19, 35, ch. 69-106; s. 451, ch. 71-136; s. 429, ch. 77-147.

500.29 Misbranding of toilet preparations; penalty.—Any person who sells or offers for sale at retail to the public any perfume, talcum powder or other toilet preparations manufactured or prepared by any person other than the person selling or offering the same for sale at retail to the public, which bears upon the label, package, container or bottle the name of the retail seller thereof without also displaying with equal prominence upon such label, package, container or bottle language clearly and plainly indicating by whom the same were prepared or manufactured, together also with the name of the person preparing or manufacturing the same or the name of the factory or laboratory in which the same were manufactured or prepared, shall be guilty of a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 10287, 1925; CGL 7852; s. 452, ch. 71-136.

500.30 Sale of lye regulated.—It is unlawful for any person to sell at wholesale or retail within this state any caustic acids or caustic alkalies, or preparations containing such acids or alkalies, intended for household use including preparations ordinarily described as or called "lye", without affixing to the bottle, box, vessel, sack or package containing the same a label printed or plainly written containing the name of the article, the name and place of business of the manufacturer, seller, or distributor of such household acids, alkalies or preparations thereof and in addition, the word "poison" which shall conspicuously appear thereon in red capital letters not less than 24 point size or which shall be affixed thereto as a sticker conspicuously placed.

History.—s. 1, ch. 9336, 1923; CGL 7700.

500.31 "Caustic" defined.—The word "caustic" within the intent and purpose of ss. 500.30-500.32 is construed to mean any "acids or alkalies in liquid or powdered form of" preparations thereof or containing free or chemically unneutralized hydrochloric acid in a concentration of 10 percent or sulphuric acid in a concentration of 10 percent or nitric acid in a concentration of 5 percent or carbolic acid (phenol) in a concentration of 5 percent or oxalic acid in a concentration of 10 percent or acetic acid in a concentration of 20 percent or hypochlorous acid (calx chlorinata bleaching powder or chloride of lime) in a concentration of 100 percent or potassium hydrate (caustic potash vienna paste pearlash potassa carbonas) in a concentration of 10 percent or sodium hydrate (caustic soda concentrated lye) in a concentration of 20 percent or silver nitrate (lunar caustic) in a concentration of 5 percent.

History.—s. 2, ch. 9336, 1923; CGL 7701; s. 7, ch. 22858, 1945.

500.32 Penalty for violation.—Any person violating s. 500.30 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 9336, 1923; CGL 7702; s. 453, ch. 71-136.

500.33 Horse meat; sale for human consumption.—

(1) It shall be unlawful for any person, firm or corporation to sell horse meat for human food in the markets of Florida for human consumption; provided, however, this section shall not apply to the sale of horse meat where the same is clearly stamped, marked and described as such.

(2) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 21986, 1943; s. 11, ch. 25035, 1949; s. 454, ch. 71-136.

500.341 Registration of drugs, devices and cosmetics.—

(1) All manufacturers, packagers, or proprietors of drugs, devices, and cosmetics, the label of which shows a Florida address, are required to register annually with the Department of Health and Rehabilitative Services. Each separate and distinct product must be listed at the time of annual registration.

(2) All manufacturers of drugs selling the same in Florida shall file with the Department of Health and Rehabilitative Services annually, on or before January 20, a current list of all prices charged to their customers, including any discounts given for volume or cash purchases. All changes in such listed prices shall be filed with the Department of Health and Rehabilitative Services within 10 days after their adoption or effective date, whichever is sooner.

(3) The submission of a catalog and specimens of labels may be required at the time of application for registration of drugs, devices and cosmetics packaged and prepared in compliance with the Federal Food, Drug and Cosmetic Act, which shall constitute a satisfactory compliance for registration of the products. With respect to all other drugs, devices and cosmetics, submission of a catalog and specimens of labels may be required at the time of application for registration but the registration will not become effective until examination and approval of the label of the drug, device or cosmetic product by the Department of Health and Rehabilitative Services. This approval shall be written notification to the manufacturer, packer and processor.

(4) No manufacturer, packer or proprietor shall sell any product which he has failed to register in conformity with this section. Such failure also subject to drugs, devices and cosmetics products to seizure and condemnation as provided in ss. 500.41-500.43.

(5) Such registration shall expire on December 31 next thereafter issuance and shall be renewed on January 1 of each year. Provided, that if any person who is subject to the requirements of this section shall fail to comply herewith by February 1 of any year the Department of Health and Rehabilitative Services shall have the authority to issue a stop-sale notice or order against such person which shall prohibit such person from selling or causing to be sold any drugs, devices, or cosmetics covered by this chapter until the requirements of this section are complied with.

(6) No product under this section not included on the annual registration shall be sold until after approval of its label by the Department of Health and Rehabilitative Services or the Federal Food and Drug Administration. Any product which is considered to be a new drug, unless excepted under the provisions of s. 500.16(3), may not be sold until the new drug application with respect thereto has become effective under s. 505 of the federal act.

History.—s. 2, ch. 65-402; ss. 19, 35, ch. 69-106; ss. 4, 5, ch. 76-47; s. 430, ch. 77-147; s. 4, ch. 79-57.

500.351 Examination and investigation fees.—

(1) The Department of Health and Rehabilitative Services shall assess the manufacturers, packers and proprietors of drugs, devices and cosmetics in packaged form an annual examination and investigation charge of $1 for each separate and distinct product registered annually from each manufacturer, packer or proprietor.

(2) All fees paid to the Department of Health and Rehabilitative Services, as herein provided, shall be

utilized by the Department of Health and Rehabilitative Services for the administration of this chapter.

History.—s. 2, ch. 65-402; ss. 19, 35, ch. 69-106; s. 431, ch. 77-147.

500.361 Revocation and suspension of registration.—The Department of Health and Rehabilitative Services shall have authority to suspend or revoke any registration required by the provisions of this chapter for the violation of any provision of this chapter or of any rules and regulations made and promulgated under the authority of this chapter.

History.—s. 2, ch. 65-402; ss. 19, 35, ch. 69-106; s. 432, ch. 77-147; s. 19, ch. 78-95.

500.39 Records of interstate shipment.—For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce and persons receiving food, drugs, devices, or cosmetics in interstate commerce shall, upon the request in the manner set out below of an officer or employee duly designated by the Department of Health and Rehabilitative Services or Department of Agriculture and Consumer Services, permit the officer or employee to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device, or cosmetic, and the quantity, shipper and consignee thereof.

History.—s. 11, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 433, ch. 77-147.

500.40 Carriers in interstate commerce; excepted from chapter.—Carriers engaged in interstate commerce are not subject to the provisions of this chapter, other than s. 500.39, by reason of their receipt, carriage, or delivery of food, drugs, devices or cosmetics in the usual course of business as carriers.

History.—s. 12, ch. 59-302.

500.41 Causes for seizure and condemnation of foods, drugs, devices or cosmetics.—Any article of food and any drug, device or cosmetic that is adulterated or misbranded under the provisions of this chapter is subject to seizure and condemnation by the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services or by its duly authorized agents that it designates for that purpose in regard to foods and by the Department of Health and Rehabilitative Services or by its duly authorized agent which it designates for that purpose in regard to drugs, devices, or cosmetics.

History.—s. 13, ch. 59-302; s. 3, ch. 61-456; ss. 14, 19, 35, ch. 69-106; s. 434, ch. 77-147.

500.42 Seizure; procedure; prohibition on sale or disposal of article; penalty.—Whenever a duly authorized officer or employee of the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services finds or has probable cause to believe that cause for the seizure of any food, drug, device or cosmetic, as set out in this chapter exists, he shall affix to the article a tag, stamp or other appropriate marking, giving notice that the article is or is suspected of being subject to seizure under the provisions of this chapter and that it has been detained and seized by either department, whichever the agent is authorized by. Such agent shall also warn all persons not to remove or dispose of the article by sale or otherwise, until permission of the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services or of the court of competent jurisdiction in which the article is detained or seized is given. It is unlawful for any person to remove or dispose of the detained or seized article by sale or otherwise without permission of the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services, or of the court in such cases. Any person who violates this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 14, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 455, ch. 71-136; s. 435, ch. 77-147.

500.43 Condemnation and sale, or release.—(1) When any article detained or seized under s. 500.42 has been found by the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services to be subject to seizure and condemnation under s. 500.42, the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services shall petition a court for an order of condemnation or sale, as the court may direct. The proceeds of the sale of food used for human consumption, less the legal costs and charges, shall be deposited in the State Treasury into the General Inspection Trust Fund. The proceeds of the sale of drugs, devices and cosmetics, less the legal costs and charges, shall be deposited in the State Treasury into the General Revenue Fund.

(2) Upon the payment of the costs of the condemnation proceeding and upon the execution and delivery of a surety bond to the effect that the goods shall not be sold or otherwise disposed of contrary to the provisions of this chapter, the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services or court may order that the goods be delivered to the owner thereof instead of being condemned or sold.

(3) If the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services finds that any article seized under the provisions of s. 500.42, was not subject to seizure under that section, the Department of Agriculture and Consumer Services or Department of Health and Rehabilitative Services or the designated officer or employee shall remove the tag or marking.

History.—s. 15, ch. 59-302; s. 1, ch. 61-31; ss. 14, 19, 35, ch. 69-106; s. 436, ch. 77-147.

[1]500.46 Wholesale drug and drug manufacturer establishment permits; renewal of permits; inspections.—

(1) No person shall operate as a drug wholesaler or drug manufacturer in this state unless he has first secured from the Department of Health and Rehabilitative Services a permit for each drug wholesale or drug manufacturing establishment operated by him. Application for such permit shall be made on forms to be furnished by the department showing the name and address of the establishment for which a permit is sought; the name and address of the own-

er or owners; and the names of all employees, agents, or salesmen who are engaged in the wholesaling or the manufacturing of drugs in this state. At the time of filing each such original application, the applicant shall pay to the department a fee of $50. Upon approval of the application by the department and the payment of the required fee, the department shall issue a permit to the applicant.

(2) Drug wholesalers and drug manufacturers who wholesale or manufacture any substance controlled under chapter 893 shall so notify the Department of Health and Rehabilitative Services when registering pursuant to this section. The department shall, on the forms furnished to registrants, provide an appropriate place for such notification. The department shall immediately notify the Department of Law Enforcement of all persons who register pursuant to this section.

(3) Drug wholesalers and drug manufacturers engaged in such business on January 1, 1972, who meet all the other requirements of this chapter and who, within 90 days of said time, shall pay an original permit fee of $50 and prove satisfactorily to the department that they are actually engaged in the drug wholesale or drug manufacturing business, shall, upon approval of their application by the department, be issued a permit.

(4)(a) During the month of December of each year, the owners and proprietors of drug wholesale and drug manufacturing establishments for which a permit has been secured shall, on forms to be furnished by the Department of Health and Rehabilitative Services, make application for renewal of such permit together with a $25 fee. All drug wholesale permits and drug manufacturer permits issued by the department shall expire on December 31. If a renewal application and fee are not filed by December 31 of any year, the permit may be reinstated only upon payment of a delinquent fee of $5, plus the required renewal fee, within 30 days after the date of expiration. Failure to renew in accordance with the provisions of this section shall preclude any future renewal of the permit. Continued operation as a drug wholesaler or drug manufacturer in this state when a permit for renewal is precluded shall require a new permit application in accordance with the requirements of subsection (1).

(b) The Department of Health and Rehabilitative Services may refuse to issue a permit if it is shown that the applicant is not of good moral character or that it would be a danger to the public health, safety, and welfare if the applicant were issued a permit.

(5) The agents of the Department of Health and Rehabilitative Services and the Department of Law Enforcement shall have the authority to inspect and investigate all drug wholesalers and drug manufacturers during business hours for the purpose of enforcing the provisions of this chapter, chapters 893 and 465, and the rules and regulations of the Department of Health and Rehabilitative Services which relate to the protection of the health, safety, and welfare of the public.

(6) The operation of a drug wholesale or a drug manufacturing establishment in the state is declared to be a practice affecting the public health, safety, and welfare and subject to regulation and control in the public interest. This act shall be liberally construed to carry out these objectives and purposes.

History.—s. 2, ch. 71-261; s. 27, ch. 73-331; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 18, ch. 79-8.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

500.465 Amygdalin (laetrile) manufacturers; regulation; inspection; fees.—The Department of Health and Rehabilitative Services shall:

(1) Adopt rules outlining minimum standards for manufacturers in preparing, compounding, processing, and packaging amygdalin (laetrile).

(2) Conduct unannounced inspections of the facilities used to manufacture amygdalin (laetrile) at least annually.

(3) Establish a minimum licensing fee of $500 per year to be collected from each manufacturer to defray the total cost of the licensing and inspections of the facilities.

History.—s. 4, ch. 79-57.

[1]500.47 Authority to revoke or suspend permits.—

(1) The Department of Health and Rehabilitative Services may revoke or suspend the permit of any drug wholesale or drug manufacturing establishment which is found to have:

(a) Obtained a permit by misrepresentation or fraud or through a mistake of the department;

(b) Attempted to procure or has procured a permit for any other person by making or causing to be made any false representation;

(c) Violated any of the requirements of this chapter, chapter 893 or chapter 465, or any of the rules and regulations of the Department of Health and Rehabilitative Services as they relate to drug wholesale or drug manufacturing establishments.

(2) If a drug wholesale permit or drug manufacturer permit is revoked or suspended, the owner, manager, or proprietor of the establishment shall cease to operate the establishment as a drug wholesale or drug manufacturing establishment from the effective date of such suspension or revocation until such time as the establishment is again registered with the Department of Health and Rehabilitative Services and possesses the required permit for operation. In the event of such revocation or suspension, the owner, manager, or proprietor shall remove from the premises all signs and symbols identifying the premises as a drug wholesale or drug manufacturing establishment. The period of a suspension shall be as determined by the Department of Health and Rehabilitative Services; however, no such suspension shall exceed 6 months in duration. In the event a permit is revoked, the person owning or operating the establishment shall not be entitled to make application for a permit to operate a drug wholesale or drug manufacturing establishment for a period of 1 year from the date of such revocation.

History.—s. 2, ch. 71-261; s. 28, ch. 73-331; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 19, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

500.500 Standards of enrichment for grain products; definitions.—As used in ss. 500.500-500.506, unless the context otherwise requires:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Enrichment" means the replacement of those essential nutrients removed in the processing and refining of grain products. The nutrients specified in state bread and cereal enrichment laws and stipulated in federal standards of identity are iron, thiamine, riboflavin, and niacin.

(3) "Federal standard of enrichment" means the definition and standard of identity for a food established pursuant to the provisions of the Federal Food, Drug and Cosmetic Act and acts amendatory thereof.

(4) "State standard" means regulations and standards promulgated and adopted by the State of Florida and now in effect under the Federal Food, Drug and Cosmetic Act and Fair Packaging and Labeling Act as amended in 21 C.F.R. [Code of Federal Regulations], parts 1 through 129.

(5) "Wheat flour" includes, and is limited to, the following foods made from wheat, as defined in federal standards heretofore or hereafter in effect: Flour (white flour, wheat flour, plain flour); enriched flour; bromated flour; enriched bromated flour; durum flour; self-rising flour (self-rising white flour, self-rising wheat flour); enriched self-rising flour; phosphated flour (phosphated white flour, phosphated wheat flour); instantized flours (instant blending flours, quick mixing flours); whole wheat flour (graham flour, entire wheat flour); bromated whole wheat flour; whole durum wheat flour; crushed wheat (coarse ground wheat); cracked wheat; farina; enriched farina; and semolina.

(6) "Enriched flour" includes, and is limited to, the following kinds of wheat flour, as defined in federal standards for enrichment: Enriched flour; enriched bromated flour; enriched self-rising flour (including instantized, instant blending, and quick-mixing forms of each of the foregoing); enriched farina; and any other enriched wheat flour for which a federal standard for enrichment shall be established after January 1, 1975.

(7) "Corn flour and related products" includes, but is not limited to, foods made from corn meeting standards heretofore and hereafter in effect for white cornmeal, yellow cornmeal, bolted white cornmeal, bolted yellow cornmeal, degerminated white cornmeal, degermed white cornmeal, degerminated yellow cornmeal, degermed yellow cornmeal, self-rising white cornmeal, self-rising yellow cornmeal, white corn flour, yellow corn flour, grits, corn grits, hominy grits, yellow grits, yellow corn grits, yellow hominy grits, quick grits, quick-cooking grits, and instant grits.

(8) "Rice" includes the following kinds of products defined in the federal standards: All forms of milled rice, except rice coated with talc and glucose and known as coated rice, to which nutrients may be added.

(9) "White bread" includes, and is limited to, any bread made with wheat flour, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented as white bread.

(10) "Rolls" includes, but is not limited to, rolls and buns of the semibread type, such as soft rolls, hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls.

(11) "Macaroni products" means, and is limited to, foods which are prepared by drying formed units of dough made from semolina durum flour, farina, or any combination of two or more of these, and water and with or without one or more of the ingredients as identified by the Federal Food and Drug Administration. These products include macaroni, spaghetti, and vermicelli.

(12) "Noodle products" includes, and is limited to, foods which are prepared by drying formed units of dough made from semolina durum flour, farina, or any combination of two or more of these, with liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks, or any combination of two or more of these, with or without water and with or without one or more of the optional ingredients identified by the Federal Food and Drug Administration. These products include noodles, egg noodles, egg macaroni, egg spaghetti, and egg vermicelli.

(13) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons, whether incorporated or not.

(14) "Sell at retail," when used with reference to a food intended for human consumption, means sale of the food to a purchaser for his personal, family, or household consumption, and not for resale.

History.—s. 1, ch. 74-41.

500.501 Standards established by departmental regulation.—The department shall by regulation establish a state standard for each product defined in s. 500.500(5)-(12), which shall conform so far as practicable with, and shall not be inconsistent with, the federal standard of enrichment for the same product. State standards shall, from time to time, be amended to conform similarly to the federal standard of enrichment.

History.—s. 2, ch. 74-41.

500.502 Enforcement.—The department is charged with the duty of enforcing the provisions of ss. 500.500-500.506 and is authorized and directed to promulgate, amend, or rescind rules, regulations, and orders for their efficient enforcement. The department is further authorized to:

(1) Suspend the requirement of s. 500.504 for a temporary period if it finds that there is an existing or imminent shortage of any vitamin or mineral required by state standards of enrichment.

(2) Permit the omission, in whole or in part, of any vitamin or mineral from a food in the class of foods to which s. 500.501 applies, if it finds that the inclusion of such class may adversely affect one or more desirable characteristics of the food.

(3) Exempt, in whole or in part, from the provisions of ss. 500.500-500.506 sales to hospitals or other such institutions, or foods served by these institu-

tions, if it is found that good reason for such exemption exists.

History.—s. 5, ch. 74-41.

500.503 Investigations; inspections.—For the purposes of ss. 500.500-500.506, the department is authorized to:

(1) Take samples for analysis.

(2) Conduct examinations and investigations.

(3) Enter at reasonable times any factory, mill, bakery, warehouse, shop, or establishment where any wheat flour, cornmeal, corn grits, or rice, or any food containing these products, is manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof.

(4) Inspect any such place or vehicle; any such wheat flour, cornmeal, corn grits, rice, or food therein; and any and all pertinent equipment, materials, containers, and labeling.

History.—s. 6, ch. 74-41.

500.504 Unlawful retail sales.—After January 1, 1975, it shall be unlawful for any person to sell at retail in this state any products for which there is a state standard of enrichment which do not conform to state standards of enrichment.

History.—s. 3, ch. 74-41.

500.505 Violations of ss. 500.500-500.506; penalty.—Any person who violates any of the provisions of ss. 500.500-500.506 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 74-41.

500.506 Exemption.—Notwithstanding the provisions of s. 500.504, any wheat flour, cornmeal, corn grits, or rice, or food containing these products, which shall have been produced prior to January 1, 1975, shall be exempt from the provisions of ss. 500.500-500.506.

History.—s. 4, ch. 74-41.

CHAPTER 501

CONSUMER PROTECTION

PART I GENERAL PROVISIONS (ss. 501.011-501.142)

PART II DECEPTIVE AND UNFAIR TRADE PRACTICES (ss. 501.201-501.213)

PART III MISCELLANEOUS (ss. 501.90-501.923)

PART I

GENERAL PROVISIONS

501.011 Credit cards; unsolicited delivery or mailing prohibited.—

(1) As used in this section the term "credit card" means any credit card or other document or device intended or adopted for the purpose of establishing the identity and credit of any person in connection with the purchase or rental on credit of goods or services or the obtaining of loans.

(2) Except as provided in subsection (3), it shall be unlawful for any financial institution, retail merchant, or other person to mail or otherwise deliver any credit card in this state. Any violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section shall not apply to any credit card when mailed or otherwise delivered:

(a) In response to a request or application for a credit card; or

(b) As a replacement for a credit card previously issued to the person to whom the credit card is shipped or mailed.

(4) No credit card bearer shall be liable for the unauthorized use of any credit card issued on an unsolicited basis, after July 5, 1970.

History.—ss. 1, 2, ch. 70-352; s. 456, ch. 71-136.

501.012 Contracts for health studio services.—

(1) The Legislature finds and declares that there exist in connection with a substantial number of contracts for health studio services certain practices and business and financing methods which have worked undue financial hardship upon some of the citizens of our state, and that existing legal remedies are inadequate to correct existing problems in the industry. The Legislature finds and declares that the health studio industry has a significant impact upon the economy and well-being of the people of the state and that the provisions of this section regulating health studio contracts are necessary for the public welfare.

(2) For purposes of this section, the following terms shall have the following meanings, unless the context requires otherwise:

(a) "Health studio" means and includes any person, firm, corporation, organization, club, or association engaged in the sale of instruction, training, or assistance in a program of physical exercise, which may include the use of a sauna, whirlpool bath, weight lifting room, massage, steam room, or other exercising machine or device. The term also includes any person, firm, corporation, organization, or association engaged in the sale of the right or privilege to use exercise equipment or facilities, such as a sauna, whirlpool bath, weight lifting room, massage, steam room, or other exercising machine or device. "Health studio" does not include bona fide nonprofit organizations which have been granted tax exempt status by the Internal Revenue Service, including,

but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or other similar organizations, whose functions as health studios are only incidental to their overall functions and purposes.

(b) "Health studio services" means and includes services, privileges, or rights offered for sale or provided by a "health studio."

(3) Every contract for the sale of health studio services shall contain the following, contractual provisions to the contrary notwithstanding:

(a) Provision for the penalty-free cancellation of the contract within 3 days, exclusive of holidays and weekends, of its making, upon the mailing or delivery of written notice to the health studio, and refund upon such notice of all moneys paid under the contract, except that the health studio may retain an amount computed by dividing the number of complete days in the contract's term or, if appropriate, the number of occasions health studio services are to be rendered, into the total contract price and multiplying the result by the number of complete days that have passed since the contract's making or, if appropriate, by the number of occasions that health studio services have been rendered.

(b) Provision for the cancellation of the contract if the health studio goes out of business and fails to provide facilities within 5 miles or moves its facilities more than 5 miles from the location designated in such contract, upon written notice by the buyer, with refund upon such notice of funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks of the contract's term and multiplying the result by the number of weeks remaining in the contract's term.

(c) Provision for the cancellation of the contract if the buyer dies or becomes totally and permanently disabled during the membership term following the date of such contract, with refund of funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks of the contract's term and multiplying the result by the number of weeks remaining in the contract's term. The contract may require a buyer or the buyer's estate seeking relief under this subsection to provide reasonable proof of total and permanent disability or death.

(d) Provision that the contract shall not be for a period in excess of 36 months, but may be renewable at the end of each 36-month period of time.

(4) Upon entering into a contract for health studio services, the buyer shall be provided with a written contract, which shall include the name, address, and primary place of business of the health studio. Prior to entering into any such contract, the health studio shall also provide the buyer with a current copy of any rules and regulations applicable to the buyer's use of the health studio.

(5) The provisions of this section shall not apply to any contracts for health studio services entered into before the effective date of this act, or to the subsequent renewals of said contracts.

(6)(a) Every health studio which sells contracts for health studio services to be rendered at a planned health studio or a health studio under construction shall maintain a bond issued by a surety company admitted to do business in the state. The principal sum of the bond shall be $10,000.

(b) The bond required by paragraph (a) shall be in favor of the state for the benefit of any person injured as a result of a violation of this section. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

(c) In lieu of maintaining the bond required in paragraph (a), the health studio may furnish to the Department of Agriculture and Consumer Services a certified copy of its financial statement, letter of credit from any foreign or domestic bank, or any other documentation establishing sufficient financial responsibility in at least the amount of the bond required under paragraph (a) as will enable the health studio to satisfy the possible claims against the bond allowed by paragraph (b). In the event the health studio is controlled by, under common control with, or controls other corporations, and such other corporations agree in writing to satisfy the claims against a bond allowed by paragraph (b), then the financial responsibility of such other corporations shall be considered in determining compliance of this section.

(7) The amendments to this section by chapter 78-419, Laws of Florida, shall not apply to any contracts for health studio services entered into before July 1, 1978, or to subsequent renewals of such contracts.

History.—s. 1, ch. 77-432; ss. 1, 2, ch. 78-419.

501.021 Home solicitation sale; definitions.—As used in ss. 501.021-501.055:

(1) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(2) "Home solicitation sale" means any consumer credit sale of goods or services made pursuant to an installment contract, loan agreement, other evidence of indebtedness, or a cash sale or other consumer credit sale in excess of $25, which includes all interest, service charges, finance charges, postage, freight, insurance, and service or handling charges, in which the seller or a person acting for him engages in a personal solicitation of the sale at a place other than at the seller's fixed location business establishment where goods or services are offered or exhibited for sale, and the buyer's agreement or offer to purchase is given to the seller and the sale is consummated at a place other than at the seller's fixed location business establishment, including a sales transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services. It does not include a sale made at any fair or similar commercial exhibit.

(3) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day,

Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.
History.—ss. 1, 4, ch. 70-363; s. 1, ch. 71-65; s. 1, ch. 77-350.

501.025 Same; buyer's right to cancel.—In addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. Written notice of cancellation shall be effective upon postmarking. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notice of a buyer's right to cancel must appear on all notes or other evidence of indebtedness given pursuant to any home solicitation sale.
History.—s. 2, ch. 70-363; s. 1, ch. 77-350.

501.031 Same; written agreement.—Every home solicitation sale shall be evidenced by a writing as provided in this section.

(1) In a home solicitation sale, the seller must present to and obtain from the buyer his signature to a written agreement or offer to purchase which designates, as the date of the transaction, the date on which the buyer actually signs and which contains a statement of the buyer's rights which complies with subsection (2).

(2) The statement must:

(a) Appear under the conspicuous caption, "BUYER'S RIGHT TO CANCEL";

(b) Read as follows: "This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. This notice must indicate that you do not want the goods or services and must be postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may keep all or part of any cash down payment, not to exceed the lesser of 5 percent of the cash price or $50."
History.—s. 3, ch. 70-363.

501.035 Same; exclusions.—There shall be excluded from the operation of ss. 501.021-501.055:

(1) The sale of insurance; and

(2) The sale of farm equipment or machinery.
History.—s. 5, ch. 70-363.

501.041 Same; restoration of down payment and retention of cancellation fee.—Except as provided in this section, within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement. If the seller fails to comply with an obligation imposed by ss. 501.021-501.055 or if the buyer avoids the sale on any ground independent of his right to cancel as provided by s. 501.025, the seller is not entitled to retain a cancellation fee as provided in s. 501.031(2)(b). Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.
History.—s. 6, ch. 70-363.

501.045 Same; duty of buyer.—Except as provided in s. 501.041, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purposes of this section, 40 days is presumed to be a reasonable time. The buyer has the duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee as provided in s. 501.031(2)(b).
History.—s. 7, ch. 70-363.

501.046 Same; duty of businesses conducting home solicitation sales.—

(1) All businesses conducting home solicitation sales in this state shall:

(a) In the case of personal, face-to-face transactions, provide to the seller proper identification in such form as to be easily recognizable, which shall be presented to the prospective buyer and which shall include but not be limited to:

1. The seller's name, description, and signature.
2. The name, address, and telephone number of the parent company or sponsor.
3. The name, address, and signature of the seller's supervisor.

(b) Direct the seller to leave with the buyer a "business card" or receipt, which shall include:

1. The name, address, and telephone number of the parent company or sponsor.
2. The name, address, and telephone number of the seller.

(2) In the case of telephone sales solicitations, the name, address, and telephone number of the parent company or sponsor shall be clearly and conspicuously disclosed on sales materials and contracts sent to the buyer.
History.—s. 2, ch. 77-350.

501.047 Same; prohibited practices.—In conducting a home solicitation, no person shall:

(1) Misrepresent the terms or conditions of the sale.

(2) Misrepresent the seller's affiliation with the parent company or sponsor.

(3) Misrepresent the seller's reasons for soliciting the sale of goods or services, such as participation

in a contest, or inability to perform any other job, when such is not a fact.

(4) Allege or imply that the agreement to purchase goods or services is noncancelable, when such is not a fact.

(5) Perform any other act which constitutes misrepresentation.

History.—s. 2, ch. 77-350.

501.052 Same; enforcement authority; injunctive relief.—The division shall investigate any complaints received concerning violations of ss. 501.021-501.055 and report the results of its investigation to the Attorney General or State Attorney, and it may institute proceedings to enjoin any person found by the division to be violating the provisions of ss. 501.021-501.055.

History.—s. 2, ch. 77-350.

501.055 Same; penalty.—Violation of any of the provisions of ss. 501.021-501.045 is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 70-363; s. 457, ch. 71-136.

501.061 Hazardous Substances Law; short title.—Sections 501.061-501.121 may be cited as the "Florida Hazardous Substances Law."

History.—s. 1, ch. 70-374.

501.065 Same; definitions.—For the purpose of ss. 501.061-501.121:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Secretary" means the secretary of the Department of Health and Rehabilitative Services or his legally authorized representative or agent.

(3) "Person" includes an individual, partnership, corporation, or association, or its legal representative or agent.

(4) "Commerce" means any and all commerce within the state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(5)(a) "Hazardous substance" means:

1. Any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, or flammable or which generates pressure through decomposition, heat, or other means, if such substances or mixture of substances may cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

2. Any substances which the department by regulation finds, pursuant to the provisions of s. 501.071(1), meet the requirements of paragraph (a)1.

3. Any radioactive substance, whether as used in a particular class of article or as packaged, which the department determines by regulation to be sufficiently hazardous to require labeling in order to protect the public health.

4. Any toy or other article intended for use by children which the department determines to meet the requirements of subsection (16)(a)1.

(b) "Hazardous substance" does not apply to economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act or the Florida Pesticide Law, to foods, drugs, and cosmetics subject to the Florida Food, Drug and Cosmetic Law, or to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house; but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act or the Florida Pesticide Law, but which is a hazardous substance within the meaning of paragraph (a)1. by reason of bearing or containing such an economic poison.

(c) "Hazardous substance" does not include any source material, special nuclear material, or byproduct material, as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(6) "Toxic" applies to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(7)(a) "Highly toxic" means any substance which falls within any of the following categories:

1. Produces death within 14 days in one-half or more than one-half of a group of 10 or more laboratory white rats, each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered.

2. Produces death within 14 days in one-half or more than one-half of a group of 10 or more laboratory white rats, each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust if such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner.

3. Produces death within 14 days in one-half or more than one-half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

(b) If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(8) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but does not refer to action on inanimate surfaces.

(9) "Irritant" means any substance not corrosive within the meaning of subsection (8) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(10) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of

the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(11) "Extremely flammable" applies to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester, and the term "flammable" shall apply to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; except that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to such materials or containers, respectively, and established by regulations issued by it, which regulations shall also define the terms "flammable" and "extremely flammable" in accord with such methods.

(12) "Radioactive substance" means a substance which emits ionizing radiation.

(13) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto, and a requirement, made by or under authority of ss. 501.061-501.121, that any word, statement, or other information must appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be any, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written, or otherwise.

(14) "Immediate container" does not include package liners.

(15)(a) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children, which is a hazardous substance or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended or packaged in a form suitable for use in the household or by children, which substance, except as otherwise provided by or pursuant to s. 501.071, fails to bear a label which states conspicuously:

1. The name and place of business of the manufacturer, packer, distributor, or seller.

2. The common or usual name or the chemical name, if there is no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by regulation permits or requires the use of a recognized generic name.

3. The signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic.

4. The signal word "WARNING" or "CAUTION" on all other hazardous substances.

5. An affirmative statement of the principal hazard or hazards, such as "Flammable," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard.

6. Precautionary measures describing the action to be followed or avoided, except when modified by regulation of the department pursuant to s. 501.071.

7. Instruction, when necessary or appropriate, for first aid treatment.

8. The word "Poison" for any hazardous substance which is defined as "highly toxic" by subsection (7).

9. Instructions for handling and storage of packages which require special care in handling or storage.

10. The statement "Keep out of the reach of children" or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard.

(b) Any statement required under this subsection shall be located prominently and be in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(16)(a) "Banned hazardous substance" means:

1. Any toy or other article intended for use by children which is a hazardous substance, which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted, which is otherwise hazardous because of the presence of electrical, mechanical, or thermal hazards, or which may cause substantial personal injury or illness by, during, or as a result of, foreseeable use of the toy or article, even if unintended by the manufacturer, when such injury or illness is attributable to electrical, mechanical, or thermal aspects of design, processing, or assembly of that toy or article; or

2. Any hazardous substance intended or packaged in a form suitable for use in household, which the department by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under ss. 501.061-501.121 for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of commerce.

(b) The department, by regulation, shall exempt from paragraph (a)1. articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed such directions and warnings. The department shall also exempt from paragraph (a)1., and provide for the labeling, of common fireworks, including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers, to the extent that it determines that such articles can be labeled to protect the purchasers and users thereof.

(c) Proceedings for the issuance, amendment, or repeal of regulations pursuant to paragraphs (a)2.

and (b) shall be governed by the provisions of s. 501.071.

(17) The term "electrical" pertains to the flow of an electrical charge or to electrons in motion; and the term "electrical hazard" means a condition or circumstance that may cause substantial personal injury or substantial illness from electric shock or electrocution during, or as a proximate result of, any customary or reasonably foreseeable use.

(18) The term "mechanical" pertains to the design, construction, or structure of a substance; and the term "mechanical hazard" means a condition or circumstance that may cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable use, because of sharp surfaces or protrusions, fragmentation, explosion, strangulation, suffocation, asphyxiation, or other mechanical means.

(19) The term "thermal" pertains to the transfer or manifestation of heat energy; and the term "thermal hazard" means a condition or circumstance that may cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable use of articles which contain heated surfaces or which, if ignited, burn so intensely that extremely high temperatures are reached or they cannot be readily extinguished by means ordinarily at hand.

History.—s. 2, ch. 70-374; s. 1, ch. 70-439.

501.071 Same; declaration, variation, and exemptions.—

(1) Whenever in the judgment of the department such action will promote the objectives of ss. 501.061-501.121 by avoiding or resolving uncertainty as to application, the department may by regulation declare to be a hazardous substance, for the purposes of ss. 501.061-501.121, any substance or mixture of substances which it finds meets the requirements of s. 501.065(5)(a)1.

(2) If the department finds that the requirements of s. 501.065(15)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, it may by regulation establish such reasonable variations or additional label requirements as it finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(3) If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under ss. 501.061-501.121 is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall promulgate regulations exempting such substances from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(4) If the department finds that the hazard of an article subject to ss. 501.061-501.121 is such that labeling adequate to protect the public health and safety cannot be devised or that the article presents an imminent danger to the public health and safety, it may declare such article to be a banned hazardous substance and require its removal from commerce.

History.—s. 3, ch. 70-374; s. 1, ch. 70-439.

501.075 Same; prohibited acts.—The following acts and the causing thereof are prohibited:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(3) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(4) The giving of a guarantee or undertaking referred to in s. 501.081(2)(b) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance.

(5) The failure to permit entry or inspection as authorized by s. 501.105(1) or to permit access to and copying of any record as authorized by s. 501.111.

(6) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food," "drug," and "cosmetic" have the same meanings as in the Florida Food, Drug, and Cosmetic Law.

(7) The use by any person to his own advantage, or revealing, other than to the department or employees of the department, or to the courts when relevant in any judicial proceeding under ss. 501.061-501.121, of any information acquired under authority of s. 501.105 concerning any method of process which, as a trade secret, is entitled to protection.

History.—s. 4, ch. 70-374; s. 1, ch. 70-439.

501.081 Same; penalties.—

(1) Any person who violates any of the provisions of s. 501.075 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the violator shall be guilty of a misdemean-

or of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) No person shall be subject to the penalties of subsection (1) of this section:

(a) For having violated s. 501.075(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received such hazardous substance and copies of all documents, if there be any, pertaining to the delivery of the hazardous substance to him; or

(b) For having violated s. 501.075(1) if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in ss. 501.061-501.121.

History.—s. 5, ch. 70-374; s. 1, ch. 70-439; s. 458, ch. 71-136.

501.085 Same; injunction.—In addition to the remedies hereinafter provided, the department is authorized to apply to the circuit court, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of s. 501.075, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

History.—s. 5, ch. 70-374; s. 1, ch. 70-439.

501.091 Same; embargo and seizure.—

(1) Whenever a duly authorized agent of the department finds or has probable cause to believe that any hazardous household substance is misbranded or is a banned hazardous substance within the meaning of ss. 501.061-501.121, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(2) When an article detained or embargoed under subsection (1) has been found by an agent to be misbranded or a banned hazardous substance, he shall petition the judge of the circuit court in whose jurisdiction the article is detained or embargoed for a libel of condemnation of such article. When an agent has found that an article so detained or embargoed is not a misbranded or banned hazardous substance, he shall remove the tag or other marking.

(3)(a) If the court finds that a detained or embargoed article is a misbranded or banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of such article or his agents.

(b) When the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for such labeling under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of ss. 501.061-501.121 and that the expenses of such supervision have been paid.

History.—s. 7, ch. 70-374; s. 1, ch. 70-439.

501.095 Same; hearing before report of violation.—It is the duty of each state attorney, county attorney, or city attorney to whom the department reports any violation of ss. 501.061-501.121 to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

History.—s. 8, ch. 70-374; s. 1, ch. 70-439.

501.101 Same; rules.—

(1) The authority to promulgate regulations for the efficient enforcement of ss. 501.061-501.121 is vested in the department.

(2) The department shall cause the regulations promulgated under ss. 501.061-501.121 to conform, insofar as practicable, with the regulations established pursuant to the Federal Hazardous Substances Act.

History.—s. 9, ch. 70-374; s. 1, ch. 70-439.

501.105 Same; examinations and investigations.—

(1) For the purposes of enforcement of ss. 501.061-501.121, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(a) To enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, or packed or held for introduction into commerce or held after such introduction or to enter any vehicle being used to transport or hold such hazardous substances in commerce.

(b) To inspect, at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein.

(c) To obtain samples of such materials or packages thereof or of such labeling.

(2) If the officer or employee obtains any sample

prior to leaving the premises, he shall pay or offer to pay the owner, operator, or agent in charge for such sample and give a receipt describing the samples obtained.

History.—s. 10, ch. 70-374; s. 1, ch. 70-439.

501.111 Same; records of shipment.—For the purpose of enforcing the provisions of ss. 501.061-501.121, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances or the holding thereof during or after such movement and the quantity, shipper, and consignee thereof. It is unlawful for any such carrier or person to fail to permit such access and copying of any record so requested when the request is accompanied by a statement in writing specifying the nature or kind of the hazardous substance to which the request relates. Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained. Carriers shall not be subject to the other provisions of ss. 501.061-501.121 by reason of their receipt, carrying, holding, or delivery of hazardous substances in the usual course of business as carriers.

History.—s. 11, ch. 70-374; s. 1, ch. 70-439.

501.115 Same; publicity.—

(1) The department may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under ss. 501.061-501.121, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History.—s. 12, ch. 70-374; s. 1, ch. 70-439.

501.121 Same; legislative intent.—Nothing in ss. 501.061-501.121 shall be construed to remove the authority or jurisdiction of any other state agency with respect to products or services regulated or controlled under other provisions of law.

History.—s. 13, ch. 70-374.

501.122 Control of nonionizing radiations; laser.—

(1) DEFINITIONS.—For the purposes of this section:

(a) "Laser" means light amplification by stimulated emission of radiation, encompassing wavelengths above and below those in visual range, if produced by laser devices.

(b) "Laser device" means any device designed or used to amplify electromagnetic radiation by stimulated emission.

(c) "Nonionizing radiation" means electromagnetic or sound waves which do not produce or result in ionization.

(d) "Ionizing radiation" means gamma and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

(e) "Department" means the Department of Health and Rehabilitative Services.

(2) AUTHORITY TO ISSUE REGULATIONS.—The department shall promulgate such rules and regulations as it may determine to be necessary to protect the health and safety of persons exposed to laser devices and other nonionizing radiation, including the user or any others who might come in contact with such radiation. The department is further authorized:

(a) To develop a program for registration of laser devices and uses and of identifying and controlling sources and uses of other nonionizing radiations.

(b) To maintain liaison with, and receive information from, industry, industry associations, and other organizations or individuals relating to present or future radiation-producing products or devices.

(c) To study and evaluate the degree of hazard associated with the use of laser devices or other sources of radiation.

(d) To establish and prescribe performance standards for laser and other radiation control if it determines that such standards are necessary for the protection of the public health.

(e) To amend or revoke any performance standard established under the provisions of this section.

History.—ss. 1, 2, ch. 71-189; s. 437, ch. 77-147.

501.131 Consumer protection organizations.—

(1) DEFINITION.—For the purposes of this section, a consumer protection organization shall be defined as every nonprofit corporation, organization, or association in the state which has as its purpose:

(a) The education of persons regarding unfair or unjust business practices;

(b) The coordination of persons or organizations for the purpose of protection of consumers, or for the enhancement of consumer buying power;

(c) The promotion or preparation of legislation for the protection of Florida consumers.

(2) REGISTRATION.—No consumer protection organization shall solicit funds or anything of value for whatever purpose in this state unless a certificate of registration has been first secured from the Department of State on a form prescribed by the department. Such certificate shall state the name and address of the applicant, its board of directors, its officers, the place and type of proposed solicitations, the proposed use of receipts from same, and such other pertinent information as may be required by the Department of State.

(3) ISSUANCE OF CERTIFICATE.—If the applicant is found to have submitted all the information required pursuant to subsection (2), the Department of State shall issue a certificate of registration on a form prescribed by it which shall include at least the name and address of the consumer protection organization and the purpose of the solicitation of funds.

(4) FEE.—Each applicant for registration shall pay to the Department of State for the filing of its

application and for the issuance of the certificate of registration provided for by this section the same fee as for making a certificate with seal, as provided by s. 15.09.

(5) FINANCIAL STATEMENT.—All registrants under this section shall file with the Department of State, on or before January 1 of each year, an annual certified financial statement which shall set forth the total receipts of the registrant and an itemized list of all expenses, including salaries and wages, and such other information as the department may require. Should a consumer protection organization fail to file such statement, the Department of State shall forthwith revoke such organization's certificate of registration.

(6) PENALTY.—Any consumer protection organization violating any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-6, ch. 70-416; s. 459, ch. 71-136.

501.135 Consumer unit pricing.—

(1) SHORT TITLE.—This act shall be known and cited as "The Consumer Unit Pricing Act."

(2) PURPOSES; RULE OF INTERPRETATION.—This act shall be liberally construed to effectively promote the following purposes and policies:

(a) Protect the interests of consumers and encourage constructive and useful competition in the sale of consumer commodities.

(b) Encourage, to the extent that it will facilitate the consumer's choice of consumer commodities, the development and use of a method of unit pricing for consumer commodities.

(c) Prohibit the use of unit pricing of consumer commodities when it would tend to mislead or deceive consumers.

(d) Encourage competition among sellers of consumer commodities through the use of uniform units of quantity for unit pricing of consumer commodities.

(e) Encourage the development and use, by sellers, of consumer education programs with respect to factors which should be considered in the purchase of consumer commodities which are offered for sale or sold on a unit price basis, with special attention to the needs of disadvantaged consumers for such consumer education programs.

(f) Provide for a state-approved program of unit pricing of consumer commodities.

(3) DEFINITIONS.—As used in this act:

(a) "Seller" means any person engaged in the business of selling a consumer commodity at retail.

(b) "Consumer commodity" means any article, product, or commodity of any kind or class, other than durable articles, textiles, items of apparel, appliances, paints, writing supplies, and articles specially ordered from the seller, including prescription drugs, which is customarily produced or distributed for sale at retail for consumption by individuals or use by individuals for purposes of personal care or in the performance of routine services ordinarily rendered regularly within the household, and which is usually consumed or expended in the course of such consumption or use.

(c) "Unit price" means the pricing of, or expression of the price of, a consumer commodity as the price per an approved unit of quantity.

(d) "Department" means the Department of Agriculture and Consumer Services.

(4) RESPONSIBILITY OF DEPARTMENT.—The department shall have the authority, duty and responsibility of administering and enforcing this act.

(5) APPROVED UNIT OF QUANTITY AND COMPUTATION OF UNIT PRICE.—

(a) The price of all consumer commodities offered for sale or sold by a seller shall be expressed as the price per approved unit of quantity, which shall be the price per:

1. Avoirdupois ounce;
2. Fluid ounce;
3. Unit;
4. Square foot;
5. Linear foot;
6. Pound; or
7. Such substitute unit or units of quantity as may be approved by the department upon a finding of need for such substitute unit.

(b) Unit prices shall be computed to the nearest one-hundredth of 1 cent rounded to the nearest one-tenth of 1 cent for purposes of display to consumers. Five one-hundredths of 1 cent shall be rounded to the next highest one-tenth of 1 cent.

(c) This act shall not apply to any seller unless he voluntarily establishes a system of unit pricing.

(6) DISPLAY AND ADVERTISING OF CONSUMER COMMODITY UNIT PRICES.—A seller shall conspicuously and clearly display the price per package or unit and the unit price in close proximity to the display of the commodity in such manner as may be established by rules of the department. However, the display of the prices may not obliterate or conceal any other information required by law or regulation. Nothing contained herein shall be construed to require that a seller unit price any consumer commodity other than those with regard to which he has voluntarily established a system of unit pricing.

(7) PENALTIES.—Any person who offers for sale, or sells, any consumer commodity in violation of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) INJUNCTIVE RELIEF.—The department may institute proceedings in the appropriate circuit court for injunctive relief to enforce this act.

History.—ss. 1-8, ch. 72-325; s. 6, ch. 78-95.

501.136 Invention development services contracts.—

(1) DEFINITIONS.—As used in this section:

(a) "Contract for invention development services" means a contract by which an invention developer undertakes to develop or promote an invention for a customer.

(b) "Customer" includes any person who is solicited by an invention developer; who inquires about invention development services; or who seeks the services of, or enters into a contract for invention development services with, an invention developer, except:

1. Any department or agency of federal, state, or local government.

2. Any charitable, scientific, educational, religious, or other organization qualified under s. 501(c)(3) or described in s. 170(b)(1)(a) of the Internal Revenue Code of 1954, as amended.

3. Any person regularly engaged in a trade, business, or profession which has either a net worth of $100,000 or more or gross receipts from any source of $50,000 or more during the calendar year in which any contract for invention development services is signed.

(c) "Invention" means an invention, idea, or concept, or any combination thereof.

(d) "Invention developer" means any person, and the agents, employees, or representatives of such person, who develops or promotes, or offers to develop or promote, an invention, except:

1. Any department or agency of federal, state, or local government.

2. Any charitable, scientific, educational, religious, or other organization qualified under s. 501(c)(3) or described in s. 170(b)(1)(a) of the Internal Revenue Code of 1954, as amended.

3. Any person whose gross receipts from contracts for invention development services, as defined in paragraph (a), do not exceed 10 percent of his gross receipts from all sources during the fiscal year preceding the year in which any contract for invention development services is signed.

4. Any person who does not charge a fee for invention development services.

For the purposes of this paragraph, "fee" includes any payment made by the customer to such person, including reimbursements for expenditures made or costs incurred by such person, but shall not include any payment made from a portion of the income received by a customer by virtue of invention development services performed by such person.

(e) "Invention development services" includes acts required or promised to be performed or actually performed, or both, by an invention developer for a customer.

(f) "Enforcing authority" means:

1. The office of the State Attorney if a violation of this section occurs in or affects the judicial circuit under the office's jurisdiction.

2. The Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the State Attorney fails to act upon a violation within a reasonable period of time.

(2) CONTRACTS FOR INVENTION DEVELOPMENT SERVICES.—

(a) Every contract for invention development services shall be in writing and shall be subject to the provisions of this section. A copy of the written contract shall be given to the customer at the time he signs the contract.

(b) If one or more subsequent contracts are contemplated by the invention developer in connection with an invention, or if the invention developer contemplates performance of services in connection with an invention in more than one phase, with the performance of each phase covered in one or more subsequent contracts, the invention developer shall so state in writing and shall supply to the customer such writing together with a copy of such contract or a written summary of the general terms of each and every subsequent contract, including the amount of any fees or other consideration required from the customer at the time the customer signs the first contract.

(3) CANCELLATION OF CONTRACTS FOR INVENTION DEVELOPMENT SERVICES.—

(a) Notwithstanding any contractual provision to the contrary, the invention developer and the customer shall each have the right to cancel a contract for invention development services for any reason at any time within 7 business days of the date the invention developer and the customer sign the contract. Cancellation shall be effected by written notice mailed or delivered to the invention developer or the customer. If the notice is mailed, it must be postmarked by midnight of the last day of the cancellation period. If the notice is delivered, it must be delivered by the end of the invention developer's normal business day on the last day of the cancellation period. Within 5 business days after receipt of such notice of cancellation by the customer, the invention developer shall return to the customer, by mail, all moneys paid and all materials provided by the customer.

(b) The provisions of paragraph (a) shall apply to every contract executed between an invention developer and a customer. Each such contract shall contain the following statement in 10-point boldface type immediately above the place at which the customer signs the contract:

"The 7-day period during which you may cancel this contract for any reason by mailing or delivering written notice to the invention developer will expire on (last date to mail or deliver notice). If you choose to mail your notice, it must be placed in the United States mail properly addressed and first-class postage prepaid and postmarked before midnight of this date. If you choose to deliver your notice to the invention developer directly, it must be delivered to him by the end of his normal business day on this date. The invention developer also has the right to cancel this contract by notice similarly mailed or delivered."

(4) CONTRACT DISCLOSURES.—Each and every contract for invention development services shall carry a distinctive and conspicuous cover sheet with the following notice (and no other) imprinted thereon in boldface type of not less than 10-point size:

"The following disclosures are required by law:

You have the right to cancel this contract for any reason at any time within 7 days from the date you and the invention developer sign the contract and you receive a fully executed copy of it. To exercise this option you need only mail or deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. Upon cancellation, the invention developer must return by mail, within 5 business days, all money paid and all materials provided by you.

This contract between you and the invention developer is regulated by law. The invention developer is not qualified or permitted to advise you whether protection of your idea or invention is available un-

der the patent, copyright, or trademark laws of the United States or any other law. This contract does not provide any patent, copyright, or trademark protection for your idea or invention. If your idea or invention is patentable, copyrightable, or subject to trademark protection, or infringes on an existing valid patent, copyright, or trademark, or a patent, copyright, or trademark for which application has been made, your failure to inquire into these matters may affect your rights to your idea or invention."

(5) PROHIBITIONS AND REQUIREMENTS.—

(a) No invention developer shall acquire any interest, partial or whole, in the title to the customer's invention unless the invention developer contracts to manufacture the invention and acquires such interest for such purpose at or about the time the contract for manufacture is executed. Nothing in this section shall be construed to prohibit an invention developer from contracting with a customer to receive a portion of any proceeds accruing to the customer as a result of performance of invention development services by the invention developer.

(b) No contract for invention development services shall require or entail the execution of any note or series of notes by the customer which, when separately negotiated, will cut off as to third parties any right of action or defense which the customer may have against the invention developer.

(c) Any assignee of the invention developer's rights is subject to all equities and defenses of the customer against the invention developer existing in favor of the customer at the time of the assignment.

(d) With respect to each and every contract for invention development services, the invention developer shall deliver to the customer, at the address specified in the contract, at quarterly intervals throughout the term of the contract, a written statement of the services performed to date; however, the first such statement need not be delivered until 180 days after the contract is executed.

(6) MANDATORY CONTRACT TERMS.—Every contract for invention development services shall set forth, in at least 10-point boldface type, or equivalent size if handwritten, all of the following:

(a) The terms and conditions of payment required by subsection (3).

(b) A full and detailed description of the acts or services that the invention developer undertakes to perform for the customer. To the extent that the description of acts or services affords the invention developer discretion to decide what acts or services are to be performed by him, the invention developer shall exercise that discretion to promote the best interests of the customer.

(c) A statement whether the invention developer undertakes to construct one or more prototypes, models, or devices embodying the customer's invention.

(d) A statement whether the invention developer undertakes to sell or distribute one or more prototypes, models, or devices embodying the customer's invention.

(e) The name of the person contracting to perform the invention development services, the name under which said person is doing or has done business as an invention developer, and the name of any parent, subsidiary, or affiliated company that may engage in performing the invention development services.

(f) The invention developer's principal business address and the name and address of its agent in the state authorized to receive service of process.

(g) The business form of the invention developer, whether corporate, partnership, or otherwise.

(h) A statement of the fee charged; a statement, if applicable, that a portion of the fee charged will be paid as a commission or other similar payment to a person inducing, directly or indirectly, a customer to contract for the services of the invention developer, which statement shall specify the names of the person or persons receiving said payment; and a statement of the approximate portion of the fee charged, if any, that will be expended for services relating to patent matters.

(i) A statement that the invention developer does not intend to expend more for the invention development services than the fee charged the customer or, if he does, a statement of the estimated expenditures of the invention developer in excess of the fee received from the customer.

(j) If any oral or written representation of estimated or projected customer earnings is made, a statement of such estimation or projection and the data upon which it is based.

(k) A single statement setting forth the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the last 30 days, as well as the number of customers that have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by such customers to the invention developer.

(l) A statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period not less than 3 years after expiration of the term of the contract for invention development services.

(m) The name and address of the custodian of all records and correspondence relating to the performance of the invention development services.

(n) A statement that the records and correspondence required to be maintained by paragraph (m) will be made available to the customer or his representative for review and copying at the customer's expense on the invention developer's premises during normal business hours upon 7 days' written notice, said time period to begin from the date the notice is placed in the United States mail properly addressed and first-class postage prepaid.

(o) A statement of the expected date of completion of the invention development services.

(p) A statement as follows:

"This contract between you and the invention developer is regulated by law. The invention developer is not qualified or permitted to advise you whether protection of your idea or invention is available under the patent, copyright, or trademark laws of the United States or any other law. This contract does not provide any patent, copyright, or trademark pro-

tection for your idea or invention. If your idea or invention is patentable, copyrightable, or subject to trademark protection, or infringes on an existing valid patent, copyright, or trademark or a patent, copyright, or trademark for which application has been made, your failure to inquire into these matters may affect your rights to your idea or invention."

(7) DISCLOSURES MADE PRIOR TO CONTRACT.—

(a) Every invention developer who charges a fee or requires any consideration for his invention development services must clearly and conspicuously disclose such fact in every advertisement of such services.

(b) In the first oral communication with a customer or in the first written response to an inquiry by a customer, other than an oral communication or written response the primary purpose of which is to arrange an appointment with the invention developer for presentation of his invention development services, the invention developer shall cause the following disclosures to be made to each customer:

1. A statement of the fee charged, if known, or a statement of the approximate range of fees charged; a statement, if applicable, that a portion of the fee charged will be paid as a commission or other similar payment to a person inducing, directly or indirectly, a customer to contract for the services of the invention developer; and a statement of the approximate portion of the fee charged, if any, that will be expended for services relating to patent matters.

2. A statement that the invention developer does not intend to expend more for the invention development services than the fee charged the customer or, if he does, a statement of the estimated expenditures of the invention developer in excess of the fee received from the customer.

3. A single statement setting forth the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the last 30 days, as well as the number of customers that have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by such customers to the invention developer.

4. A statement as follows:

"Any contract for invention development services between you and our firm will be regulated by law. Our firm is not qualified or permitted to advise you whether protection of your idea or invention is available under the patent, copyright, or trademark laws of the United States or any other law. The contract does not provide any patent, copyright, or trademark protection for your idea or invention. If your idea or invention is patentable, copyrightable, or subject to trademark protection, or infringes on an existing valid patent, copyright, or trademark or a patent, copyright, or trademark for which application has been made, your failure to inquire into these matters may affect your rights to your idea or invention."

(8) REMEDIES.—

(a) The provisions of this section are not exclusive and do not relieve the parties or the contract subject thereto from compliance with all other applicable provisions of law.

(b) Any contract for invention development services which does not comply with the applicable provisions of this section shall be void and unenforceable as contrary to public policy. However, no such contract shall be void and unenforceable if the invention developer proves that noncompliance was unintentional and resulted from a bona fide error, notwithstanding the use of reasonable procedures adopted to avoid any such errors, and makes an appropriate correction.

(c) Any contract for invention development services entered into in reliance upon any willful and false, fraudulent, or misleading representation by the invention developer shall be void and unenforceable.

(d) Any waiver by the customer of the provisions of this section shall be deemed contrary to public policy and shall be void and unenforceable.

(e) Failure to make the disclosures required by subsection (7) shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

(f) Any person who has been injured by a violation of this section by an invention developer; by any false or fraudulent statement, representation, or omission of material fact by an invention developer; or by failure of an invention developer to make all the disclosures required by subsection (7) may bring a civil action against the invention developer for the greater of the following amounts:

1. $3,000; or

2. Three times the amount of the actual damages, if any, sustained by the plaintiff.

In addition to the greater of the preceding amounts, the court may award reasonable attorney's fees to the plaintiff.

(g) Without regard to any other remedy or relief to which a person is entitled, any person affected by a violation of this section may bring an action to enjoin the violation of any of the provisions of this section.

(h) The enforcing authority may bring an action to enjoin the violation of any of the provisions of this section.

(9) FINANCIAL REQUIREMENTS.—

(a) Every invention developer rendering or offering to render invention development services in this state shall maintain a surety bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be 5 percent of the invention developer's gross income from the invention development business in this state during the invention developer's last fiscal year, except that the principal sum of the bond shall not be less than $25,000 in the first or any subsequent year of operations. A copy of such bond shall be filed with the Secretary of State prior to the time the invention developer first commences business in this state. The invention developer shall have 90 days after the end of each fiscal year within which to change the bond as may be necessary to conform to the requirements of this section.

(b) The bond required by paragraph (a) shall be

in favor of the Secretary of State for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud or dishonesty or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond provided herein shall in no event exceed the amount of the bond.

(c) In lieu of furnishing the bond required by paragraph (a), the invention developer may deposit with the Secretary of State a cash deposit in the like amount. This cash deposit may be satisfied by any of the following:

1. Certificates of deposit payable to the Secretary of State issued by banks doing business in this state and insured by the Federal Deposit Insurance Corporation.

2. Investment certificates of share accounts assigned to the Secretary of State and issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation.

3. Bearer bonds issued by the United States Government or by this state.

4. Cash deposited with the Secretary of State.

(10) MISCELLANEOUS PROVISIONS.—

(a) Every invention developer shall maintain all records and correspondence relating to performance of each invention development service contract for a period of not less than 3 years after expiration of the terms of each such contract.

(b) No invention developer shall make, or authorize the making of, any reference to compliance by it with this act in any advertisement.

(c) This section shall not apply to any contract entered into before the effective date of this act.

History.—s. 1, ch. 76-229; s. 1, ch. 77-174.

501.137 Mortgagees, tax payments from escrow accounts; duties.—All lenders of money, whether natural persons or artificial entities, whose loans are secured by mortgages on real estate located within the state and who collect funds incidental thereto or in connection therewith for the payment of property taxes when said funds are held in escrow by or on behalf of the lender, shall promptly pay taxes when said taxes become due and adequate escrow funds are deposited, so that the maximum tax discount available may be obtained with regard to the taxable property. If the escrow account for said taxes is deficient, the lender shall notify the depositor within 15 days after the lender receives the notification of taxes due from the county tax collector. At the expiration of the annual accounting period, the mortgagee shall issue to the mortgagor an annual statement of the escrow account.

History.—s. 1, ch. 76-12; s. 1, ch. 77-174.
cf.—s. 197.072 Notice of taxes by mail, etc.

501.138 Advertising of previews or trailers; standards.—

(1) Any motion picture theater owner or operator who desires to exhibit, on the same program, a motion picture which has received a "G" rating and which he advertises as "G" rated, and a preview or trailer of a motion picture which has not received a "G" rating, shall in all such advertising of the program give notice to the public of the exhibition of the preview or trailer in the manner provided in subsections (2) and (3).

(2) The advertisement of the preview or trailer which is required by subsection (1) shall conform to the following standards:

(a) In the case of printed matter or marquees, such advertising shall be contiguous to and in the same type size as, and shall contain the same kind of information as, the advertisement for the motion picture which has received a "G" rating and is to be shown on the same program.

(b) In the case of oral advertising and television advertising, the text used for the broadcast of such trailer or preview shall contain the same kind of information as, and be broadcast in the same manner, form, detail, and time as, the text advertising the motion picture which has received a "G" rating and is to be shown on the same program.

(c) In the case of any other form of advertisement, such dissemination shall be in the same manner, form, detail, time, and place as that used for the motion picture which has received the "G" rating and is to be shown on the same program.

(3) For the purposes of this act, advertisement or advertising shall include, but not be limited to, marquee, poster, flier, newspaper, television, radio, and billboard.

(4) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, ch. 77-220; s. 212, ch. 79-400.

501.141 Delivery of crated item; written statement of satisfaction; right to cancel.—

(1) As used in this section, "statement of satisfaction" means any receipt, statement, or document by which any retail noncommercial buyer of goods, which goods are to be delivered or are delivered in any box, crate, or other covering which hides the goods from view, is requested or required, as a condition upon receipt of any such purchased goods, to attest satisfaction with the condition or operation of any goods delivered or to be delivered by a seller or his representative.

(2) Every statement of satisfaction requested or required to be attested or agreed to in this state shall be evidenced by a writing as provided in this section.

(a) The person or business entity requesting or requiring any such statement of satisfaction shall present to and obtain from the buyer his signature to the statement of satisfaction which designates, as the date of the attestation of or agreement to the statement, the date on which the buyer actually signs and which contains a statement of buyer's rights which complies with paragraph (b).

(b) The statement must:

1. Appear under the conspicuous caption, "BUYER'S RIGHT TO CANCEL."

2. Read as follows: "If the goods you have received are not in satisfactory condition or operation, you may cancel this statement of satisfaction by mailing a notice to the seller. This notice must indi-

cate that you do not want the goods in the condition in which they were delivered and must be postmarked before midnight of the fifth business day after you sign this statement."

(3) Any statement of satisfaction agreed or attested to which is not in compliance with the provisions of this section shall be null, void, and of no force or effect.

History.—s. 1, ch. 77-346.

501.142 Retail sales establishments; notice of refund policy; exceptions.—

(1) Every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure of a retail sales establishment to exhibit a "no refund" sign under such circumstances at the point of sale shall mean that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided the merchandise is unused and in the original carton, if one was furnished. Nothing herein shall prohibit a retail sales establishment from having a refund policy which exceeds the number of days specified herein.

(2) The provisions of this section shall not apply to the sale of food, perishable goods, goods which are custom made, goods which are custom altered at the request of the customer, or goods which cannot be resold by the merchant because of any law, rule, or regulation adopted by a governmental body.

History.—ss. 1, 2, ch. 78-148.

PART II

DECEPTIVE AND UNFAIR TRADE PRACTICES

501.201 Short title.—This part shall be known and may be cited as the "Florida Deceptive and Unfair Trade Practices Act."

History.—s. 1, ch. 73-124.

501.202 Purposes; rules of construction.—The provisions of this part shall be construed liberally to promote the following policies:

(1) To simplify, clarify, and modernize the law governing consumer sales practices.

(2) To protect consumers from suppliers who commit deceptive and unfair trade practices.

(3) To make state regulation of consumer sales practices consistent with established policies of federal law relating to consumer protection.

History.—s. 1, ch. 73-124.

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a consumer service, or an intangible to an individual for purposes that are primarily personal, family, or household or that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation by a supplier with respect to any of these dispositions.

(2) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(3) "Supplier" means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

(4) "Enforcing authority" means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction and if a complaint of such violation has been referred to the state attorney by the Department of Legal Affairs. "Enforcing authority" means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of state attorney fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

(5) "Violation of this part" means either a violation of a provision of this part or a violation of any rule promulgated pursuant to this part.

(6) "Department" means the Department of Legal Affairs.

(7) "Order" means a cease and desist order issued by the enforcing authority as set forth in s. 501.208.

(8) "Interested party or person" means any person affected by a violation of this part or any person affected by an order of the enforcing authority.

(9) "Consumer" means an individual; child, by and through its parent or legal guardian; firm; association; joint adventure; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; or any other group or combination.

History.—s. 1, ch. 73-124; s. 1, ch. 79-386.

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the legislature that in construing subsection (1) of this section, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

History.—s. 1, ch. 73-124.

501.205 Rulemaking power.—

(1) The department shall propose rules to the Governor and Cabinet which prohibit with specificity acts or practices that violate this part and which prescribe procedural rules for the administration of this part. Such rules shall be adopted by the department upon a majority vote of the Governor and Cabinet. All rules and administrative actions taken by the department shall be pursuant to chapter 120. The Department of Legal Affairs shall, at least 30 days before the meeting at which such rules are to be considered by the Governor and Cabinet, mail a copy of such rules to any person filing a written request with the Department of Legal Affairs to receive copies of proposed rules.

(2) All substantive rules and regulations promulgated under this part shall be consistent with the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting the provisions of s. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

History.—s. 1, ch. 73-124; s. 22, ch. 78-95; s. 2, ch. 79-386.

501.206 Investigative powers of enforcing authority.—

(1) If, by his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence according to the Florida Rules of Civil Procedure.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law may not be subjected to a criminal proceeding or to a civil penalty with respect to the consumer transaction concerning which he is required to testify or produce relevant matter.

History.—s. 1, ch. 73-124.

501.207 Remedies of enforcing authority.—

(1) The enforcing authority may bring:

(a) An action to obtain a declaratory judgment that an act or practice violates this part.

(b) An action to enjoin a supplier who has violated, is violating, or is otherwise likely to violate, this part.

(c) An action on behalf of one or more consumers for the actual damages caused by an act or practice performed in violation of this part. However, no damages shall be recoverable under this section against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

(2) Before bringing an action under paragraphs (a) or (c) of subsection (1), the enforcing authority shall, pursuant to an administrative hearing, determine that there is probable cause to bring the action. Written notice of such hearing together with a copy of all sworn affidavits of complaining witnesses shall be served by certified mail upon the party charged with a violation of this part at least 15 days prior to such hearing. The party charged shall have the right to file a written answer to the charges at any time prior to the hearing and shall have the right to be represented by counsel at such hearing and to cross-examine any witnesses and to rebut other evidence. The determination of probable cause may be based upon a complaint made in writing and sworn to by the complaining witness or witnesses before a person authorized to administer oaths when the complaint states facts which show that a violation of this part may have occurred. The party charged shall not be prevented from offering testimony or other evidence to rebut the complaint at the administrative hearing. The administrative hearing shall be held in the county in which the party charged resides or in the county in which the violation is alleged to have occurred. The administrative hearing shall otherwise be as provided by s. 120.57.

(3) Upon motion of the enforcing authority or any interested party in any action brought under subsection (1), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, to reimburse consumers found to have been damaged, to carry out a consumer transaction in accordance with consumers' reasonable expectations, to strike or limit the application of clauses of contracts to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against a supplier.

(4) If a supplier shows that a violation of this part resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(5) No action may be brought by the enforcing authority under this section more than 2 years after the occurrence of a violation of this part, or more than 1 year after the last payment in a consumer transaction involved in a violation of this part, whichever is later.

(6) The enforcing authority may terminate an investigation or an action upon acceptance of a supplier's written assurance of voluntary compliance with this part. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or to take other appropriate corrective action. An assurance is not evidence of a prior violation of this part. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this part. No such assurance shall act as a limitation upon any action or remedy available to a person aggrieved by a violation of this part.

History.—s. 1, ch. 73-124; s. 3, ch. 79-386.

501.208 Cease and desist orders; procedures.—

(1) Whenever the Department of Legal Affairs has reason to believe that a person has been, or is, violating this part, and if it appears to the department that a cease and desist order against such violation would be in the interest of the public, it shall issue and serve upon such person a complaint and order stating its charges in that respect and containing a notice of a hearing upon a day and at the place therein fixed at least 30 days after the service of said complaint. Said hearing shall be held in conformity with the provisions of chapter 120.

(2) The department may modify or set aside its order at any time by rehearing upon its own motion when such rehearing is in the interest of the public welfare.

(3) Judicial review of orders of the department shall be in accordance with the provisions of s. 120.68 and shall take precedence over other civil cases pending and shall be expedited in every way.

(4) An order of the department to cease and desist shall not become effective until 10 days after all administrative action has been concluded or, if appeal is made to the district court of appeal and bond is posted, until a final order has been entered by that court.

(5) No cease and desist order shall act as a limitation upon any other action or remedy available to a person aggrieved by a violation of this act.

(6) When a court remands an order of the department for rehearing, such rehearing shall be held within 45 days after the remand.

(7) Any person who violates a cease and desist order of the department after it has become final and while such order is in effect shall forfeit and pay to the state a civil penalty of not more than $5,000 for each violation which shall accrue to the state and may be recovered in a civil action brought by the state. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the department, each day of continuance of such failure or neglect shall be deemed a separate offense.

History.—s. 1, ch. 73-124; s. 22, ch. 78-95; s. 4, ch. 79-386.

501.209 Other supervision.—If the enforcing authority receives a complaint or other information relating to noncompliance with this act by a supplier who is subject to other supervision in this state, the enforcing authority shall inform the official or agency having that supervision.

History.—s. 1, ch. 73-124.

501.2091 Stay of proceedings pending trial.— Notwithstanding anything in this act to the contrary, any person made a party to any proceeding brought under the provisions of this part by any enforcing authority may obtain a stay of such proceedings at any time by filing a civil action requesting a trial on the issues raised by the enforcing authority in the circuit court in the county of said party's residence. All parties shall be bound by the final order of the circuit court.

History.—s. 1, ch. 73-124.

501.2101 Enforcing authorities; moneys received in certain proceedings; Consumer Frauds Trust Fund.—

(1) Any moneys received by an enforcing authority as reimbursement for attorney's fees and costs of investigation and litigation in proceedings brought under the provisions of s. 501.207, s. 501.208, or s. 501.211 shall be deposited as received in the Consumer Frauds Trust Fund in the State Treasury.

(2) There is created in the State Treasury a trust fund to be known as the Consumer Frauds Trust Fund. Money deposited therein shall be disbursed to the enforcing authority responsible for its collection for the funding of activities conducted by enforcing authorities pursuant to ss. 501.201-501.213, inclusive.

(3) Any moneys received by an enforcing authority and neither received as reimbursement for attorney's fees and costs of investigation and litigation nor used to reimburse consumers found under this law to be damaged shall accrue to the state and be deposited as received in the General Revenue Fund unallocated.

History.—s. 6, ch. 79-386.

501.2105 Attorney's fees.—

(1) In any civil litigation resulting from a consumer transaction involving a violation of this part, except as provided in subsection (5), the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his reasonable attorney's fees and costs from the nonprevailing party.

(2) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(3) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actu-

ally spent on the case as sworn to in an affidavit.

(4) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(5) In any civil litigation initiated by the enforcing authority, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(6) In any administrative proceeding or other nonjudicial action initiated by an enforcing authority, the attorney for the enforcing authority may certify by sworn affidavit the number of hours and the cost thereof to the enforcing authority for the time spent in the investigation and litigation of the case plus costs reasonably incurred in the action. Payment to the enforcing authority of the sum of such costs may be made by stipulation of the parties a part of the final order or decree disposing of the matter. The affidavit shall be attached to and become a part of such order or decree.

History.—s. 1, ch. 73-124; s. 5, ch. 79-386.
Note.—Former s. 501.210.

501.211 Other individual remedies.—

(1) Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a supplier who has violated, is violating, or is otherwise likely to violate this part.

(2) In any individual action brought by a consumer who has suffered a loss as a result of a violation of this part, such individual may recover actual damages, plus attorney's fees and court costs as provided in s. 501.210; however, no damages, fees, or costs shall be recoverable under this section against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

(3) In any action brought under this section, upon motion of the party against whom such action is filed alleging that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may, after hearing evidence as to the necessity therefor, require the party instituting the action to post a bond in the amount which the court finds reasonable to indemnify the defendant for any damages incurred, including reasonable attorney's fees. This subsection shall not apply to any action initiated by the enforcing authority.

History.—s. 1, ch. 73-124.

501.212 Application.—This part does not apply to:

(1) An act or practice required or specifically permitted by federal or state law.

(2) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

(3) A claim for personal injury or death or a claim for damage to property other than the property that is the subject of the consumer transaction.

(4) The holder in due course of a negotiable instrument or the transferee of a credit agreement received in good faith without knowledge of a violation of this part.

(5) Any person or activity regulated under laws administered by the Department of Insurance or the Florida Public Service Commission or banks and savings and loan associations regulated by the Department of Banking and Finance or banks or savings and loan associations regulated by federal agencies.

History.—s. 1, ch. 73-124; s. 7, ch. 79-386.

501.213 Effect on other remedies.—

(1) The remedies of this part are in addition to remedies otherwise available for the same conduct under state or local law.

(2) This part is supplemental to, and makes no attempt to preempt, local consumer protection ordinances not inconsistent with this part.

History.—s. 1, ch. 73-124.

PART III

MISCELLANEOUS

501.90 Treated fence posts.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Treated Fence Post Act."

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires:

(a) "Preservative" means any chemical used in treating wood to retard or prevent untimely deterioration or destruction by insects, fungi, bacteria, or other wood-destroying organisms.

(b) "Brand" means an identification mark of a processor approved by the department and used to mark a fence post after treatment.

(c) "Department" means the Department of Agriculture and Consumer Services.

(d) "Treated fence post" means roundwood having a 2-inch or greater top diameter and a length of 16 feet or less, which has been chemically treated with a preservative.

(e) "Person" means an individual, partnership, corporation, association, or other group.

(3) LICENSING REQUIREMENTS.—

(a) Each person, firm, or corporation which shall

engage in the business of treating fence post products with preservatives in this state shall secure an annual processor's license from the department before such treatment is undertaken. The annual fee for this license shall be $25.

(b) Each person, firm, or corporation which shall ship into the state for sale or which shall bring into the state for sale any treated fence post processed outside the state shall secure an annual dealer's license from the department. The annual fee for this license shall be $25.

(4) SALE OF TREATED FENCE POSTS.—

(a) Every treated fence post sold or offered for sale in this state shall be clearly marked with a brand approved by the department.

(b) Every sale of a treated fence post consummated in this state, except for sales between farmers, shall have documentation available which shall be supplied to the purchaser disclosing the following information:

1. The method or process used in treating the fence posts.

2. The name of the preservative and the average minimum net retention of preservative per cubic foot of treated wood.

3. The name and location of the wood-preserving plant.

(c) No person shall sell or offer to sell treated fence posts in this state unless they have been treated as described in the disclosure required by paragraph (b), and all provisions of this section and rules of the department are complied with.

(5) INSPECTION AND SAMPLING.—For the purpose of carrying out the provisions of this section and rules promulgated hereunder, the department or its authorized representative may enter into or upon any place during reasonable business hours, may open any package or container containing, or believed to contain, treated fence posts, and may take reasonable samples consistent with current industry sampling standards for the purpose of testing treated fence posts. The department or its authorized representative is authorized to inspect any treated fence post upon request of any purchaser thereof for compliance with the information disclosed under paragraph (4)(b), provided that such inspection is performed within 60 days from date of purchase.

(6) VIOLATIONS; PENALTIES.—

(a) The department, after notice and hearing in accordance with chapter 120, may suspend or revoke the registration of any person for violation of any of the provisions of this section.

(b) Any person who violates any of the provisions of this section shall be subject to a civil penalty not exceeding $100, payable to the department, in addition to any civil damages that may be assessed.

(c) Nothing in this section shall be construed as requiring the department to report any person for prosecution as a result of minor violations of this section when it believes that the public interest will be best served by other methods, procedures, or actions.

(d) To enforce the provisions of this section, the department may seek injunction, without bond, before a court of competent jurisdiction.

(7) RULES.—The department may adopt such rules as necessary to implement the provisions of this section.

(8) STOP-SALE, STOP-USE, REMOVAL, OR HOLD ORDERS.—

(a) When treated fence posts are being offered for sale or exposed for sale in violation of any provision of this section, the department may issue and enforce a stop-sale, stop-use, removal, or hold order to the owner or custodian of said treated fence posts ordering them to be held at a designated place until this section has been complied with and said treated fence posts are released in writing by the department or said violation has been disposed of by court order.

(b) Any person receiving written notice of such stop-sale, stop-use, removal, or hold order shall scrupulously refrain from moving, altering, or interfering with said treated fence posts or from altering, defacing, or in any way interfering with such notice itself or permitting the same to be done.

(c) It shall be unlawful for any person to willfully violate any of the provisions of paragraph (b), and such violation shall be punishable as provided in subsection (6).

(d) The department shall release the treated fence posts so withdrawn when the provisions of this section have been complied with.

(e) The owner or custodian, with the consent and authorization of the department, may correct a documentation or branding violation to conform with this section or may transfer said treated fence posts to the producer or dealer for the purpose of bringing the products into compliance with the law; provided that such correction or return shall be under the direction and supervision of the department.

History.—ss. 1-6, 8, ch. 78-179; s. 1, ch. 79-181.

501.91 Short title.—Sections 501.91-501.923 may be cited as the "Antifreeze Act of 1978."

History.—s. 1, ch. 78-199.

501.911 Administration of act.—Sections 501.91-501.923 shall be administered by the Department of Agriculture and Consumer Services.

History.—s. 2, ch. 78-199.

501.912 Definitions.—As used in ss. 501.91-501.923:

(1) "Antifreeze" means any substance or preparation sold, distributed, or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point.

(2) "Antifreeze-coolant," "antifreeze and summer coolant," or "summer coolant" means any substance as defined in subsection (1) which also is sold, distributed, or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."

(3) "Person" means any individual, partnership, association, firm, or corporation.

(4) "Department" means the Department of Ag-

riculture and Consumer Services.

(5) "Distribute" means to hold with intent to sell, offer for sale, sell, barter, or otherwise supply to the consumer.

(6) "Package" means a sealed, tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or a container from which the antifreeze may be installed directly by the seller into the cooling system, but does not include shipping containers containing properly labeled inner containers.

(7) "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.

(8) "Labeling" means the labels and any other written, printed, or graphic matter accompanying a package.

History.—s. 3, ch. 78-199.

501.913 Registration.—On or before July 1 of each year, and before any antifreeze may be distributed, the manufacturer, packager, or person whose name appears on the label shall make application to the department on forms provided by the department for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of its labeling, an inspection fee of $200 for each product, and a properly labeled sample of the antifreeze. The department may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, the department shall issue a certificate of registration, authorizing the distribution of such antifreeze in this state for the permit year. If the antifreeze is adulterated or misbranded, the department shall refuse to register the antifreeze and shall return the application stating how the antifreeze or labeling is not in conformity.

History.—s. 4, ch. 78-199.

501.914 Cancellation of registration.—The department may cancel any registration after due notice and opportunity to be heard if it finds the antifreeze is adulterated or mislabeled or that the registration has failed to comply with any of the provisions of this act or the rules promulgated pursuant to this act.

History.—s. 4, ch. 78-199.

501.915 Adulteration of antifreeze.—Antifreeze shall be deemed to be adulterated:

(1) If, in the form in which it is sold and directed to be used, it would be ineffective in or injurious to the cooling system in which it is to be installed or if, when used in such cooling system, it would make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold or offered for sale.

History.—s. 5, ch. 78-199.

501.916 Mislabeling of antifreeze.—Antifreeze shall be deemed to be mislabeled:

(1) If it does not bear a label which specifies the identity of the product, which states the name and address of the manufacturer, packager, or distributor, which states the net quantity of contents (in terms of liquid measure) separately and accurately in a uniform location upon the principal display panel, and which contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze.

(2) If the product is to be diluted with another substance for use and the label on a container of less than 5 gallons, or the labeling for a container of 5 gallons or more, does not contain a statement or chart showing the appropriate amount, percentage, proportion, or concentration of the antifreeze to be used to provide claimed protection from freezing at a specified degree or degrees of temperature, claimed protection from corrosion, or claimed increase of boiling point or protection from overheating.

(3) If its labeling contains any claim that it has been approved or recommended by the department.

(4) If its labeling is false, deceptive, or misleading.

History.—s. 6, ch. 78-199.

501.917 Inspection by department; sampling and analysis.—The department or its authorized agents shall have the right to have access at reasonable hours to all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze there found and to take reasonable samples of such antifreeze for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to a laboratory designated by the department for examination together with all labeling appertaining to such samples. It shall be the duty of said laboratory to examine promptly all samples received in connection with the administration and enforcement of this act.

History.—s. 7, ch. 78-199.

501.918 Prohibited activity.—It is unlawful for any person to:

(1) Distribute any antifreeze which has not been registered in accordance with s. 501.913 or whose labeling is different from that accepted for registration; however, registration is not required for the orderly disposal, within a reasonable period of time, of stocks of discontinued brands of antifreeze not adulterated or otherwise misbranded which were properly registered in the immediately preceding registration period.

(2) Distribute any antifreeze which is adulterated or mislabeled.

(3) Refuse to permit entry or inspection or to permit the acquisition of a sample of the antifreeze as authorized by s. 501.917.

(4) Dispose of any antifreeze which is under a stop-sale order in accordance with s. 501.919.

(5) Distribute any antifreeze unless it is in the registrant's or manufacturer's unbroken package; or is installed by the seller in the cooling system of the purchaser's vehicle directly from the registrant's or manufacturer's package and the label on such package is less than 5 gallons, or the labeling of such package, if 5 gallons or more, does not bear the infor-

mation required by s. 501.916; however, the department may by regulation establish labeling and other reasonable requirements for the sale of a properly registered antifreeze from a bulk container into a container supplied by or for the purchaser.

(6) Use the term "ethylene glycol" in connection with the name of a product which contains other glycols unless it is qualified by the word "base" or "type" or some such word and unless the product meets the following requirements:

(a) It consists essentially of ethylene glycol.

(b) If it contains suitable glycols other than ethylene glycol, that no more than a maximum of 15 percent of such other glycols be present.

(c) It contains a minimum total glycol content of 93 percent by weight.

(d) The specific gravity is corrected to give reliable freezing-point readings on a commercial ethylene glycol-type hydrometer.

(e) The freezing point of 50 percent by volume of the antifreeze shall not be above -34° F.

(7) Refill any container bearing a registered label, other than a customer's container, without first obtaining permission from the registrant.

(8) Refuse, when requested, to permit a purchaser to see the container from which antifreeze is drawn for installation into the purchaser's vehicle.

(9) Distribute any antifreeze for which a practical, rapid means for measuring the freeze protection by the user is not readily available, whether by hydrometer or other means.

(10) Disseminate any false or misleading advertisement relating to an antifreeze product.

History.—s. 8, ch. 78-199.

501.919 Enforcement; stop-sale order.—

(1) When the department finds any antifreeze being distributed in violation of s. 501.918 or of any of the rules duly promulgated and adopted under this act, the department shall issue and enforce a written "stop-sale" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or the court. Copies of such orders shall also be sent to the registrant and to the person whose name and address appears on the labeling of the antifreeze. The department shall release for distribution the lot of antifreeze under a stop-sale order when s. 501.918 and applicable rules have been complied with. If compliance is not obtained within 30 days, the department may begin proceedings for confiscation.

(2) Any lot of antifreeze not in compliance with said provisions and rules shall be subject to confiscation upon complaint of the department, or any of its agents, to the circuit court in the county in which said antifreeze is located. In the event the court finds the antifreeze to be in violation of this act, it may then order the condemnation of the antifreeze, and the same shall be disposed of in any manner consistent with the rules of the department and the laws of the state.

(3) Nothing in this act shall be construed to require the department to report for prosecution or for institution of libel proceedings any minor violations of the act whenever it believes that the public interest will be best served by a suitable notice of warning in writing to the registrant or the person whose name and address appears on the label.

History.—s. 9, ch. 78-199.

501.92 Formula may be required.—The department may, if required for the analysis of antifreeze by the laboratory designated by the department for the purpose of registration, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. Such statement need not include inhibitor or other minor ingredients which total less than 5 percent by weight of the antifreeze; and, if over 5 percent, the composition of the inhibitor and such other ingredients may be given in generic terms.

History.—s. 10, ch. 78-199.

501.921 Standards.—The standards, definitions, and test procedures for antifreeze shall be the same as those specified by the American Society for Testing and Materials in its "Standard Specification for Ethylene Glycol Base Engine Coolant" and designated as D 3306. The department may by rule, pursuant to chapter 120, amend such standards for antifreeze to bring the act into conformance with the most current published version of American Society for Testing and Materials Standard D 3306.

History.—s. 11, ch. 78-199.

501.922 Violation.—The registration with the department of any person who violates this act or fails to comply with any of the provisions of this act shall be subject to suspension or revocation. Such suspension or revocation shall be for not less than 15 days or more than 90 days. For each such violation, the department may levy a fine which shall not exceed $5,000 per violation. If the person in violation of this act fails to pay the fine, then his registration shall be suspended for such period of time as the department may specify. All fines collected by the department shall be deposited in the General Revenue Fund.

History.—s. 12, ch. 78-199.

501.923 Injunctive relief.—In addition to the remedies provided in this act, and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court. Such circuit court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, to be issued without bond, restraining any person from violating or continuing to violate any of the provisions of this act or from failing or refusing to comply with the requirements of this act or any rule duly promulgated under the provisions of this act.

History.—s. 13, ch. 78-199.

CHAPTER 502

MILK AND MILK PRODUCTS

502.012 Definitions.—The following definitions shall apply in the interpretation and the enforcement of this law:

(1) "Milk" is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than 8.25 percent milk solids-not-fat and not less than 3 percent milkfat. Milkfat or butterfat is the fat of milk.

(2) "Goat milk" is the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats. The word "milk" shall be interpreted to include goat milk.

(3) "Cream" means the liquid milk product high in fat separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less that 18 percent milkfat.

(4) "Light cream," "coffee cream," or "table cream" is cream which contains not less than 18 percent but less than 30 percent milkfat.

(5) "Light whipping cream" or "whipping cream" is cream which contains not less than 30 percent milkfat but less than 36 percent milkfat.

(6) "Heavy cream" or "heavy whipping cream" is cream which contains not less than 36 percent milkfat.

(7) "Whipped cream" is whipping cream into which air or gas has been incorporated.

(8) "Whipped light cream," "coffee cream," or "table cream" is light cream, coffee cream, or table cream into which air or gas has been incorporated.

(9) "Sour cream" results from the souring, by lactic-acid-producing bacteria, of pasteurized cream. Sour cream contains not less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(10) "Half-and-half" is the food consisting of a mixture of milk and cream which contains not less than 10.5 percent milkfat but less than 18 percent milkfat.

(11) "Sour half-and-half" results from the souring, by lactic-acid-producing bacteria, of pasteurized half-and-half. Sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(12) "Reconstituted" or "recombined milk products" shall mean milk products defined in this section which result from the recombining of grade A milk constituents with potable water.

(13) "Concentrated milk" is a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk, which, when combined with potable water, results in a product conforming with the standards for milkfat and solids-not-fat of milk as defined above.

(14) "Concentrated milk products" shall be taken to mean and to include homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, fortified concentrated skim milk, concentrated lowfat milk, fortified concentrated lowfat milk, concentrated flavored milk, concentrated flavored milk products, and similar concentrated products made from concentrated milk or concentrated skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding milk products in this section.

(15) "Frozen milk concentrate" is a frozen milk product whose composition of milkfat and milk sol-

ids-not-fat is such that, when a given volume of concentrate is mixed with a given volume of water, the reconstituted product conforms to the milkfat and milk solid-not-fat requirements of whole milk. In the manufacturing process, water may be used to adjust the primary concentrate to the final desired concentration. The adjusted primary concentrate is pasteurized, packaged, and immediately frozen. This product is stored, transported, and sold in the frozen state.

(16) "Skim milk" or "nonfat milk" is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than 0.5 percent. Skim milk that is in final package form for beverage use shall contain added vitamin A in such quantity that each quart of the food contains not less than 2,000 International Units thereof, within limits of good manufacturing practice, and shall contain not less than 8.25 percent milk solids-not-fat.

(17) "Lowfat milk" is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practice, one of the following milkfat contents: 0.5 percent, 1 percent, 1.5 percent, or 2 percent fat. Lowfat milk contains added vitamin A in such quantity that each quart of the food contains not less than 2,000 International Units thereof, within limits of good manufacturing practice, and shall contain not less than 8.25 percent milk solids-not-fat.

(18) "Vitamin D milk and milk products" are milk and milk products, the vitamin D content of which has been increased by an approved method to at least 400 U.S.P. units per quart.

(19) "Fortified milk and milk products" are milk and milk products other than vitamin D milk and milk products, the vitamin, mineral, or milk solid content of which have been increased by a method and in an amount approved by the department.

(20) "Homogenized milk" is milk which has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 45°F, no visible cream separation occurs on the milk and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10 percent from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" shall be interpreted to include homogenized milk.

(21) "Flavored milk or milk products" mean milk and milk products as defined in this law to which has been added a flavor and/or sweetener, e.g., chocolate milk, etc.

(22) "Buttermilk" is a fluid product resulting from the manufacture of butter from milk or cream. It contains not less than 8.25 percent of milk solids-not-fat.

(23) "Cultured buttermilk" is a fluid product resulting from the souring, by lactic-acid-producing bacteria or similar culture, of pasteurized skim milk or pasteurized lowfat milk.

(24) "Cultured milk," "cultured milk products," or "cultured whole milk buttermilk" is a fluid or semi-fluid product resulting from the souring, by lactic-acid-producing bacteria or similar culture, of pasteurized milk or pasteurized milk products.

(25) "Acidified milk and milk products" are milk and milk products obtained by the addition of food grade acids to pasteurized cream, half-and-half, milk, lowfat milk, or skim milk, resulting in a product acidity of not less than 0.2 percent expressed as lactic acid.

(26) "Eggnog" is a milk product consisting of a mixture of milk or milk product of at least 6 percent butterfat, at least 1 percent egg yolk solids, sweetener, and flavoring. Emulsifier and not over 0.5 percent stabilizer may be added. Eggnog shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures: 155°F and held at or above this temperature for at least 30 minutes, or 175°F and held at or above this temperature for at least 25 seconds.

(27) "Eggnog-flavored milk" is a milk product consisting of a mixture of at least 3.25 percent butterfat, at least 0.5 percent egg yolk solids, sweetener, and flavoring. Emulsifier and a maximum of 0.5 percent stabilizer may be added.

(28) "Dry curd cottage cheese" or "cottage cheese dry curd" is the soft uncured cheese obtained by adding lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skim milk, pasteurized lowfat milk, or pasteurized reconstituted skim milk. It shall contain not more than 80 percent moisture and not more than 0.5 percent milk fat. Cottage cheese dry curd or dry curd cottage cheese may be seasoned with salt.

(29)(a) "Lowfat cottage cheese" is prepared by mixing dry curd cottage cheese with a pasteurized creaming mixture consisting of pasteurized cream and milk, dry milk products, concentrated skim milk, skim milk, or lowfat milk, to which salt, lactic acid, and flavor-producing bacteria, rennet, lactic acid, citric acid, phosphoric acid, or stabilizer may be added. The quantity of milk fat added in the creaming mixture shall not be less than 0.5 percent and not more than 2 percent by weight of the finished lowfat cottage cheese. Dry milk products or concentrated skim milk may be added, provided the amount of added solids does not exceed 3 percent of the weight of the creaming mixture. Lowfat cottage cheese shall contain not more than 82.5 percent moisture.

(b) "Cottage cheese" is prepared by mixing dry curd cottage cheese with a pasteurized creaming mixture consisting of pasteurized cream and milk, dry milk products, concentrated skim milk, skim milk, or lowfat milk, to which salt, lactic acid, and flavor-producing bacteria, rennet, lactic acid, citric acid, phosphoric acid, or stabilizer may be added. The quantity of milk fat added in the creaming mixture shall not be less than 4 percent by weight of the finished cottage cheese. Dry milk products or concentrated skim milk may be added, provided the amount of added solids does not exceed 3 percent of the weight of the creaming mixture. Cottage cheese shall contain not more than 80 percent moisture.

(30)(a) "Milk products" include cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, whipped coffee cream, whipped table cream, sour

cream, cultured sour cream, half-and-half, sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, frozen milk concentrates, skim milk, nonfat milk, lowfat milk, fortified milk and milk products, vitamin D milk and milk products, homogenized milk, flavored milk or milk products, buttermilk, cultured buttermilk, cultured milk, cultured milk products, cultured whole milk buttermilk, acidified milk and milk products, eggnog, eggnog-flavored milk, cottage cheese, creamed cottage cheese, and filled milk and filled milk products.

(b) This definition is intended to include such products as sterile or sterilized milk and milk products hermetically sealed in a container and so processed, either before or after sealing, as to prevent microbial spoilage. This definition is not intended to include sterile or sterilized evaporated milk; condensed milk; ice cream and other frozen desserts; butter; dry milk products, except as defined herein; or cheese, except when they are combined with other substances to produce any pasteurized milk or milk product defined herein.

(31) "Grade A dry milk products" are milk products which have been produced for use in grade A pasteurized milk products and which have been manufactured under the provisions of grade A dry milk products-recommended sanitation ordinance and code for dry milk products used in grade A pasteurized milk products.

(32) "Optional ingredients" shall mean and include grade A dry milk products, concentrated milk, concentrated milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins, minerals, and safe and suitable bacterial cultures. Optional ingredients may be used in any milk product defined in this law.

(33) "Adulterated milk and milk products" shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health.

(b) If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established.

(c) If it consists, in whole or in part, of any substance unfit for human consumption.

(d) If it has been produced, processed, prepared, packed, or held under unsanitary conditions.

(e) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(f) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(34) "Misbranded milk and milk products" are misbranded:

(a) When their containers bear or accompany any false or misleading written, printed, or graphic matter.

(b) When such milk and milk products do not conform to their definitions as contained in this chapter.

(c) When such products are not labeled in accordance with s. 502.041.

(35) "Pasteurization" shall mean the process of heating every particle of milk or milk product to at least 145°F and holding it continuously at or above this temperature for at least 30 minutes, or to at least 161°F and holding it continuously at or above this temperature for at least 15 seconds, in equipment which is properly operated and approved by the department. However, milk products which have a higher milkfat content than milk and/or contain added sweeteners shall be heated to at least 150°F and held continuously at or above this temperature for at least 30 minutes, or to at least 166°F and held continuously at or above this temperature for at least 15 seconds. Nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the United States Public Health Service to be equally efficient and which is approved by the department.

(36) "Sanitization" is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product, or the health of the consumers, and shall be acceptable to the department.

(37) "Milk producer" is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

(38) "Milk hauler" is any person who transports raw milk and/or milk products to or from a milk plant or a receiving or transfer station.

(39) "Milk distributor" is any person who offers for sale or sells to another any milk or milk products.

(40) "Department" is the Department of Agriculture and Consumer Services, which has jurisdiction and control over the matters embraced within this chapter, except as otherwise provided in ss. 502.171 and 502.211.

(41) "Dairy farm" is any place or premises where one or more cows or goats are kept, and from which a part or all of the milk or milk products are provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

(42) "Milk plant," "processing plant," and/or "receiving station" is any place, premises, or establishment where food products as defined in this law are collected, handled, processed, stored, pasteurized, packaged, or prepared for distribution.

(43) "Transfer station" is any place, premises, or establishment where milk or milk products are transferred directly from one transport tank to another.

(44) "Official laboratory" is a biological, chemical, or physical laboratory which is under the direct supervision of the state or a local health authority.

(45) "Officially designated laboratory" is a commercial laboratory authorized to do official work by the supervising agency, or a milk industry laboratory officially designated by the supervising agency for the examination of producer samples of grade A raw milk for pasteurization.

(46) "Person" shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

(47) "And/or" is used, "and" shall apply where appropriate, otherwise "or" shall apply.

(48) "Filled milk" or "filled milk products" means any milk, cream, skimmed milk, whey, or lactose, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or blended or compounded with, any fat or oil other than milk fat, whether in bulk or in containers, hermetically sealed or unsealed. This definition shall not be held or construed to mean or include any milk or cream from which no part of the milk or butterfat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, or any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, provided such compound is:

(a) Prepared and designed for the feeding of infants, young children, or sick or infirm persons and is customarily used on the order of a physician; and

(b) Packed in individual containers bearing a label in bold type that the contents are to be used for said purposes.

Nothing in this definition shall be held or construed to prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended, or compounded no other fat or oils than milk or butterfat.

(49) "Acidified sour cream" results from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic-acid-producing bacteria. Acidified sour cream contains not less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Acidified sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(50) "Acidified sour half-and-half" results from the souring of pasteurized half-and-half with safe and suitable acidifiers, and with or without addition of lactic-acid-producing bacteria. Acidified sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Acidified sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(51) "Sour cream dressing" is made in semblance of sour cream, but does not comply with the standards of identity for either sour cream or acidified sour cream. Sour cream dressing contains not less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Sour cream dressing has a titratable acidity of not less than 0.5 percent, calculated as lactic acid. The blend of all ingredients shall be pasteurized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pasteurization.

(52) "Sour half-and-half dressing" is made in semblance of sour half-and-half, but does not comply with the standards of identity for either sour half-and-half or acidified sour half-and-half. Sour half-and-half dressing contains not less than 10.5 percent but less than 18 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Sour half-and-half dressing has a titratable acidity of not less than 0.5 percent, calculated as lactic acid. The blend of all ingredients used shall be pasteurized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pasteurization.

(53) "Ultra-pasteurized," when used to describe a dairy product, means that such product shall have been thermally processed at or above 280°F for at least 2 seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 1, ch. 70-247; ss. 2, 3, ch. 71-211; s. 187, ch. 71-377; s. 1, ch. 73-356; s. 1, ch. 75-14; s. 1, ch. 76-282; s. 1, ch. 77-174.

502.021 Reconstituted or recombined milk, adulterated or misbranded milk or milk products.—

(1) No person shall, in this state or its police jurisdiction, produce, provide, sell, offer or expose for sale, or have in possession with intent to sell any reconstituted or recombined milk, or any milk or milk product which is adulterated or misbranded; provided, that in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the department, in which case such products shall be labeled "ungraded."

(2) Any reconstituted or recombined milk, or any adulterated or misbranded milk or milk product may be impounded by the department and made unsalable, or otherwise disposed of as may be deemed proper. Disposition shall be accomplished so as not to create a nuisance and to prevent their being used for human consumption.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

[1]502.031 Permits.—

(1) It shall be unlawful for any person who does not possess a permit from the department to bring into, send into, or receive into the state or its police jurisdiction, for sale, or to sell, or offer for sale therein, or to have in storage any milk or milk products defined in this chapter. A permit is defined to be a privilege extended to any person, firm or corporation who offers for sale any milk or milk products, as defined in this chapter, in the state; provided, that grocery stores, restaurants, soda fountains and similar establishments where milk or milk products are served or sold at retail, but not processed, may be exempt from the requirements of this section.

(2) Only a person who complies with the requirements of this law shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

(3) The department shall suspend such permit whenever it has reason to believe that a public health hazard exists, whenever the permitholder has violated any of the requirements of this law, or whenever the permitholder has interfered with the department in the performance of its duties; provided, that the department shall, in all cases except where the milk or milk product involved creates or appears to create an imminent hazard to the public health or in any case of a willful refusal to permit authorized inspection, serve upon the holder a written notice of intent to suspend permit, which notice shall specify with particularity the violations in questions and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, fixed by the department, before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the department.

(4) Upon written application of any person whose permit has been suspended, or upon application within 48 hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the department shall within 72 hours proceed to a hearing pursuant to chapter 120.

(5) Upon repeated violations, the department may revoke such permit. This section is not intended to preclude the institution of court action as provided in ss. 502.051 and 502.061.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

502.032 Milk fat testers; permit, application, suspension or revocation, records.—It is unlawful for any person to test milk or milk products for milk fat content by weight, volume, chemical, electronic, or other method when the result of such test is used as a basis for payment for the milk or milk products unless such person has been issued a milk fat tester's permit by the department.

(1) Said permit shall be issued for a period of 2 years from date of first issue upon application to the department on a form furnished by the department.

(2) To qualify for a permit, the applicant shall demonstrate a sufficiency of knowledge, ability, and equipment to perform adequately milk fat tests.

(3) Said permit is nontransferable between persons or locations and is subject to suspension or revocation upon a showing of violation of conditions upon which the permit was issued.

(4) Each milk fat tester shall keep records of milk fat tests conducted by him for a period of 1 year, and such records shall be available for inspection by the department at all reasonable hours.

History.—s. 1, ch. 73-357; s. 6, ch. 78-95.

502.041 Labeling and advertising.—

(1) All bottles, containers and packages enclosing milk or milk products defined in s. 502.012 shall be conspicuously labeled or marked with:

(a) The name of the contents as given in s. 502.012 of this chapter.

(b) The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination.

(c) The grade of the contents.

(d) The word "pasteurized" if the contents are pasteurized and the name and address of the plant where pasteurized.

(e) The word "raw" if the contents are raw and the name and address of the producer.

(f) The designation "vitamin D" and the number of U.S.P. units per quart in the case of vitamin D milk or milk products.

(g) The volume or proportion of water to be added for reconstituting or recombining in the case of milk products.

(h) The words "nonfat milk solids added" and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk products.

(i) The words "artificially sweetened" in the name if nonnutritive or artificial sweeteners are used.

(j) The common name of stabilizers, emulsifiers, distillates and ingredients.

(2) Provided that:

(a) Only the identity of the milk producer shall be required for milk delivered to a milk plant which receives only grade A raw milk for pasteurization, and which immediately dumps and washes delivery containers.

(b) In the case of concentrated milk products, the specific name of the product shall be substituted for the generic term "concentrated milk products," e.g., "homogenized concentrated milk," "concentrated skim milk," "concentrated chocolate milk," "concentrated chocolate flavored lowfat milk."

(c) In the case of flavored milk the name of the principal flavor shall be substituted for the word "flavored."

(d) In the case of cultured milk and milk products, the special type culture used may be substituted for the word "cultured," e.g., "acidophilus buttermilk," "Bulgarian buttermilk," and "yogurt."

(e) In the case of filled milk or filled milk products the specific name of the product shall be substituted for the generic term "filled milk" or "filled milk products," e.g., "homogenized filled milk," "filled skim milk," "filled chocolate milk," "filled chocolate low-fat milk," etc. Also, on the package containing any such filled milk or filled milk product

there shall be stated the amount and name of fat contained in said product.

(3) All vehicles and transport tanks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the routine supervision of the department are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for each such shipment, a shipping statement shall be prepared containing at least the following information:

(a) Shipper's name, address, and permit number.

(b) Permit number of hauler, if not employee of shipper.

(c) Point of origin of shipment.

(d) Tanker identity number.

(e) Name of product.

(f) Weight of product.

(g) Grade of product.

(h) Temperature of product.

(i) Date of shipment.

(j) Name of supervising health authority at the point of origin.

(k) Whether the contents are raw, pasteurized, or otherwise heat treated.

Such statement shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of 6 months for the information of the department.

(4) The labeling information which is required on all bottles, containers or packages of milk or milk products shall be in letters of an acceptable size, kind, and color satisfactory to the department and shall contain no marks or words which are misleading.

(5) No ingredient shall be displayed on the label with more prominence than another.

(6) When the percentage of butterfat appears on the label, it shall be accurately stated in a manner as provided by rule of the department.

(7) The label of milk and milk products may include the name of the breed of cows from which such milk or milk products were produced; provided such milk or milk products contain only milk produced from the breed named on the label.

(8) Samples of labels or marks to be used on containers of milk or milk products, upon referral, will be examined by the department for compliance with law and rules.

(9) It is unlawful for any person to advertise or cause to be advertised any milk or milk product, the advertisement of which contains any assertion, representation or statement which is untrue, deceptive or misleading. This subsection shall not apply to any owner of an advertising medium or to any agent of the advertiser who in good faith publishes or causes to be published any false, deceptive or misleading information.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 2, ch. 70-247; s. 4, ch. 71-211; s. 2, ch. 73-356.

502.042 Labeling of shelf life.—

(1) It is the legislative intent to assure continuation of the normal flow of fresh wholesome milk and milk products from farmer to the consumer by uniform regulation of the shelf life of milk and milk products throughout this state.

(2) All dairy processors shall establish, and legibly label on the package or container, in a manner prescribed by rule or regulation of the department, the maximum shelf-life period during which such products may be offered for sale, to insure consumers full disclosure of the date beyond which such product may no longer be offered for sale. For purposes of this requirement, "legibly label" means to label with conspicuous and easily legible boldface print or type in distinct contrast to the background, by color. The department shall periodically review the keeping quality of milk and milk products by scientific shelf-life studies, recognizing the different methods of pasteurization, processing, and packaging, and shall sample periodically the products of the dairy processors to determine if the shelf-life dating used by the processors complies with the minimum standards of quality.

(3) All general laws, special or local acts, general laws of limited application, county ordinances or resolutions, municipal ordinances, or municipal charter provisions authorizing regulation of the sale of milk or milk products through the establishment of shelf-life termination dates are hereby repealed and any such regulation is superseded by this section.

History.—s. 1, ch. 72-60; s. 2, ch. 76-282.

502.051 Inspection of dairy farms and milk plants.—

(1) Each dairy farm, milk plant, receiving station, and transfer station whose milk or milk products are intended for consumption within the state or its police jurisdiction shall be inspected by the department prior to the issuance of a permit.

(2) Following the issuance of a permit, each dairy farm and transfer station shall be inspected at least once every 6 months and each milk plant and receiving station shall be inspected at least once every 3 months. Should the violation of any requirement set forth in s. 502.071 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before 3 days; the reinspection shall be used to determine compliance with the requirements of s. 502.071. Any violation of the same requirement of s. 502.071 on such reinspection shall call for permit suspension in accordance with s. 502.031 and/or court action.

(3) One copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the establishment. Said inspection report shall not be defaced and shall be made available to the department upon request. An identical copy of the inspection report shall be filed with the records of the department.

(4) Every milk producer, hauler, distributor, or plant operator shall, upon request of the department, permit access of officially designated persons to all parts of his establishment or facilities to determine compliance with the provisions of this chapter. A distributor or plant operator shall furnish the de-

partment, upon request, for official use only, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, and a list of all sources of such milk and milk products, records of inspections, tests, and pasteurization time and temperature records.

(5) It shall be unlawful for any person who in an official capacity obtains any information under the provisions of the chapter which is entitled to protection as a trade secret (including information as to quantity, quality, source or disposition of milk or milk products, or results of inspections or tests thereof) to use such information to his own advantage or to reveal it to any unauthorized person.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.052 Inspections; administrative procedures.—

(1) INSPECTION FREQUENCY.—One producer inspection every 6 months or one plant inspection every 3 months is not a desirable frequency; it is instead a legal minimum. Dairy farms and milk plants experiencing difficulty meeting requirements should be visited more frequently. Inspections of dairy farms shall be made at milking time as often as possible, and of milk plants at different times of the day, in order to ascertain if the processes of equipment assembly, sanitizing, pasteurization, cleaning, and other procedures comply with the requirements of this chapter.

(2) ENFORCEMENT PROCEDURE.—This section provides that a dairy farm or milk plant shall be subject to suspension of permit, and/or court action, if two successive inspections disclose violation of the same requirement.

(a) Experience has demonstrated that a strict enforcement of the law leads to a better and friendlier relationship between the department and the milk industry than does a policy of enforcement which seeks to excuse violations and to defer penalty therefor. The sanitarian's criterion of satisfactory compliance should be neither too lenient nor unreasonably stringent. When a violation is discovered, the inspector should point out to the milk producer or plant operator the requirement that has been violated, discuss a method for correction, and set a time for correcting the violated requirement.

(b) The penalties of suspension or revocation of permit, and/or court action, are provided to prevent continued violation of the provisions of this chapter but are worded to protect the dairy industry against unreasonable or arbitrary action. When a condition is found which constitutes an imminent health hazard, prompt action is necessary to protect the public health; therefore, the department is authorized, in s. 502.031, to suspend the permit immediately. However, except for such emergencies, no penalty is imposed on the producer or distributor upon the first violation of any of the sanitation requirements listed in s. 502.071. A producer or distributor found violating any requirement must be notified in writing and given a reasonable time to correct the violations before an official reinspection is made. The requirement of giving written notice shall be deemed to have been satisfied by the handing to the operator or by the posting of an inspection report, as required by this section. After receipt of a notice of violation, but before the allotted time has elapsed, the producer or distributor shall have an opportunity to appeal the sanitarian's interpretation to the department for an extension of the time allowed for correction.

(3) CERTIFIED INDUSTRY INSPECTION.—The department may certify industry personnel to carry out cooperatively the provisions of this chapter with respect to the supervision of dairy farms. Reports of all inspections conducted by such personnel to determine compliance with the provisions of this chapter shall be forwarded to the department. All punitive actions and all inspections for the issuance or reinstatement of permits shall be performed by the department. Industry personnel shall be certified annually by the department in accordance with the provisions of appendix B, page 100, Recommended Milk Ordinance, 1965, United States Public Health Service.

(4) INSPECTION REPORTS.—A copy of the inspection report shall be filed by the department and retained for at least 12 months. The results shall be entered on appropriate ledger forms. The use of a computer or other information retrieval system may be used. Examples of field inspection forms are included in appendix L, page 168, Recommended Milk Ordinance, 1965, United States Public Health Service.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.055 Dairy farms and milk plants; department jurisdiction for onsite inspections.—It is the intent of the Legislature to eliminate, to the extent practicable, overlapping and duplicative inspections of dairy farms and milk plants as defined by s. 502.012(42) and (43), performed by the several agencies of state and local governments. In furtherance of this goal, primary responsibility and jurisdiction for all onsite inspections of dairy farms and milk plants required by this chapter shall be made by the Department of Agriculture and Consumer Services. However, the Department of Health and Rehabilitative Services and local health agencies shall cooperate with and advise the Department of Agriculture and Consumer Services in all matters relating to preservation of public health. The Department of Agriculture and Consumer Services shall designate members of the department who shall be certified by the U.S. Public Health Service, Food and Drug Administration, as state milk sanitation officers and who shall conduct routine sanitation-compliance survey ratings of milk producers and milk plants. These ratings shall be made in accordance with recommendations of the U.S. Department of Health, Education, and Welfare, Public Health Service, Food and Drug Administration, published in "Methods of Making Sanitation Ratings of Milk Sheds."

History.—s. 1, ch. 74-370; s. 2, ch. 76-235.

502.061 The examination of milk and milk products.—

(1) During any consecutive 6 months, at least four samples of raw milk for pasteurization shall be taken from each producer and four samples of raw milk for pasteurization shall be taken from each milk plant after receipt of the milk by the milk plant and prior to pasteurization. In addition, during any consecutive 6 months, at least four samples of pas-

teurized milk and at least four samples of each milk product defined in this chapter shall be taken from every milk plant. Samples of milk and milk products shall be taken while in possession of the producer or distributor at any time prior to final delivery. Samples of milk and milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and milk products are sold shall be examined periodically as determined by the department; and the results of such examination shall be used to determine compliance with ss. 502.021, 502.041 and 502.101. Proprietors of such establishments shall furnish the department, upon its request, with the names of all distributors from whom milk or milk products are obtained.

(2) Required bacterial counts, somatic cell counts, and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four times during any consecutive 6 months. When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive. Required bacterial counts, coliform determinations, phosphatase and cooling temperature checks shall be performed on pasteurized milk and milk products.

(3) Whenever two of the last four consecutive bacteria counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the department shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within 14 days of the sending of such notice, but not before the lapse of 3 days. Immediate suspension of permit in accordance with s. 502.031 and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, somatic cell counts, coliform determinations, or cooling temperatures.

(4) Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, it shall be corrected; and any milk or milk product involved shall not be offered for sale.

(5) Samples shall be analyzed at an official or appropriate officially designated laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the Standard Methods for the Examination of Dairy Products of the American Public Health Association and the Official Methods of Analyses of the Association of Official Agricultural Chemists, as provided by rule of the department. Such procedures and examinations shall be evaluated in accordance with the methods of evaluating milk laboratories recommended by the United States Public Health Service. Examinations and tests shall be conducted to detect adulterants, including pesticides, as the department may require. Assays of vitamin D milk or milk products shall be made at least annually in a laboratory acceptable to the department.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 1, ch. 71-210; s. 1, ch. 79-39.

502.062 Enforcement; administrative procedures.—

(1) ENFORCEMENT PROCEDURES.—All violations of bacteria, somatic cell, coliform, and cooling temperature standards shall be followed promptly by inspection to determine and correct the cause. (See appendix E, examples of 3-out-of-5 compliance enforcement procedures. Recommended Milk Ordinance, 1965, United States Public Health Service.) All violations of bacterial, somatic cell, coliform, and cooling temperature standards shall be followed promptly by inspection to determine and correct the cause.

(2) LABORATORY TECHNIQUES.—Procedures for the collection and holding of samples; the selection and preparation of apparatus, media and reagents; and the analytical procedures, incubation, reading, and reporting of results, shall be in substantial compliance with standard methods for the examination of dairy products and the official methods of analyses. The procedures shall be those specified therein for:

(a) Standard plate count at 32°C.
(b) Simplified methods for viable counts of raw milk at 32°C.
(c) Somatic cell count.
(d) Coliform test with solid media at 32°C.
(e) Disc assay methods for antibiotics.
(f) Apha or aoac phosphatase tests.

The phosphatase test is an index of the efficiency of the pasteurization process. In the event the laboratory phosphatase test is positive, the cause shall be be determined immediately. When the cause is improper pasteurization, it shall be corrected. When a laboratory phosphatase test is positive, or if any doubt should arise as to the compliance of the equipment, standards or methods outlined in s. 502.071(3)(e) and (p), the department should immediately conduct field phosphatase tests at the plant (appendix G, page 134, Recommended Milk Ordinance, 1965, United States Public Health Service.) The direct microscopic count is useful as a screening test to detect suspicious tanker loads of milk for subsequent official examinations, and to determine the possible presence of abnormal milk.

(3) SAMPLING PROCEDURES.—When samples of raw milk for pasteurization are taken at a milk plant prior to pasteurization, they shall be drawn following adequate agitation from randomly selected storage tanks.

(a) When bacterial counts, somatic cell counts, and temperature determinations are made of several samples of the same milk or milk products collected from the same supply or processor, on the same day, these values are averaged arithmetically, and the results recorded as the count or temperature determinations of the milk or the milk product for that day. All counts and temperatures should be recorded on the milk-ledger form PHS 1784 (or a similar form) for dairy farms, and form PHS 1782 (or a similar form) for milk plants as soon as reported by the laboratory.

(b) The use of a computer or other information retrieval system may be used. (See appendix G, page 135, Recommended Milk Ordinance, 1965, United States Public Health Service, for a reference to antibiotics in milk and the conditions under which a positive phosphatase reaction may be encountered in properly pasteurized milk or cream.)

(c) The industry should be encouraged by the department to achieve day-to-day compliance with the foregoing standards by performing tests on each producer's milk, including platform tests for odors, temperature, and sediment. Bacterial counts should be conducted following laboratory pasteurization as a check for thermoduric organisms. Examinations for the presence of psychrophilic bacteria are also recommended. Periodic screening tests for presence of added water, antibiotics, and pesticide residues should be performed on producer milk. Plants should reject milk of abnormal odor and high temperature as well as milk that is found to be unsatisfactory by the sediment test. Follow-up inspections on the dairy farm should be made by the plant fieldman to determine the cause and to institute corrective measures whenever milk is rejected by the milk plant.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 2, ch. 71-210.

502.071 Standards for milk and milk products.—All grade A raw milk for pasteurization and all grade A pasteurized milk and milk products shall be produced, processed, and pasteurized to conform with the following chemical, bacteriological, somatic cell, and temperature standards, and the sanitation requirements of this section. No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating micro-organisms. However, the use of sorbates and its salts may be permitted in creaming mixtures for cottage cheese; and safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life may be used in those cultured products presently allowed by federal regulations.

(1) CHEMICAL, BACTERIOLOGICAL, SOMATIC CELL, AND TEMPERATURE STANDARDS FOR GRADE A MILK AND MILK PRODUCTS.—

Grade A raw milk for pasteurization	Temperature . . . Cooled to 50°F. or less and maintained thereat until processed. Bacterial limits . . . Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization. Somatic cell limits . . . Individual producer milk not to exceed the number established by rule of the department. Antibiotics . . . No detectable antibiotic residues.
Grade A pasteurized milk and milk products (except cultured products).	Temperature . . . Cooled to 45°F. or less and maintained thereat. Bacterial limits . . . Milk and milk products—20,000 per ml. Coliform limit . . . Not exceeding 10 per ml. Phosphatase . . . Less than 1 microgram per ml. by Scharer rapid method (or equivalent by other means).
Grade A pasteurized cultured products	Temperature . . . Same as above. Coliform limit . . . Do. Phosphatase . . . Do. Bacterial limits . . . Exempt.

(2) SANITATION REQUIREMENTS FOR GRADE A RAW MILK FOR PASTEURIZATION.—

(a) *Abnormal milk.*—Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, somatic cell, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the department, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the department may direct.

(b) *Milking barn, stable, or parlor construction.*—A milking barn, stable, or parlor shall be provided on all dairy farms in which the milking herd shall be housed during milking time operations. The areas used for milking purposes shall:

1. Have floors constructed of concrete or equally impervious material.
2. Have walls and ceilings which are smooth, painted or finished in an approved manner, in good repair, ceiling dust-tight.
3. Have separate stalls or pens for horses, calves, and bulls, at least 100 feet from milking barn or milk room.
4. Be provided with natural and/or artificial light, well distributed for day and/or night milking.
5. Provide sufficient air space and air circulation to prevent condensation and excessive odors.
6. Not be overcrowded.
7. Have dust-tight feed room doors, covered boxes or bins, or separate storage facilities for ground, chopped or concentrated feed.

(c) *Milking barn, stable, or parlor cleanliness.*—The interior shall be kept clean. Floors, walls, windows, pipelines, and equipment shall be free of filth

and/or litter and shall be clean. Swine and fowl shall be kept out of the milking barn.

(d) *Cow yard.*—The cow yard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes, and shall provide a firm footing; provided that in loafing or cattle housing areas, cow droppings and soiled bedding shall be removed, or clean bedding added at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the cow yard.

(e) *Milkhouse or room; construction and facilities.*—

1. A milkhouse or room of sufficient size shall be provided, in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted.

2. The milkhouse shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped.

3. The walls and ceilings shall be constructed of smooth material, in good repair, well painted, or finished in an equally suitable manner.

4. The milkhouse shall have adequate natural or artificial light and be well ventilated.

5. The milkhouse shall be used for no other purpose than milkhouse operations. There shall be no direct opening into any barn, stable, or room used for domestic purposes; however, a direct opening between the milkhouse and milking barn, stable or parlor is permitted when a tight-fitting self-closing solid door, hinged to be single or double acting, is provided.

6. Hot and cold water under pressure shall be piped into the milkhouse and to wash vats.

7. The milkhouse shall be equipped with a two-compartment wash vat and adequate hot water heating facilities.

8. When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable room for the receipt of milk. Such room shall be adjacent to, but not a part of, the milk room and shall comply with the requirements of the milk room with respect to construction, light, drainage, insect and rodent control, and general maintenance.

(f) *Milkhouse or room; cleanliness.*—The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, and equipment, and other milk room equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(g) *Toilet.*—Every dairy farm shall be provided with one or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

(h) *Water supply.*—Water for milkhouse and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

(i) *Utensils and equipment; construction.*—All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned and shall be used for no other purpose. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type.

1. Multiple use woven material shall not be used for straining milk.

2. All single-service articles shall have been manufactured, packaged, transported, stored, and handled in a sanitary manner and shall comply with the applicable requirements of subsection (3)(k). Articles intended for single-service use shall not be reused.

3. Farm holding-cooling tanks, welded sanitary piping, and transportation tanks shall comply with the applicable requirements of subsection (3)(j) and (k).

(j) *Utensils and equipment; cleaning.*—The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(k) *Utensils and equipment; sanitization.*—The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each usage.

(l) *Utensils and equipment storage.* —All containers, utensils, and equipment used in the handling, storage, or transportation of milk, shall be stored to assure complete drainage, and shall be protected from contamination prior to use.

(m) *Utensils and equipment; handling.*—After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product contact surface.

(n) *Milking; flanks, udders, and teats.*—Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt. All cleaning and brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be relatively dry before milking. Wet hand milking is prohibited.

(o) *Milking; surcingles, milk stools and antikickers.*—Surcingles, milk stools and antikickers shall be kept clean and stored above the floor.

(p) *Milking; transfer and protection of milk.*—Each pail or container of milk shall be transferred immediately from the milking barn, stable, or parlor to the milk house. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination.

(q) *Personnel; hand-washing facilities.*—There shall be provided adequate hand-washing facilities, including running water, soap or detergent, and individual sanitary towels, in the milk house and in or

convenient to the milking barn, stable, or parlor.

(r) *Personnel; cleanliness.*—Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(s) *Cooling.*—Raw milk for pasteurization shall be cooled to 50°F. or less within 2 hours after milking and shall be maintained at that temperature until delivered.

(t) *Vehicles.*—Vehicles used to transport milk in cans from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean, inside and out; and no substance capable of contaminating milk shall be transported with milk.

(u) *Insect and rodent control.*—Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents, and by chemicals used to control such vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept clean, neat, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

(3) SANITATION REQUIREMENTS FOR GRADE A PASTEURIZED MILK AND MILK PRODUCTS.—A receiving station shall comply with paragraphs (a) to (o) inclusive, and paragraphs (q), (t), and (v), except that the partitioning requirement of paragraph (e) shall not apply. A transfer station shall comply with paragraphs (a), (d), (f)-(l), (n), (o), (t), and (v); and as climatic and operating conditions require, the applicable provisions of paragraphs (b) and (c); provided, that in every case, overhead protection shall be provided. Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with paragraphs (a), (d), (f)-(l), (n), (o), (t), and (v); and as climatic and operating conditions require, the applicable provisions of paragraphs (b) and (e); provided, that in every case, overhead protection shall be provided.

(a) *Floors; construction.*—The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material; and shall be smooth, properly sloped, provided with trapped drains, kept in good repair; provided, that cold-storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits; provided further, that storage rooms for storing dry ingredients and/or packaging materials need not be provided with drains; and the floors may be constructed of tightly joined wood.

(b) *Walls and ceilings; construction.*—Walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable light-colored surface, in good repair.

(c) *Doors and windows.*—Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

(d) *Lighting and ventilation.*—All rooms in which milk and milk products are handled, processed or stored and/or in which milk containers, equipment, and utensils are washed shall be well lighted and well ventilated.

(e) *Separate rooms.*—There shall be separate rooms for:

1. Pasteurizing, processing, cooling, and packaging.

2. Cleaning of milk cans and bottles. In addition, plants receiving milk in bulk transport tanks shall provide for cleaning and sanitizing facilities. Unless all milk and milk products are received in bulk transport tanks, a receiving room, separate from rooms 1. and 2. of this paragraph shall be required. Rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils and equipment are washed or stored, shall not open directly into any stable or any room used for domestic purposes.

(f) *Toilet and sewage disposal facilities.*—Every milk plant shall be provided with toilet facilities conforming with the requirements of the state sanitary code. Toilet rooms shall not open directly into any room in which milk and/or milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms, and fixtures shall be kept in a clean condition, in good repair and shall be well ventilated and well lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner in conformance with requirements of the state sanitary code.

(g) *Water supply.*—Water for milk plant purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

(h) *Hand-washing facilities.*—Convenient hand-washing facilities shall be provided, including hot and cold and/or warm running water, soap, and individual sanitary towels or other approved hand-drying devices. Hand-washing facilities shall be kept in a clean condition and in good repair.

(i) *Milk plant cleanliness.*—All rooms in which milk and milk products are handled, processed, or stored, and/or in which containers, utensils, or equipment are washed or stored, shall be kept clean, neat and free of evidence of insects and rodents. Pesticides shall be safely used. Only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, shall be permitted in the pasteurizing, processing, cooling, packaging, and bulk-milk storage rooms.

(j) *Sanitary piping.*—All sanitary piping, fittings, and connections which are exposed to milk and milk products, or from which liquids may drip, drain, or be drawn into milk or milk products, shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

(k) *Construction and repair of containers and equipment.*—All multiuse containers and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant nontoxic material; shall be constructed for ease of cleaning; and shall be kept in good repair. All single-service containers, closures, gaskets, and other articles with which milk or milk products come in contact shall be nontoxic, and shall have been manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

(l) *Cleaning and sanitizing of containers and equipment.*—The product contact surfaces of all multiuse containers, utensils, and equipment used in the transportation, processing, handling, and storage of milk and milk products shall be effectively cleaned and shall be sanitized before each use.

(m) *Storage of cleaned containers and equipment.*—After cleaning, all multiuse milk or milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

(n) *Storage of single-service containers, utensils and materials.*—Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons, shall be kept therein in a clean, dry place until used; and shall be handled in a sanitary manner.

(o) *Protection from contamination.*—Milk plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of milk or milk products, ingredients, equipment, containers, and utensils. All milk or milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and milk products.

(p) *Pasteurization.*—Pasteurization shall be performed as defined in s. 502.012(36).

(q) *Cooling of milk.*—All raw milk and milk products shall be maintained at 50°F. or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled immediately prior to filling or packaging in approved equipment to a temperature of 45°F. or less. All pasteurized milk and milk products shall be stored at a temperature of 45°F. or less. On delivery vehicles the temperature of milk and milk products shall not exceed 50°F.

(r) *Bottling and packaging.*—Bottling and packaging of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment.

(s) *Capping.*—Capping or closing of milk and milk product containers shall be done in a sanitary manner by approved mechanical capping and/or closing equipment. The cap or closure shall protect the pouring lip to at least its largest diameter.

(t) *Personnel; cleanliness.*—Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils shall wear clean outer garments. The use of tobacco by any person engaged in the processing of milk or milk products is prohibited.

(u) *Vehicles.*—All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are maintained at 45°F. or less, and are protected from sun, from freezing, and from contamination.

(v) *Surroundings.*—Milk plant surroundings shall be kept neat, clean, and free from conditions which might attract or harbor flies, other insects, and rodents, or which otherwise constitute a nuisance.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 3, ch. 71-210; s. 1, ch. 75-25.

502.081 Animal health.—

(1) All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis area as determined by the United States Department of Agriculture in cooperation with the Florida Department of Agriculture and Consumer Services or the official agency of another state administering animal health laws; provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by said department as tuberculosis-free, or shall have passed an annual tuberculosis test; provided further, that the department may, by rule, provide additional measures for the control of tuberculosis in dairy herds.

(2) All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

(a) Located in a certified brucellosis-free area as defined by the United States Department of Agriculture in cooperation with the Florida Department of Agriculture and Consumer Services or the official agency of another state, and enrolled in the testing program for such areas; or

(b) Located in a modified certified brucellosis area as defined by the United States Department of Agriculture in cooperation with the Florida Department of Agriculture and Consumer Services or the official agency of another state, and enrolled in the testing program for such areas; or

(c) Meet the requirements of the United States Department of Agriculture cooperating with the Florida Department of Agriculture and Consumer Services, for an individually certified herd; or

(d) Participating in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every 3 months or more than every 6 months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

(e) Have an individual blood agglutination test annually with an allowable maximum grace period not exceeding 2 months.

(3) For diseases other than brucellosis and tuberculosis, the department shall require such physical, chemical, or bacteriological tests as it deems necessary. The diagnosis of other diseases in dairy cattle

shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency. Any diseased animal disclosed by such tests shall be disposed of as the department directs.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.091 Milk and milk products which may be sold.—

(1) Only grade A pasteurized milk and milk products or certified pasteurized milk shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; provided, that in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the department, in which case, such milk and milk products shall be labeled "ungraded"; provided further, that if the milk from a producer is less than grade A for reasons of failure on the part of producer to comply with sanitation or bacterial standards, as defined in this chapter, or if any specific shipment of milk from points beyond routine supervision fails to comply with standards of s. 502.071 of this chapter, but is determined by the department to be fit for human consumption, such milk may be received into a milk plant, under written permit issued by the department, for use in ungraded products, such as frozen desserts, which are being processed by such milk plant. During processing of such milk, it shall be pasteurized at a temperature of at least 175°F. for at least 15 seconds or at least 160°F. for at least 30 minutes.

(2) Certified pasteurized milk is derived from certified raw milk which meets the latest requirements of the North American Association of Medical Milk Commissions, Inc., 405 Lexington Ave., New York, N. Y. 10017.

(3) Milk that is in final package form for beverage use shall have been pasteurized and shall contain not less than 8¼ percent milk solids-not-fat and not less than 3¼ percent milkfat.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 1, ch. 75-14.

502.101 Transferring; delivery containers; cooling.—

(1) Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container or tank truck to another on the street, in any vehicle, store, or in any place except a milk plant, receiving station, transfer station, or milk house especially used for that purpose. The dipping or ladling of milk or fluid milk products is prohibited.

(2) It shall be unlawful to sell or serve any milk or fluid milk product except in the individual, original container received from the distributor, or from an approved bulk dispenser; provided, that this requirement shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream, or half-and-half which is consumed on the premises and which may be served from the original container of not more than one-half gallon capacity, or from a bulk dispenser approved for such service by the department.

(3) It shall be unlawful to sell or serve any pasteurized milk or milk product which has not been maintained at a temperature of 45°F. or less. If containers of pasteurized milk or milk products are stored in ice, the storage container shall be properly drained.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.111 Milk and milk products from points beyond the limits of routine inspection.—Milk and milk products from points beyond the limits of routine inspection of the state, or its police jurisdiction may be sold in Florida, or its police jurisdiction, provided they are produced and pasteurized under regulations which are substantially equivalent to this law and have been awarded an acceptable milk sanitation compliance and enforcement rating made by a state milk sanitation rating officer certified by the United States Public Health Service.

History.—s. 2, ch. 67-263.

502.121 Future dairy farms and milk plants.—

(1) All milk houses, milking barns, stables, parlors, transfer stations, and milk plants regulated under this chapter which are hereafter constructed, reconstructed, or extensively altered, must meet certain minimum specifications and requirements which the Department of Agriculture and Consumer Services shall from time to time establish and keep on file in its office in Tallahassee.

(2) Anyone desiring to make such construction shall give written notification to the department in which he states that he is going to construct, reconstruct, or extensively alter his milk house, milking barns, stables, parlors, transfer stations, or milk plants, the date he intends to begin said construction, and the legal description of the property on which such construction is planned.

(3) The minimum specifications which shall apply are those on file at the date of the original notification. If the construction does not meet the current requirements and specifications, then the department shall direct the owner to alter the construction to conform to such specifications.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.131 Personnel; health.—No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils; and no dairy farm or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any producer or distributor of milk or milk products, upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the department immediately.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.141 Procedure when infection is suspected.—When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk and/or milk

products, the department is authorized to require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling.

(2) The immediate exclusion of the milk supply concerned from distribution and use.

(3) Adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106.

502.161 Industry trade products.—

(1) DEFINITION.—"Industry trade products" means all food products having the semblance of milk or a milk product defined in this chapter but which do not come within the definition of milk, a milk product, filled milk, or filled milk product.

(2) LABELING.—Industry trade products shall be labeled with a fanciful name or any other descriptive name that accurately describes the product, but in no case shall an industry trade product be labeled as an imitation of any product defined in this chapter. An industry trade product which contains a milk-derived ingredient shall not bear on its label the words "nondairy product." An industry trade product which does not contain a milk-derived ingredient shall bear on its label the words "nondairy product" in type of uniform size and prominence, with the size to be at least one-fourth the size of the largest type on the carton immediately preceding or following the name of the food. No picture or representation of the animal genus bovine or any other picture, symbol, mark, word, design, or representation commonly associated with dairy farming or any other phase of the dairy industry or associated with the production, sale, advertising, distribution, or marketing of milk, milk products, filled milk, or filled milk products, whether in liquid, powdered, frozen, or any other form, shall be used on any label of any industry trade product or in any advertisement for the sale of any industry trade product. The mere use of the manufacturer's name and symbol on milk, a milk product, filled milk, or a filled milk product shall not be sufficient to prohibit their use on an industry trade product if such use on milk, milk products, filled milk, or filled milk products was in effect on or before January 1, 1970.

(3) DISPLAY.—All industry trade products sold in retail food stores shall be physically separated from milk, milk products, filled milk, and filled milk products, as defined in this chapter, by a partition or other device or divider in the dairy display case or other display area.

(4) HEALTH STANDARDS.—In the interest of public health, industry trade products shall comply with the manufacture, sanitation, and health standards of this chapter.

(5) UNLAWFUL LABELING OR ADVERTISING.—It is unlawful for any person to advertise, package, label, sell, or offer for sale, or cause to be advertised, packaged, labeled, sold, or offered for sale, any industry trade product the advertising, packaging, or labeling of which contains any assertion, representation, or statement which is untrue, deceptive, or misleading and which could cause consumers to think they are purchasing a grade A milk, milk product, filled milk, or filled milk product.

(6) PERMITS.—Any person engaged in the manufacture, distribution, or sale of industry trade products within this state shall obtain a permit in accordance with the provisions of s. 502.031.

History.—s. 2, ch. 67-263; s. 1, ch. 70-78; s. 3, ch. 76-282; s. 1, ch. 77-174.

502.171 Enforcement and expenses.—This law, which is in accordance with the Grade A Pasteurized Milk Ordinance, 1965, Recommendations of the United States Public Health Service, shall be enforced by the department, and, in connection therewith, the department is authorized to incur necessary expenses which shall be paid from the General Inspection Trust Fund.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 3, ch. 76-235.

502.181 Prohibited acts.—It is unlawful:

(1) To repasteurize milk; or

(2) To obstruct or resist any authorized inspector while in performance of his duties.

History.—s. 2, ch. 67-263; s. 4, ch. 70-247.

502.191 Rules.—The department is authorized to define and establish standards for milk and milk products and to adopt rules to implement, interpret, and make specific the provisions of this chapter, and specifically the department is authorized to adopt by rule all or any part of the administrative procedures and provisions of the appendices contained in the Grade A Pasteurized Milk Ordinance, 1965, Recommendations of the United States Public Health Service and any addendum thereto.

History.—s. 2, ch. 67-263; ss. 14, 35, ch. 69-106; s. 5, ch. 70-247; s. 1, ch. 70-439.

502.201 Purpose.—The purpose of this chapter is:

(1) To secure to the people of this state, without being unduly burdensome to either the regulatory agency or the dairy industry, the assurance that milk and milk products sold or offered for sale to the public are produced under sanitary conditions and are wholesome and fit for human consumption and are being offered to the public under correct designation as to grade, quality and source of production.

(2) To encourage a greater uniformity and a higher level of excellence of milk sanitation practice in the state.

(3) To facilitate the shipment and acceptance of milk and milk products of high sanitary quality in interstate and intrastate commerce.

History.—s. 2, ch. 67-263.

502.211 Declaration of policy and cooperation between the Department of Agriculture and Consumer Services and the Department of Health and Rehabilitative Services.—In order to more effectively utilize the agencies of the state in the public interest and without unnecessary duplication and expense, the relationship between the production, processing, and distribution of milk and milk products and the public health is recognized. It is therefore hereby declared to be the public policy of the state that:

(1) The duty of administration and enforcement of all regulatory legislation now enacted applying to the production, processing, and distribution of milk and milk products shall be performed by the depart-

ment, except as otherwise provided in this law.

(2) The administration and enforcement of all regulatory legislation now enacted, applying to the sanitation and sanitary practices of establishments where food and drink including milk and milk products are sold for consumption on the premises where sold, or to the sanitary and healthful condition of such food and drink sold or offered for sale by such establishment, also, such laboratory work of testing and analyzing milk and milk products, may be performed by the Department of Health and Rehabilitative Services and local health departments of various municipalities and counties; provided, that nothing contained herein shall limit the authority conferred on the Department of Agriculture and Consumer Services by provisions of this chapter.

(3) There shall be the fullest cooperation and exchange of information between the Department of Agriculture and Consumer Services and the Department of Health and Rehabilitative Services in the making of any surveys, investigations and inquiries to be made for the purpose of determining whether or in what manner the production, processing and distribution of milk and milk products may affect the public health. Whenever the findings in the report of any survey, investigation or inquiry made by the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services show any hazard to public health existing, incident to the production, processing or distribution of milk and milk products, the Department of Agriculture and Consumer Services shall take such action as may be necessary and within the scope of the resources of the Department of Agriculture and Consumer Services, to remove such hazard; provided, that nothing herein contained shall limit the authority of the Department of Health and Rehabilitative Services to take immediate action when it appears necessary in the interest of public health.

History.—s. 2, ch. 67-263; ss. 14, 19, 35, ch. 69-106; s. 4, ch. 76-235; s. 438, ch. 77-147.

502.231 Penalty and injunction.—Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such persons may also be enjoined by the circuit courts of this state on complaint of the department from continuing such violations, and injunction shall issue without bond. Each day upon which such a violation occurs shall constitute a separate violation.

History.—s. 1, ch. 67-555; ss. 14, 35, ch. 69-106; s. 460, ch. 71-136.

502.232 Local regulations superseded.—This chapter and all rules and regulations promulgated hereunder supersede all municipal or county regulations or laws pertaining to milk and milk products that are in conflict herewith.

History.—s. 2, ch. 74-370; s. 5, ch. 76-235.

CHAPTER 503

FROZEN DESSERTS

[1]**503.011 Definitions.**—The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Dairy plant" or "plant" means any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing. When "plant" is used in connection with the production, transportation, classifying, or use of milk, it means any plant that handles or purchases milk for manufacturing purposes; when used in connection with specifications for plants or licensing of plants, it means only those plants that manufacture or mix frozen desserts.

(3) "Dairy products" means butter, cream (fluid, dry, or plastic), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products derived from milk, as may be defined under the federal standards of identity as ingredients for frozen desserts.

[2](4) "Frozen desserts" means the foods which conform to the provisions of "definitions and standards of identity for frozen desserts," United States Food and Drug Administration (1977—21 C.F.R. ss. 135.10-135.90), s. 135.10 frozen custard; s. 135.20 fruit sherbets; s. 135.30 ice cream; s. 135.40 ice milk; s. 135.50 mellorine; s. 135.65 nonfruit sherbets; s. 135.70 nonfruit water ices; and s. 135.90 water ices.

(5) "Quiescently frozen confection" means a clean and wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain milk solids or water, or may be made with or without added harmless pure or imitation flavoring and with or without harmless coloring. The finished product may contain not more than one-half of 1 percent by weight of stabilizer composed of wholesome edible material. The finished product shall contain not less than seventeen percent by weight of total food solids. In the production of this confection, no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10 percent.

(6) "Quiescently frozen dairy confection" means a clean and wholesome frozen product made from water, milk products, and sugar, with added harmless pure or imitation flavoring, with or without added harmless coloring, with or without added stabilizer, with or without added emulsifier, and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). It contains not less than 13 percent by weight of total milk solids, not less than 33 percent by weight of total food solids, not more than one-half percent by weight of stabilizer, and not more than one-fifth of 1 percent of weight by emulsifier. Stabilizer and emulsifier must be composed of wholesome, edible material. In the production of quiescently frozen dairy confections, no processing or mixing prior to quiescently freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10 percent.

(7) "Frozen dietary dairy dessert and frozen dietary dessert" means a food for any special dietary use, prepared by freezing, with or without agitation, and composed of a pasteurized mix which may contain fat, protein, carbohydrates, natural or artificial sweeteners, flavoring, stabilizers, emulsifiers, vitamins, and minerals.

(8) "Frozen desserts manufacturer" means any person who manufactures, processes, converts, partially freezes, or freezes any mix or frozen desserts for distribution or sale.

(9) "Frozen desserts plant" means any place or premises where frozen desserts or mix are manufactured, processed, or frozen for distribution or sale at wholesale.

(10) "Frozen desserts retail establishment" means any place or premises, including retail stores, stands, hotels, restaurants, and vehicles or mobile units, where frozen desserts are frozen or partially frozen or dispensed for sale at retail.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 188, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 3, ch. 79-38.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 3, ch. 79-38, provides that, if chapter 503 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that chapter 79-38 shall also be repealed on the same date as is therein provided.

[1]**503.021 Legislative intent.**—It is the intent of this chapter to encourage the sanitary production of good quality milk, to promote the sanitary processing of milk, cream, and other dairy products or ingredients, thereby assuring wholesome, stable, and high quality frozen desserts made therefrom.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**503.031 Powers of department.**—The department shall administer the provisions of this chapter and is hereby authorized:

(1) To establish and promulgate minimum standards of milk for use in the manufacture of frozen desserts, its transportation, classification, use and processing, and the manufacture, packaging, labeling, storage, and handling of frozen desserts made therefrom:

(2) To inspect frozen desserts and frozen dessert plants and to license frozen dessert plants to handle and process mix and to manufacture frozen desserts in conformity with the 1968 recommended standards for the manufacture of frozen desserts as promulgated by the United States Department of Agriculture.

(3) To require the keeping of appropriate books and records by plants licensed hereunder.

(4) To license qualified milk graders and bulk milk collectors when direct receipt of milk from producers is involved.

(5) To issue order of stop-sale on any frozen dessert when sold or offered for sale in violation of the provisions of this chapter or rules adopted hereunder. It shall be unlawful to remove any such order of stop-sale or to dispose of a product to which an order of stop-sale is attached without authority of the department or order of court.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; ss. 1, 2, ch. 73-318; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.041 License fee.—The license fee shall be $50 for each manufacturing plant shown in the application of frozen desserts or frozen desserts mix manufacturers doing a wholesale business, and $10 for each retail store shown in the application of a retail manufacturer. There shall be no fee for the issuance of a license to a hotel, restaurant, or boardinghouse or for the manufacture of frozen desserts or frozen desserts mix sold to the patrons thereof for consumption exclusively on the premises where manufactured. The fee shall be tendered to the department with the application, and upon the issuance of the license shall be remitted by the department to the State Treasurer to the credit of the General Inspection Trust Fund and shall be used by the department for the enforcement of this chapter.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.051 Suspension or revocation of license.—The department may for good cause suspend or revoke certifications and licenses issued hereunder.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.062 Food products in semblance of frozen desserts.—Any food product which has the semblance of ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, fruit sherbet, water ice, a quiescently frozen dairy confection, a frozen dietary dairy dessert, or a frozen dietary dessert, but does not conform to the definition of the preceding products, whether in frozen, powdered, or liquid mix form, shall be subject to inspection, order of stop sale, and licensing and to manufacturing, sanitation, bacteriological, and health standards required for frozen desserts in this chapter. Such food products shall be labeled with an accurate ingredient legend. There shall be no picture or representation by picture, symbol, mark, word, or design commonly associated with defined frozen desserts.

History.—s. 1, ch. 73-317; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.071 Penalty and injunction.—Any person, firm, or corporation that willfully violates any provision of this chapter or the rules and regulations promulgated hereunder shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, and each and every violation shall constitute a separate offense. In addition thereto, any such person or persons may also be enjoined by the circuit courts of this state on complaint of the department from continuing such violations, and injunction shall issue without bond.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 461, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.081 Preemption.—This chapter and all rules and regulations promulgated hereunder preempt all municipal or county laws pertaining to frozen desserts that are in conflict herewith.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]503.091 Exemptions.—Frozen dessert retail establishments as defined in s. 503.011(10) are exempt from the provisions of this chapter.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 504

FRESH FRUITS AND VEGETABLES

[1]**504.011 Short title.**—This act shall be known and may be cited as the "Produce Labeling Act of 1979."

History.—s. 1, ch. 79-121.
[1]**Note.**—Effective January 1, 1980.

[1]**504.012 Label marking permitted; removal prohibited.**—

(1) All growers and shippers of fresh fruits and vegetables in this state shall be permitted to mark each individual fruit or vegetable, in a conspicuous place as legibly, indelibly, and permanently as the nature of the fruit or vegetable will permit, in such manner as to indicate to an ultimate purchaser that the product was produced in Florida. Any fresh fruits and vegetables produced in any country other than the United States and offered for retail sale in Florida shall be marked individually, in a conspicuous place as legibly, indelibly, and permanently as the nature of the fruit or vegetable will permit, in such manner as to indicate to an ultimate purchaser the country of origin. Markings shall be done prior to delivery into Florida.

(2) All retail vendors engaged in the business of selling products labeled or identified as [2]to origin shall be prohibited from willfully and knowingly removing such labels or identifying marks.

History.—ss. 2, 3, ch. 79-121.
[1]**Note.**—Effective January 1, 1980.
[2]**Note.**—The words "to origin" were substituted for "such" by the editors.

[1]**504.013 Penalties.**—Any person, firm, or corporation engaged in the business of the retail vending of fresh fruits and fresh vegetables who willfully and knowingly removes any labels or identifying marks from fruits and vegetables so labeled shall be guilty of a noncriminal violation as defined in s. 775.08(3) and upon conviction shall be punished as provided in s. 775.082(5) by a civil fine of not more than $500.

History.—s. 4, ch. 79-121.
[1]**Note.**—Effective January 1, 1980.

[1]**504.014 Enforcement.**—The Department of Agriculture and Consumer Services shall be responsible for enforcing the provisions of this act.

History.—s. 5, ch. 79-121.
[1]**Note.**—Effective January 1, 1980.

CHAPTER 506

STAMPED OR MARKED BOTTLES AND BOXES

506.01 Devices to be filed in offices.—Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, small beer, lager beer, weiss beer, white beer or other beverages or medicine, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, fountains, tins or kegs, with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, fountains, tins or kegs, or the boxes used by him may file in the office of the clerk of the county in which his principal place of business is situated, or if such person shall manufacture or bottle out of this state, then in any county in this state, and also with the Department of State, a description of the name, marks or devices so used by him and cause such description to be printed once each week, for three weeks successively, in a newspaper published in the county in which said notice may have been filed.

History.—s. 1, ch. 4584, 1897; GS 3165; RGS 4991; CGL 7080; ss. 10, 35, ch. 69-106.

cf.—s. 1.01 "Person" defined.

506.02 Presumptive evidence of unlawful use.—The use by any person other than the person whose device, name or mark shall be or shall have been upon the same, without written consent or purchase, of any marked or distinguished bottle, box, siphon, fountain, tin or keg, a description of which shall have been filed and published, as provided in s. 506.01, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or any article of merchandise, medicines, medical preparations, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers; or the buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphons, fountains, tins or kegs by any person other than said persons having a name, mark or device thereon of such owner without written consent, or the possession by any junk dealer or dealers in secondhand articles of any such bottles, boxes, siphons, fountains, tins or kegs, a description of which shall have been so filed and published as aforesaid, without such written consent, is presumptive evidence of the unlawful use, purchase and traffic in of such bottles, boxes, siphons, fountains, tins or kegs.

History.—s. 3, ch. 4584, 1897; GS 3166, 3346; RGS 4992, 5189; CGL 7081, 7292.

506.03 Search warrant.—When any person or his agent shall make oath before any judge having jurisdiction in the district where the offense is committed that he has reason to believe and does believe that any of his bottles, boxes, siphons, fountains, tins, or kegs, a description of which has been filed and published as aforesaid, are being unlawfully used or filled or had by any person manufacturing or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, weiss beer, white beer, or other beverages or medicine, medical preparations, perfumery, oils, compounds, or mixtures, or that any junk dealer or dealers in secondhand articles, vendor of bottles, or other person, has any such bottles, boxes, siphons, fountains, tins, or kegs in his possession or secreted in any place, the said judge shall thereupon issue a search warrant signed by him with his name of office, to any sheriff and his deputies or any police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the same before the court having jurisdiction of the offense.

History.—s. 4, ch. 4584, 1897; GS 3167; RGS 4993; CGL 7082; s. 26, ch. 73-334.

cf.—s. 506.39 Procedure to obtain.
s. 901.01 All judicial officers shall be committing magistrates.
s. 933.01, et seq. Issuance of search warrants.

506.04 Deposit on bottles, etc., not a sale of property.—The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, box, siphon, fountain, tin or keg is not a sale of such property, either optional or otherwise, in any proceedings under ss. 506.01-506.09.

History.—s. 5, ch. 4584, 1897; GS 3168; RGS 4994; CGL 7083.

506.05 Unlawful use of bottles, boxes, etc., when label is registered; penalty.—No person shall fill with soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, beer, small beer, lager beer, weiss beer, white beer or other beverages, or with medicine, medical preparations, perfumery, oils, compounds or mixtures, any bottle, box, siphon, fountain, tin or keg, which has been marked or distinguished under the provisions of s. 506.01, or deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device thereon, or sell, buy, give, take, or otherwise dispose of, or wantonly destroy, or traffic in the same without the written consent of, or unless the same shall have been purchased from the person whose mark or device shall be or shall have been in or upon the bottle, box, siphon, fountain, tin or keg so filled, trafficked in, used or handled as aforesaid. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for each subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 4584, 1897; GS 3345; RGS 5188; CGL 7291; s. 7, ch. 22858, 1945; s. 462, ch. 71-136.

506.06 Unlawful to counterfeit trademark.—When any person or any association or union of working men adopts or uses and files as provided in s. 506.07 any label, trademark, term, wording, design, device, color or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other products of labor as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of working men, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trademark, term, wording, design, device, color or form of advertisement, or knowingly to use, sell, offer for sale, or in any other way utter or circulate any counterfeit or imitation of any such label, trademark, term, wording, design, device, color or form of advertisement.

History.—s. 1, ch. 4974, 1901; GS 3169; RGS 4995; CGL 7084.

506.07 To file for record with Department of State.—Every person, association or union that adopts or uses a label, trademark, term, wording, design, device, color or form of advertisement as provided in s. 506.06, may file the same for record with the Department of State, by leaving two copies, counterparts or facsimiles thereof, with said department, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trademark, term, wording, design, device, color or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing or on whose behalf such label, trademark, term, wording, design, device, color or form of advertisement shall be filed, has the right to the use of the same; that no other person, association or union has the right to use either in the identical form or in any such near resemblance thereto as may be calculated to deceive and that the facsimiles or counterparts filed therewith are true and correct.

History.—s. 3, ch. 4974, 1901; GS 3170; RGS 4996; CGL 7085; ss. 10, 35, ch. 69-106.

506.08 Fee for filing.—There shall be paid for such filing and recording a fee of $15. The Department of State shall deliver to such person, association or union so filing or causing to be filed any label, trademark, term, wording, design, device, color or form of advertisement so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which the department shall receive a fee of $15. Any certificate of record shall, in all suits and prosecutions hereunder, be sufficient proof of the adoption of such label, trademark, term, wording, design, device, color or form of advertisement. The Department of State shall not record for any person, union or association any label, trademark, term, wording, design, device, color or form of advertisement that would probably be mistaken for any label, trademark, term, wording, design, device, color or form of advertisement theretofore filed by or on behalf of any other person, union or association.

History.—s. 3, ch. 4974, 1901; GS 3171; RGS 4997; CGL 7086; ss. 10, 35, ch. 69-106; s. 8, ch. 71-114.

506.09 Courts to grant injunctions.—Every person, association or union adopting or using a label, trademark, term, wording, design, device, color or form of advertisement as aforesaid may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any suit damages resulting from any manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay such person, association or union all profit derived from such wrongful manufacture, use, display or sale; and such court shall also order that all counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainants, to be destroyed.

History.—s. 5, ch. 4974, 1901; GS 3172; RGS 4998; CGL 7087.
cf.—Ch. 60 Injunctions.

506.10 Counterfeiting or improperly using trademarks; penalty.—Whoever counterfeits or imitates any label, trademark, term, wording, design, device, color or form of advertisement; or knowingly sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any label, trademark, term, wording, design, device, color or form of advertisement, which has been filed for record according to law, or knowingly purchases and keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly purchases with intent to sell or dispose of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 4974, 1901; GS 3347; RGS 5190; CGL 7293; s. 463, ch. 71-136.
cf.—s. 831.03 Forging or counterfeiting private labels.

506.11 Unlawful use of trademark; penalty.—Every person who shall use or display the genuine label, trademark, term, wording, design, device, color or form of advertisement of any person, association or union, when legally filed for record, in any manner, not being authorized so to do by such person, union or association, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 4974, 1901; GS 3348; RGS 5191; CGL 7294; s. 464, ch. 71-136.

506.12 Procuring the filing of labels, etc., by fraudulent representations; penalty.—Any person who shall, for himself or on behalf of any other person, association or union, procure the filing of any label, trademark, term, wording, design, device, color or form of advertisement with the Department of State, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damage sustained in consequence of such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction, and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 4974, 1901; GS 3349; RGS 5192; CGL 7295; ss. 10, 35, ch. 69-106; s. 465, ch. 71-136.

506.13 Using the name or seal of another; penalty.—Any person who shall, in any way, use the name or seal of any person, association or union or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 4974, 1901; GS 3350; RGS 5193; CGL 7296; s. 466, ch. 71-136.

506.14 Sale, etc., of milk in marked bottles by person other than owner.—No person, without the written consent of the owner, shall sell or offer for sale or distribute milk, cream, or other milk products, in bottles, cans or crates of another person, whose name, label or mark is permanently fixed thereon; mar, or cover up such label, name or mark; sell, dispose of or traffic in such receptacle, or refuse upon demand to return the same to the owner, except milk or cream bottles permanently marked by the manufacturer "5¢ Store Bottle," and on which a 5 cent charge is made whenever the bottle changes hands.

History.—ss. 1, 2, ch. 17104, 1935; CGL 1936 Supp. 3219(60).

506.15 Possession of marked milk bottles may be presumptive evidence of unlawful use.—The use for the sale and distribution of milk, cream or milk products by any other than the person whose label, name or mark shall be or shall have been upon the same, or the possession by any dealer in second-hand articles, of any such receptacle without the written consent of the owner is presumptive evidence of the unlawful use or traffic in such article.

History.—s. 3, ch. 17104, 1935; CGL 1936 Supp. 7677(6).

506.16 Proceedings by owner to recover possession of milk bottles and to protect rights.—The owner of such receptacle as is described in ss. 506.14, 506.15 shall have the right to take and recover the same from any person unlawfully possessing the same, and may maintain actions of replevin, or other appropriate actions, to preserve his rights therein. The court also may grant an injunction restraining any person from doing any of the acts and things herein declared to be unlawful. In any action taken by the owner, and prosecuted to a successful conclusion, for the recovery of such property or to protect his rights therein, he shall be allowed all costs of such proceeding, including a reasonable attorney's fee.

History.—s. 4, ch. 17104, 1935; CGL 1936 Supp. 3219(61).
cf.—Ch. 60 Injunctions.

506.17 Certain acts not to constitute sale of milk container.—The sale or delivery of milk, cream, or milk products, contained in such bottle, can or crate, or the taking or accepting of any deposit

upon delivery of such container does not constitute a sale of such container.

History.—s. 5, ch. 17104, 1935; CGL 1936 Supp. 3219(62).

506.18 Penalty for violations.—Any person violating the provisions of ss. 506.14-506.17 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 17104, 1935; CGL 1936 Supp. 7677(6); s. 467, ch. 71-136.

506.19 Protection of owners of marked or branded field boxes, etc.; recordation.—Any person being the owner of field boxes, pallets, crates, containers, or receptacles used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts in the state may adopt for his exclusive use and ownership a particular mark or brand to designate and distinguish his ownership thereof and may identify his field boxes, pallets, crates, containers, or receptacles so used with such mark or brand in the form of such combinations, initials, symbols, designs, or names as he may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the same into or upon both ends or sides of such field boxes, pallets, crates, receptacles, or containers, and the presence of such identifying mark or brand on any field box, pallet, crate, container, or receptacle whenever a copy or description thereof shall have been filed and recorded in the office of the Department of Agriculture and Consumer Services as herein provided for, shall, in any court and in any proceedings in this state, be prima facie evidence of the ownership of such boxes, pallets, crates, containers, or receptacles by the person in whose name such mark or brand may have been recorded, provided such mark or brand shall have been recorded with the Department of Agriculture and Consumer Services as herein provided and shall bear the registered number herein provided for.

History.—s. 1, ch. 16018, 1933; s. 1, ch. 16859, 1935; CGL 1936 Supp. 7087(1), (13); s. 1, ch. 67-18; ss. 14, 35, ch. 69-106; s. 1, ch. 72-47.

506.20 Filing and recording of marks and brands on field boxes.—Any person desiring to avail himself of the benefits of ss. 506.19-506.28, may make application to the Department of Agriculture and Consumer Services and shall file with such department a true copy and description of such identifying mark or brand, which, if entitled thereto under the provisions of ss. 506.19-506.28, shall be filed and recorded by such department in a book to be provided and kept by it for that purpose, and the name of the owner of such brand or mark shall be likewise entered into such record, and such department shall then assign or designate a permanent registered number to the owner of such brand or mark, said number to be assigned progressively as marks and brands are received and recorded, and the registered number so assigned shall then become a part of the registered brand or mark and shall plainly and distinctly be made to appear on such field boxes, pallets, crates, receptacles and containers, together with the identifying mark or brand referred to in s. 506.19 hereof. The department shall determine if such brand or mark so applied for is not a duplication of any brand or mark previously recorded by or with it, or does not so closely resemble the same as to be misleading or deceiving. If the brand or mark applied for does so resemble or is such a duplication of previously recorded brands or marks as to be misleading or deceiving, the application shall be denied and the applicant may file some other brand or mark in the manner described above. The books and records previously kept by the Secretary of State shall be transferred to the Commissioner of Agriculture upon the effective date of this act.

History.—s. 2, ch. 16018, 1933; s. 2, ch. 16859, 1935; CGL 1936 Supp. 7087(2), (14); s. 1, ch. 67-18; ss. 14, 35, ch. 69-106; s. 1, ch. 72-47.

506.21 Filing fee; issuance of certificate of recordation.—The application for filing and recording shall be accompanied by a fee of $2 and thereupon, if consistent with the provisions of s. 506.20 the Department of Agriculture and Consumer Services shall issue to the person applying for registration and recordation of such mark or brand a certificate of such recordation and of the register number assigned thereto and thereafter it shall issue such certificates, in any number, to any person applying therefor, upon the payment of a fee of $1 for each certificate so issued, and such certificate shall, in all proceedings in all of the courts of this state be taken as proof of the adoption and recordation of such identifying mark or brand.

History.—s. 3, ch. 16018, 1933; s. 3, ch. 16859, 1935; CGL 1936 Supp. 7087(3), (15); s. 1, ch. 67-18; ss. 14, 35, ch. 69-106.

506.22 Transfer, release or sale of registered mark or brand.—The owner of any such registered mark or brand may transfer, release or sell the same by an instrument in writing evidencing such transfer, release or sale, and upon application to the Department of Agriculture and Consumer Services where such mark or brand is registered for the recordation of such instrument in writing, and upon the filing of the same with such department and the payment of a fee of $2 the department shall cause such instrument or transfer, release or sale to be placed on record in a book provided and kept by it for that purpose, and certificates of such transfer, upon application therefor, shall be issued by it in like manner, upon the payment of like fees, as provided for the issuance of certificates under the provisions of s. 506.21.

History.—s. 4, ch. 16018, 1933; s. 4, ch. 16859, 1935; CGL 1936 Supp. 7087(4), (16); s. 1, ch. 67-18; ss. 14, 35, ch. 69-106.

506.23 Application of law.—The provisions of ss. 506.19-506.28 shall not be construed to apply when fruits, vegetables, or their byproducts, are wrapped or packed in such accepted or prescribed standard containers as are prescribed and designated by the Bureau of Standards, United States Department of Agriculture, and are used only as receptacles or containers for fruits, vegetables, or their byproducts when offered for transportation or sale only.

History.—s. 10, ch. 16018, 1933; s. 10, ch. 16859, 1935; CGL 1936 Supp. 7087(5), (17).

506.24 Unauthorized possession of field box, etc., penalty.—

(1) Any person who shall have in his unauthorized possession any field box, pallet, crate, recepta-

cle, or container marked or branded with any mark or brand registered under the provisions of ss. 506.19-506.28, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The possession by any person of any field box, pallet, crate, container, or receptacle so marked or branded, in the absence of written authority therefor, shall be prima facie evidence of the violation of the provisions of this section. However, the owner of such recorded or registered mark or brand may, in writing, authorize and designate any person to use or have in his possession any such field boxes, pallets, crates, containers, or receptacles.

History.—s. 5, ch. 16018, 1933; s. 5, ch. 16019, 1933; s. 5, ch. 16859, 1935; CGL 1936 Supp. 7433(3), (8), (16); s. 468, ch. 71-136; s. 1, ch. 72-47.

506.25 Alteration or obliteration of mark or brand on field box, etc.—If any person shall alter, change, remove or obliterate the registered mark or brand on any field box, pallet, crate, container, or receptacle other than his own or shall cause or procure the same to be done, with intent to claim the same, or to prevent identification thereof by the true owner, or use or have in his possession, any such field box, pallet, crate, container, or receptacle on which the registered mark or brand has been altered, changed, removed or obliterated, such person shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 16018, 1933; s. 6, ch. 16019, 1933; s. 6, ch. 16859, 1935; CGL 1936 Supp. 7433(4), (9), (17); s. 469, ch. 71-136; s. 1, ch. 72-47.

506.26 Purchase of marked field box, etc., from one other than owner.—It is unlawful for any person to receive or to purchase any field box, pallet, crate, container, or receptacle marked or branded with registered mark or brand as herein provided, from any person other than the registered owner thereof or his duly authorized agent, and proof of such receipt or purchase shall be prima facie evidence in any court of this state that such receiver or purchaser received or purchased the same with knowledge that it was stolen or embezzled property, and upon conviction thereof, such receiver or purchaser shall be punished as for receiving stolen or embezzled property.

History.—s. 7, ch. 16018, 1933; s. 7, ch. 16019, 1933; s. 7, ch. 16859, 1935; CGL 1936 Supp. 7433(5), (10), (18); s. 1, ch. 72-47.

506.27 Refusal to deliver marked field box, etc., to owner upon demand.—The refusal of any person in possession thereof to deliver any field box, pallet, crate, container, or receptacle so marked or branded and registered as herein provided, to the registered owner of the same or his duly authorized agent, upon the demand of such registered owner or authorized agent, when said demand is accompanied with a display of the certificate of recordation and number of the same, as furnished to the registered owner by the Department of Agriculture and Consumer Services, shall be prima facie evidence in any court of this state of a fraudulent intent to convert said field box, pallet, crate, container, or receptacle to the use of the person or persons, so in possession of the same, and to deprive the registered owner thereof, and any person convicted of a violation shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 16018, 1933; s. 8, ch. 16019, 1933; s. 8, ch. 16859, 1935; CGL 1936 Supp. 7433(6), (11), (19); s. 1, ch. 67-18; ss. 14, 35, ch. 69-106; s. 470, ch. 71-136; s. 1, ch. 72-47.

506.28 Sending marked field box, etc., out of state; penalty.—Any person who shall take or send out of the state, or cause to be taken or sent out of the state, any field box, pallet, crate, container, or receptacle so registered or branded as herein provided without the permission of the owner thereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 16018, 1933; s. 9, ch. 16019, 1933; s. 9, ch. 16859, 1935; CGL 1936 Supp. 7433(7), (12), (20); s. 471, ch. 71-136; s. 1, ch. 72-47.

506.29 Short title.—Sections 506.30-506.45 shall be known and designated as the "Florida Milk and Ice-cream Container Law" and may be so cited and referred to in all processes and proceedings taken under it and in all courts and places.

History.—s. 1, ch. 21969, 1943.

506.30 Application of law.—Any person or corporation engaged in manufacturing milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream; or any person or corporation engaged in bottling or selling milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, in ice-cream containers, packages, wrappers, cabinets, refrigerators, bottle, barrel, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacles or containers upon which his or its name, or other marks or devices used by him or it, are branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced, may register his or its name, mark or device as hereinafter provided, and upon completing the registration and publication of any such name, mark or device, shall thereupon be deemed the proprietor of such name, mark or device and of every bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container upon which such name, mark or device may be branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced.

History.—s. 2, ch. 21969, 1943.

506.31 Registration of names, marks, devices, etc.—Any such names, marks or devices may be registered by filing in the office of the clerk of the circuit court of the county in which the principal office of the person or corporation seeking registration is situate and with the department of state a description of such names, marks or devices; provided, that if any such person or corporation has no principal office in this state, then such person or corporation may register such name, mark or device by filing descriptions thereof in the office of the clerk of the circuit court of any county in which such per-

son or corporation does business and with the Department of State.

History.—s. 3, ch. 21969, 1943; ss. 10, 35, ch. 69-106.
cf.—s. 15.09 Fees collected by Department of State.

506.32 Notice of intention to register.—Any person or corporation seeking to register such names, marks or devices shall first cause such description to be printed once in each week, for 2 weeks successively, in a newspaper published in the county in which said description may be filed as aforesaid.

History.—s. 4, ch. 21969, 1943.

506.33 Certified copies of registration; use, etc.—A copy of such description, duly certified by the clerk of the circuit court of the county where such description has been filed, and a copy of such description, duly certified by the Department of State, shall be received as evidence of such filing and also of the matters therein stated in all courts and places.

History.—s. 5, ch. 21969, 1943; ss. 10, 35, ch. 69-106.
cf.—s. 15.09 Department of State's certification fee.

506.34 Proof of publication; notice of intention.—The affidavit of the printer or publisher of a newspaper published within this state, or of his foreman or clerk, showing the publication of the description required by s. 506.32, annexed to a printed copy of the notice as published, shall be received as evidence of the publication, and also of the matters therein stated, in all courts and places.

History.—s. 6, ch. 21969, 1943.

506.35 Containers; illegal use.—No person or corporation other than the owner or proprietor of such name, mark or device shall fill or cause to be filled with milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, or shall sell, buy, give, take, possess, use, dispose of or traffic in any box, siphon, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container which is so marked or distinguished with or by any name, mark or device, a description of which shall have been filed as provided in s. 506.31; or shall deface, obliterate, destroy, cover up or otherwise remove or conceal any such name, mark or device thereon, without the written consent of, or unless the same shall have been purchased from, the owner or proprietor thereof; provided, however, that no person or corporation to whom such milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, shall have been delivered in bottles, boxes, tins, ice-cream containers, packages, wrappers, cabinets, refrigerators, equipment or other receptacles or containers by the owners or proprietors thereof, shall be deemed to have violated the provisions of this law by having in his possession any such marked receptacles, unless such person or corporation, willfully and with the intention of unlawfully converting, retains such receptacles for a period longer than is reasonably necessary after the contents placed therein by the owner or proprietor thereof have been removed therefrom.

History.—s. 7, ch. 21969, 1943.

506.36 Penalties for illegal use.—Any person, acting for himself or as the agent of any person, firm or corporation, who shall violate the provisions of this law, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 21969, 1943; s. 472, ch. 71-136.

506.37 Containers; obtaining possession.—The owner or proprietor or his or its agents may take possession of any such bottles, boxes, tins, ice-cream container, packages, wrapper, cabinets, refrigerators, equipment or other receptacles or containers used in violation of this law, whether such receptacles or containers be full or partly full of any liquid, beverage or other substance, or empty, and shall not be liable in damages therefor, or for any trespass arising out of such taking possession. And if the party or parties having possession of such receptacles or containers refuses to empty the same of the contents contained therein immediately upon notice and demand by the owner or proprietor thereof or his or its agent, then such owner, proprietor or agent may empty such receptacle or container and shall not be liable therefor.

History.—s. 9, ch. 21969, 1943.

506.38 Complaints before county court judge.—When any person shall complain on oath or affirmation to any county court judge that any person or corporation has violated any of the provisions of this law, the court to whom such complaint is presented shall issue process at the suit of the state, which process may be either a summons or a warrant against the person or corporation so charged, which process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons shall be returnable in not less than 2 nor more than 10 days, and shall be served at least 1 day before its return. Such complaint and such process shall state in general terms a violation of this law. On the return of such process, or at any time to which the trial of the case shall be adjourned, the county court judge issuing the same shall proceed in a summary manner to hear testimony and determine and give judgment in the case without the filing of any pleadings, and if the defendant or defendants be convicted, shall impose the penalty or penalties by this law provided. It shall not be necessary to take or keep any record of the evidence or testimony taken on such trial. Service of summons upon a person other than a corporation may be made either personally or by leaving a copy at his dwelling house or usual place of abode; service upon a corporation may be made by delivering a copy of the summons to any officer or employee of such corporation who may be found in this state.

History.—s. 10, ch. 21969, 1943; s. 26, ch. 73-334.

506.39 Search warrants; procedure to obtain.—Whenever any person shall make oath before any county court judge that he has reason to believe and does believe that any bottles, boxes, tins, ice-cream

containers, packages, wrappers, cabinets, refrigerators, equipment, or other receptacles or containers, the property of any person or corporation who has complied with the provisions of ss. 506.31 and 506.32, are being filled, sold, bought, given, taken, possessed, used, disposed of, or trafficked in by any person or corporation in violation of this law, such county court judge shall issue a search warrant to discover and obtain such receptacles or containers and to bring before such judge the person or persons in whose possession such bottles, boxes, tins, ice cream containers, packages, wrappers, cabinets, refrigerators, equipment, or other receptacles or containers may be found, and if any such receptacles or containers are found in the possession of any such person or persons in violation of the provisions of this law, the county court judge who issued the process shall proceed to trial and judgment in the manner provided for in s. 506.38, and upon judgment, shall also award possession of the receptacles or containers so taken under such warrant to the owners or proprietors thereof.

History.—s. 11, ch. 21969, 1943; s. 26, ch. 73-334.

506.40 Presumptive evidence of violations.—The presence upon any bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, or any name, mark or device which has been registered and published as provided for in ss. 506.31 and 506.32, shall be presumptive evidence in any proceeding or trial, that the owner or proprietor of such mark or device is the owner or proprietor of such bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container.

History.—s. 12, ch. 21969, 1943.

506.41 Deposit for container not a sale.—The requiring, taking or accepting of any deposit upon delivery of any bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, bearing a name, mark or device which has been registered and published as provided for by ss. 506.31 and 506.32 shall not be deemed a sale thereof, either optional or otherwise.

History.—s. 13, ch. 21969, 1943.

506.42 Penalties, generally; judgments, etc.—Any person or corporation which violates the provisions of this law, or of any of the amendments hereof or supplements hereto, shall be liable to a penalty of $5 for the first offense, for each bottle, box, tin, ice-cream container, package, cabinet, refrigerator, equipment or other receptacle or container so filled, sold, bought, given, taken, used, disposed of, trafficked in or possessed in violation of the provisions of this law; and a penalty of double that amount for the second and each subsequent offense; which penalty may be recovered by an action for the recovery of a debt, by the owner or proprietor of any such bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, or his agent in any court of this state having cognizance thereof. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contains a statement of the nature of the alleged violation and of the section of this law alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended in the discretion of the court, as in any other action or proceeding in said court.

History.—s. 14, ch. 21969, 1943.

506.43 Executions on judgments.—When judgment shall be rendered against any defendant other than a corporation, execution shall be issued against his goods or chattels without any order of the court for that purpose first had and obtained. In case judgment shall be rendered against a body corporate, execution shall be issued against the goods and chattels of said corporation as in other actions of debt.

History.—s. 15, ch. 21969, 1943.

506.44 Prior registrations recognized.—Any person or corporation having heretofore filed in any of the offices mentioned in s. 506.31, a description of the names, marks or devices, upon his or its property therein mentioned, and having caused the same to be published, according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description in order to be entitled to the benefits of this law, but may avail himself or itself of any or all of the provisions, modes of procedure and methods of protection provided for herein, marks or devices under and according to the provisions of this law.

History.—s. 16, ch. 21969, 1943.

506.45 Statutes and laws unaffected.—Any proceeding now pending under any other law which this law may repeal shall not abate, but may be proceeded into final judgment as if this law had not been passed; and provided, further, that nothing in this law contained shall be construed to repeal or modify or affect any existing laws for the protection of producers or shippers of milk or concerning milk cans.

History.—s. 18, ch. 21969, 1943.

506.46 Registration of brand names, etc.; egg containers.—Any person, corporation, or association engaged in receiving, packing, handling, or selling eggs in permanent type containers which contain 4 dozen or more shell eggs may adopt, own, and use any name or mark and permanently affix or stamp such name or mark to any egg container, excepting cardboard, fiberboard, or corrugated containers, owned by such person, corporation, or association, in order to designate or distinguish the ownership of such egg container from other similar egg containers. Any person, corporation, or association adopting such name or mark may file with the Department of State a description of the name or mark so used. If the department determines that the name

or mark is not a duplication of any brand or mark previously recorded in its office and does not so closely resemble any other recorded name or mark as to be misleading or deceiving, it shall file and record such name or mark in a book to be provided and kept by it for that purpose, along with the owner of the name or mark. If the department shall determine that such name or mark so applied for is a duplication of any brand or mark previously recorded by it or does so closely resemble the same as to be misleading or deceiving, the application shall be denied and the applicant may file some other brand or mark in the manner described above.

History.—s. 1, ch. 74-280.

506.47 Filing fee; issuance of certificate of recordation.—The application for filing and recording a name or mark shall be accompanied by a fee of $2, and the Department of State shall issue to the person, corporation, or association applying for registration of such name or mark a certificate of such recordation, and thereafter it shall issue a duplicate certificate to any person applying for such certificate upon the payment of a fee of $1 for each certificate issued. In all proceedings in all of the courts of this state, such certificate of the department shall be taken as proof of the adoption and recordation of the identifying mark or brand.

History.—s. 1, ch. 74-280.

506.48 Illegal use of egg containers.—No person, corporation, or association other than the owner of such name or mark shall use for any purpose any container which is so marked or distinguished with or by any name or mark filed with the Department of State as provided in s. 506.46. No person, corporation, or association shall deface, obliterate, destroy, cover up, or otherwise remove or conceal any such name or mark without the written consent of the owner of such name or mark.

History.—s. 1, ch. 74-280.

506.49 Possession of egg container; notice.—Any person who finds or receives any egg container marked with a name or mark registered under the provisions of s. 506.46, shall, within 14 days therefrom, notify the owner of such name or mark or his agent. In the event the person in possession of the egg container is unable to locate the owner, then such person shall, within 7 days thereafter, notify the Department of State in writing that he has in his possession such egg container, particularly describing the name or mark affixed or stamped to such egg container. Upon receipt of such notice the department shall immediately notify the registered owner of such name or mark of the name of the person in possession, and the location, of such egg container.

History.—s. 1, ch. 74-280.

506.50 Transportation of egg containers; bill of lading.—It shall be unlawful for any common carrier or private carrier for hire, except those engaged in the transporting of eggs and egg containers to and from farms where eggs are produced, to receive or transport any container marked with a name or mark registered under the provisions of s. 506.46 unless such carrier has in its possession a bill of lading or invoice.

History.—s. 1, ch. 74-280.

506.51 Deposits upon egg container; no sale.—The requiring, taking, or accepting of any deposit upon delivery of any egg container bearing a name or mark which has been registered in accordance with s. 506.46 shall not be deemed a sale thereof, optional or otherwise.

History.—s. 1, ch. 74-280.

506.52 Penalties.—The owner of any egg container in the possession of any other person, corporation, or association may institute proceedings in any court of competent jurisdiction to recover possession of any container bearing a name or mark registered pursuant to the provisions of s. 506.46. The expenses of such proceedings shall be paid by the person, corporation, or association in possession of such egg container. Additionally, any person, corporation, or association from whom possession of an egg container is recovered through legal process shall be liable for a penalty of $10 per egg container for the first offense and a penalty of $20 per egg container for the second and each subsequent offense. The penalty may be recovered by an action for the recovery of a debt by the owner of the egg container or his agent in any court of competent jurisdiction.

History.—s. 1, ch. 74-280.

CHAPTER 509

PUBLIC LODGING AND PUBLIC FOOD SERVICE ESTABLISHMENTS

[1]**509.013 Definitions.**—As used in this chapter:

(1) "Division" means the Division of Hotels and Restaurants of the Department of Business Regulation.

(2) "Operator" means the owner, operator, keeper, proprietor, lessee, manager, assistant manager, desk clerk, agent, or employee of a public lodging establishment or public food service establishment.

(3) "Guest" means any guest, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(4)(a) "Public lodging establishment" means any building or structure, or group of buildings or structures within a single complex of buildings, which is kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants.

(b) The following are excluded from the definition in paragraph (a):

1. Any individually or collectively owned one-family, two-family, or three-family dwelling house or dwelling unit, regardless of the number of such dwelling houses or units clustered together, unless they are regularly rented to transients or held out or advertised to the public as places regularly rented to transients;

2. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university primarily for the use of students, faculty, or visitors;

3. Any hospital, nursing home, sanitarium, adult congregate living facility, or other similar place; and

4. Any place renting three rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

(5)(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure, that is maintained and operated as a place where food is regularly prepared, served, or sold for immediate consumption on or in the vicinity of the premises; to be called for or taken out by customers; or to be delivered to factories, construction camps, airlines, and other similar locations for consumption at any place. "Public food service establishment" includes any public location with vending machines dispensing prepared meals.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university either:

a. Primarily for the use of students and faculty; or

b. On a temporary basis to serve such events as

fairs, carnivals, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, fraternal, or nonprofit civic organization, either:

a. Primarily for the use of members and associates; or

b. On a temporary basis to serve such events as fairs, carnivals, or athletic contests.

3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

4. Any eating place maintained by a hospital, nursing home, sanitarium, adult congregate living facility, adult day care center, or other similar place.

5. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

6. Any retail grocery store in which food is prepared for consumption off the premises, which food is sold as part of the retail grocery operation.

(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business Regulation.

(7) "Single complex of buildings" means all buildings or structures which are owned, managed, controlled, and operated under one business name, have a common street address, and are situated on the same tract or plot of land which is not separated by a public street or highway.

(8) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(9) "Transient" means a guest in transient occupancy.

History.—s. 1, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.032 Duties.—

(1) GENERAL.—The division shall carry out all of the provisions of this chapter and all other laws relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare. The division shall be responsible for ascertaining that no establishment licensed by it engages in any misleading advertising or unethical practices. The division shall keep accurate account of all expenses arising out of the performance of its duties and shall file monthly itemized statements of such expenses with the Department of Banking and Finance, together with an account of all fees collected under the provisions of this chapter.

(2) INSPECTION OF PREMISES.—

(a) The division shall inspect, at least four times annually, each public lodging establishment and each public food service establishment in this state or shall contract with the Department of Health and Rehabilitative Services to perform such inspections, through the facilities of the county health unit, on a county-by-county basis, and for that purpose it shall have the right of entry and access to such establishments at any reasonable time.

(b) Primary responsibility and jurisdiction for all inspections required by this chapter is placed in the division. The Department of Health and Rehabilitative Services shall:

1. Prescribe sanitary standards which shall be enforced in public food service establishments and ensure that such standards are maintained;

2. Inspect public food service establishments not more than twice annually to ensure the maintenance of sanitary standards concurrently with the inspections performed by the division and whenever necessary to respond to an emergency or epidemiological condition, except as provided in paragraph (a);

3. Immediately report to the Secretary of the Department of Business Regulation any significant failure of the division to enforce sanitary standards; and

4. Send the Governor a written report at the end of each fiscal year, which report shall state, but not be limited to, the total number of inspections conducted to ensure the enforcement of sanitary standards, the total number of inspections conducted in response to emergency or epidemiological conditions, the number of violations of each sanitary standard, and any recommendations for improved surveillance procedures.

(3) RULEMAKING AUTHORITY.—The division shall adopt such rules as are necessary to carry out the provisions of this chapter.

History.—ss. 1, 2, 9, ch. 6952, 1915; RGS 212, 213, 2130; s. 2, ch. 9264, 1923; CGL 245, 246, 3359; ss. 3, 4, ch. 16042, 1933; CGL 1936 Supp. 245, 246; s. 9, ch. 26945, 1951; s. 1, ch. 28129, 1953; ss. 1, 8, ch. 29821, 1955; s. 1, ch. 57-389; s. 1, ch. 63-420; ss. 12, 16, 35, ch. 69-106; s. 2, ch. 73-325; s. 135, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former ss. 509.03, 509.04, 511.11.

[1]509.034 Application of ss. 509.141-509.162, 509.401-509.417.—Sections 509.141-509.162 and 509.401-509.417 apply to transients only. This act shall not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

History.—ss. 3, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.072 Hotel and Restaurant Trust Fund; collection and disposition of moneys received.—There is created within the division a Hotel and Restaurant Trust Fund to be used for the administration and operation of the division and the carrying out of all laws and rules under the jurisdiction of the division pertaining to the construction, maintenance, and operation of public lodging establishments and public food service establishments, including the inspection of elevators as required under chapter 399. All funds collected by the division and the amounts paid for licenses and fees shall be deposited in the State Treasury into the Hotel and Restaurant Trust Fund.

History.—s. 3, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed

on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.091 Notices; form and service.—Each notice served by the division pursuant to this chapter shall be in writing and shall be delivered personally, by an agent of the division, or by registered letter to the operator of the public lodging establishment or public food service establishment.

History.—s. 28, ch. 6952, 1915; RGS 2148; CGL 3377; s. 30, ch. 16042, 1933; CGL 1936 Supp. 3377; s. 1, ch. 71-157; s. 190, ch. 71-377; s. 4, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.29.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

[1]509.092 Public lodging and public food service establishments; rights as private enterprises.—Public lodging establishments and public food service establishments are private enterprises, and the operator of a public lodging establishment or a public food service establishment has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal shall not be based upon race, creed, color, sex, physical disability, or national origin.

History.—s. 4, ch. 57-389; s. 1, ch. 70-291; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.101 Establishment rules; maintenance of guest register.—

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying, sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as he shall remain in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the facilities of or at any public lodging establishment or public food service establishment. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted, together with a copy of ss. 509.111, 509.151, and 509.161, in the office, hall, or lobby or another prominent place of such public lodging establishment or public food service establishment.

(2) It is the duty of each operator of a public lodging establishment to maintain at all times a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register shall be available for inspection by the division at any time. Operators need not make available registers which are more than 2 years old.

History.—s. 2, ch. 1999, 1874; RS 871; GS 1229; RGS 2353; CGL 3757; s. 38, ch. 16042, 1933; s. 5, ch. 57-389; ss. 16, 35, ch. 69-106; s. 5, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 510.02.

[1]509.111 Liability for property of guests.—

(1) The operator of a public lodging establishment is under no obligation to accept for safekeeping any moneys, securities, jewelry, or precious stones of any kind belonging to any guest, and, if such are accepted for safekeeping, he shall not be liable for the loss thereof unless such loss was the proximate result of fault or negligence of the operator. However, the liability of the operator shall be limited to $1,000 for such loss, if the public lodging establishment gave a receipt for the property (stating the value) on a form which stated, in type large enough to be clearly noticeable, that the public lodging establishment was not liable for any loss exceeding $1,000 and was only liable for that amount if the loss was the proximate result of fault or negligence of the operator.

(2) The operator of a public lodging establishment shall not be liable or responsible to any guest for the loss of wearing apparel, goods, or other property, except as provided in subsection (1), unless such loss occurred as the proximate result of fault or negligence of such operator, and, in case of fault or negligence, he shall not be liable for a greater sum than $500, unless the guest, prior to the loss or damage, files with the operator an inventory of his effects and the value thereof and the operator is given the opportunity to inspect such effects and check them against such inventory. The operator of a public lodging establishment shall not be liable or responsible to any guest for the loss of effects listed in such inventory in a total amount exceeding $1,000.

History.—s. 4, ch. 1999, 1874; RS 873; GS 1231; RGS 2355; s. 11, ch. 9264, 1923; s. 1, ch. 12052, 1927; CGL 3759; s. 40, ch. 16042, 1933; CGL 1936 Supp. 3759; s. 1, ch. 23931, 1947; s. 2, ch. 28129, 1953; s. 6, ch. 73-325; s. 1, ch. 73-364; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 8, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 510.04.

[1]509.141 Refusal of admission and ejection of undesirable guests; notice, procedure, etc.—

(1) The operator of any public lodging establishment or public food service establishment may remove or cause to be removed from such establishment, in the manner hereinafter provided, any guest of the public food service establishment or any transient guest of the public lodging establishment who, while on the premises of the establishment, is intoxicated, immoral, profane, lewd, or brawling; who indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; or who, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment. The admission to, or the removal from, such establishment shall not be based upon race, creed, color, sex, physical disability, or national origin.

(2) The operator of any public lodging establishment or public food service establishment shall notify such guest that the establishment no longer desires to entertain him and request that such guest immediately depart from the establishment. Such

notice may be given orally or in writing. If the notice is in writing, it shall be as follows:

"You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

If such guest has paid in advance, the establishment shall, at the time such notice is given, tender to such guest the unused portion of the advance payment.

(3) Any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) If any person is illegally on the premises of any public lodging establishment or public food service establishment, the operator of such establishment may call upon any law enforcement officer of this state for assistance. It is the duty of such law enforcement officer, upon request of such operator, to place under arrest and take into custody for violation of this section any guest who violates subsection (3) in the presence of the officer. If a warrant has been issued by the proper judicial officer for the arrest of any violator of subsection (3), the officer shall serve the warrant, arrest the person, and take him into custody. Upon arrest, with or without warrant, the guest will be deemed to have given up any right to occupancy or to have abandoned his right of occupancy of said premises, and the operator of the establishment may then make such premises available to other guests. However, the operator of said establishment shall employ all reasonable and proper means adequately to care for any personal property which may be left on the premises by such guest and shall refund any unused portion of moneys paid by such guest for occupancy of such premises.

History.—ss. 1-3, ch. 22023, 1943; s. 1, ch. 63-96; s. 2, ch. 70-291; s. 473, ch. 71-136; s. 5, ch. 72-48; s. 8, ch. 73-325; s. 8, ch. 73-330; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 9, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 510.08.

[1]**509.142 Conduct on premises; refusal of service.**—The operator of a public lodging establishment or public food service establishment may refuse accommodations or service to any person whose conduct on the premises of the establishment displays intoxication, immorality, profanity, lewdness, or brawling; who indulges in language or conduct such as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; whose conduct constitutes a nuisance; or who commits such acts as are of a nature to corrupt the public morals, outrage the sense of public decency, or affect the peace or quiet of persons who may witness them. Such refusal shall not be based upon race, creed, color, sex, physical disability, or national origin.

History.—s. 1, ch. 65-131; s. 3, ch. 70-291; s. 6, ch. 72-48; s. 9, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]**509.151 Obtaining food or lodging with intent to defraud; penalty.**—

(1) Any person who obtains food, lodging, or other accommodations having a value of less than $100 at any public food service establishment, or at any public lodging establishment on a transient basis, with intent to defraud the operator thereof, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; if such food, lodging, or other accommodations have a value of $100 or more, such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) This section does not apply where there has been an agreement in writing for delay in payments. This section shall not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

History.—ss. 1-3, ch. 6954, 1915; RGS 5157; CGL 7260; s. 45, ch. 16042, 1933; CGL 1936 Supp. 7260; s. 1, ch. 63-546; s. 474, ch. 71-136; s. 10, ch. 73-325; s. 1, ch. 74-314; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 11, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.38.

[1]**509.161 Rules of evidence in prosecutions.**—In prosecutions under s. 509.151, proof that lodging, food, or other accommodations were obtained by false pretense; by false or fictitious show of baggage or other property; by absconding without paying or offering to pay for such food, lodging, or accommodations; or by surreptitiously removing or attempting to remove baggage shall constitute prima facie evidence of fraudulent intent. If the operator of the establishment has probable cause to believe, and does believe, that any person has obtained food, lodging, or other accommodations at such establishment with intent to defraud the operator thereof, the failure to make payment upon demand therefor, there being no dispute as to the amount owed, shall constitute prima facie evidence of fraudulent intent in such prosecutions.

History.—s. 2, ch. 6954, 1915; RGS 5158; CGL 7261; s. 46, ch. 16042, 1933; CGL 1936 Supp. 7261; s. 2, ch. 63-546; s. 11, ch. 73-325; s. 3, ch. 76-168; s. 1, ch 77-457; ss. 12, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is re on July 1, 1981, and shall be reviewed by the Legislature pursua Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.39.

[1]**509.162 Obtaining lodging or fo tent to defraud; detaining and arre**
—Any law enforcement officer or o
lic lodging establishment or publ
tablishment who has probable
does believe:

(1) That any person has
other accommodations a
intent to defraud the

(2) That any pers
property belongin
premises,

may take such person
and detain him for such r

is necessary to take him before the nearest magistrate.

History.—s. 3, ch. 63-546; s. 12, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 13, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.191 Unclaimed property.—Any property left in a public lodging establishment, other than property belonging to a guest who has vacated the premises without notice to the operator and with an outstanding account, which property remains unclaimed after being held by the establishment for 90 days after written notice to the guest, shall become the property of the establishment.

History.—ss. 1, 2, ch. 6196, 1911; RGS 2357, 2358; CGL 3761, 3762; ss. 42, 43, ch. 16042, 1933; s. 125, ch. 26869, 1951; s. 15, ch. 73-325; s. 3, ch. 76-168; s. 188, ch. 77-104; s. 1, ch. 77-457; ss. 14, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former ss. 510.06, 510.07.

[1]509.201 Room rates; posting; advertising; penalties.—

(1) In each public lodging establishment renting by the day or week there shall be posted in a plainly legible fashion, in a conspicuous place in each rental unit, the rates at which each such unit is rented. Such posting shall show the maximum amount charged for occupancy per person; the amount charged for extra conveniences, more complete accommodations, or additional furnishings; and the dates during the year when such charges prevail. Copies of the posted rate schedules for all similar rental units in each establishment shall be filed with the division at least 5 days before such rates are to become effective and shall be kept current. The rates posted in the rental units shall coincide with those on file in the division's office, and no establishment shall charge more than the rates posted in the rental units and filed with the division.

(2)(a) No person shall display or cause to be displayed any sign which may be seen from a public highway or street, which sign includes a statement or numbers relating to the rates charged at a public lodging establishment renting by the day or week, unless such sign includes in letters and figures of similar size and prominence the following additional information: the number of rental units in the establishment and the rates charged for each, whether the rates quoted are for single or multiple occupancy if such fact affects the rate charged, and the dates during which such rates are in effect. The rates shall in each instance coincide with the rates posted in ach rental unit of the establishment and with those ed with the division. No such sign shall be dis- yed which includes a statement or numbers ch appear to relate to the rate charged at a public ng establishment when in fact the statement or ers do not relate to such rates.

No person shall publish or cause to be pub- ny advertisement, other than those referred ragraph (a), which includes a statement or relating to rates charged at a public lodg- ishment renting by the day or week unless tisement includes, in letters or figures im- djacent to said rate, a statement as to rates quoted are for single or multiple occupancy if such fact affects the rates charged. Any such advertisement shall also include the number of rental units in the establishment available at the published rates, the dates during which such rates are in effect, and an indication as to whether there are other rates in effect in the establishment. The advertised rate shall in each instance coincide with the rates posted in such rental units and with those filed for such units with the division. With regard to the advertisements referred to in this paragraph, the type size of the required additional information shall be no smaller than one-twelfth of the size of the rate figures advertised or equal to the type size used in the body of the advertisement, whichever is larger.

(c) The provisions of paragraph (b) do not apply to advertisements or listings in guides or directories which are published by nonprofit public lodging establishments or similar organizations or associations or to advertisements of a classified nature placed in the classified section of newspapers and other similar publications. Paragraph (b) applies to any type of display advertisement, regardless of where it might be printed in a magazine, newspaper, or other similar publication, and applies to all other advertisements, whether published orally or by writing or printing.

(d) There shall not be published with regard to any public lodging establishment any advertisement that contains false or misleading statements as to any matter.

(3) Any operator of any public lodging establishment who violates, or causes to be violated, any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition to the criminal penalty, the license of any public lodging establishment may be suspended or revoked by the division, or the division may impose fines on the responsible person, in accordance with the provisions of s. 509.261, when the operator of such establishment is determined by the division to have violated any provision of this section. It is not necessary that the offender be convicted of violating this section as a condition precedent to the suspension or revocation of such license or the imposition of a civil penalty by the division.

History.—ss. 1-4, 6, ch. 26907, 1951; s. 1, ch. 29822, 1955; s. 6, ch. 57-389; ss. 16, 35, ch. 69-106; s. 477, ch. 71-136; s. 16, ch. 73-325; s. 1, ch. 74-347; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 15, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.45.

[1]509.211 Safety regulations.—

(1)(a) Before the erection or remodeling is begun of any building for use as a public lodging establishment or public food service establishment or of any building located on the premises of such an establishment which may be used by guests of the establishment, the registered architect's plans or registered engineer's plans, with detailed specifications, shall be submitted to the division with a notarized statement of such architect or engineer that the plans and specifications comply with the requirements of law.

(b) New construction or remodeling costing $10,000 or less need not be accompanied by plans of a

registered architect or engineer, but scaled drawings shall be submitted to the division.

(2) Each bedroom or apartment in each public lodging establishment shall be equipped with a substantial lock on each door opening to the outside, to an adjoining room or apartment, or to a hallway.

(3) The division shall inspect elevators as provided in chapter 399. The division shall enforce any rule adopted by the State Fire Marshal which relates to public lodging establishments or public food service establishments. The State Fire Marshal may also enforce such rules.

(4)(a) It is unlawful for any person to use within any public lodging establishment or public food service establishment any fuel-burning wick-type equipment for space heating unless such equipment is vented so as to prevent the accumulation of toxic or injurious gases or liquids.

(b) Any person who violates the provisions of paragraph (a) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) The division may immediately remove any heater in violation of paragraph (a) from any public lodging establishment or public food service establishment and shall keep any such heater in a safe place to be used as evidence.

(d) If any operator of a public lodging establishment or public food service establishment violates the provisions of paragraph (a) or allows anyone else to violate the provisions of paragraph (a), then the division may revoke or suspend the license of such public lodging establishment or public food service establishment.

History.—s. 5, ch. 1999, 1874; RS 874; GS 1232; ss. 17-23, ch. 6952, 1915; RGS 2137-2143, 2356; s. 7, ch. 9264, 1923; CGL 3366-3372, 3760; ss. 19-25, 41, ch. 16042, 1933; CGL 1936 Supp. 3366-3372; ss. 3-5, ch. 23930, 1947; s. 10, ch. 26484, 1951; s. 3, ch. 28129, 1953; s. 4, ch. 29821, 1955; s. 7, ch. 57-389; s. 1, ch. 63-67; s. 1, ch. 63-312; s. 1, ch. 63-426; s. 7, ch. 65-421; s. 1, ch. 65-150; ss. 1, 2, ch. 67-232; ss. 16, 35, ch. 69-106; ss. 1, 2, ch. 70-281; s. 478, ch. 71-136; ss. 2, 4, 13, ch. 71-157; s. 191, ch. 71-377; s. 17, ch. 73-325; s. 3, ch. 76-168; s. 6, ch. 76-252; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 16, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former ss. 510.05, 511.18-511.24.

[1]509.221 Sanitary regulations.—

(1) Each public lodging establishment and each public food service establishment in a municipality where a system of waterworks is maintained for public use shall, within 60 days after a receipt of notice from the division, be equipped with suitable toilets for the accommodation of its guests, and such toilets shall be connected by proper plumbing to an approved sewerage system and means of flushing such toilets with the water of the system in such manner as to prevent sewer gas or effluvia from arising therefrom. Each transiently rented public lodging establishment and each public food service establishment shall maintain not less than one toilet for each sex, properly designated; and each transiently rented public lodging establishment shall maintain one public bath on each floor for every 15 guests, or major fraction of that number, rooming on that floor and not provided with private or connecting bathrooms.

(2) Each public lodging establishment and each public food service establishment shall be properly plumbed, lighted, heated, cooled, and ventilated and shall be operated with strict regard to the health, comfort, and safety of the guests. Such proper lighting shall be construed to apply to both daylight and artificial illumination; such proper plumbing shall be constructed and plumbed according to proper sanitary principles; and such proper ventilation or cooling shall be construed to mean at least one door and one window in each room.

(3) No room in a public lodging establishment shall be used for a sleeping room which does not have an opening to the outside of the building, air shafts, or courts sufficient to provide adequate ventilation. In each sleeping room there shall be at least one window with its opening so arranged as to provide easy access to the outside of the building or courts.

(4) Each public lodging establishment, except a nontransiently rented apartment, and each public food service establishment shall provide in the main public washroom clean cloth or paper towels for each guest and in each bedroom furnish each guest with two clean individual towels so that no two guests will be required to use the same towel unless it has first been washed. Such individual towels shall not be less than 10 inches wide and 15 inches long after being washed.

(5) Each public lodging establishment, except a nontransiently rented apartment, shall provide each bed, bunk, cot, or other sleeping place for the use of guests with pillowslips and under and top sheets. Sheets and pillowslips, after being used by one guest, shall be washed and ironed before they are used by another guest, a clean set being furnished each succeeding guest. Noniron sheets and pillowslips need not be ironed.

(6) All bedding, including mattresses, quilts, blankets, pillows, sheets, and comforters, used in any public lodging establishment shall be thoroughly aired, disinfected, and kept clean. No bedding, including mattresses, quilts, blankets, pillows, sheets, or comforters, shall be used which is worn out or unfit for further use. No mattress on any bed in any such establishment shall be used which is made of moss, sea grass, excelsior, husks, or shoddy. Any room in any such establishment infested with vermin or bedbugs shall be fumigated, disinfected, and renovated until the vermin [2]or bedbugs are exterminated.

(7) It is unlawful for any person to operate any place of business where food is cooked or prepared without keeping all outside doors, windows, and other similar openings screened with wire netting of not less than 16-mesh screening or protected by properly installed fans.

(8) The operator of any public lodging establishment or public food service establishment shall keep all flies out of such establishment.

(9) No person suffering from any contagious or communicable disease shall be employed in any public lodging establishment or public food service establishment to prepare or handle food, drink, dishes, towels, or linens or in any other capacity whereby such disease might be communicated to guests or tenants. Each employee shall furnish a health certificate, including the results of a Wassermann test, signed by a licensed physician, whenever the division, in its discretion, deems the furnishing of such

certificate necessary for the protection of public health.

History.—ss. 12-16, 24-26, 32, ch. 6952, ss. 1-5, ch. 6953, 1915; RGS 2132-2136, 2144-2146, 2152-2156, 5642; ss. 5, 6, 10, ch. 9264, 1923; ss. 3, 4, ch. 12053, 1927; CGL 3361-3365, 3373-3375, 3381-3385, 7836; ss. 14-18, 26-28, 34-37, ch. 16042, 1933; CGL 1936 Supp. 3361-3365, 3373-3375, 3381, 3382, 3384, 3385; s. 8, ch. 57-389; s. 1, ch. 59-152; ss. 16, 35, ch. 69-106; s. 3, ch. 71-157; s. 18, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 17, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "or" was substituted for "and" by the editors.

Note.—Former ss. 511.13-511.17, 511.25-511.27, 511.35-511.37, 511.42.

cf.—s. 381.522 Toilets required by the Department of Health and Rehabilitative Services; charge for use of, prohibited.

[1]509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and each public food service establishment shall obtain a license from the division. Such license shall not be transferable from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for such an establishment to operate without a license. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of or has forfeited a bond when charged with any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, [2]or illegally dealing in narcotics, whether in this state or in any other jurisdiction within the United States. Licenses shall be renewed annually, and the division shall adopt a rule establishing a staggered schedule for license renewals.

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for the licensing of his establishment prior to the commencement of operation.

(3) EXCEPTIONS.—The licensing provisions of chapter 475 shall not be construed to prohibit the operator of a public lodging establishment or public food service establishment from offering to rent or renting to the public the facilities defined in this chapter and engaging in activities related to such offer to rent and renting such facilities, including advertising and solicitation, provided:

(a) The facilities rented, offered for rent, or having been rented are under one ownership, control, management, or franchising authority;

(b) The activities of offering for rent and renting by such operator are confined and relate to such facilities; and

(c) No operator rents or offers for rent facilities for more than one ownership, management, control, or franchising authority.

(4) Any license issued by the division shall be conspicuously displayed in the office or lobby of the licensed establishment.

History.—ss. 3-5, 8, ch. 6952, 1915; RGS 2124-2126, 2129; ss. 3, 4, ch. 9264, 1923; s. 6, ch. 12053, 1927; CGL 3353-3355, 3358; s. 1, ch. 13659, 1929; ss. 6-8, 13, ch. 16042, 1933; CGL 1936 Supp. 3353, 3354; s. 1, ch. 23930, 1947; ss. 5, 6, ch. 29821, 1955; s. 1, ch. 29820, 1955; s. 9, ch. 57-389; s. 1, ch. 57-824; s. 1, ch. 61-81; s. 1, ch. 67-507; ss. 16, 35, ch. 69-106; s. 4, ch. 70-281; s. 480, ch. 71-136; s. 6, ch. 71-157; s. 19, ch. 73-325; s. 20, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 17, ch. 78-336; s. 1, ch. 78-343; ss. 18, 20, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[2]Note.—The word "or" was substituted for "and" by the editors.

Note.—Former ss. 511.01-511.03, 511.10.

[1]509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment which desires a specific classification (apartment, hotel, motel, apartment hotel, apartment motel, etc.) may apply therefor and receive a specific classification from the division, if the establishment satisfies the following criteria, as appropriate to the classification sought:

(a) *Hotel.*—Any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry is a hotel.

(b) *Apartment hotel.*—Any public lodging establishment which meets the requirements of a hotel, but which also has units with kitchen equipment and housekeeping facilities, is an apartment hotel.

(c) *Motel (Motor hotel, motor court, court, tourist court, motor lodge, etc.).*—Any public lodging establishment which offers rental units easily accessible to guests with an exit to the outside of each rental unit, daily or weekly rates, off-street parking for each unit, a central office on the property with specified hours of operation, a bath or connecting bath for each rental unit, and at least six rental units, recognized as a motel in the community in which it is situated and by the industry, is a motel.

(d) *Apartment motel.*—Any public lodging establishment which meets the requirements of a motel, but which has at least 40 percent of the units as apartments with kitchen facilities, is an apartment motel. A motel with less than 40 percent of its units in apartments is a "motel with apartments."

(e) *Resort motel, beach motel, fishing camp motel.*—Any public lodging establishment requesting any such classification shall meet the requirements of a motel and may have both motel rooms and apartment units.

(f) *Apartment.*—Any public lodging establishment intended for living accommodations, each with or without kitchen equipment and housekeeping facilities, and providing the services generally provided by an apartment house and recognized as an apartment house in the community in which it is situated or by the industry is an apartment house.

(g) *Rooming houses, guest houses, cabins.*—Any public lodging establishment not within the foregoing classifications shall be classified as a rooming house, a guest house, cabins, a tourist camp, or otherwise according to choice, but shall not be allowed a classification that could be confused with one of the foregoing. Converted dwelling houses, unless they can qualify for another classification, shall be classified under this paragraph.

(2) If 25 percent or more of the units in any public lodging establishment fall within a classification different from the classification applicable to the establishment, such establishment shall obtain a sepa-

rate classification for such 25 percent or more units, unless otherwise provided herein. When an establishment has a different classification of units in a separate building which is operated in connection with the principal establishment and is in the immediate vicinity, such as a hotel with a motel section, two classifications shall be required.

(3) A public lodging establishment may advertise or display signs which advertise a specific classification, provided it has applied for and received the specific classification and it fulfills the requirements of that classification.

History.—s. 2, ch. 57-824; s. 2, ch. 61-81; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 19, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment but shall not exceed $1,000. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall also provide that each public lodging establishment under construction shall pay the same fees for inspection during such construction as it would be required to pay for inspection while in operation.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered, but the aggregate fee charged any public food service establishment shall not exceed $200. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall also provide that each public food service establishment under construction shall pay the same fees for inspection during such construction as it would be required to pay for inspection while in operation.

(3) The fact that a public food service establishment is operated in conjunction with a public lodging establishment does not relieve the public food service establishment of the requirement that it be separately licensed as a public food service establishment.

History.—ss. 6, 7, ch. 6952, 1915; RGS 2127, 2128; ss. 1, 2, ch. 12053, 1927; CGL 3356, 3357; ss. 9-12, ch. 16042, 1933; ss. 2, 3, ch. 17062, 1935; CGL 1936 Supp. 3356(1), 3357(1); ss. 1, 2, ch. 28276, 1953; ss. 2-5, ch. 29820, 1955; s. 1, ch. 57-272; s. 1, ch. 61-353; s. 1, ch. 63-350; ss. 1, 2, ch. 67-221; ss. 16, 35, ch. 69-106; ss. 1, 2, ch. 72-228; s. 4, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 20, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former ss. 511.06-511.09.

[1]509.261 Revocation or suspension of licenses; fines; procedure.—

(1) The division may suspend or revoke the license of any public lodging establishment or public food service establishment that has operated or is operating in violation of any of the provisions of this chapter or the rules of the division; such public lodging establishment or public food service establishment shall remain closed while its license is suspended or revoked.

(2) In lieu of the suspension or revocation of licenses, the division may impose fines against licensees for such violations. No fine so imposed shall exceed $500 for each offense, and all amounts collected shall be deposited with the Treasurer to the credit of the Hotel and Restaurant Trust Fund.

(3)(a) No license shall be suspended under this section for a period of more than 12 months. At the end of such period of suspension, the establishment may apply for reinstatement or renewal of the license. A public lodging establishment or public food service establishment, the license of which is revoked, may not apply for another license prior to the date on which the revoked license would have expired. No new license shall be issued to the licensee or to any other firm in which the licensee or any of its stockholders is interested during the term of such suspension or revocation.

(b) The division may suspend or revoke the license of any public lodging establishment or public food service establishment if the operator knowingly lets, leases, or gives space for unlawful gambling purposes or where unlawful gambling is to be carried on in such establishment or in or upon any premises which are used in connection with, and are under the same charge, control, or management as, such establishment. The suspension or revocation shall be of the license in effect at the date of such suspension or revocation, even though it may have been issued to a licensee other than the person who held the license at the time the cause for such suspension or revocation arose.

(c) Notice of intended suspension or revocation under paragraph (b) shall be given within 60 days after the cause for suspension or revocation arises.

(4) The division may suspend or revoke the license of any public lodging establishment or public food service establishment when:

(a) Any person interested in the operation of any such establishment, within the preceding 5 years in this state, any other state, or the United States, has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in narcotics, or any other crime reflecting on professional character.

(b) Such establishment has been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe and unfit for human occupancy.

History.—s. 48, ch. 16042, 1933; CGL 1936 Supp. 3355(2); s. 1, ch. 21660, 1943; s. 2, ch. 23930, 1947; ss. 1-5, ch. 26939, 1951; s. 1, ch. 28224, 1953; s. 1, ch. 29823, 1955; s. 10, ch. 57-389; s. 40, ch. 63-512; s. 1, ch. 63-69; s. 1, ch. 63-68; s.

1, ch. 63-70; ss. 16, 35, ch. 69-106; s. 192, ch. 71-377; s. 20, ch. 73-325; s. 3, ch. 76-168; s. 188, ch. 77-104; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 21, 39, 42, ch 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former ss. 511.05, 511.051.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]509.271 Prerequisite for issuance of municipal or county occupational license.—No municipality or county shall issue an occupational license to any business coming under the provisions of this chapter until a license has been procured for such business from the division.

History.—s. 49, ch. 16042, 1933; CGL 1936 Supp. 3355(1); s. 7, ch. 29821, 1955; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 22, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.04.

[1]509.281 Prosecution for violation; duty of state attorney; penalties.—

(1) The division or an agent of the division, upon ascertaining by inspection that any public lodging establishment or public food service establishment is being operated contrary to the provisions of this chapter, shall make complaint and cause the arrest of the violator, and the state attorney, upon request of the division or agent, shall prepare all necessary papers and conduct the prosecution. The division shall proceed in the courts by mandamus or injunction whenever such proceedings may be necessary to the proper enforcement of the provisions of this chapter, of the rules adopted pursuant hereto, or of orders of the division.

(2) Any operator of a public lodging establishment or public food service establishment who obstructs or hinders any agent of the division in the proper discharge of his duties; who fails, neglects, or refuses to obtain a license or pay the license fee required by law; or who fails or refuses to perform any duty imposed upon it by law or rule is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day that such establishment is operated in violation of law or rule is a separate offense.

History.—s. 11, ch. 6952, 1915; RGS 2131; CGL 3360; s. 9, ch. 29821, 1955; ss. 16, 35, ch. 69-106; s. 481, ch. 71-136; s. 21, ch. 73-325; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 23, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

Note.—Former s. 511.12.

[1]509.291 Advisory council.—

(1) There is created an 11-member advisory council. The Secretary of the Department of Business Regulation shall appoint eight members who represent the industries regulated by the division and one lay member. Members of the council shall serve staggered terms of 4 years, except that the secretary shall initially appoint one member to a term of 1 year, two members to terms of 2 years each, and two members to terms of 3 years each. The Secretary of the Department of Health and Rehabilitative Services or his designated representative and the Dean of the School of Business, Florida State University, shall also serve as members of the council.

(2) The purpose of the advisory council is to promote better relations, understanding, and cooperation between such industries and the division; to suggest means of better protecting the health, welfare, and safety of persons using the services offered by such industries; to give the division the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division; and to promote and coordinate the development of programs to educate and train personnel for such industries.

(3)(a) The advisory council may be called into session by the division, or it may call itself into session if a majority of the council agrees that a meeting is necessary.

(b) The council shall hold at least one meeting each year and may not hold more than one meeting in any calendar month. All such meetings shall be held during 1 day.

(4) The members of the council shall serve without pay but shall be eligible for per diem and travel expenses pursuant to s. 112.061.

History.—s. 1, ch. 28129, 1953; s. 2, ch. 29821, 1955; s. 11, ch. 57-389; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 24, 39, 41, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended. Also repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date; see s. 41, ch. 79-240.

Note.—Former s. 509.052.

[1]509.292 Misrepresenting food or food product; penalty.—

(1) No operator of any public lodging establishment or public food service establishment shall knowingly and willfully misrepresent the identity of any food or food product to any of the patrons of such establishment. The identity of food or a food product is misrepresented if:

(a) The description of the food or food product is false or misleading in any particular;

(b) The food or food product is served, sold, or distributed under the name of another food or food product;

(c) The food or food product purports to be or is represented as a food or food product for which a definition of identity and standard of quality have been established by custom and usage, unless it conforms to such definition and standard;

(d) Any words, statements, or other information used to describe the food or food product are not likely to be read and understood by the ordinary individual.

(2) If the food or food product is a fruit or fruit juice, its identity is misrepresented if:

(a) The description of the fruit or fruit juice is false or misleading in any particular;

(b) The fruit or fruit juice is served, sold, or distributed under the name of another fruit or fruit juice; or

(c) A synthetic or flavored drink is sold purporting to be fruit juice.

The term "fresh juice" refers to a juice without additives and prepared from the original fruit within 12 hours or less of sale.

(3) Any person who violates any provision of this section is guilty of a misdemeanor of the second de-

gree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 57-412; s. 482, ch. 71-136; s. 7, ch. 71-157; s. 22, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 25, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.302 Director of education, personnel, employment duties, compensation.—

(1) The advisory council shall employ a director of education for the lodging and food service industry. With the concurrence of the Board of Regents, the director shall establish his office in the School of Business at Florida State University.

(2) The qualifications of the director shall include the ability to present program plans to industry members, federal agencies, boards of education, college presidents, and foundation trustees. He shall possess a sound knowledge and philosophy of educational methods in this field as determined by the advisory council and the Board of Regents.

(3) The director's basic role is to develop and blend together an educational program, designated the Hospitality Education Program, offered for the entire industry with proper emphasis on each of the types of educational programs required. Such programs shall include:

(a) Vocational training.

(b) Community college programs for supervisors and department heads.

(c) Degree programs in management for top administrative positions.

(d) Inservice continuing education programs.

All public lodging establishments and all public food service establishments licensed under this chapter shall pay an additional fee of $1 which shall be deposited in the Hotel and Restaurant Trust Fund established under s. 509.071, and money collected pursuant to such fees shall be used for the sole purpose of funding the Hospitality Education Program.

(4) The director of education shall formulate programs and activities to accomplish the purposes of this section in accordance with and subject to the advice and recommendations of the advisory council and the Board of Regents.

(5) The director of education, with the concurrence of the advisory council and the Board of Regents, may employ such personnel as necessary to carry out the purposes of this section.

(6) The director of education and the staff shall receive such compensation as may be approved by the advisory council and the Board of Regents.

History.—s. 2, ch. 61-257; s. 2, ch. 63-204; s. 2, ch. 73-296; s. 1, ch. 75-294; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.303 Enforcement of fire safety regulations.—

(1) Fire safety regulations for "institutional occupancies," as prescribed in pamphlet 101 (Life Safety Code Standards, 1970 edition) of the National Fire Protection Association, apply in any public lodging establishment of two or more stories used for the lodging or boarding of four or more persons who, by reason of advanced age or decline in health or because of physical infirmity or mental impairment, are incapacitated to the extent of being incapable of independent living, except that the State Fire Marshal may waive or set time extensions for those requirements the application of which, in his judgment, would be clearly impractical and when a reasonable degree of life safety is not involved.

(2) The State Fire Marshal, with the cooperation of the division, shall determine which establishments are covered by this section. The division and the State Fire Marshal shall enforce this section. Compliance herewith is a condition for licensing by the division.

(3) Any representative of the division or of the State Fire Marshal may, at any reasonable hour, enter any premises for the purpose of making any inspection or investigation which he deems necessary in order to carry out the provisions of this section.

History.—s. 15, ch. 71-157; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.4005 Applicability of ss. 509.401-509.417.—Sections 509.401-509.417 apply only to guests in transient occupancy in a public lodging establishment.

History.—ss. 27, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.401 Operator's right to lockout.—

(1) If, upon a reasonable determination by an operator of a public lodging establishment, a guest has accumulated a large outstanding account at such establishment, then the operator may lock the guest out of his rental unit for the purpose of requiring the guest to confront the operator and arrange for payment on his account. Such arrangement shall be in writing, and a copy shall be furnished to the guest.

(2) Once the guest has confronted the operator and made arrangements for payment on his account, the operator shall remove the lockout from the guest's rental unit.

(3) Notwithstanding other provisions of this section, the owner shall permit the guest to remove from the rental unit from which he has been locked out those items of personal property essential to the health of the guest.

History.—s. 1, ch. 77-249; ss. 27, 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.402 Operator's right to recover premises.—If the guest of a public lodging establishment vacates the premises without notice to the operator and with an outstanding account, the operator, upon discovery of such vacation, may recover the premises. Upon recovery of the premises, the operator shall make an itemized inventory of any property belonging to the guest and store such property until a settlement or a final court judgment is obtained on the guest's outstanding account. Such inventory

shall be conducted by the operator and at least one other person who is not an agent of the operator.

History.—s. 1, ch. 77-249; ss. 28, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.403 Operator's writ of distress.—If, after a lockout has been imposed pursuant to s. 509.401, a guest fails to make agreed-upon payments on his account, or, notwithstanding s. 509.401, if a guest vacates the premises without making payment on his account, an operator may proceed to prosecute a writ of distress against the guest and his property. The writ of distress shall be predicated on the lien created by s. 713.67 or s. 713.68.

History.—s. 1, ch. 77-249; ss. 29, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.404 Writ of distress; venue and jurisdiction.—The action under s. 509.403 shall be brought in a court of appropriate jurisdiction in the county where the property is located. When property consists of separate articles, the value of any one of which is within the jurisdictional amount of a lower court but which, taken together, exceed that jurisdictional amount, the plaintiff shall not divide the property to give jurisdiction to the lower court to enable the plaintiff to bring separate actions therefor.

History.—s. 1, ch. 77-249; ss. 30, 39, 42, ch. 79-240; s. 213, ch. 79-400.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.405 Complaint; requirements.—To obtain an order authorizing the issuance of a writ of distress upon final judgment, the plaintiff shall first file with the clerk of the court a complaint reciting and showing the following information:

(1) A statement as to the amount of the guest's account at the public lodging establishment.

(2) A statement that the plaintiff is the operator of the public lodging establishment in which the guest has an outstanding account. If the plaintiff's interest in such account is based on written documents, a copy of such documents shall be attached to the complaint.

(3) A statement that the operator has reasonably attempted to get the guest to pay his account, either through confronting the guest or by a lockout pursuant to s. 509.401, and that the guest has failed to make any payment or that the guest has vacated the premises without paying his outstanding account.

(4) A statement that the account is outstanding and unpaid by the guest; the means by which the guest accumulated the account; and the cause of such nonpayment according to the best knowledge, information, and belief of the plaintiff.

(5) A general statement as to what property the plaintiff is requesting levy against and the authority under which the plaintiff has a lien against such property.

(6) A statement, to the best of the plaintiff's knowledge, that the claimed property has not been taken for a tax, assessment, or fine pursuant to law or taken under an execution or attachment by order of any court.

History.—s. 1, ch. 77-249; ss. 31, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.406 Prejudgment writ of distress.—

(1) A prejudgment writ of distress may issue and the property seized may be delivered forthwith to the plaintiff when the nature of the claim, the amount thereof, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the verified petition or by separate affidavit of the plaintiff.

(2) The prejudgment writ of distress may issue if the court finds, pursuant to subsection (1), that the defendant is engaging in, or is about to engage in, conduct that may place the claimed property in danger of destruction, concealment, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action and that the defendant has failed to make payment as agreed.

(3) The plaintiff shall post bond in the amount of twice the estimated value of the goods subject to the writ or twice the balance of the outstanding account, whichever is the lesser as determined by the court, as security for the payment of damages the defendant may sustain if the writ is wrongfully obtained.

(4) The defendant may obtain release of the property seized under a prejudgment writ of distress by posting bond with surety within 10 days after service of the writ, in the amount of one and one-fourth the claimed outstanding account, for the satisfaction of any judgment which may be rendered against him, conditioned upon delivery of the property if the judgment should require it.

(5) A prejudgment writ of distress shall issue only upon a signed order of a circuit court judge or a county court judge. The prejudgment writ of distress shall include a notice of the defendant's right to immediate hearing before the court issuing the writ.

(6) As an alternative to the procedure prescribed in subsection (4), the defendant, by motion filed with the court within 10 days after service of the writ, may obtain the dissolution of a prejudgment writ of distress, unless the plaintiff proves the grounds upon which the writ was issued. The court shall set such motion for an immediate hearing.

History.—s. 1, ch. 77-249; ss. 32, 39, 42, ch. 79-240.

[1]Note.—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.407 Writ of distress; levy of writ.—The officer to whom the writ is directed shall execute the writ of distress by service on defendant and by levy on property distrainable for services rendered, if found in his jurisdiction. If the property is not so found but is in another jurisdiction, he shall deliver the writ to the proper officer in the other jurisdiction, and the other officer shall execute the writ by levying on such property and delivering it to the officer of the court in which the action is pending, to be disposed of according to law, unless he is ordered by such court to hold the property and dispose of it in his jurisdiction according to law. If defendant can-

not be found, the levy on the property suffices as service on him, if the plaintiff and the officer each file a sworn statement stating that he does not know the whereabouts of the defendant.

History.—s. 1, ch. 77-249; ss. 33, 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.408 Prejudgment writ; form; return.—The prejudgment writ issued under s. 509.406 shall command the officer to whom it may be directed to distrain the described personal property of defendant and hold such property until final judgment is rendered.

History.—s. 1, ch. 77-249; ss. 34, 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.409 Writ; inventory.—When the officer seizes distrainable property, either under s. 509.407 or s. 509.408, and such property is seized on the premises of a public lodging establishment, the officer shall inventory the property, hold those items which, upon his appraisal, would satisfy the plaintiff's claim, and return the remaining items to the defendant. If the defendant cannot be found, the officer shall hold all items of property. The officer shall release the property only pursuant to law or a court order.

History.—s. 1, ch. 77-249; ss. 35, 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.410 Writ; execution on property changing possession, etc.—If the property to be distrained is in the possession of the defendant at the time of the issuance of a writ under ss. 509.403-509.405 or a prejudgment writ under s. 509.406 and the property passes into the possession of a third person before the execution of the writ, the officer holding the writ shall execute it on the property in the possession of the third person and shall serve the writ on the defendant and the third person, and the action, with proper amendments, shall proceed against the third person.

History.—s. 1, ch. 77-249; ss. 36, 39, 42, ch. 79-240; s. 214, ch. 79-400.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.411 Exemptions from writ of distress.—The following property of a guest is exempt from distress and sale under this chapter:

(1) From final distress and sale: beds, bedclothes, clothing, and items essential to the health and safety of the guest.

(2) From prejudgment writ of distress: beds, bedclothes, wearing apparel, items essential to the health and safety of the guest, and any tools of the guest's trade or profession, business papers, or other items directly related to such trade or profession.

History.—s. 1, ch. 77-249; ss. 37, 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.412 Writ; claims by third persons.—Any third person claiming any property distrained pursuant to this chapter may interpose and prosecute his claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.—s. 1, ch. 77-249; ss. 38, 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.413 Judgment for plaintiff when goods not delivered to defendant.—If it appears that the account stated in the complaint is wrongfully unpaid and the property described in such complaint is the defendant's and was held by the officer executing the prejudgment writ, the plaintiff shall have judgment for his damages, which may include reasonable attorney's fees and costs, by taking title to the defendant's property in the officer's possession or by having the property sold as prescribed in s. 509.417.

History.—s. 1, ch. 77-249; ss. 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.414 Judgment for plaintiff when goods retained by or redelivered to defendant.—

(1) If it appears that the property was retained by, or redelivered to, defendant on his forthcoming bond, either under s. 509.406(4) or (6), the plaintiff shall take judgment for the property, which may include reasonable attorney's fees and costs, and against the defendant and the surety on the forthcoming bond for the value of the outstanding account, and the judgment, which may include reasonable attorney's fees and costs, shall be satisfied by the recovery and sale of the property or the amount adjudged against defendant and his surety.

(2) After the judgment is rendered, the plaintiff, at his option, may have a writ of possession for the property and execution for his costs or have execution against defendant and his surety for the amount recovered and costs. If he elects to have a writ of possession for the property and the officer returns that he is unable to find it or any of it, the plaintiff may immediately have execution against the defendant and his surety for the whole amount recovered less the value of any property found by the officer. If he has execution for the whole amount, the officer shall release all property taken under the writ of possession.

(3) In any proceeding to ascertain the value of the property so that judgment for the value may be entered, the value of each article shall be found. It shall not be necessary to ascertain the value of each article of a lot of goods, wares, or merchandise when it has been distrained, but it shall be sufficient to ascertain the total value of the entire lot found.

History.—s. 1, ch. 77-249; ss. 39, 42, ch. 79-240.
[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.415 Judgment for defendant when goods retained by or redelivered to him.—When property has been retained by, or redelivered to, the defendant on his forthcoming bond or upon the dissolution of a prejudgment writ and the defendant prevails, he shall have judgment against the plaintiff for his damages for the taking, if any, of the property, which may include reasonable attorney's fees and costs. The remedies provided in this section and s.

509.416 shall not preclude any other remedies available under the laws of this state.

History.—s. 1, ch. 77-249; ss. 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.416 Judgment for defendant when goods not retained by or redelivered to him.—When the property has not been retained by, or redelivered to, the defendant and he prevails, judgment shall be entered against the plaintiff for possession of the property, which may include reasonable attorney's fees and costs. The remedies provided in s. 509.415 and this section shall not preclude any other remedies available under the laws of this state.

History.—s. 1, ch. 77-249; ss. 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]509.417 Writ; sale of property distrained.—

(1) If the judgment is for the plaintiff, the property in whole or in part shall, at the plaintiff's option pursuant to s. 509.413 or s. 509.414, be sold and the proceeds applied on the payment of the judgment.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on may be sold on the premises of the public lodging establishment or at the courthouse door.

(3) Before the sale, if the defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be held by the officer executing the writ, and there shall be no sale or disposition of the property until final judgment is had on appeal.

History.—s. 1, ch. 77-249; ss. 39, 42, ch. 79-240.

[1]**Note.**—Section 42, ch. 79-240, in effect provides that this section is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 513

TOURIST CAMPS

[1]513.01 "Tourist camp" and "trailer camp" defined.—A "tourist camp" is a place where two or more tents, tent houses, or camp cottages are located and offered by a person or municipality for sleeping or eating accommodations, most generally to the transient public, and where there is direct remuneration in money to the owner, or indirect benefit to the owner in connection with a related business. A "trailer camp" is a place set aside and offered by any person or municipality, most generally to the transient public, for the parking and accommodation of two or more automobile trailers which are to be occupied for sleeping or eating, for either a direct money consideration or for indirect benefit to the owner in connection with a related business.

History.—s. 1, ch. 12419, 1927; CGL 4140; s. 1, ch. 19365, 1939; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.02 Permit for establishment; revocation.—No person or municipality shall establish or maintain any tourist camp or trailer camp in this state without first obtaining a permit therefor from the Department of Health and Rehabilitative Services, and the department may revoke any permit issued to any person or municipality operating or maintaining a tourist camp or trailer camp upon the failure of such person or municipality to comply with the provisions of this chapter or the rules and regulations made and promulgated by the department. Renewal of permit shall be as the department in its discretion may require.

History.—s. 2, ch. 12419, 1927; CGL 4141; s. 1, ch. 19365, 1939; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 439, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 1.01 "Person" defined.

[1]513.03 Application for permit.—Application for permit shall be made in writing to the Department of Health and Rehabilitative Services. The application shall state the location of the existing or proposed camp, type of camp, the approximate number of persons or trailers to be accommodated, the probable duration of use, and any other information the department may require.

History.—s. 3, ch. 12419, 1927; CGL 4142; s. 1, ch. 19365, 1939; ss. 19, 35, ch. 69-106; s. 440, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.04 Issuance of permit.—If the Department of Health and Rehabilitative Services is satisfied, after causing an inspection to be made, that the existing or proposed tourist or trailer camp is so located, constructed, and equipped as not to be a source of danger to the health of others or its occupants, it shall issue in the name of the department the necessary permit in writing on a form to be prescribed by the department.

History.—s. 4, ch. 12419, 1927; CGL 4143; s. 1, ch. 19365, 1939; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 441, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.05 Supervision by department; rules and regulations.—The Department of Health and Rehabilitative Services shall have general supervision of the health and sanitary conditions of all tourist and trailer camps located in the state, and shall make, promulgate, and enforce such rules and regulations pertaining to the location, construction, equipment, and operation of such camps as may be necessary.

History.—s. 5, ch. 12419, 1927; CGL 4144; s. 1, ch. 19365, 1939; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 442, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.06 Laws and rules and regulations to be posted in camps.—The Department of Health and Rehabilitative Services shall see that there is posted in one or more places in each tourist camp and trailer camp a copy of the provisions contained in this chapter and such rules and regulations as the department may make or promulgate relating to the health and sanitation in such camps.

History.—s. 12, ch. 12419, 1927; CGL 4150; s. 1, ch. 19365, 1939; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 443, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.07 Parking of trailers on watersheds prohibited.—It is unlawful to park an automobile trailer house for occupancy on the watershed of any stream or watercourse used as a source of public water supply except under such regulations as the Department of Health and Rehabilitative Services may prescribe.

History.—s. 1, ch. 19365, 1939; CGL 1940 Supp. 4150(1); ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 444, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.08 Use of toilets on trailers prohibited in the state.—It is unlawful to use any toilet, commode, or receptacle for receiving the bowel movements in connection with or installed in an automo-

bile trailer, cottage, or house when said trailer is being drawn along the public highways of the state or is at rest on said highways or rights-of-way of same. It is unlawful to use such toilets or devices within a trailer camp having a permit from the Department of Health and Rehabilitative Services except where the owner or operator consents and has suitable arrangements approved in writing by the department to handle the wastes from such toilets. It is unlawful to empty a receptacle containing human excreta or urine from a trailer house except into a sewerage system or into a privy of the type approved by the department. Trailer camp owners or operators shall provide means for the emptying of such receptacles and their cleaning as may be specified in the rules and regulations of the department.

History.—s. 1, ch. 19365, 1939; CGL 1940 Supp. 4150(2); ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 445, ch. 77-147; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.09 Maintaining camp without permit or after revocation of same; penalty.—Any person, or in case of a corporation or municipality, the officers thereof, who shall maintain a tourist camp or trailer camp without first obtaining a permit as provided by s. 513.02, or who shall maintain the same after revocation thereof, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 12419, 1927; CGL 7844; s. 1, ch. 19365, 1939; s. 483, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.10 Enforcement and penalties.—This chapter and regulations adopted hereunder may be enforced in the manner provided in s. 381.031(4). Such regulations shall be a part of the Sanitary Code of Florida created by s. 381.031(1) (g) 11. Violations of this chapter and the rules and regulations adopted hereunder shall be subject to the penalties provided in s. 381.411.

History.—s. 1, ch. 19365, 1939; CGL 1940 Supp. 7849(a); s. 1, ch. 59-214; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]513.12 Obtaining accommodations with intent to defraud; penalty.—Any person who shall obtain quarters or living accommodations at any tourist camp with intent to defraud the owner or keeper thereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that the provisions of this section shall not apply where there has been an agreement in writing for delay in payment for a period to exceed 10 days.

History.—s. 10, ch. 12419, 1927; CGL 7849; s. 484, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 514

PUBLIC BATHHOUSES AND SWIMMING OR BATHING PLACES

514.02 Supervision by department.—The Department of Health and Rehabilitative Services shall have supervision over the sanitation, healthfulness, safety, and cleanliness of public swimming pools and bathing places, including, but not limited to, swimming pools, bathhouses, public swimming and bathing places; water recreation attractions, including water slides, water amusement lagoons, and wave pools; hydrotherapy facilities, whirlpools, and spa pools; wading pools; special purpose pools; and any other type of public swimming pool or bathing facility the primary purpose of which is for the partial or total immersion of the body in water, and all related appurtenances; and the department may make and enforce such rules pertaining thereto as it shall deem proper. However, water therapy facilities connected with hospitals, medical doctors' offices and licensed physical therapy establishments shall be exempt from supervision under this chapter.

History.—s. 1, ch. 7825, 1919; CGL 3768; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 446, ch. 77-147; s. 1, ch. 77-457; ss. 1, 9, ch. 78-356.

514.03 Permit necessary to construct, develop, add to, or modify public swimming pools or bathing places.—It is unlawful for any person, institution, municipality, or county to construct, develop, add to, or modify any public swimming pool or bathing place without an unrevoked permit from the Department of Health and Rehabilitative Services, such permit to be obtained in the following manner:

(1) Any person, institution, municipality, or county desiring to construct, develop, add to, or modify any public swimming pool or bathing place within the state shall file application for permit with the department, on application forms provided by the department, and shall accompany such application with:

(a) Engineering drawings, specifications, descriptions, and detailed maps of the structure, its appurtenances and its intended operation.

(b) Description of the source or sources of water supply, and amount and quality of water available and intended to be used.

(c) Method and manner of water purification, treatment, disinfection, heating, and other regulation.

(d) Any other information and statistics required by the department.

(2) Upon receiving the application, the department may cause an investigation to be made of the proposed public swimming pool or bathing place.

(3) If, based upon the application and any necessary investigation, the department determines the proposed construction of, development of, addition to, or modification of a public swimming pool or bathing place may reasonably be expected to meet standards of public health and safety, the department shall grant the application for permit under such restrictions as it shall deem proper.

(4) If, based upon the application or any necessary investigation, the department determines the proposed construction of, development of, addition to, or modification of a public swimming pool or bathing place would fail to meet standards of public health and safety, the department shall deny the application for permit. Such denial shall be in writing and shall list circumstances for denial. Upon correction of such circumstances, an applicant previously denied permission to construct, develop, add to, or modify a public swimming pool or bathing place may reapply for a permit.

History.—s. 2, ch. 7825, 1919; CGL 3769; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 447, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 78-356.

514.031 Permit necessary to operate public swimming pool or bathing place.—It is unlawful for any person, institution, municipality, or county to operate or continue to operate any public swimming pool or bathing place without an unrevoked permit from the Department of Health and Rehabilitative Services, such permit to be obtained in the following manner:

(1) Any person, institution, municipality, or county desiring to operate any public swimming pool or bathing place within the state shall file application for permit with the department, on application forms provided by the department, and shall accompany such application with:

(a) Descriptions of the structure, its appurtenances, and its operation.

(b) Description of the source or sources of water supply, and amount and quality of water available and intended to be used.

(c) Method and manner of water purification, treatment, disinfection, heating, and other regulation.

(d) Safety equipment and standards to be used.

(e) Measures to insure personal cleanliness of bathers.

(f) Method and manner of washing, disinfecting, drying, and storing bathing apparel and towels.

(g) Any other information and statistics required by the department.

(2) Upon receiving the application, the department shall cause an investigation to be made of the public swimming pool or bathing place, which investigation may include on-site investigation.

(3) If, after application and investigation are completed, the department determines the proposed

or existing public swimming pool or bathing place is or may reasonably be expected to be operated continuously in a clean, sanitary, and safe manner and will not constitute a menace to public health, safety, or well-being, the department shall grant the application for permit under such restrictions as it shall deem proper.

(4) If, based upon application or investigation, the department determines the proposed or existing public swimming pool or bathing place is or may reasonably be expected to become unclean, unsafe, or unsanitary, or may constitute a menace to public health, safety, or well-being, the department shall deny the application for permit. Such denial shall be in writing and shall list circumstances for denial. Upon correction of such circumstances, an applicant previously denied permission to operate a public swimming pool or bathing place may reapply for a permit.

(5) Operating permits shall not be transferable. However, when the ownership or name of an existing public swimming pool or bathing place is changed, and such establishment is operating at time of the change with an unrevoked permit from the Department of Health and Rehabilitative Services, the owner of the establishment shall apply to the department, upon forms provided by the department, for a reissuance of the existing permit.

History.—s. 7, ch. 78-356.

514.032 Delegation of authority to local health units.—The Department of Health and Rehabilitative Services shall delegate to local health units that are staffed with qualified engineering or environmental health personnel the functions of reviewing applications and plans for the construction or development of or modification of or addition to public swimming pools or bathing places; conducting inspections for determination of issuance of permits to operate such establishments; and the issuing of all permits. The department shall make the determination concerning the qualifications of local health unit personnel to perform these functions, and may make and enforce such rules pertaining thereto as it shall deem proper. The department shall delegate to all local health units the responsibility for surveillance of all public swimming pools and bathing places, including all routine and complaint investigations.

History.—s. 7, ch. 78-356.

514.033 Creation of fee schedules authorized.—

(1) The Department of Health and Rehabilitative Services is authorized to establish a schedule of fees to be charged by the department or by any authorized local health unit as detailed in s. 514.032 for the review of applications and plans to construct, develop, modify, or add to a public swimming pool or bathing place and for the issuance of permits to operate such establishments. However, public swimming pools or bathing places owned or operated by the state shall be exempt from such charges. Maximum limits of the various fees shall be: for original construction or development, not to exceed $250; for modification of or addition to, not to exceed $75; for operation, not to exceed $75; for reissuance of permit, not to exceed $50.

(2) Fee payment shall accompany the initial submission of applications to construct, develop, modify, add to, or operate a public swimming pool or bathing place, or for reissuance of permit. Fee payments are not refundable.

(3) Fees charged by the Department of Health and Rehabilitative Services in accordance with provisions of this chapter shall be paid into the General Revenue Fund to be used toward the administration of this chapter. However, any local health unit performing review and permitting functions under the provisions of s. 514.032 shall deposit any funds collected thereby in the local health unit trust fund.

History.—s. 7, ch. 78-356.

514.04 Inspectors may enter premises.—For the purpose of this chapter, the Department of Health and Rehabilitative Services or its inspectors at any reasonable time may enter upon any and all parts of the premises of such public swimming pools and bathing places to make examination and investigation to determine the sanitary and safety condition of such places and whether the provisions of this chapter or rules of the department pertaining thereto are being violated.

History.—s. 3, ch. 7825, 1919; CGL 3770; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 448, ch. 77-147; s. 1, ch. 77-457; ss. 3, 9, ch. 78-356.

514.05 Permit may be revoked.—Any permit granted by the Department of Health and Rehabilitative Services as provided in this chapter shall be revocable or subject to suspension at any time, if it shall determine as a fact that the public swimming pool or bathing place is being conducted in a manner unsanitary, unclean, or dangerous to public health or safety.

History.—s. 4, ch. 7825, 1919; CGL 3771; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 449, ch. 77-147; s. 1, ch. 77-457; ss. 4, 9, ch. 78-356.

514.06 Injunction to restrain violations.—Any public swimming pool or bathing place constructed, developed, operated, or maintained contrary to the provisions of this chapter is declared to be a public nuisance, dangerous to health or safety. Such nuisances may be abated or enjoined in an action brought by the local health unit or the Department of Health and Rehabilitative Services.

History.—s. 5, ch. 7825, 1919; CGL 3772; ss. 19, 35, ch. 69-106; s. 139, ch. 71-355; s. 3, ch. 76-168; s. 450, ch. 77-147; s. 1, ch. 77-457; ss. 5, 9, ch. 78-356.
cf.—Ch. 60 Injunctions.

514.07 Violation of law relating to sanitation and safety, etc., of public swimming pools and bathing places.—Any person, whether as principal or agent, employer or employee, who violates any of the provisions of ss. 514.02-514.06, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and each day that conditions or actions in violation of ss. 514.02-514.06 shall continue shall be a separate and distinct offense.

History.—s. 6, ch. 7825, 1919; CGL 7838; s. 485, ch. 71-136; s. 3, ch. 76-168;

s. 1, ch. 77-457; ss. 6, 9, ch. 78-356.

514.081 Saving clause.—Any person, institution, municipality, or county holding a valid permit granted by the Department of Health and Rehabilitative Services on or before June 30, 1978, to construct, add to, modify, or operate any public swimming pool or bathing place may continue under provisions of said permit so long as it remains valid and unrevoked.

History.—s. 8, ch. 78-356.

CHAPTER 516

CONSUMER FINANCE

516.001 Short title.—This chapter shall hereafter be known, referred to, and cited as the "Florida Consumer Finance Act."

History.—s. 1, ch. 73-192.

516.01 Definitions; businesses excluded.—

(1) DEFINITIONS.—As used in this chapter:

(a) The word "person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities;

(b) The word "license" shall mean a permit issued under authority of this chapter to make and collect loans in accordance with the provisions of this chapter at a single place of business;

(c) The word "licensee" shall mean a person to whom one or more licenses have been issued;

(d) The word "department" shall mean the Department of Banking and Finance.

(2) BUSINESSES EXCLUDED.—This chapter shall not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies or to any bona fide pawnbroking business transacted under a pawnbroker's license. No pawnbroker may be licensed to transact business under this chapter.

History.—s. 19, ch. 10177, 1925; CGL 4016; s. 6, ch. 20728, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 57-201; ss. 12, 35, ch. 69-106; s. 193, ch. 71-377; s. 189, ch. 77-104.

[1]516.02 Loans; rate of interest; license.—No person shall engage in the business of making loans of money, credit, goods, or choses in action in the amount, or to the value of $2,500 or less, and charge, contract for, or receive a greater rate of interest than 18 percent per annum therefor except as authorized by this chapter or other statute and without first obtaining a license from the department.

History.—s. 1, ch. 10177, 1925; CGL 3999; s. 2, ch. 57-201; ss. 12, 35, ch. 69-106; s. 2, ch. 73-192; s. 1, ch. 79-274.

[1]Note.—Section 15, ch. 79-274, provides that ch. 79-274 applies only to loans or advances of credit made on or subsequent to July 1, 1979, and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date.

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the department, and shall contain the name, residence and business addresses of the applicant and, if the applicant is a copartnership or association, of every member thereof and, if a corporation, of each officer and director thereof, also the county and municipality with the street and number or approximate location where the business is to be conducted, and such further relevant information as the department may require. At the time of making such application the applicant shall pay to the department the sum of $175 as an annual license fee for a period terminating on the last day of the current calendar year, and a further fee of $200 for investigating the application and the applicants.

(2) FEES.—Fees herein provided for shall be collected by the department and shall be turned into the State Treasury to the credit of the regulatory trust fund under the Division of Finance of the department. The department shall have full power to employ such examiners or clerks to assist the department as may from time to time be deemed necessary and fix their compensation.

History.—s. 2, ch. 10177, 1925; CGL 4000; s. 1, ch. 20728, 1941; s. 127, ch. 26869, 1951; s. 3, ch. 57-201; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-192; s. 3, ch. 73-326; s. 144, ch. 79-164.

516.031 Finance charge; maximum rates.—

[1](1) INTEREST RATES.—Every licensee may lend any sum of money not exceeding $2,500. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon, interest

charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first $500 of the principal amount as computed from time to time; 24 percent per annum on that part of the principal amount as computed from time to time exceeding $500 and not exceeding $1,000; and 18 percent per annum on that part of the principal amount as computed from time to time exceeding $1,000. The original principal amount as used in this section shall be the same amount as the amount financed as defined by the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations utilized shall be simple interest and not add-on interest or any other computations.

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH-IN-LENDING ACT.—The annual percentage rate of finance charge which may be contracted for and received under any loan contract made by a licensee under this chapter may equal, but not exceed, the annual percentage rate which must be computed and disclosed as required by the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of finance charge which may be contracted for and received is 12 times the maximum monthly rate and the maximum monthly rate shall be computed on the basis of one-twelfth of the annual rate for each full month. The department shall by regulation establish the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than one month.

(3) OTHER CHARGES.—In addition to the interest and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, brokerage, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter, or actual and reasonable attorney fees as determined by the court in which suit is filed and court costs, including actual and reasonable expenses of repossession, storing, and selling of any property pledged as security, as determined by the court in which suit is filed. If interest or charges in excess of those permitted by this chapter shall be charged, contracted for, or received, the contract or loan shall be void and the licensee shall have no right to collect or receive any remaining principal, interest, or charges whatsoever. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of such overcharge within 5 days of the discovery of such error.

(4) DIVIDED LOANS.—No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, or any husband and wife, jointly or severally, to become obligated to him, directly or contingently or both, under more than one contract of loan at the same time, for the purpose, or with the result, of obtaining a greater finance charge than would otherwise be permitted by this section.

History.—s. 7, ch. 73-192; ss. 1, 2, ch. 76-180; s. 190, ch. 77-104; s. 1, ch. 77-174; s. 2, ch. 79-274.

[1]**Note.**—Section 15, ch. 79-274, provides that ch. 79-274 applies only to loans or advances of credit made on or subsequent to July 1, 1979, and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date.

516.035 Rate of interest upon default.—In the event that any balance remains unpaid at the expiration of the scheduled maturity date of a loan, licensees may continue to charge interest on the unpaid balance at the rate provided for in s. 516.031(1) for a period not to exceed 12 months. Thereafter, the interest shall not exceed 10 percent per annum.

History.—s. 1, ch. 79-59.

516.05 Issuance of license; denial; etc.—

(1) INVESTIGATION OF APPLICATION.—Upon the filing of such application and the payment of such fees, the department shall make an investigation of the facts concerning the application and the requirements provided for in subsection (2). At least 10 days before entering the order granting or denying the application, it shall mail a notice of the receipt of the application to the local small loan exchange (if there be one) in the community where the applicant proposes to do business. If any licensee or registrant files an objection to the issuance of the license to said applicant, or if the department has any doubts of the applicant meeting the standards of subsection (2), it shall order a hearing on such application pursuant to chapter 120 not more than 60 days from the date of mailing such notice. In addition to such hearing, the department may make such further and other investigation relative to the application and the requirements as it may deem fit.

(2) ISSUANCE OR DENIAL OF LICENSE.—If the department shall find:

(a) That the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter;

(b) That the applicant has available for the operation of such business at the specified location liquid assets of at least $10,000, if the specified location is in a community of 25,000 or less population, according to the last United States census, or $25,000, if the specified location is in a community of more than 25,000 population, according to said census,

it shall thereupon enter an order granting such application and issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the location specified in the said application (provided that nothing in this chapter shall be construed to prevent a licensee from lending to residents of any part of this state or any other state or country nor to prohibit the making of loans by mail when authorized by the department). Said

license shall remain in full force and effect until surrendered by the licensee or revoked or suspended as provided by law or as may be prohibited by the provisions of this chapter. If the department shall not so find, it shall thereupon enter an order denying such application and return the sum paid as a license fee, retaining the $200 investigation fee to cover the cost of investigating the application.

(3) EXISTING LICENSES; PURCHASE OF ASSETS.—Any licensee having a license under this chapter at the effective date of this amendment shall be conclusively presumed to have established the convenience and advantage of its business to the community wherein it is licensed. In the event any person shall purchase substantially all of the assets of any existing licensed office, the purchaser, if not a licensee hereunder, upon application, shall be granted a 90-day temporary license hereunder, applicable to the same location, within 10 days of such purchase, and the department shall cause an investigation to be made as provided by subsection (1) to determine whether a license shall be issued, provided such purchaser shall not be required to meet the provisions of subsection (2)(b). Where the purchaser is a licensee hereunder the department shall issue a license within 10 days of such purchase if the purchaser meets the requirements of this chapter provided that such purchaser shall not be required to meet the requirements of subsection (2)(b) and the licensee selling such assets shall surrender its license for such location to the department.

History.—s. 4, ch. 10177, 1925; CGL 4002; s. 2, ch. 20728, 1941; s. 4, ch. 57-201; ss. 12, 35, ch. 69-106; ss. 4, 15, ch. 73-192; s. 2, ch. 77-256; s. 7, ch. 78-95.
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

516.07 Revocation, reinstatement, surrender, etc., of license.—

(1) REVOCATION OF LICENSE.—The department may revoke any license issued hereunder if it shall find that:

(a) The licensee has failed to pay the annual license fee or to comply with any order of the department lawfully made pursuant to and within the authority of this chapter;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation lawfully made by the department under and within the authority of this chapter; or

(c) Any fact or condition existed at the time of the original application for such license which clearly would have warranted the department in refusing originally to issue such license.

(2) LICENSES AFFECTED BY REVOCATION OR SUSPENSION.—The department may revoke or suspend only the particular license with respect to which ground for revocation or suspension may occur or exist, or, if it shall find that such grounds for revocation are of general application to all offices or to more than one office operated by such licensee, it shall revoke or suspend all of the licenses issued to said licensee or such licensees as such grounds apply to, as the case may be.

(3) SURRENDER OF LICENSE.—Any licensee may surrender any license by delivering it to the department with a written notice that he thereby surrenders it, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(4) PREEXISTING CONTRACTS.—No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(5) REINSTATEMENT OF LICENSE.—Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter, but the department shall have authority on its own initiative to reinstate suspended licenses or to issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the department in refusing originally to issue such license under this chapter.

History.—s. 6, ch. 10177, 1925; CGL 4004; s. 3, ch. 20728, 1941; ss. 12, 35, ch. 69-106; s. 7, ch. 78-95; s. 145, ch. 79-164.

516.08 License to be posted.—The license shall be kept conspicuously posted in the place of business of the licensee.

History.—s. 7, ch. 10177, 1925; CGL 4005.

516.09 License, removal, other business.—

(1) PLACE OF BUSINESS.—Not more than one place of business for the making of loans under this chapter shall be maintained under the same license, but the department shall issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license.

(2) REMOVAL.—No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license. When a licensee wishes to change his place of business within the same county, he shall give written notice thereof to the department. If the department finds that the proposed location is reasonably accessible to borrowers under existing loan contracts, it shall enter an order permitting the change and shall amend the license accordingly. If the department does not so find, it shall enter an order denying the removal of the license to the requested location.

(3) OTHER BUSINESS IN THE SAME OFFICE.—A licensee may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the department shall find that the conduct of such other business by the licensee results in an evasion of this chapter. Upon such finding, the department shall order the licensee to desist from such evasion, provided, however, that no license shall be granted to or renewed for any person or organization engaged in the pawnbroker business.

History.—s. 8, ch. 10177, 1925; CGL 4006; s. 5, ch. 57-201; ss. 12, 35, ch. 69-106; s. 7, ch. 78-95; s. 1, ch. 79-340.

516.11 Investigation by department.—

(1) EXAMINATIONS.—For the purpose of discovering violations of this chapter or securing information lawfully required by it hereunder, the department may at any time investigate the loans and business, and examine the books, accounts, records, and files used therein, of every licensee and of every

person who shall be engaged in the business described in s. 516.02. If the department shall have reason to believe that any act or business is being done, or is about to be done, which is illegal under this chapter, it may make all examinations and take all steps authorized under this subsection, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. Any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value regulated by this chapter, whether as principal, agent, broker, or otherwise shall, for the purposes of this subsection, be presumed to be engaged in such business. For the purposes of this section the department and its duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons whether within or without the state. The department and all persons duly designated by it shall have authority to require the attendance of witnesses and to examine under oath all persons whomsoever whose testimony it may require relative to such loans or such business or to the subject matter of any examinations, investigation or hearing.

(2) ANNUAL EXAMINATION.—At least once each year, but no oftener than is reasonably necessary in order to verify reasonably founded suspicions of violations, the department or its duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers and records of such licensee in so far as they pertain to the business licensed under this chapter. Every licensee shall pay to the department an examination fee based upon the amount of outstanding loans due the licensee at the time of said examination, as follows:

Amount Outstanding	Examination Fee
From $0 to $25,000	$40
From $25,000.01 to $50,000	60
From $50,000.01 to $100,000	90
From $100,000.01 to $250,000	115
From $250,000.01 and over	150

(3) LIEN FOR FEES.—The above examination fees shall be secured by a lien upon the assets of the licensee and if not paid within 30 days from and after the licensee is billed therefor by the department, the license of the licensee shall stand suspended until said examination fee is paid in full.

History.—s. 10, ch. 10177, 1925; CGL 4008; s. 4, ch. 20728, 1941; s. 6, ch. 57-201; ss. 12, 35, ch. 69-106; s. 5, ch. 73-192; s. 1, ch. 77-356.

516.12 Records to be kept by licensee.—

(1) BOOKS AND RECORDS.—The licensee shall keep and use in his business such books, accounts, and records in accordance with sound and accepted accounting practices to enable the department to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the department hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least 2 years after making the final entry on any loan recorded therein.

(2) ANNUAL REPORTS.—Each licensee shall annually on or before April 1 file a report with the department for the preceding calendar year. Such report shall give information with respect to the financial condition of such licensee and shall include the name and address of the licensee; balance sheets at the beginning and end of the accounting period; a statement of income and expense for said period; a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans, and types of security on loans permitted by this chapter; an analysis of delinquent accounts; an analysis of suits, repossessions, and sales of chattels; and such other relevant information as the department may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the department, which shall make and publish annually an analysis and recapitulation of such reports. Should said annual report not be filed on or before April 1 of each year, the licensee shall pay a penalty of $5 per day for each day of delinquency. Upon application to the department made prior to said date, the department may, for good cause shown, extend such filing date for a reasonable period of time without such penalty.

History.—s. 11, ch. 10177, 1925; CGL 4009; s. 5, ch. 20728, 1941; s. 7, ch. 57-201; ss. 12, 35, ch. 69-106; s. 6, ch. 73-192.

516.13 False publications prohibited.—No licensee subject to this chapter shall advertise, display, distribute, broadcast, or televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner whatsoever, any false, misleading, or deceptive statement concerning the business authorized under this chapter.

History.—s. 12, ch. 10177, 1925; CGL 4010; s. 8, ch. 57-201.

516.15 Duties of licensee.—Every licensee shall:

(1) Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of s. 516.031.

(2) Give to the borrower a plain and complete receipt for all payments made on account of any loan at the time payments are made.

(3) Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof.

(4) Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security.

History.—s. 14, ch. 10177, 1925; CGL 4012; s. 13, ch. 73-192.

516.16 Confession of judgment; power of attorney; contents of notes and security.—No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual

amount of the loan, the time for which it is made, and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

History.—s. 15, ch. 10177, 1925; CGL 4013.

516.17 Assignment of wages, etc., given to secure loans.—No assignment of, or order for the payment of, any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any such loans shall be valid.

History.—s. 16, ch. 10177, 1925; CGL 4014; s. 1, ch. 28011, 1953; s. 8, ch. 73-192.

516.18 Rate of interest or consideration.—

[1](1) No person engaged in the business of making loans of money, except as authorized by this chapter or other statutes of this state, shall directly or indirectly charge, contract for, or receive any interest or consideration greater than 18 percent per annum upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan or use of credit, of the amount or value of $2,500 or less.

(2) The foregoing prohibition shall apply to any lender who, as security for any such loan, use, or forbearance of money, goods, or things in action, or for any such loan or use of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for services or otherwise seeks to obtain a greater compensation than is authorized by this chapter.

(3) No loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this chapter. However, the foregoing shall not apply to loans legally made to a resident of another state by a person within that state where that state has in effect a regulatory small loan or consumer finance law similar in principle to this act.

History.—s. 17, ch. 10177, 1925; CGL 4015; s. 10, ch. 57-201; s. 9, ch. 73-192; s. 1, ch. 77-256; s. 3, ch. 79-274.

[1]Note.—Section 15, ch. 79-274, provides that ch. 79-274 applies only to loans or advances of credit made on or subsequent to July 1, 1979, and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date.

cf.—Ch. 687 Interest and usury.

516.19 Penalty for violations.—Any person who shall violate any of the provisions of s. 516.02, s. 516.031, s. 516.09, s. 516.13, or s. 516.18 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 18, ch. 10177, 1925; CGL 7880; s. 487, ch. 71-136; s. 13, ch. 73-192.

516.20 "Interest" defined.—

(1) Any profit or advantage of any kind whatsoever that any licensee may contract for, collect, receive, or in anywise obtain by a collateral sale, purchase, or agreement, in connection with any loan regulated by this chapter, shall be deemed to be interest or consideration for the purposes of regulation under this chapter. Such transactions shall be governed by and subject to the provisions of this chapter, except commissions received as a person licensed by the department of insurance on insurance written as hereinafter permitted. However, security consisting of tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan, and such insurance shall not be deemed such collateral sale, purchase, or agreement when the policy is payable to the borrower or any member of his family, even though the customary mortgagee clause is attached or the licensee is a coassured; provided, that such insurance is sold at standard rates through a person duly licensed by the Department of Insurance.

(2) No licensee shall enter into any contract for a loan under this chapter for $600 or less which provides for scheduled repayment of principal more than 24 months and 15 days from the date the loan is made, nor enter into any contract for a loan under this chapter for more than $600 which provides for scheduled repayment of principal more than 36 months and 15 days from the date the loan is made.

History.—s. 7, ch. 20728, 1941; s. 11, ch. 57-201; ss. 13, 35, ch. 69-106; s. 10, ch. 73-192; s. 1, ch. 77-174.

[1]516.21 Restriction of borrower's indebtedness.—No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than 18 percent per annum upon any loan, or upon any part or all of any aggregate loan indebtedness of the same borrower, of the amount of more than $2,500. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower, or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than $2,500 for principal; provided, however, that if the proceeds of any loan of $2,500 or less are used to discharge a preexisting debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan with interest at a rate not exceeding 18 percent per annum, and the acceptance of one or more such guaranties in any aggregate amount shall not affect the rights of such licensee to make the charges against the primary borrower authorized by s. 516.031, nor shall the limitation apply to the isolated acquisition directly or indirectly by purchase or by discount of bona fide obligations of a borrower. However, in the event a licensee shall make a bona fide purchase of substantially all of the loans made under this chapter from another licensee or other lender not affiliated with the purchaser and such licensee or other lender shall have an existing loan outstanding to one or more of the borrowers whose loans are purchased, such licensee making such purchase shall be entitled to liquidate and collect the balances due on such loans, including all lawful charges and interest at the rates or amounts agreed upon in such loan contracts.

History.—s. 8, ch. 20728, 1941; s. 12, ch. 57-201; s. 11, ch. 73-192; s. 4, ch. 79-274.

[1]Note.—Section 15, ch. 79-274, provides that ch. 79-274 applies only to loans or advances of credit made on or subsequent to July 1, 1979, and shall not be construed as diminishing the force and effect of any laws applying to loans or

advances of credit completed prior to that date.

516.22 Regulations; certified copies.—
(1) REGULATIONS.—The department shall have the power and authority to issue regulations.
(2) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.—On application of any person and payment of the costs thereof, at the same rate and fees as allowed clerks of the circuit court by statute, the department shall furnish a certified copy of any license, regulation, or order. In any court or proceeding, such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order.

History.—s. 9, ch. 20728, 1941; s. 13, ch. 57-201; ss. 12, 35, ch. 69-106; s. 194, ch. 71-377; s. 7, ch. 78-95; s. 146, ch. 79-164.
cf.—s. 28.24 Service charges by clerks of circuit court.

516.221 Liability when acting upon department's order, declaratory statement, or rule.—No person or licensee hereunder shall be deemed to be in violation of this chapter nor shall such person or licensee be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, declaratory statement, or rule issued by the department, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order, declaratory statement, or rule.

History.—s. 1, ch. 78-242.

516.23 Injunctions; receivers.—In addition to all other powers granted to it under this chapter, the department may:
(1) Whenever it has reasonable cause to believe any person is violating or is about to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter, enter an order requiring such person to desist from such violation;
(2) Bring an action in the name of the state in the circuit court of the county in which the licensed place of business is located on the relation of the Department of Legal Affairs and the Department of Banking and Finance against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper;
(3) In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, said circuit court shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court.

History.—s. 9, ch. 20728, 1941; ss. 11, 12, 35, ch. 69-106.

516.231 Appointment of managers; qualifications.—Upon application for an original or renewal license, each applicant or licensee shall designate or appoint a manager for each location to be licensed. Each such manager shall have been employed by a licensee under this chapter or under former chapter 519, or by a subsidiary, affiliate, parent, or partner of the licensee, for a total period of at least 12 months or shall have successfully passed an examination based on the law and provisions of this chapter or former chapter 519 and rules and regulations thereunder. The foregoing requirement shall not apply to any person employed as such principal manager by a licensee on October 1, 1973.

History.—s. 12, ch. 73-192.

516.26 Purchase or assignment of wages, salaries, etc.—The payment of $600 or less in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under, and the enforcement and interpretation of, any law, civil or criminal, relating to loans, interest charges, or usury, be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall, for the purpose of regulation under, and the interpretation and enforcement of, such law, be deemed interest upon such loan from the date of such payment until the date such compensation is payable. Each such transaction shall be governed by and subject in all respects to all provisions of law relating to loans, interest, charges, usury, and to the same extent as if it had been in form a loan of the sum paid for the assignment.

History.—s. 1, ch. 20209, 1941; s. 14, ch. 57-201; s. 191, ch. 77-104.

516.27 Preexisting contracts.—This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any obligor, provided further, that nothing contained herein shall be construed so as to impair or affect the obligation of any contract of loan which was lawfully entered into prior to the effective date of this law.

History.—s. 15, ch. 57-201.

516.29 Suspension or revocation of license for unreasonable collection tactics.—The department shall have the authority to suspend or revoke the license of any licensee found guilty by it of using unreasonable collection tactics.

History.—s. 20, ch. 57-201; ss. 12, 35, ch. 69-106.

516.30 Period of transition allowed.—Upon this law taking effect the department is hereby au-

thorized to permit or allow a period of 60 days for the transition of the business of the then licensees.

History.—s. 17, ch. 57-201.

516.31 Consumer protection; certain negotiable instruments restricted; assigns subject to defenses; limitation on deficiency claims; cross collateral.—

(1) SCOPE.—This section shall apply to every consumer credit transaction and contract in which any form of credit is extended to an individual to purchase or obtain goods or services for use primarily for personal, family, or household purposes.

(2) RESTRICTION ON CERTAIN NEGOTIABLE INSTRUMENTS AND INSTALLMENT CONTRACTS.—A holder or assignee of any negotiable instrument or installment contract, other than a currently dated check, which originated from the purchase of certain consumer goods or services is subject to all claims and defenses of the consumer debtor against the seller of those consumer goods or services. A person's liability under this section may not exceed the amount owing to the person when the claim or defense is asserted against the person.

(3) LIMITATIONS ON DEFICIENCY CLAIMS.—If a creditor takes possession of property which was collateral under a consumer credit transaction, the consumer shall not be personally liable to the creditor for any unpaid balance of the obligation unless the unpaid balance of the consumer's obligation at the time of default was $2,000 or more. When the unpaid balance is $2,000 or more, the creditor shall be entitled to recover from the consumer the deficiency, if any, resulting from deducting the fair market value of the collateral from the unpaid balance due. In a proceeding for a deficiency, the fair market value of the collateral shall be a question for the trier of fact. Periodically published trade estimates of the retail value of goods shall, to the extent they are recognized in the particular trade or business, be presumed to be the fair market value of the collateral.

(4) CROSS COLLATERAL.—If debts arising from two or more retail installment sales or other credit contracts with individual consumers are secured by more than one security interest, or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security instruments, to have been first applied to the payment of the debt arising from the sale first made. To the extent that debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid. Payments received by the seller or holder upon a revolving account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made. If the debts consolidated arose from two or more credit sales or other credit contracts with an individual which were made on the same day, payments received by the seller or holder are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

(5) PURCHASERS OF RETAIL INSTALLMENT CONTRACTS MUST BE LICENSED UNDER CHAPTER 520.—A licensee under the Consumer Finance Act who purchases or holds retail installment contracts as defined in s. 520.31 in this state shall also be licensed under chapter 520 as an Installment Sales Finance Act licensee.

(6) WAIVER.—Waiver by the buyer of any provisions in this section shall be void and unenforceable as contrary to public policy.

History.—s. 12, ch. 73-192; s. 1, ch. 77-174.

516.32 Consumer credit counseling.—The department shall be responsible for promoting a consumer credit counseling service for the purpose of promoting and helping establish consumer credit counseling services for individuals in areas where a need has been established. The purposes of the consumer credit counseling service shall be to:

(1) Assist and educate individual consumers as to money management.

(2) Assist individual consumers in consolidating obligations when a situation exists in which the individual consumer is in need of such assistance.

(3) Work with consumer credit grantors in an effort to establish better relations with the individual consumer and with state and federal regulatory agencies.

History.—s. 12, ch. 73-192.

516.33 Public disclosures.—All findings of facts and orders filed with the department shall be a public record.

History.—s. 12, ch. 73-192.

516.34 Transfer of licenses held under former chapter 519.—All persons holding licenses under former chapter 519, on October 1, 1973, shall become licensees under chapter 516, and licenses issued under former chapter 519 shall be reissued by the department showing their new designation as licenses issued under chapter 516.

History.—s. 12, ch. 73-192; s. 1, ch. 77-174.

516.35 Credit insurance must comply with Credit Insurance Act.—Credit life and disability insurance which is provided at the expense of borrowers must be provided only under a group or individual insurance policy which complies with ss. 627.676-627.683 and s. 627.685, and lawful regulations thereunder. The cost of credit life and disability insurance which is paid by borrowers shall be deducted from the principal amount of the loan and shall be disclosed on the statement required by s. 516.15(1) or on a combined note and disclosure statement required by Federal Truth-In-Lending Act.

History.—s. 12, ch. 73-192.

516.36 Monthly installment requirement.—Every loan made pursuant to this chapter shall be

repaid in monthly installments as nearly equal as mathematically practicable.

History.—s. 12, ch. 73-192.

516.37 Transactions governed.—Nothing in chapter 516 shall apply to any transaction, contract, or loan other than one involving an extension of credit by a licensee as defined in this chapter.

History.—s. 15, ch. 73-192.

CHAPTER 517

SECURITIES TRANSACTIONS

517.011 Short title.—This [1]part may be cited as the "Florida Securities Act."

History.—s. 1, ch. 78-435.

[1]Note.—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this section. The change will be implemented by reviser's bill.

[1]517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms shall have the following respective meanings:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(2) "Agent" means salesman as herein defined.

(3) "Associated person" means any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions or any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial.

(4) "Broker" means dealer as herein defined.

(5) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(6) "Dealer" means any person, other than a salesman registered under this chapter, who engages, either for all or part of his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term "dealer" shall also include any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by said issuer. The term "dealer" shall not include any licensed practicing attorney who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any wholesaler selling exclusively to dealers; any person buying and selling exclusively through a registered dealer or stock exchange; or, pursuant to s. 517.061(12), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

(7) "Department" means the Department of Banking and Finance.

(8) "Investment adviser" means any person who for compensation engages for all or part of his time, directly, indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services. The term "investment adviser" shall not include any licensed practicing attorney or certified public accountant who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state; any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in the state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any person who renders investment advice exclusively to insurance or investment companies; or any person who does not hold himself out to the general public as an in-

vestment adviser and has no more than 15 clients within 12 consecutive months.

(9) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(10) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(11) "Person" means a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.

(12) "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(13) "Sale" or "sell" means any contract of sale or disposition of a security or interest in a security, for value. The term defined in this subsection shall not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(14) "Salesman" means any natural person, other than a dealer, employed, appointed, or authorized by a dealer or issuer to sell securities in any manner or act as an investment adviser as defined in this section. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.

(15) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, whiskey warehouse receipt or other commodity warehouse receipt, or right to subscribe to any of the foregoing; certificate of interest in a profit-sharing agreement or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease, or the right to participate therein; collateral trust certificate, reorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings; interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security.

(16) "Securities option" means any contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(17) "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; provided that a person shall be presumed not to be an underwriter with respect to any securities which he has owned beneficially for at least 1 year; and provided, further, that a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; provided, further, that in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person shall include the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

History.—s. 1, ch. 78-435; s. 147, ch. 79-164; ss. 1, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

[1]517.03 Power of department to make rules.—

(1) The Department of Banking and Finance shall administer and provide for the enforcement of all the provisions of this chapter. The department shall make, adopt, promulgate, amend, and repeal all rules necessary or convenient for the carrying out of the duties, obligations, and powers conferred on said department and perform any other acts necessary or convenient for the proper administration, enforcement, or interpretation of this chapter, including, without limitation, adopting rules and forms governing reports. The department shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

(2) No provision of this chapter imposing liability shall apply to an act done, or omitted to be done, in conformity with a rule of the department in existence at the time of the act or omission, even though such rule may thereafter be amended or repealed or determined by judicial or other authority to be invalid for any reason.

History.—s. 2, ch. 14899, 1931; CGL 1936 Supp. 6002(3); s. 1, ch. 59-423; s. 2, ch. 65-454; ss. 12, 35, ch. 69-106; s. 196, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 15, ch. 79-381.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.051 Exempt securities.—The registration provisions of s. 517.07 shall not apply to any of the following securities:

(1) Any security issued or guaranteed by the United States or any territory or insular possession thereof, by the District of Columbia, or by any state of the United States or by any political subdivision or agency thereof.

(2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale or offer of sale thereof maintaining diplomatic relations, or by any state, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the same.

[1](3) Any security issued or guaranteed by:

(a) A national bank or a federally chartered savings and loan association, or the initial subscription for equity securities in such national bank or federally chartered savings and loan association;

(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;

(c) An international bank of which the United States is a member; or

(d) A corporation created and acting as an instrumentality of the government of the United States.

(4) Any security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession thereof, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

[1](5) Any security issued or guaranteed by any domestic or foreign bank, trust company, or savings institution or building or savings and loan association of this state subject to the examination, supervision, or control of this state; or the initial subscription for equity securities in such bank, trust company, savings institution, or building or savings and loan association of this state under like supervision; except that the exemption provided herein for initial subscriptions of equity securities shall not be available unless and until proper notice is filed as required by the rules of the department.

(6) Any security, other than common stock, providing for a fixed return, which has been outstanding in the hands of the public for a period of not less than 5 years, upon which no default in payment of principal or failure to pay the fixed return has occurred for an immediately preceding period of 5 years.

(7) Securities of nonprofit agricultural cooperatives organized under the laws of this state when said securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

[1](8) Any note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding 9 months exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(9) Any security issued by a corporation organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the department, of all material information, including, but not limited to, a description of the securities offered and terms of the offering; a description of the nature of the issuer's business; a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof; and financial statements of the issuer prepared in conformance with generally accepted accounting principles.

History.—s. 1, ch. 78-435; ss. 3, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

[1]517.061 Exempt transactions.—The registration provisions of s. 517.07 do not apply to any of the following transactions:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledge holder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to

liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter thereof, who, being the bona fide owner of such securities, disposes of his own property for his own account and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales shall include, but not be limited to, isolated offers or sales when made by or on behalf of a vendor of securities not the issuer or underwriter thereof if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (12)(a)1., 2., 3., and 4. and paragraph (12)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity made in good faith and not for the purpose of avoiding the provisions of this chapter either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) The issuance of additional securities of a corporation, trust, or partnership sold or distributed by it among its own stockholders, partners, or beneficiaries, exclusively, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank or trust company, whether acting in its individual or fiduciary capacity; savings institution; insurance company; dealer; regulated investment company; or pension or profit-sharing plan having assets not less than $500,000; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporation each has assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation or to security holders thereof pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered, provided that the security surrendered had been registered under the law when sold or was, when sold, exempt from the registration provisions of this chapter.

(12)(a) The offer or sale, by or on behalf of an issuer, of its own securities, provided that:

1. There are no more than 35 purchasers of the securities of the issuer in this state within the immediately preceding 12-month period in reliance upon this subsection;

2. The issuer, or anyone acting in the issuer's behalf, makes no public solicitation or advertisement in the State of Florida concerning the offer of such securities;

3. Prior to the sale, each purchaser, or his representative, is provided with, or given reasonable access to, full and fair disclosure of all material information;

4. No person defined as a dealer in this chapter shall be paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter; and

5. Where sales are made to five or more persons, any sale made pursuant to this subsection shall be voidable by the purchaser either within 3 days after the first tender of consideration is made by the purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to the purchaser, whichever occurs later.

(b) Any purchaser who makes a bona fide investment of $100,000 or more may be excluded from the computation of the 35 purchasers, provided that any such purchaser, or his representative, receives or has access to the information required to be disclosed by subparagraph (a)3.

(13) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(14) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer

registered with the Department of Banking and Finance pursuant to the provisions of s. 517.12; provided that this exemption shall apply solely and exclusively to such registered dealers and shall not authorize or permit the purchase or sale of securities on order of and as agent for another by any person other than a dealer so registered; and provided, further, that such purchase or sale shall not be directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(15) The offer or sale of shares of a corporation which represent ownership, or entitle the holders thereof to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(16) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(17) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the department; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the department; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this chapter.

(18)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities appearing in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals shall remain in effect. The exemption provided for herein shall not apply when the securities are suspended from listing approval for listing or trading; or

5. Securities as to which the following information is published in a recognized manual of securities:

a. A balance sheet as of a date not more than 18 months prior to the date of the sale; and

b. Profit and loss statements for a period of not less than 2 years next prior to the date of the balance sheet or for the period as of the date of the balance sheet if the period of existence is less than 2 years.

(b) The exemption provided in this subsection shall not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to or subscription or participation by a dealer as an underwriter of such securities.

(c) The department may deny this exemption with reference to any particular security by order published in such manner as the department shall find proper.

(19)(a) The offer or sale of securities pursuant to a registration statement filed under the Securities Act of 1933, provided that prior to the sale the registration statement has become effective and the department has received:

1. A notice of intention to sell which has been executed by the issuer, any other person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, and which sets forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered in this state;

2. Copies of such documents filed with the Securities and Exchange Commission as the department may by rule require; and

3. The irrevocable written consent as required by s. 517.101.

(b) The person filing a notice of intention shall at the time of filing pay the department a nonreturnable fee of 0.1 percent of the aggregate sales price of the securities offered or to be offered in this state, but not less than $20 or more than $750. The fee required by this paragraph shall be paid to the department for each 36-consecutive-month period in which the securities are offered and sold. The 36-consecutive-month period shall commence upon receipt by the department of the notice of intention to sell.

History.—s. 1, ch. 78-435; ss. 4, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein

provided.

[1]517.07 Registration of securities.—No securities except of a class exempt under any of the provisions of s. 517.051 or unless sold in any transaction exempt under any of the provisions of s. 517.061 shall be sold or offered for sale within this state unless such securities shall have been registered as hereinafter defined, and unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the department. The department shall issue a permit when such registration has been granted by the department. A permit to sell securities shall be effective for 1 year from the date it was granted. Registration of securities shall be deemed to include the registration of rights to subscribe to such securities if the application under s. 517.081 for registration of such securities includes a statement that such rights are to be issued. A record of the registration of securities shall be kept in the office of the department, in which register of securities shall also be recorded any orders entered by the department with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection. The provisions of this section to the contrary notwithstanding, offers of securities required to be registered by this section may be made in this state prior to the registration of such securities if the offers are made in conformity with rules adopted by the department.

History.—s. 6, ch. 14899, 1931; CGL 1936 Supp. 6002(7); s. 3, ch. 24066, 1947; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-435; ss. 5, 15, ch. 79-381.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.081 Registration procedure.—

[1](1) All securities required by this chapter to be registered before being sold in this state shall be registered in the manner provided by this section.

(2) The department shall receive and act upon applications to have securities registered and may prescribe forms on which it may require such applications to be submitted. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the department. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The department may require the applicant to submit to the department the following information concerning the issuer and such other relevant information as the department may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation or association or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the department may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g) A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the department may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the department. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the department.

(4) All of the statements, exhibits, and documents of every kind required by the department under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the department.

(5) The department may by rule fix the maxi-

mum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

[1](6) An issuer filing an application under this section shall, at the time of filing, pay the department a nonreturnable fee computed at the rate of 0.1 percent of the maximum aggregate offering price of the securities to be offered in this state, but not less than $50 or more than $1,000.

(7) If upon examination of any application the department shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities, and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the department.

History.—s. 3, ch. 78-435; s. 148, ch. 79-164; ss. 6, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.101 Consent to service.—

(1) Upon any application for registration under s. 517.081, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this [1]part, the service on the department of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the department has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the department, it shall be by duplicate copies, one of which shall be filed in the department and another immediately forwarded by the department by registered mail to the principal office of the issuer against which said process or pleadings are directed.

History.—s. 3, ch. 78-435.

[1]**Note.**—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this subsection. The change will be implemented by reviser's bill.

517.111 Revocation or denial of registration of securities.—

(1) The department may revoke or suspend the registration of any security, or may deny any application to register securities, if upon examination into the affairs of the issuer of such security it shall appear that:

(a) The issuer is insolvent;

(b) The issuer or any controlling person has violated any provision of this chapter or any rule made hereunder or any order of the department of which such issuer has notice;

(c) The issuer or any controlling person has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any controlling person is in any other way dishonest or has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or

(e) The terms of the offer or sale of such securities would not be fair, just, or equitable.

In making such examination, the department shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the department may deem it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the department may require.

(2) If any issuer shall refuse to permit an examination to be made by the department, it shall be proper ground for revocation of registration.

(3) If the department shall deem it necessary, it may enter an order suspending the right to sell securities pending any investigation, provided that the order shall state the department's grounds for taking such action.

(4) Notice of the entry of such order shall be given by mail, personally, by telephone confirmed in writing, or by telegraph to the issuer. Before such order is made final, the issuer applying for registration shall, on application, be entitled to a hearing.

History.—s. 3, ch. 78-435.

[1]517.12 Registration of dealers, associated persons, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities in this state to persons thereof from offices outside this state, by mail or otherwise, unless the person has been registered with the department pursuant to the provisions of this section.

(2) The registration requirements of this section shall not apply to the issuers of securities exempted by s. 517.051(1)-(8).

(3) Except as otherwise expressly provided in s.

517.061(12)(a)4., the registration requirements of this section shall not apply in a transaction exempted by s. 517.061(1)-(16).

(4) No investment adviser shall engage in business from offices in this state, or render investment advice to persons thereof, by mail or otherwise, unless the investment adviser has been registered with the department pursuant to this section.

(5) A dealer, associated person, or investment adviser, in order to obtain initial registration, shall file with the department a written application, in a form which the department may by rule prescribe, verified under oath. Dealers and investment advisers shall also file an irrevocable written consent to service of civil process similar to that provided in s. 517.101. The application shall contain such information as the department may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization and, if the applicant is a corporation, a copy of its articles of incorporation and amendments thereto or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all salesmen of the applicant to be employed in this state and the offices to which they will be assigned.

(6) The application shall also contain such information as the department may require about the applicant, any partner, officer, or director of the applicant, any person having a similar status or performing similar functions, any person directly or indirectly controlling the applicant, or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant shall file a complete set of fingerprints taken by an authorized law enforcement officer. Said fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The department may waive, by rule, the requirement that applicants must file a set of fingerprints or the requirement that such fingerprints must be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The department may require information about any such applicant or person concerning such matters as:

(a) His full name, age, photograph, qualifications, educational and business history, and any other names by which he may have been known.

(b) Any injunction or administrative order by any state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His conviction of, or plea of nolo contendere to, a criminal offense or his commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the department may inquire as to his character, reputation, and financial responsibility.

(7) The department may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any agent-applicant to successfully pass oral or written examinations. The examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory salesman. The department may waive the examination process when it determines that such examinations are not in the public interest. The department shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934.

(8) The department may by rule require the maintenance of a minimum net capital for registered dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public.

(9) An applicant for registration shall pay an assessment fee of $100, in the case of a dealer or investment adviser, or $20, in the case of an associated person. There shall be no fee for reaffiliation of a registered associated person. Each dealer and each investment adviser shall pay an assessment fee of $50 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Security Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(10) If the department finds that the applicant is of good repute and character and has complied with the provisions of this section and the rules made pursuant hereto, it shall register the applicant. Every dealer and investment adviser registration shall expire on December 31 of the year in which it became effective; except that the department may by rule provide for an equitable method of staggering the expiration dates of registrations using a date other than December 31 of each year. Registration for dealers and investment advisers may be renewed by a written application furnishing such information as the department may require, together with payment of the fee required in subsection (9) for dealers, investment advisors, associated persons, or branch offices. The renewal shall be accomplished not less than 30 or more than 60 days prior to the date of expiration of the registration. If a registrant fails to renew a registration within the time period provided, registration shall only be granted upon the submission of an original application.

(11)(a) The department may issue a license to a dealer, salesman, officer, office, or investment adviser to evidence registration under this chapter. The

department may require the return to the department of any license it may issue prior to issuing a new license.

(b) Every dealer shall promptly file with the department, as prescribed by rules adopted by the department, notice as to the termination of employment of any associated person registered for such dealer in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer shall designate in writing to the department a manager for each office the dealer has in that state, and each manager shall be registered as a principal.

(12) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the department may specify.

(13) A dealer, associated person, or investment adviser registered under this section shall maintain such books and records as the department may prescribe by rule. The department shall have authority to visit and examine the affairs and records of each registered dealer, associated person, or investment adviser or require such records and reports submitted to it as it may require by rule.

History.—s. 11, ch. 14899, 1931; s. 6, ch. 17253, 1935; CGL 1936 Supp. 6002(12); s. 3, ch. 20960, 1941; s. 3, ch. 21709, 1943; s. 1, ch. 57-288; s. 1, ch. 59-169; s. 1, ch. 63-321; s. 6, ch. 65-454; ss. 12, 35, ch. 69-106; s. 6, ch. 71-96; s. 2, ch. 72-152; s. 3, ch. 73-68; s. 1, ch. 74-278; s. 3, ch. 76-168; s. 194, ch. 77-104; s. 1, ch. 77-457; s. 4, ch. 78-435; s. 19, ch. 79-8; s. 149, ch. 79-164; ss. 7, 15, ch. 79-381.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

s. 112.011 Felons; removal of disqualifications for employment, exceptions.

517.131 Security Guaranty Fund.—

[1](1) Effective November 1, 1978, the Treasurer shall establish a Security Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) shall be allocated to the fund. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Security Guaranty Fund. If the fund at any time exceeds $250,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $150,000 by disbursement made in accordance with s. 517.141.

[1](2) The Security Guaranty Fund shall be disbursed as provided in s. 517.141 to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, salesman, or investment adviser who was licensed under this chapter at the time the act was committed:

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.

(3) Any person shall be eligible to seek recovery from the Security Guaranty Fund if:

(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections in subsection (2);

(b) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(c) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment;

[1](d) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court; and

[1](e) The act for which recovery is sought occurred on or after January 1, 1979.

[1](4) Any person who files an action that may result in the disbursement of funds from the Security Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice to the department as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Security Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.

History.—s. 5, ch. 78-435; ss. 8, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.141 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to the department for payment to be made to such person from the Security Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages.

(2) Upon receipt by the claimant of the payment from the Security Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department.

(3) Payments for claims shall be limited in the aggregate to $100,000, regardless of the number of claimants involved, against any one dealer, salesman, or investment adviser. If the total claims exceed the aggregate limit of $100,000, the department shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed.

(4) If at any time the money in the Security Guaranty Fund is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a

sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department.

(5) All payments and disbursements made from the Security Guaranty Fund shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate.

History.—s. 5, ch. 78-435.

517.151 Investments of the fund.—The funds of the Security Guaranty Fund shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Security Guaranty Fund.

History.—s. 5, ch. 78-435.

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, or salesman.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked or suspended by the department if the department determines that such applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made hereunder;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities, or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of the law;

(d) Has made any misrepresentation or false statement to, or concealed any essential or material fact from, any person in the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by dealer, broker, or investment adviser, as and when paid, and due to be delivered;

(g) Is selling or offering for sale securities through any salesman not registered in compliance with the provisions of this [1]part;

(h) Has demonstrated his unworthiness to transact the business of dealer, investment adviser, or salesman;

(i) Is, in the case of the dealer or investment adviser, insolvent;

(j) Has been convicted of, or entered a plea of nolo contendere to, a crime against the laws of this state or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(k) Is of bad business repute.

(2) The payment of any amount from the Security Guaranty Fund in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee.

(3) In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and salesmen; and denial, suspension, or revocation of the registration of a dealer or investment adviser shall also suspend or revoke the registration of all his salesmen.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for denying or revoking the registration of an individual dealer, investment adviser, or salesman.

(5) The department may deny any request to terminate or withdraw any application or registration if the department shall believe that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

History.—s. 5, ch. 78-435.

[1]Note.—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this paragraph. The change will be implemented by reviser's bill.

517.171 Burden of proof.—It shall not be necessary to negate any of the exemptions provided in this [1]part in any complaint, information, indictment, or any other writ or proceedings brought under this [1]part, and the burden of establishing the right to any exemption shall be upon the party claiming the benefit of such exemption.

History.—s. 5, ch. 78-435.

[1]Note.—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this section. The change will be implemented by reviser's bill.

517.181 Escrow agreement.—

(1) If the statement containing information as to securities to be registered, as provided for in s. 517.081, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for goodwill or going-concern value or other intangible assets, then the amount and nature thereof shall be fully set forth, and the department may require that such securities so issued in payment of such patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for other intangible assets shall be delivered in escrow to the department or other depository satisfactory to the department under an escrow agreement. The escrow agreement shall be in a form suitable to the department and shall provide for the escrow or impoundment of such securities for a reasonable length of time determined by the department to be in the best interest of other shareholders. The securities subject to escrow shall also include any dividend, cash, or stock that may be paid during the life of the escrow and any stock issued through, or by reason of, any stock split, exchange of shares, recapitalization, merger, consolidation, reorganization, or similar combination or subdivision in substi-

tution for or in lieu of any stock subject to this provision; and in case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(2) Any securities held in escrow under this section on November 1, 1978, may be released to the owners thereof upon request, if satisfactory financial data is submitted to the department showing that the issuer is currently operating on sound business principles and has net income in accordance with criteria-implementing rules of the department relating to escrow of securities. At any time, the department may review any existing escrow agreement made under this section and determine that the same may be amended in order to permit a subsequent release of the securities upon terms and conditions which are just and equitable as defined by said rules.

(3) When it shall appear from information available to the department that the issuer of securities held in escrow has been dissolved or disbanded or is defunct or no longer actively engaged in business and such securities are of no value, the department, after giving at least 60 days' notice in at least one newspaper of general circulation and after giving interested parties opportunity for hearing, may enter its order authorizing the destruction of said securities. Any affected escrow agent may rely on such order and shall not be required to determine the validity or sufficiency thereof.

History.—s. 5, ch. 78-435.

517.191 Injunction to restrain violations.—

(1) When it shall appear to the department, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this [1]part or a rule or order hereunder, the department may investigate, and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this [1]part or a rule or order hereunder, the department may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this [1]part to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this [1]part. In any such court proceedings, the department may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the department, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to any other remedies provided by this [1]part, the department may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the department to have been obtained by them in violation of any of the provisions of this [1]part. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this [1]part.

History.—s. 5, ch. 78-435.

[1]**Note.**—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this subsection. The change will be implemented by reviser's bill.

517.201 Investigations; subpoenas; hearings; witnesses.—

(1) The department:

(a) May make investigations within or outside of this state as it deems necessary

1. To determine whether a person has violated or is about to violate any provision of this chapter or a rule or order hereunder; or

2. To aid in the enforcement of this chapter.

(b) May require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) When it is proposed to conduct an investigation, the department may gather evidence in the matter. The department may administer oaths, examine witnesses, and issue subpoenas.

(3) Subpoenas for witnesses whose evidence is deemed material to any investigation may be issued by the department under the seal of the department, or by any county court judge or clerk of the circuit court or county court, commanding such witnesses to be or appear before the department at a time and place to be therein named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection; and such subpoenas may be served by an authorized representative of the department.

(4) When any witness who has been served with

a subpoena fails or refuses to be or appear at the time and place named, fails or refuses to answer any lawful questions propounded or produce the books, records, or documents required, or is guilty of disorderly or contumacious conduct at the hearing, the facts shall be made known to a circuit judge of the county who shall forthwith issue an attachment for such witness and cause him to be brought before the judge. Upon appearance, if the witness fails to purge himself of such failure, refusal, or conduct, the judge shall proceed further as in cases of contempt of court; and said witness shall pay the costs of said attachment.

(5) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

(6) The material compiled by the department in an investigation under this chapter is confidential until the investigation is complete. The material compiled by the department in an investigation under this chapter remains confidential after the department's investigation is complete if the department has submitted the material or any part of it to any law enforcement agency for further investigation or for the filing of a criminal prosecution and that agency has not completed its investigation or prosecution.

History.—s. 5, ch. 78-435.

[1]517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12 may be rescinded at the election of the purchaser, and the person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, shall be jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled shall have the benefit of this subsection who has refused or failed, within 30 days, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, shall be jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) In an action for rescission:

(a) A purchaser may recover the consideration paid for the security, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security upon tender of the security.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate, less the amount of any income received by the defendant on the security.

(4) In an action for damages brought by a purchaser of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The consideration paid for the security, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security at the time it was disposed of by the plaintiff, plus the amount of any income received on the security by the plaintiff.

(5) In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(6) In any action brought under this section, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust.

History.—s. 5, ch. 78-435; ss. 9, 15, ch. 79-381.

[1]Note.—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.221 Cease and desist orders.—

(1) The department may issue and serve upon a person a cease and desist order whenever the department has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the department, or any written agreement entered into with the department.

(2) The cease and desist order shall contain a statement of facts and a notice for a hearing pursuant to s. 120.57.

(3) The department may impose an administrative fine not to exceed $1,000 against any person found to have violated any cease and desist order of the department. All fines collected under this section shall be paid into the State Treasury and credited to the General Revenue Fund.

History.—s. 5, ch. 78-435.

517.241 Remedies.—

(1) Any person aggrieved by a final order of the department may have said order reviewed as provided by chapter 120, the Administrative Procedure Act.

[1](2) Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of securities or the right of the state to punish any

person for any violation of any law.

[1](3) The same civil remedies provided by laws of the United States for the purchaser or seller of securities under any such laws, in interstate commerce, shall extend also to purchasers or sellers of securities under this chapter.

(4) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as they may have under similar cases instituted under the laws of the state.

History.—s. 5, ch. 78-435; ss. 10, 15, ch. 79-381.

[1]**Note.**—Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

[1]517.301 Fraudulent transactions; falsification or concealment of facts.—It is unlawful, and a violation of the provisions of this [2]part, for any person:

(1) In connection with the offer, sale, or purchase of any security, including any security exempted under the provisions of s. 517.051 and including any security sold in any transaction exempted under the provisions of s. 517.061, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) To publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(3) In any matter within the jurisdiction of the department, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

History.—s. 1, ch. 65-428; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-435.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this section. The change will be implemented by reviser's bill.

[1]517.302 Penalty.—Whoever violates any of the provisions of this [2]part is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations for prosecution of offenses committed under this [2]part shall be 5 years.

History.—s. 1, ch. 65-102; s. 488, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this section. The change will be implemented by reviser's bill.

[1]517.311 False representations; deceptive words; enforcement.—

(1) It is unlawful for any person, in issuing or selling any security within the state, including any security exempted under the provisions of s. 517.051 and including any transactions exempted under the provisions of s. 517.061, to misrepresent that such security or company has been guaranteed, sponsored, recommended, or approved by the state or any agency or officer thereof or the United States or any agency or officer thereof.

(2) It is unlawful for any person registered or required to be registered under any section of this chapter, including such persons and issuers within the purview of ss. 517.051 and 517.061, to misrepresent that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon, by the state or any agency or officer thereof or the United States or any agency or officer thereof.

(3) No provision of subsection (1) or subsection (2) shall be construed to prohibit a statement that a person or security is registered under this chapter if such statement of registration is required by the provisions of this part or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement of registration is not misrepresented.

(4) This section may be enforced only by the department in an action or proceeding brought under ss. 517.191 or 517.221.

History.—s. 1, ch. 63-98; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-435; ss. 11, 15, ch. 79-381.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. Section 15, ch. 79-381, provides that, if ch. 517 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-381 shall also be repealed on the same date as is therein provided.

517.313 Destroying certain records; reproduction.—

(1) The department is authorized to photograph, microphotograph, or reproduce on film or prints documents, records, data, and information of a permanent character.

(2) The department is authorized to destroy any of said documents after audit of the office has been completed for the period embracing the dates of said instruments, after complying with the provisions of chapter 119.

(3) Duly certified or authenticated photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have and shall be

treated as originals for the purpose of their admissibility as evidence.

History.—s. 7, ch. 78-435.

517.315 Fees.—All fees and charges of any nature collected by the department pursuant to this chapter, except the fees and charges collected pursuant to s. 517.131, shall be paid into the State Treasury and credited to the General Revenue Fund; and an appropriation shall be made annually of necessary funds for the administration of the provisions of this chapter.

History.—s. 7, ch. 78-435.

[1]517.32 Exemption from excise tax, certain obligations to pay.—There shall be exempt from all excise taxes imposed by chapter 201 all promissory notes, nonnegotiable notes, and other written obligations to pay money bearing dates subsequent to July 1, 1957, when the maker thereof is a security dealer registered by the department under this [2]part, when such promissory note, nonnegotiable note or notes, or other written obligation to pay money shall be for the duration of 30 days or less and secured by pledge or deposit, as collateral security for the payment thereof, security or securities as defined in s. 517.02, provided all excise taxes imposed by chapter 201, shall have been paid upon such collateral security.

History.—s. 1, ch. 57-823; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—See s. 14, ch. 79-381, which directs that "part" be changed to "chapter" where "part" appears in this section. The change will be implemented by reviser's bill.

cf.—Ch. 201 Excise tax on documents.

CHAPTER 518

INVESTMENT OF FIDUCIARY FUNDS

518.01 Investments of funds received from Veterans' Administration.—Subject to the conditions herein contained, and except as otherwise authorized by law, guardians holding funds received from, or currently in receipt of funds from, the Veterans' Administration, to the extent of those funds alone, may invest such funds only in the following:

(1) UNITED STATES GOVERNMENT OBLIGATIONS.—In bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged, including such bonds or obligations of the District of Columbia.

(2) BONDS AND OBLIGATIONS OF STATES AND TERRITORIES.—In bonds or other interest-bearing obligations of any state of the United States, or the Territory of Puerto Rico; provided such state or territory has not, within 10 years previous to the date of making such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of any of its bonded indebtedness.

(3) BONDS, AND OTHER OBLIGATIONS OF POLITICAL SUBDIVISIONS WITHIN THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city, town, school district, or road and bridge district located within the state and which has according to the federal census next preceding the date of making the investment, a population of not less than 2,000 inhabitants and for which the full faith and credit of such political subdivision has been pledged; provided, that such political subdivision or its successor through merger, consolidation, or otherwise, has not within 5 years previous to the making of such investment, defaulted for more than 6 months in the payment of any part of the principal or interest of its bonded indebtedness.

(4) BONDS AND OBLIGATIONS OF POLITICAL SUBDIVISIONS LOCATED OUTSIDE THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city, or town located outside of the state, but within another state of the United States, which county, city, or town has, according to the federal census next preceding the date of making the investment a population of not less than 40,000 inhabitants and the indebtedness of which does not exceed 7 percent of the last preceding valuation of property for the purposes of taxation; provided, that the full faith and credit of such political subdivision shall have been pledged for the payment of the principal and interest of such bonds or obligations, and provided further, that such political subdivision or its successor, through merger, consolidation, or otherwise, has not within 15 years previous to the making of such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of its bonded indebtedness.

(5) BONDS OR OBLIGATIONS OF FEDERAL LAND BANKS AND FARM CREDIT INSTITUTIONS.—In the bonds or other interest-bearing obligations of any federal land bank organized under any Act of Congress enacted prior to June 14, 1937, provided such bank is not in default in the payment of principal or interest on any of its obligations at the time of making the investment; and on any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, Public Law 92-181.

(6) BONDS OF RAILROAD COMPANIES.—

(a) Bonds bearing a fixed rate of interest secured by first mortgage, general mortgage, refunding mortgage, or consolidated mortgage which is a lien on real estate, rights or interest therein, leaseholds, right-of-way, trackage, or other fixed assets; provided, that such bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

(b) In bonds secured by first mortgage upon terminal, depot, or tunnel property, including buildings and appurtenances used in the service or transporta-

tion by one or more qualified railroad companies; provided that such bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company, or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

(c) As used in this subsection, the words "qualified railroad company" means a railroad corporation other than a street railroad corporation which, at the date of the investment by the fiduciary, meets the following requirements:

1. It shall be a railroad corporation incorporated under the laws of the United States or of any state or commonwealth thereof or of the District of Columbia.

2. It shall own and operate within the United States not less than 500 miles of standard gauge railroad lines, exclusive of sidings.

3. Its railroad operating revenues derived from the operation of all railroad lines operated by it, including leased lines and lines owned or leased by a subsidiary corporation, all of the voting stock of which, except directors' qualifying shares, is owned by it, for its fiscal year next preceding the date of the investment, shall have been not less than $10 million.

4. At no time during its fiscal year in which the investment is made, and its 5 fiscal years immediately prior thereto, shall it have been in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

5. In at least 4 of its 5 fiscal years immediately preceding the date of investment, its net income available for fixed charges shall have been at least equal to its fixed charges, and in its fiscal year immediately preceding the date of investment, its net income available for fixed charges shall have been not less than 1¼ times its fixed charges.

(d) As used in this subsection, the words "income available for fixed charges" mean the amount obtained by deducting from gross income all items deductible in ascertaining the net income other than contingent income interest and those constituting fixed charges as used in the accounting reports of common carriers as prescribed by the accounting regulations of the Interstate Commerce Commission.

(e) As used in this subsection, the words "fixed charges" mean rent for leased roads, miscellaneous rents, funded debt interest, and amortization of discount on funded debt.

(7) BONDS OF GAS, WATER OR ELECTRIC COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any gas, water, or electric company, subject to the following conditions:

(a) Gas, water, or electric companies by which such bonds are issued, guaranteed, or assumed, shall be incorporated under the laws of the United States or any state or commonwealth thereof or of the District of Columbia.

(b) The company shall be an operating company transacting the business of supplying water, electrical energy, artificial gas, or natural gas for light, heat, power, and other purposes, and provided that at least 75 percent of its gross operating revenue shall be derived from such business and not more than 15 percent of its gross operating revenues shall be derived from any other one kind of business.

(c) The company shall be subject to regulation by a public service commission, a public utility commission, or any other similar regulatory body duly established by the laws of the United States or any state or commonwealth or of the District of Columbia in which such company operates.

(d) The company shall have all the franchises necessary to operate in the territory in which at least 75 percent of its gross revenues are obtained, which franchises shall either be indeterminate permits of, or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least 5 years beyond the maturity of the bonds.

(e) The company shall have been in existence for a period of not less than 8 fiscal years, and at no time within the period of 8 fiscal years immediately preceding the date of such investment shall such company have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed, or guaranteed, but the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period.

(f) For a period of 5 fiscal years immediately preceding the date of the investment, net earnings shall have averaged per year not less than two times the average annual interest charges on its entire funded debt, applicable to that period and for the last fiscal year preceding the date of investment, such net earnings shall have been not less than two times such interest charges for that year.

(g) The bonds of any such company must be part of an issue of not less than $1 million and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them or must be underlying mortgage bonds secured by property owned and operated by the companies issuing or assuming them. The aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed 60 percent of the value of the physical property owned, which shall be book value less such reserves for depreciation or retirement, as the company may have established, and subject to the lien of such mortgage or mortgages securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement on or before the date of maturity of all bonds secured by prior liens on the property.

(h) As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating, all property owned and operated by, or leased and operated by, such companies, as determined by the system of accounts prescribed by the Public Service

Commission or other similar regulatory body having jurisdiction.

(i) As used in this subsection, the words "net earnings" mean the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, taxes, other than federal and state income taxes, rentals, and provisions for depreciation, renewals and retirements of the physical assets of the company, and by adding to such balance its income from securities and miscellaneous sources, but not, however, exceeding 15 percent of such balance.

(8) BONDS OF TELEPHONE COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any telephone company, subject to the following conditions:

(a) The telephone company by which such bonds are issued shall be incorporated under the laws of the United States or of any state or commonwealth thereof or of the District of Columbia and shall be engaged in the business of supplying telephone service in the United States and shall be subject to regulations by the Federal Communications Commission, a public service commission, a public utility commission, or any similar regulatory body duly established by the laws of the United States or of any state or commonwealth or of the District of Columbia in which such company operates.

(b) The company by which such bonds are issued, guaranteed, or assumed shall have been in existence for a period of not less than 8 fiscal years, and at no time within the period of 8 fiscal years immediately preceding the date of such investment shall such company have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed, or guaranteed, but the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period. The company shall file with the Federal Communications Commission, or a public service commission or similar regulatory body having jurisdiction over it, and make public in each year a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(c) For a period of 5 fiscal years immediately preceding the investment, the net earnings of such telephone company shall have averaged per year not less than twice the average annual interest charges on its outstanding obligations applicable to that period, and for the last fiscal year preceding such investment, such net earnings shall have been not less than twice such interest charges for that year.

(d) The bonds must be part of an issue of not less than $5 million and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them, or must be underlying mortgage bonds similarly secured. As of the close of the fiscal year preceding the date of the investment by the fiduciary, the aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed 60 percent of the value of the real estate and tangible personal property owned absolutely, which value shall be book value less such reserves for depreciation or retirement as the company may have established, and subject to the lien of such mortgage, or mortgages, securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement, on or before the date of their maturity, of all bonds secured by prior liens on the property.

(e) As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating all property owned and operated by, or leased and operated by, such company as determined by the system of accounts prescribed by the Federal Communications Commission, or any other similar federal or state regulatory body having jurisdiction in the matter.

(f) As used in this subsection, the words "net earnings" mean the balance obtained by deducting from the telephone company's gross operating revenues its operating and maintenance expenses, provision for depreciation of the physical assets of the company, taxes, other than federal and state income taxes, rentals, and miscellaneous charges, and by adding to such balance its income from securities and miscellaneous sources but not, however, to exceed 15 percent of such balance.

(9) FIRST MORTGAGES.—In mortgages signed by one or more individuals or corporations, subject to the following conditions:

(a) If the taking of the mortgages as an investment for any particular trust, estate, or guardianship will not result in more than 40 percent of the then value of the principal of such trust, estate, or guardianship being invested in mortgages.

(b) Within 30 days preceding the taking of a mortgage as an investment, the property encumbered or to be encumbered thereby shall be appraised by two or more reputable persons especially familiar with real estate values. The fair market value of the property as disclosed by the appraisal of such persons shall be set forth in a writing dated and signed by them and in such writing they shall certify that their valuation of the property was made after an inspection of the same, including all buildings and other improvements.

(c) The mortgage shall encumber improved real estate located in the state and in or within 5 miles of the corporate limits of a city or town having a population of 2,000 or more, according to the federal census next preceding the date of making any such investment.

(d) The mortgage shall be or become, through the recordation of documents simultaneously filed for record, a first lien upon the property described therein prior to all other liens, except taxes previously levied or assessed but not due and payable at the time the mortgage is taken as an investment.

(e) The mortgage shall secure no indebtedness other than that owing to the executor, administrator, trustee, or guardian taking the same as an investment.

(f) The amount of the indebtedness secured by the mortgage shall not exceed 60 percent of the fair market value, as determined in accordance with the provisions of paragraph (b), of the property encumbered or to be encumbered by said mortgage.

(g) If the amount of the indebtedness secured by the mortgage is in excess of 50 percent of the fair market value, as determined in accordance with the provisions of paragraph (b), of the property encumbered or to be encumbered by said mortgage, then the mortgage shall require principal payments, at annual or more frequent intervals, sufficient to reduce by or before the expiration of 3 years from the date the mortgage is taken as an investment, the unpaid principal balance secured thereby to an amount not in excess of 50 percent of the fair market value of said property, as determined in accordance with the provisions of paragraph (b).

(h) The mortgage shall contain a covenant of the mortgagor to keep insured at all times the improvements on the real estate encumbered by said mortgage, with loss payable to the mortgagee, against loss and damage by fire, in an amount not less than the unpaid principal secured by said mortgage.

(i) Provided, however, that the foregoing limitations and requirements shall not apply to notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, and that notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator are declared to be eligible for investment under the provisions of this chapter.

(10) LIFE INSURANCE.—Annuity or endowment contracts with any life insurance company which is qualified to do business in the state under the laws thereof.

(11) SAVINGS AND LOAN ASSOCIATIONS.—In savings share or investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in this state, and in the shares of any Florida building and loan association which is a member of the Federal Home Loan Bank System.

(12) SAVINGS ACCOUNTS, CERTIFICATES OF DEPOSIT; STATE AND NATIONAL BANKS.—In savings accounts and certificates of deposit in any bank chartered under the laws of the United States and doing business in this state, and in savings accounts and certificates of deposit in any bank chartered under the laws of this state.

(13) SAVINGS SHARE ACCOUNTS, CREDIT UNIONS.—In savings share accounts of any credit union chartered under the laws of the United States and doing business in this state, and savings share accounts of any credit union chartered under the laws of this state, provided the credit union is insured under the federal share insurance program or an approved state share insurance program.

In determining the qualification of investments under the requirements of this section, published statements of corporations or statements of reliable companies engaged in the business of furnishing statistical information on bonds may be used.

History.—s. 1, ch. 17949, 1937; CGL 1940 Supp. 7100(9); s. 1, ch. 28154, 1953; s. 1, ch. 63-111; s. 1, ch. 73-41; s. 2, ch. 74-92.

cf.—s. 625.313 Securities of certain federal agencies.

518.06 Investment of fiduciary funds in loans insured by Federal Housing Administrator.—Banks, savings banks, trust companies, building and loan associations, insurance companies, and guardians holding funds received from or currently in receipt of funds from the Veterans' Administration to the extent of those funds alone, may:

(1) Make such loans and advances of credit, and purchases of obligations representing loans and advances of credit, as are insured by the Federal Housing Administrator, and obtain such insurance;

(2) Make such loans secured by real property or leasehold as the Federal Housing Administrator insures or makes a commitment to insure, and obtain such insurance.

History.—s. 1, ch. 17130, 1935; CGL 1936 Supp. 7100(1); s. 1, ch. 17980, 1937; s. 2, ch. 28154, 1953.

518.07 Investment of fiduciary funds in bonds, etc., issued by Federal Housing Administrator.—

(1) Banks, savings banks, trust companies, building and loan associations, insurance companies, guardians holding funds received from or currently in receipt of funds from the Veterans' Administration to the extent of those funds alone, the state and its political subdivisions, all institutions and agencies thereof, with the approval of the officials or boards having supervision or management of same, may invest their funds and moneys in their custody or possession, eligible for investment, in notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, in debentures issued by the Federal Housing Administrator, and in securities issued by national mortgage associations.

(2) Such notes, bonds, debentures, and securities made eligible for investment may be used wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or departments, or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities.

History.—s. 2, ch. 17130, 1935; CGL 1936 Supp. 7100(2); s. 2, ch. 17980, 1937; s. 3, ch. 28154, 1953.

518.08 Applicability of laws requiring security, etc.—No law of this state requiring security upon which loans or investments may be made, prescribing the nature, amount, or form of such security, prescribing or limiting interest rates upon loans or investments, limiting investments of capital or deposits, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to ss. 518.06 and 518.07.

History.—s. 3, ch. 17130, 1935; CGL 1936 Supp. 7100(3).

518.09 Housing bonds legal investments and security.—The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, all insurance companies, insurance associations, and other persons carrying on an insurance business, and guardians holding funds received from

or currently in receipt of funds from the Veterans Administration to the extent of those funds alone may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law of this state (chapter 421), or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this section to authorize any person, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any bonds or other obligations; provided, however, that nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

History.—ss. 1-3, ch. 19512, 1939; CGL 1940 Supp. 7100(3nn); s. 4, ch. 28154, 1953.

cf.—s. 18.11 Security to be given.

518.10 Fiduciary defined as used in ss. 518.11-518.14.—For the purpose of ss. 518.11-518.14, a "fiduciary" is defined as an executor, administrator, trustee, guardian (except any guardian holding funds received from or currently in receipt of funds from the Veterans' Administration, to the extent of those funds alone), or other person, whether individual or corporate, who by reason of a written agreement, will, court order, or other instrument has the responsibility for the acquisition, investment, reinvestment, exchange, retention, sale, or management of money or property of another.

History.—s. 5, ch. 28154, 1953.

518.11 Investments by fiduciaries; prudent man rule.—In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, executors, administrators, trustees, and other fiduciaries shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

History.—s. 6, ch. 28154, 1953.

518.115 Power of fiduciary or custodian to deposit securities in a central depository.—

(1)(a) Notwithstanding any other provision of law, any fiduciary, as defined in s. 518.10, holding securities, as defined in s. 678.102(1), in its fiduciary capacity, and any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in s. 678.102(3). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination.

(b) A bank or a trust company so depositing securities with a clearing corporation shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the Department of Banking and Finance and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

(c) Notwithstanding any other provisions of law, ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said clearing corporation without physical delivery of any securities. The records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on June 18, 1974, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History.—s. 1, ch. 74-224.

518.116 Power of certain fiduciaries and custodians to deposit United States Government and agency securities with a Federal Reserve bank.—

(1)(a) Notwithstanding any other provision of law, any fiduciary, as defined in s. 518.10, which is a bank or trust company holding securities in its fiduciary capacity, and any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, is authorized to deposit or arrange for the deposit with the Federal Reserve Bank in its district of any securities, the principal and interest of which the United States Government or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of said Federal Reserve Bank in the name of such bank or trust company to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited.

(b) A bank or trust company so depositing securities with a Federal Reserve Bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposits as, in the case of state-chartered institutions, the Department of Banking and Finance and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. The records of such bank or trust company shall at all times show the ownership of the securities held in such account.

(c) Notwithstanding any other provision of law, ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said Federal Reserve Bank without physical delivery of any securities. The records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. A bank or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such Federal Reserve Bank for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such Federal Reserve bank for its account as such fiduciary.

(2) This section shall apply to any fiduciary and to any bank or trust company holding securities as custodian, managing agent, or custodian for a fiduciary, acting on June 18, 1974, or who thereafter may act regardless of the date of the instrument or court order by which it is appointed.

History.—s. 2, ch. 74-224; s. 1, ch. 77-174.

518.12 Instrument creating or defining powers, duties of fiduciary not affected.—Nothing contained in ss. 518.10-518.14 shall be construed as conferring a power of sale upon any fiduciary not possessing such power or as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of s. 518.11.

History.—s. 7, ch. 28154, 1953; s. 1, ch. 57-120.

518.13 Authority of court to permit deviation from terms of instrument creating trust not affected.—Nothing contained in ss. 518.10-518.14 shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property.

History.—s. 8, ch. 28154, 1953.

518.14 Scope of ss. 518.10-518.13.—The provisions of ss. 518.10-518.13 shall govern fiduciaries acting under wills, agreements, court orders, and other instruments now existing or hereafter made.

History.—s. 9, ch. 28154, 1953.

518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in bonds or motor vehicle anticipation certificates issued under authority of s. 18, Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 revised constitution, and the additional provisions of s. 9(d), and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 18.10, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or anticipation certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

History.—s. 1, ch. 27990, 1953; s. 31, ch. 69-216.

518.151 Higher education bonds or certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally in-

vest any sinking funds, moneys or other funds belonging to them or within their control in higher education bonds or certificates issued under authority of s. 19, Art. XII of the State Constitution of 1885 or of s. 9(a), Art. XII of the constitution as revised in 1968, as amended, and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 18.10, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

History.—s. 1, ch. 65-443; s. 140, ch. 71-355.

518.152 Puerto Rican bonds or obligations, legal investments and securities.—Notwithstanding any restrictions on investments contained in any law of this state, all public officers and public bodies of the state, counties, municipal corporations, and other political subdivisions; all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; all persons holding in trust any pension, health and welfare, and vacation funds; all administrators, executors, guardians, trustees, and other fiduciaries of any public, quasi-public, or private fund or estate; and all other persons authorized to invest in bonds or other obligations may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in bonds or other obligations issued by the Commonwealth of Puerto Rico, its agencies, authorities, instrumentalities, municipalities, or political subdivisions, provided such agency, authority, instrumentality, municipality, or political subdivision has not, within 5 years prior to the making of such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of its bonded indebtedness. Such bonds or obligations shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 18.10, it being the purpose of this section to authorize any person, firm, corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or obligations up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds. However, nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

History.—s. 1, ch. 72-136.

518.16 Chapter cumulative.—This chapter shall be cumulative to any other law providing for investments and security for public deposits.

History.—s. 2, ch. 27990, 1953; s. 11, ch. 28154, 1953.

CHAPTER 520

RETAIL INSTALLMENT SALES

PART I MOTOR VEHICLES SALES FINANCE (ss. 520.01-520.13)

PART II RETAIL INSTALLMENT SALES (ss. 520.30-520.42)

PART III INSTALLMENT SALES FINANCE (ss. 520.50-520.57)

PART IV HOME IMPROVEMENT SALES AND FINANCE (ss. 520.60-520.992)

PART I

MOTOR VEHICLES SALES FINANCE

[1]**520.01 Motor Vehicles Sales Finance Act.**—Sections 520.01-520.10, 520.12, 520.13 may be cited as "The Motor Vehicle Sales Finance Act."

History.—s. 14, ch. 57-799; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.02 Definitions.**—In this act unless the context or subject matter otherwise requires:

(1) "Motor vehicle" means any device or vehicle, including automobiles, motorcycles, motor trucks, trailers, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but does not include traction engines, road rollers, implements of husbandry and other agricultural equipment and such vehicles as run only upon a track.

(2) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller not principally for the purpose of resale, and who executes a retail installment contract in connection therewith or a person who succeeds to the rights and obligations of such person.

(3) "Retail installment seller" or "seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

(4) "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a deferred payment price payable in one or more deferred installments.

(5) "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

(6) "Cash price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash price shall include any taxes, charges for accessories and their installation and for delivery, servicing, repairing, or improving the motor vehicle.

(7) "Official fees" mean fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction, or the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges which would otherwise be payable to public officials.

(8) Except as otherwise provided in this part, "finance charge" shall mean the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. Charges or premiums for credit life, accident, or health insurance, written in connection with any retail installment transaction shall be included in the finance charge unless the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit; and, in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended gives specific affirmative written indication of his desire to do so after written disclo-

sure to him of the cost thereof. However, if such insurance coverage is a factor in the approval by the seller of the extension of credit, a charge may be made for the insurance which shall be included in the finance charge for the purposes of disclosure and advertising, but shall be excluded from the finance charge for the purpose of determining maximum permitted charges. Charges on premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained. If fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting or releasing or satisfying, any security related to the credit transaction; the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described above which would otherwise be payable; taxes; or any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Department of Banking and Finance by regulation are itemized and disclosed in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction.

(9) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, or industrial bank, if so engaged. The term does not include the pledge of an aggregate number of such contracts to secure a bona fide loan thereon.

(10) The "holder" of a retail installment contract means the retail seller of the motor vehicle under the contract or, if the contract is purchased by a sales finance company or another assignee, the sales finance company or other assignee.

(11) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(12) "Deferred payment price" means the cash price, all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, plus the finance charge.

(13) "Department" means the Department of Banking and Finance.

(14) Words in the singular include the plural and vice versa.

History.—s. 1, ch. 57-799; s. 1, ch. 59-456; s. 1, ch. 61-117; s. 1, ch. 63-101; ss. 12, 35, ch. 69-106; s. 1, ch. 69-370; s. 198, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.03 Licensing of sales finance companies required.—

(1) No person shall engage in the business of a retail installment seller or of a sales finance company in this state without a license therefor as provided in this act; provided, however, that no bank, trust company or industrial bank authorized to do business in this state shall be required to obtain a license under this act.

(2) The application for such license shall be in writing and in the form prescribed by the department. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and residence address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $50 for the principal place of business of each sales finance company, and the sum of $25 for the principal place of business of each retail installment seller of motor vehicles. A separate license fee of like amount shall be paid for each branch of the sales finance company and for each branch of a retail installment seller of motor vehicles maintained in this state; however, no additional license fee shall be required when more than one branch is located in the same county. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location on the license without charge.

(5) Upon the filing of such application, and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company or of a retail installment seller under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character.

History.—s. 2, ch. 57-799; s. 2, ch. 59-456; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 1, ch. 73-276; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 150, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.04 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

History.—s. 3, ch. 57-799; s. 3, ch. 59-456; s. 7, ch. 63-512; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.041 Books, accounts, records, etc.—

(1) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts and records of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the department designating therein the office at which such control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the department for at least 2 years after making the final entry therein.

(4) The department is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the department to determine compliance with the provisions of this act.

History.—s. 4, ch. 59-456; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.05 Investigations and complaints.—

(1) The department shall, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this act. For such purposes, it may examine the books, accounts, records and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of this act. The expenses of the department incurred in each such examination of a sales finance company licensed under this act shall be paid by such sales finance company so examined within 30 days after demand therefor by the department, and shall not exceed $50 per day or fraction thereof for each examiner. For examinations conducted outside the state, such company shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. Expense thus recovered shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department as a reimbursement to the annual appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than 30 man-days in any 1 year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed.

(2) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of such alleged violations and the department upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—s. 4, ch. 57-799; s. 5, ch. 59-456; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 2, ch. 73-276; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1. ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.06 Powers of department.—

(1) The department shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any matter over which it has jurisdiction, control or supervision pertaining to this act. The department shall have the power to administer oaths and affirmations to any person whose testimony is required.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the circuit court, for the witness to appear before the department and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the department may apply to any judge of the circuit

court for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. Refusal shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The department may issue and promulgate such rules and regulations as it may deem necessary in the administration of this act and not inconsistent with the provisions of this act.

History.—s. 5, ch. 57-799; ss. 12, 35, ch. 69-106; s. 490, ch. 71-136; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.07 Requirements and prohibitions as to retail installment contracts.—

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 6-point type. The contract shall contain:

1. A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

2. The following notice:

"Notice to the Buyer

a. Do not sign this contract before you read it or if it contains any blank spaces.

b. You are entitled to an exact copy of the contract you sign."

(c) The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Before the transaction is consummated, a copy of the retail installment contract, or a separate statement by which the disclosures required by this section are made and on which the buyer and seller are identified, shall be delivered to the buyer. Until the seller has delivered or mailed to the buyer a copy of the retail installment contract, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract, if contained in the contract, shall appear directly above or adjacent to the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification number or marks.

(2) The contract shall contain the following:

(a) The cash price of the motor vehicle;

(b) The amount of the buyer's down payment, itemized, and whether made in money or goods or partly in money and partly in goods. If the down payment is in money it must be listed as "cash down payment"; if in property, it must be listed as "trade-in"; and if both, the sum must be listed as "total down payment";

(c) The difference between paragraphs (a) and (b), referred to as "unpaid balance of cash price";

(d) The amounts, if any, included for insurance and other benefits, if not included in the finance charge, specifying the types of coverages and benefits;

(e) The amount of license, taxes and official fees, if any;

(f) The amount financed which is the sum of paragraphs (c), (d) and (e) of subsection (2);

(g) The amount of the finance charge with description of each amount included;

(h) The "total of payments," which is the sum of paragraphs (f) and (g), payable in installments by the buyer to the seller, the number of installments, the amount of each installment, and the due date or period thereof;

(i) The deferred payment price which is the sum of paragraphs (2) (a), (d), (e), and (g).

The above items need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated total of payments to be paid by the buyer.

(3) The amount, if any included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Department of Insurance. If dual interest insurance on the motor vehicle is purchased by the holder it shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. Nothing in this act shall impair or abrogate the right of a buyer as defined herein, to procure insurance from an agent and company of his own selection as provided by the insurance laws of this state; and nothing contained in this act shall modify, amend, alter or repeal any of the insurance laws of the state, including any such laws enacted by the 1957 Florida Legislature.

(4) If any insurance is canceled, or the premium adjusted, unearned insurance premium refunds received by the holder and any unearned finance charges thereon shall, at his option, be credited to the final maturing installments of the contract or paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder, or either of them. The finance charge on the original transaction shall be separately computed:

(a) With the premium for the canceled or adjusted insurance included in the "Amount Financed"; and

(b) With the premium for the canceled insurance

or the amount of the premium adjustment excluded from the "Amount Financed."

The difference in the finance charge resulting from these computations shall be the portion of the finance charge attributable to the canceled or adjusted insurance, and the unearned portion thereof shall be determined by the use of the rule of 78ths. "Cancellation of insurance" occurs at such time as the seller or holder receives from the insurance carrier the proper refund of unearned insurance premiums.

(5) The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5 percent of each installment or $5, whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorney's fees where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

(6) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of paragraph (1)(c), of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against the holder of the contract.

(7) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

History.—s. 6, ch. 57-799; s. 6, ch. 59-456; ss. 13, 35, ch. 69-106; s. 2, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-245; s. 1, ch. 77-457; s. 218, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.08 Finance charge limitation.—

(1) Notwithstanding the provisions of any other law, the finance charge, exclusive of insurance, shall not exceed the following rates:

[2](a) Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—$10 per $100 per year.

(b) Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made—$11 per $100 per year.

(c) Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than 4 years prior to the year in which the sale is made—$15 per $100 per year.

(d) Class 4. Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than 4 years prior to the year in which the sale is made—$17 per $100 per year.

(2) Such finance charge shall be computed on the amount financed as determined under s. 520.07(2) on contracts payable in successive monthly payments substantially equal in amount. Such finance charge may be computed on the basis of a full month for any fractional month period in excess of 10 days. A minimum finance charge of $25 may be charged on any retail installment transaction.

(3) When a retail installment contract provides for unequal or irregular installment payments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) having due regard for the schedule of payment.

(4) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

(5) The provisions of subsection (1) shall not apply to any retail installment contract for the purchase of a mobile home, titled as a motor vehicle, when such contract is entered into pursuant to a commitment to guarantee issued by the Veterans Administration or pursuant to a commitment to insure issued by the Federal Housing Administration.

History.—s. 7, ch. 57-799; s. 7, ch. 59-456; s. 3, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-312; s. 5, ch. 79-274.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—This paragraph as amended by ch. 79-274 applies "only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

[1]520.09 Credit upon anticipation of payments.—Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge after first deducting from such finance charge an acquisition cost of $25, as the sum of the monthly balances after the month in which prepayment is made, bears to the sum of all the monthly balances under the schedule of payments in the contract. Where the amount of credit is less than $1 no refund need be made.

History.—s. 8, ch. 57-799; s. 4, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]520.10 Refinancing retail installment contract.—The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or deferred payment or payments, or renew or restate the unpaid balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: In the event the unpaid balance of the contract is extended, deferred, renewed or restated, the holder may compute the refinance charge on such amount by adding to the unpaid balance the cost for insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges after deducting any refund which may be due the buyer at the time of the renewal or restatement by prepayment pursuant to s. 520.09, at the rate of the finance charge specified in s. 520.08(1) and by reclassifying the motor vehicle by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under s. 520.08(2) and acquisition costs under the refund schedule in s. 520.09 shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than 2 months, the holder may, at his election, charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under s. 520.09 as of the scheduled due date of the first deferred installment, and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made.

History.—s. 9, ch. 57-799; s. 8, ch. 59-456; s. 5, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.12 Penalties.—

(1) Any person who shall willfully and intentionally violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) A willful violation of ss. 520.03, 520.07 or 520.08 by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

History.—s. 11, ch. 57-799; s. 9, ch. 59-456; s. 491, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.13 Waiver.—Any waiver of the provisions of ss. 520.01-520.10, s. 520.12, or s. 520.13 shall be unenforceable and void.

History.—s. 12, ch. 57-799; s. 3, ch. 61-117; s. 36, ch. 69-353; s. 6, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 672.706 Seller's resale including contract for resale.
s. 679.505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

PART II

RETAIL INSTALLMENT SALES

[1]520.30 Short title.—This act may be cited as "The Retail Installment Sales Act."

History.—s. 1, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.31 Definitions.—Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(1) "Goods" means all personalty when purchased primarily for personal, family or household use, including certificates or coupons issued by a retail seller exchangeable for personalty or services, but not including other choses in action, personalty sold for commercial or industrial use, money, motor vehicles or construction, mining or quarrying equipment. The term "goods" includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof, whether or not severable therefrom.

(2) "Motor vehicle" means any device or vehicle operated over the public highways and streets of this state and propelled by other than muscular power, but does not include traction engines, road rollers, implements of husbandry and other agricultural equipment and such vehicles as run only upon a track.

(3) "Services" means work or labor furnished for personal, family or household use, whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement or construction upon or in connection with real property.

(4) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not principally for the purpose of resale.

(5) "Retail seller" or "seller" means a person regularly engaged in, and whose business consists to a substantial extent of, selling goods to a retail buyer.

(6) "Retail installment transaction" or "transaction" means a contract to sell or furnish or the sale of or the furnishing of goods or services by a retail seller to a retail buyer pursuant to a retail installment contract or a revolving account.

(7) "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(8) "Revolving account" or "account" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereafter from time to time pursuant thereto, under which the buyer's total unpaid balance thereunder, whenever incurred, is payable in installments over a period of time and under the terms of which a finance charge is to be computed in relation to the buyer's unpaid balance from time to time.

(9) "Cash price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if such sale had been a sale for cash. The cash price may include any applicable taxes and charges for delivery, installation, servicing, repairs, alterations, or improvements.

(10) "Official fees" mean fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing or satisfying, any security related to the credit transaction or the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges which would otherwise be payable to public officials.

(11) Except as otherwise provided in this part, finance charge shall mean the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. Charges or premiums for credit life, accident, or health insurance, written in connection with any retail installment transaction, shall be included in the finance charge unless the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit and, in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof. However, if such insurance coverage is a factor in the approval by the seller of the extension of credit, a charge may be made for the insurance which shall be included in the finance charge for the purposes of disclosure and advertising, but shall be excluded from the finance charge for the purpose of determining maximum permitted charges. Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained. If fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting or releasing or satisfying, any security related to the credit transaction; the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described above which would otherwise be payable; taxes; or any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Department of Banking and Finance by regulation, are itemized and disclosed in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction.

(12) "Department" means the Department of Banking and Finance.

History.—s. 2, ch. 59-414; s. 1, ch. 61-398; s. 1, ch. 63-547; ss. 12, 35, ch. 69-106; s. 7, ch. 69-370; s. 199, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.32 Retail installment; license and fee.—

(1) For the privilege of conducting, engaging in, and carrying on the business of retail seller engaging in retail installment transactions as defined in this act, there is hereby levied and assessed upon every such retail seller, for each store located and operated within this state for the conduct of such business, an annual license fee in the sum of $10.

(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

(3) The provisions of this section shall not be construed to require the obtaining of a license or pay-

ment of a fee by any retail seller whose retail installment transactions are limited to the honoring of credit cards issued by dealers in oil and petroleum products licensed to do business in this state.

History.—s. 3, ch. 59-414; s. 2, ch. 63-547; s. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-276; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-114; s. 151, ch. 79-164.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.331 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

History.—s. 3, ch. 63-547; ss. 12, 35, ch. 69-106; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.332 Power of department; rules and regulations.—The department may issue and promulgate such rules and regulations as it may deem necessary in the administration of this act and not inconsistent with the provisions of this act.

History.—s. 4, ch. 63-547; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.34 Retail installment contracts.—

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 6-point type. The contract shall contain the following notice:

"Notice to the Buyer

a. Do not sign this contract before you read it or if it contains any blank spaces.

b. You are entitled to an exact copy of the contract you sign."

(c) The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Before the transaction is consummated, a copy of the retail installment contract, or a separate statement by which the disclosures required by this section are made and on which the buyer and seller are identified, shall be delivered to the buyer, except as provided in s. 520.35. Any acknowledgment by the buyer of delivery of a copy of the contract, if contained in the contract, shall appear directly above or adjacent to the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods.

(2) The contract shall contain the following:

(a) The cash price of the goods;

(b) The amount of the buyer's down payment, and whether made in money or goods or partly in money and partly in goods. If the down payment is in money it must be listed as "cash down payment"; if in property, it must be listed as "trade-in"; and if both, the sum must be listed as "total down payment";

(c) The difference between paragraphs (a) and (b), referred to as "unpaid balance of cash price";

(d) The amount, if any, included for insurance and other benefits, if not included in the finance charge, specifying the types of coverages and benefits;

(e) The amount of license taxes and official fees, if any;

(f) The amount financed, which is the sum of paragraphs (c), (d), and (e) of this subsection;

(g) The amount of the finance charge;

(h) The "total of payments," which is the sum of paragraphs (f) and (g), payable in installments by the buyer to the seller, the number of installments, the amount of each installment, and the due date or period thereof;

(i) The deferred payment price which is the sum of paragraphs (2)(a), (d), (e), and (g).

The above items need not be stated in the sequence or order set forth and additional items may be included to explain the calculations involved in determining the stated total of payments to be paid by the buyer.

(3) The maximum number of payments and the amount and date of each payment need not be separately listed if the payments are stated in terms of a series of scheduled amounts and if the amount of the final payment does not exceed the scheduled amount of any preceding installment; in such case the amount of the scheduled final payment may be stated as the remaining unpaid balance. The initial date for the payment of the first installment may be a calendar date or may refer to the time of delivery or installation.

(4) A retail installment contract need not be contained in a single document. If the contract is contained in more than one document, then one such document may be an original document applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by subsections (1) and (2) and shall constitute the retail installment contract for each such purchase.

[2](5) Notwithstanding the provisions of any other law, the seller under a retail installment contract may charge, receive, and collect a finance charge which shall not exceed the following rates: On the amount financed, $12 per $100 per year. The finance charge under this subsection shall be computed on the amount financed of each transaction, as determined under paragraph (2)(f), on contracts payable in successive monthly payments substantially equal in amount, for the period from the date of the contract to and including the date when the final installment thereunder is payable. When a retail installment contract is payable other than in successive monthly payments substantially equal in amount, the finance charge may be at the effective rates provided in this subsection, having due regard for the schedule of payments. The finance charge may be computed on the basis of a full month for any fractional month period in excess of 10 days. Notwithstanding the other provisions of this subsection, a minimum finance charge not in excess of the following amounts may be charged on any retail installment contract: $12 on any retail installment contract involving an initial amount financed of $50 or more; $7.50 on a retail installment contract involving an initial amount financed of more than $25 and less than $50; and $5 on a retail installment contract involving an initial amount financed of $25 or less.

(6) No retail installment contract shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed, except that, if delivery of the goods or services is not made at the time of execution of the contract, the identification of the goods or services and the due date of the first installment may be left blank and later inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's written acknowledgment, conforming to the requirements of subsection (1)(c) of delivery of a copy of a contract shall be presumptive proof, in any action or proceeding, of such delivery and that the contract, when signed, did not contain any blank spaces as herein provided.

(7) The seller under any retail installment contract shall, within 30 days after execution of the contract, deliver or mail or cause to be delivered or mailed to the buyer at his aforesaid address any policy or policies of insurance the seller has agreed to purchase in connection therewith, or in lieu thereof a certificate or certificates of such insurance. The amount, if any, included for insurance shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Department of Insurance; if any such insurance is canceled, unearned insurance premium refunds and any unearned finance charges thereon received by the holder shall, at his option, be credited to the final maturing installments of the contract or paid to the buyer, except to the extent applied toward the payment for similar insurance protecting the interests of the seller and the holder or either of them. The finance charge on the original transaction shall be separately computed:

(a) With the premium for the canceled or adjusted insurance included in the "Amount Financed"; and

(b) With the premium for the canceled insurance or the amount of the premium adjustment excluded from the "Amount Financed."

The difference in the finance charge resulting from these computations shall be the portion of the finance charge attributable to the canceled or adjusted insurance, and the unearned portion thereof shall be determined by the use of the rule of 78ths. "Cancellation of insurance" occurs at such time as the seller or holder receives from the insurance carrier the proper refund of unearned insurance premiums. Nothing in this act shall impair or abrogate the right of a buyer to procure insurance from an agent and company of his own selection, as provided by the insurance laws of this state; and nothing contained in this act shall modify, alter or repeal any of the insurance laws of this state. The term "holder" as used in this act, means the retail seller unless seller has assigned the contract, in which case "holder" means the assignee of such contract at the time of the determination.

(8) If the buyer so requests, the holder shall give or forward to the buyer a receipt for any payment when made in cash. At any time after the execution of a contract, but not later than 2 months after the last payment thereunder, the holder shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding $1 for each additional statement so supplied.

(9) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods.

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full at any time before maturity the unpaid balance of any retail installment contract and in so paying such unpaid balance shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of $15, as the sum of the monthly balances beginning 1 month after prepayment is made bears to the sum of all the monthly balances under the schedule of

payments in the contract. When the amount of such refund credit is less than $1 no refund need be made.

(11) In a retail installment transaction involving the modernization, rehabilitation, repair, alteration, improvement, or construction of real property:

(a) The buyer may be charged for and there may be collected from him, the reasonable fees and costs actually to be paid for construction authorizations and similar permits issued by public agencies and for title search, title insurance, and services of an attorney relating to any real property mortgage, lien or other encumbrance taken, granted, or reserved pursuant to the contract.

(b) The seller shall not request or accept a certificate of completion signed by the buyer prior to the actual delivery of the goods and completion of the work to be performed under the contract.

History.—s. 5, ch. 59-414; s. 2, ch. 61-398; s. 5, ch. 63-547; ss. 13, 35, ch. 69-106; ss. 8, 9, ch. 69-370; s. 3, ch. 76-168; s. 2, ch. 77-245; s. 1, ch. 77-457; s. 6, ch. 79-274; s. 219, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—This subsection as amended by ch. 79-274 applies "only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

[1]520.35 Revolving accounts.—

(1) Every revolving account shall be in writing and shall be completed prior to the signing thereof by the retail buyer. The printed portion other than instructions for completion, of any revolving account executed on or after January 1, 1960, shall be in at least 6-point type. Any such account shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and substantially the following notice:

"Notice to the Buyer

a. Do not sign this before you read it or if it contains any blank spaces.

b. You are entitled to an exact copy of the paper you sign."

A copy of any such account executed on or after January 1, 1960, shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the account shall be in a size equal to at least 6-point type and, if contained in the account, shall appear directly above or adjacent to the buyer's signature. No account executed on or after January 1, 1960, shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this subsection, of delivery of a copy of an account, shall be presumptive proof, in any action or proceeding, of such delivery and that the account, when signed, did not contain any blank spaces as herein provided. All accounts executed on or after January 1, 1960, shall state the amount of, or the method of calculating, the finance charge to be charged and paid pursuant thereto or shall state that a finance charge not in excess of that permitted by this law will be charged and paid pursuant to such account.

(2) The retail seller under a revolving account shall promptly supply the retail buyer thereunder with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder, which shall recite the following:

(a) The unpaid balance under the account at the beginning and end of the period using the terms "previous balance" and "new balance";

(b) Unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise, the cash price, and the date of each purchase during the period;

(c) The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period, using the terms "payments" and "credits";

(d) The amount of the finance charge itemized, if any.

The items need not be stated in the sequence or order set forth above, and additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer.

(3) Notwithstanding the provisions of any other law, the seller under a revolving account may charge, receive, and collect, a finance charge which shall not exceed 15 cents per $10 per month, computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; however, if the amount of the finance charge so computed shall be less that $1 for any such month, a finance charge of $1 for any such month may be charged, received, and collected. If the regular period is other than such monthly period or if the unpaid amount is less than or greater than $5, the permitted finance charge shall be computed proportionately. Such finance charge may be computed for all unpaid balances within a range of not in excess of $10 on the basis of the median amount within such range, if as so computed such finance charge is applied to all unpaid balances within such range.

History.—s. 6, ch. 59-414; s. 10, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.351 Consolidated debts.—

(1) If debts arising from two or more retail installment sales other than sales pursuant to a revolving account are secured by more than one security interest, or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security instruments, to have been first applied to the payment of the debt arising from the sale first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to

the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

History.—s. 1, ch. 73-35; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.36 Mail order and telephone sales.**—Retail installment contracts negotiated and entered into by mail or telephone without personal solicitation by salesmen or other representatives of the seller, when a catalog of the seller or other printed solicitation of business which is distributed and made available generally to the public clearly sets forth the cash price and other terms of sales to be made through such medium, may be made as provided in this section. All of the provisions of this part relating to contracts shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in s. 520.34(1)(c), and if the contract when received by the seller contains any blank spaces, the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in s. 520.34(1)(c), the seller shall deliver to the buyer, not later than the date the first payment is due, a written statement of all disclosures required by this part. The seller shall be required to deliver a copy of the contract to the buyer at any time not later than when the first payment is due.

History.—s. 7, ch. 59-414; s. 11, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.37 Delinquency charges, attorney's fees and court costs.**—A retail installment contract may provide for payment by the buyer of a delinquency charge on each installment in default for a period not less than 10 days. Such charge may not exceed 5 percent of such installment or $5, whichever is less. A retail installment contract or a revolving account may provide for the payment of reasonable attorney's fees if referred for collection to an attorney not a salaried employee of the retail seller and for the payment of court costs.

History.—s. 8, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.38 Transfer of contracts.**—Any retail seller may assign, pledge, hypothecate, or otherwise transfer a retail installment contract or revolving account to any person, firm or corporation on such terms and conditions and for such price as may be mutually agreed upon. Filing of the assignment, notice to the buyer of the assignment, and any requirement that any person maintain dominion over the payments under the contract or account or over the goods if repossessed, shall not be necessary to the validity of a written assignment or transfer of a contract or account as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment, payment thereunder made by the buyer to the last known owner of the contract or account shall be binding on all subsequent owners thereof.

History.—s. 9, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.39 Violations.**—

(1) Any person who shall willfully and intentionally violate any provision of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) In case of a willful violation of this act with respect to any transaction, the retail buyer in such transaction may recover from the person committing such violation (or may set off or counterclaim in any action by such person) an amount equal to the finance charge and any delinquency charge and any attorney's fee and court costs charged and paid with respect to such transaction, but the retail seller may recover from the retail buyer an amount equal to the cash price of the goods or services in such transaction and the cost of any insurance purchased by the retail seller for the retail buyer in connection therewith.

(3) A willful violation of ss. 520.32, 520.34 or 520.35 by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

(4) Notwithstanding the provisions of this section, no person shall be subject to any penalty for any failure to comply with any provision of this act until the retail buyer or the department has notified such person in writing of such failure and unless within 30 days after such notice such failure is not corrected by such person.

History.—s. 10, ch. 59-414; s. 6, ch. 63-547; ss. 12, 35, ch. 69-106; s. 12, ch. 69-370; s. 492, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.40 Waiver.**—Any waiver by the retail buyer of any provisions of this act or of any remedies granted to the buyer by this act shall be unenforceable and void.

History.—s. 11, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.41 Prior contracts not affected.**—The provisions of this act shall not make unlawful contracts or accounts in effect prior to January 1, 1960.

History.—s. 13, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.42 Construction.**—Nothing in this act shall be construed to affect any transaction covered by chapters 516 and 519 and part I of this chapter, or

any transaction by any banking institution or state or federal savings and loan association.

History.—s. 14, ch. 59-414; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

PART III

INSTALLMENT SALES FINANCE

[1]520.50 Short title.—This act may be cited as "The Installment Sales Finance Act."

History.—s. 1, ch. 63-244; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.51 Definitions.—

(1) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, or industrial bank, if so engaged. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

(2) "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(3) "Goods" means all personalty when purchased primarily for personal, family or household use, including certificates or coupons issued by a retail seller exchangeable for personalty or services, but not including other choses in action, personalty sold for commercial or industrial use, money, motor vehicles or construction, mining or quarrying equipment. The term "goods" includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof, whether or not severable therefrom.

(4) "Services" means work or labor furnished for personal, family or household use, whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement or construction upon or in connection with real property.

(5) The "holder" of a retail installment contract means the retail seller of the goods or services under the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

(6) "Department" means the Department of Banking and Finance.

History.—s. 2, ch. 63-244; ss. 12, 35, ch. 69-106; s. 200, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.52 Licenses.—

(1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act. However, no bank, trust company, or industrial bank authorized to do business in this state, shall be required to obtain a license under this act. The application for such licenses shall be in writing and in the form prescribed by the department. The license fee for each calendar year or part thereof shall be the sum of $50 for the principal place of business of each sales finance company, and separate license fees of like amount shall be paid for each branch maintained in this state by such licensee.

(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

History.—s. 3, ch. 63-244; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 4, ch. 73-276; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 152, ch. 79-164.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.53 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act or of part II of chapter 520, relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if

such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

History.—s. 4, ch. 63-244; ss. 12, 35, ch. 69-106; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.54 Books, accounts, records, etc.—

(1) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of parts II and III of this chapter.

(2) A licensee operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the department designating therein the office at which such control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the department for at least 2 years after making the final entry therein.

(4) The department is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the department to determine compliance with the provisions of parts II and III of this chapter.

History.—s. 5, ch. 63-244; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.55 Investigations and complaints.—

(1) The department may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with parts II and III of this chapter. For such purposes, it may examine the books, accounts, records and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of parts II and III of this chapter. The expenses of the department incurred in each such examination of a sales finance company licensed under this act shall be paid by such finance company so examined within 30 days after demand therefor by the department, and shall not exceed $50 per day or fraction thereof for each examiner. For examinations conducted outside the state, such company shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. Expense thus recovered shall be deposited in the State Treasury as a reimbursement to the annual appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than 30 man days in any 1 year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed.

(2) Any retail buyer having reason to believe that part II or III of this chapter relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of such alleged violations and the department upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—s. 6, ch. 63-244; ss. 12, 35, ch. 69-106; s. 5, ch. 73-276; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.56 Powers of department.—

(1) The department shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any matter over which it has jurisdiction, control or supervision pertaining to this act. The department shall have the power to administer oaths and affirmations to any person whose testimony is required.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoenas duces tecum, out of the circuit court, for the witness to appear before the department and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the department may apply to any judge of the circuit court for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine, not exceeding $100 or by imprisonment in the county jail, or by both fine and imprisonment and to compel such witness to pay the costs of such proceeding to be taxed.

(4) The department may issue and promulgate such rules and regulations as it may deem necessary

in the administration of this act and not inconsistent with the provisions of this act.

History.—s. 7, ch. 63-244; ss. 12, 35, ch. 69-106; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.57 Penalties.—

(1) Any person who shall willfully and intentionally violate any provision of parts II and III of this chapter or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) A willful violation of this act or of part II, chapter 520, relating to retail installment contracts, by the seller or the holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

History.—s. 8, ch. 63-244; s. 493, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

PART IV

HOME IMPROVEMENT SALES AND FINANCE

[1]520.60 Short title.—This act may be known and cited as "The Home Improvement Sales and Finance Act."

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.61 Definitions.—As used in this act:

(1) "Department" means the Department of Banking and Finance.

(2) "Home improvement" means repair, replacement, remodeling, alteration, conversion, modernization, or improvement of, or addition to, any land or building which is to be used as a single-family residence or dwelling place when such construction is done pursuant to a home improvement contract and a security interest in the real property is retained. Home improvement does not include:

(a) The construction of a new home building or work done by a contractor in compliance with a guarantee of completion of a new building project, or

(b) The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials.

(3) "Home improvement contract" means a written agreement contained in one or more documents between a home improvement contractor and an owner for the performance of a home improvement and includes all labor, materials, and services to be furnished when all or part of the contract price is to be paid in installments to the home improvement contractor, home improvement salesman, or home improvement finance agency or their assignees over a period of time greater than 90 days.

(4) "Home improvement contractor" means any person other than a bona fide employee of the owner who participates in any manner in two or more home improvements, each of which was for consideration of $500 or more, in any calendar year and includes a salesman who is not an employee of any licensed home improvement contractor.

(5) "Home improvement salesman" means any person, including nonresidents, who sells goods or services pursuant to a home improvement contract in a representative capacity, except a partner, officer, or owner of a licensed home improvement contractor.

(6) "Home improvement finance agency" means any person who directly or indirectly purchases, acquires, solicits, or arranges for the acquisition of home improvement contracts or connected obligations by purchase, discount, pledge, or otherwise.

(7) "Debt consolidation" means any money ad-

vanced to an owner or his assignee in any connection with a home improvement contract.

(8) "Official fees" means the fees actually paid to the appropriate public officer for obtaining any permit; filing, recording, or releasing any judgment, mortgage, or other lien; or perfecting any security in connection with a home improvement contract.

(9) "Cash price" means the cash sales price for which the home improvement contractor would sell the goods and services which are the subject matter of a home improvement contract if the sale were for cash rather than an installment sale.

(10) "Down payment" means the amount paid in money and goods to the home improvement contractor and allowances given by the home improvement contractor to the buyer pursuant to a home improvement contract.

(11) "Finance charge," whether expressed as such or as credit service charge, service charge, time price differential, or the like, means that amount by which the time sale price exceeds the total of the cash price and the amounts, if any, included for insurance premiums and official fees.

(12) "Person" means an individual, partnership, association, business, corporation, banking institution, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized.

(13) "Principal amount financed" means the cash price of the goods and services which are the subject matter of the home improvement contract, minus the amount of the buyer's down payment, plus the amounts, if any, included for insurance and official fees.

(14) "Services" means labor furnished for home improvement.

(15) "Time sales price" means the sum of the principal amount financed and the finance charge.

(16) "Time balance" means the total of the cash price of the goods and services or services, the finance charge, the amounts, if any, included for insurance premiums and official fees, and the amount, if any, for debt consolidation.

(17) "Owner" means any homeowner, tenant, or any other person who orders, contracts for, or purchases the services of a home improvement contractor or the person entitled to the performance of the work of a home improvement contractor pursuant to a home improvement contract.

(18) "Goods" means all personal chattels which are furnished or used in home improvement.

(19) "Home improvement sale" or "sale" means the sale of goods and furnishing of services or the furnishing of services by a home improvement contractor to an owner pursuant to a home improvement contract.

(20) "Banking institution" means any bank, bank and trust company, trust company savings bank, private bank, or any national banking association organized and doing business under the provisions of any state or of the United States.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-149; s. 141, ch. 71-355; s. 201, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.62 Administration.—This act shall be administered by the Department of Banking and Finance which shall appoint a staff and issue regulations as necessary for administration of this act.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.63 Licensees.—

(1) No person shall engage in or transact any business as a home improvement financing company, a home improvement contractor, or home improvement salesman without first obtaining a license from the department, except that banking institutions, federal savings and loan associations, credit unions authorized to do business in this state, or licensees under chapter 494 shall not be required to obtain a license to engage in home improvement financing.

(2) Engaging in or transacting business by mail from within or without the state is within the scope of subsection (1).

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.64 Application for license.—

(1) Application for a license or renewal of a license shall be in writing, under oath, and shall be in the form prescribed by the department. The application shall state the name, residence, and business addresses of the applicant and, if the applicant is a copartnership or association, of every member of such copartnership or association and, if the applicant is a corporation, of each officer and director. It shall demonstrate the financial responsibility of the applicant and set forth any other information the department may require.

(2) No license to a salesman shall be issued unless the department receives written notice of appointment or employment signed by both the contractor and salesman, and only a natural person may be issued a salesman's license.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.65 Licenses, fees.—

(1) No license issued under this act shall be transferred or assigned.

(2) No licensee shall transact any business subject to this chapter under any other name or maintain an office at any other location than that designated in the license. The licensee shall notify the department 10 days prior to a change in name or location, and the department shall endorse the change of location or name on the license without charge.

(3) Every licensee shall notify the department within 10 days after a change of control in ownership or change of management.

(4) At the time of making the application, and annually upon renewal, each home improvement finance agency and home improvement contractor shall pay a license fee of $35 and each home improve-

ment salesman shall pay a license fee of $15.

(5) An additional license fee of $15 shall be paid by each home improvement contractor for each county other than the place of its office where it participates in any manner in home improvement contracts.

(6) An additional license fee of $15 shall be paid by each home improvement finance agency for every additional office it maintains.

(7) No abatement in the license fee shall be made if the license is issued for less than a year or if the license is surrendered or revoked prior to its expiration date.

(8) A license may be renewed upon application for license renewal and payment of the fee before expiration of the license, and authority to do business shall continue unless the license is revoked or not renewed. Each license or annual renewal thereof shall be conspicuously displayed at the licensee's place of business as designated in the license.

(9) All fees collected under this act shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 153, ch. 79-164.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.66 Issuance, refusal, renewal of licenses.—

(1) When a proper application is filed, within 60 days from the date the application is received, the department must issue or refuse to issue the appropriate license.

(2) A license may be refused an applicant for any reason for which a license may be revoked or not renewed.

(3) For the people's protection, the department shall not grant or continue a license if the department finds:

(a) The person or his management personnel has demonstrated lack of financial responsibility, unworthiness, dishonesty, or is otherwise not of good character.

(b) The home improvement business of the person has been marked by failure to perform contracts, by illegal manipulation of assets or accounts, or by fraud or bad faith.

(c) The person has violated the provisions of this act or has attempted to perform an act which violates this act.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-149; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.67 Form, duration of license.—The department shall prescribe the form of licenses. Licenses issued shall expire June 30 of each year.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-394; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.68 Persons not required to be licensed.— No contractor's or salesman's license shall be required under this act of any person when acting in any capacity or type of transaction set forth in this section:

(1) An individual who performs services for a home improvement contractor for wages or salary and who does not act in the capacity of salesman for the home improvement contractor.

(2) A plumber, electrician, architect, engineer, residential designer, or any other specialty contractor who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in such craft or profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant to such other law. The installation of central heating and air-conditioning systems by such a person shall be deemed within the scope of such person's craft or profession.

(3) A contractor who does not engage, in any manner, in two or more home improvements, each of which was for consideration of $500 or more, within a calendar year. This exemption does not apply if the work is divided and contracts for less than $500 are made for the purpose of evasion of this provision or otherwise.

(4) Any person engaged in the construction or erection of any building upon land owned by that person or in which such person has a substantial legal or equitable interest, which building the owner does not intend to occupy but intends to sell upon completion thereof or shortly thereafter.

(5) Any person licensed under chapters 527 and 478.

(6) Retail establishments, including employees thereof, which are licensed under part II, chapter 520, and which engage in home improvements as an incidental part of their business. However, such retail establishments and their employees shall be governed by all other provisions contained in this act.

History.—s. 1, ch. 69-44; s. 2, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.69 Scope of license authority; scope of act's provisions.—

(1) All persons engaged in the home improvement business as defined herein shall be required to obtain a license under this act as well as any other licenses required by law.

(2) No mortgage broker's license shall be required pursuant to chapter 494 of a person whose business is exclusively in home improvement contracts or related instruments.

(3) This act may not be construed to limit or restrict the power of a city or county to regulate the quality, performance, or character of work of contractors, including requiring submission to and approval by the city or county of plans and specifications for an installation before commencement of construction of the installation, inspection of work done, and regulation by a system of permits and inspections which are designed to secure compliance with, and aid in the enforcement of, applicable state

and local building laws, or enforcement of other laws necessary for the protection of the public health and safety.

(4) Nothing in this section may be construed to authorize a city or county to enact ordinances or regulations relating to the qualifications necessary to engage in the home improvement business.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.70 Salesman to act as agent of contractor.—

(1) No salesman may concurrently represent more than one home improvement contractor in the solicitation or negotiation of any home improvement contract from an owner. The use of a contract form which fails to disclose a named contractor principal, whether for the purpose of offering the contract to various home improvement contractors other than the one the salesman purported to represent in negotiation or otherwise, is prohibited. No salesman may be authorized to select a prime home improvement contractor on behalf of the owner.

(2) No salesman shall accept or pay any compensation on or for a home improvement transaction other than from or for the home improvement contractor whom he represents with respect to the transaction.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.71 Contract copy to owner.—Every home improvement contractor, home improvement salesman, and home improvement finance agency shall furnish without charge a completely executed copy of the home improvement contract to the owner immediately after the owner signs such home improvement contract, and any acknowledgment of receipt thereof by the owner shall be in 10-point boldface type or larger.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.72 Cancellation of contract.—Either party to a home improvement contract may cancel the contract within 72 hours of execution by giving written notice of cancellation by registered mail to the other party. The party invoking this section shall not be liable to the other for any damages incurred by cancellation under this section.

History.—s. 1, ch. 69-44; s. 1, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.73 Contract form.—

(1) Every home improvement contract shall be evidenced by a written agreement and shall be signed by the parties.

(2) The home improvement contract shall be in the form approved by the department and shall contain:

(a) The name, address, and license number of the home improvement contractor;

(b) The names and license numbers of the salesmen who solicited or negotiated the home improvement contract;

(c) The approximate dates when the work will begin and be completed;

(d) A description of the work to be done and the materials to be used;

(e) The agreed consideration for the home improvement;

(f) The amount, if any, for credit life insurance or for health or accident insurance;

(g) The amount, if any, for hazard insurance;

(h) The time price differential charges on all amounts save those provided for debt consolidation;

(i) The official fees, survey, or permit charges actually incurred;

(j) The amount of down payment, if any;

(k) The amount of any money provided for debt consolidation;

(l) The interest charge for the amount advanced for debt consolidation;

(m) The total amount due under the home improvement contract, which shall be stated as a sum in dollars, less any down payment;

(n) The number of monthly payments and the amount of each payment, stated as a sum in dollars which shall include all insurance charges, finance charges, and official fees; and

(o) The description of any collateral security taken or to be taken for the owner's obligation under the home improvement contract.

(3) The home improvement contract shall be completed in full without any blank spaces to be filled in after the home improvement contract is signed by the owner.

(4) The home improvement contract shall contain the following notice in ten point boldface type directly above the space provided for the signature of the owner:

"Notice To Owner

a. Do not sign this home improvement contract in blank.

b. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights."

(5) The home improvement contract shall state whether workers' compensation and public liability insurance are carried by the home improvement contractor and if they are applicable to the work to be performed under the contract or if the home improvement contractor is qualified as a self-insurer.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-149; s. 1, ch. 70-439; s. 142, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 77, ch. 79-40.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.74 Provisions expressly prohibited.—No home improvement contract shall contain any provision by which:

(1) The buyer agrees not to assert against a home improvement contractor a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense;

(2) In the absence of the buyer's default in the performance of any of his obligations, the holder may arbitrarily and without reasonable cause accel-

erate the maturity of any part or all of the amount owing thereunder;

(3) The buyer waives any right of action against the home improvement contractor or holder of the home improvement contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the home improvement contract;

(4) The buyer relieves the home improvement contractor from liability for any legal remedies which the buyer may have against the home improvement contractor under the contract or any separate instrument executed in connection therewith;

(5) The home improvement contractor or holder or any person acting on behalf of the home improvement contractor or holder is authorized to enter upon the premises of the buyer unlawfully;

(6) The seller is entitled to liquidated damages in an amount which exceeds 10 percent of the cash price stated in the contract in the event of the buyer's failure or refusal to accept delivery of the goods or performance of the services covered by the contract;

(7) The contract requires or entails the execution of any note or series of notes by the buyer which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the home improvement contractor;

(8) Any power of attorney to confess judgment or any power of attorney;

(9) Any assignment of or order for the payment of wages, salary, commissions, or other compensation for services, or any part thereof, earned or to be earned.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.75 Buyer's waiver of statutory protection.—No act, agreement, or statement of any buyer under a home improvement contract shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the buyer.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.76 Insurance provisions, procurement, rates.—

(1) The premium paid for any group credit life or other insurance shall be included in the home improvement contract.

(2) The home improvement contract shall state which party is to procure insurance.

(3) The amount, if any, included for such insurance shall not be in excess of rates established in the then current published applicable manual of a recognized standard insurance rating bureau or the rates fixed by the state. If any such group credit life or other insurance is canceled, the refund for unearned insurance premiums received or receivable by the holder of the home improvement contract or the excess of the amount included in the contract for insurance over the premiums paid or payable by the holder of the contract together with, in either case, the unearned portion of the time price differential or other interest applicable thereto shall be credited to the final maturing installments of the home improvement contract. However, no such credit need be made if the amount would be less than $1.

(4) If the insurance is to be procured by the home improvement contractor or holder, he shall, within 30 days after delivery of the goods and furnishing of the services under the home improvement contract, deliver or mail to the owner at his address as specified in the contract a copy of the policy or policies of insurance or a certificate or certificates of the insurance procured.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.78 Finance charge limitation.—

(1) The maximum time price differential included in a home improvement contract payable in substantially equal successive monthly installments beginning 1 month from the date the finance charge accrues shall not exceed $10 per $100 per annum. Such finance charge shall be computed on the principal amount financed on the contract notwithstanding that the time balance is required to be paid in installments. The finance charge shall not accrue over a longer period than one which commences on the date of substantial completion of the contract and ends on the date when the final installment is payable. For a period less or greater than 12 months or for amounts less or greater than $100, the amount of the maximum finance charge shall be increased or decreased proportionately. A fractional monthly period of 15 days or more may be considered a full month. If the finance charge computed as above provided is less than $25, a minimum finance charge of $25 may be made.

(2) When a contract is payable other than in substantially equal successive monthly installments, as when payable in irregular or unequal installments either in amount or periods or in regular installments followed by or interspersed with an irregular, unequal, or larger installment or installments or if the finance charge accrues from a date more than 1 month before the first installment is payable, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same yield as if the home improvement contract were payable in accordance with the standard payment terms stated in subsection (1).

(3) If amounts for debt consolidation are included in the home improvement contract, the time price differential charge shall be computed as in subsections (1) and (2), but the charge computed on the principal amount advanced for debt consolidation shall not exceed 10 percent simple interest or the rate for simple interest set in the general usury statute, chapter 687.

History.—s. 1, ch. 69-44; ss. 1, 2, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.79 Unauthorized charges.—

(1) All costs and charges in connection with home improvement contracts which are not authorized by this act shall be unenforceable. Any payment

of such costs or charges shall be applied to the next maturing installment or, if the contract has been fully paid, remitted to the owner, and the owner shall be entitled to recover all such costs or charges.

(2) No home improvement contractor or any other person shall charge, collect, or receive from any owner, directly or indirectly, any further or other amount for costs, charges, examination, appraisal service, commission, interest, discount, expense, fee, fine, penalty, mortgage brokerage fee, or other thing of value in connection with a home improvement contract other than the charges permitted by this chapter.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.80 Mortgages, promissory notes.—Every promissory note or mortgage shall bear on the side of the note or mortgage which contains the maker's signature the following legend in at least 10-point boldface type: "Payment of this note or mortgage is subject to the terms of a home improvement installment contract of even date between maker and payee or mortgagor and mortgagee." The contract may require execution of a promissory note or mortgage.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.81 Completion certificate.—

(1) Upon completion of the home improvement for which the owner and the home improvement contractor contracted, the contractor shall prepare a certificate which shall be signed by both parties.

(2) The form of the certificate shall be prescribed by the department.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.82 Statement of account.—Upon written request from the owner, the holder of the home improvement contract shall deliver to the owner within 10 days from receipt of the written request a statement of the owner's account showing the date and amount of all payments made or credited to the account and the total amount, if any, unpaid under the contract. Not more than two such statements shall be required in any 12-month period.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.83 Cancellation of contract on payment in full.—

(1) For all home improvement contracts pursuant to which there is a lien, mortgage, or encumbrance upon the goods or real property, upon payment in full by the owner of the time sales price and other amounts lawfully due under a home improvement contract, the holder shall:

(a) Return to the owner the original instruments evidencing indebtedness under a home improvement contract which were signed by the owner or his sureties or guarantors in connection with such contract, excepting such instruments as are filed with a public official and retained in the files of such official;

(b) Release all security interest in the goods and real property affected by the contract;

(c) Deliver to the owner such good and sufficient assignments, releases of liens and mortgages on personal and real property, and such other instruments of title as may be necessary to vest the owner with complete evidence of title.

(2) For all other home improvement contracts, the holder, upon payment in full by the owner of the time sales price and other amounts lawfully due under the home improvement contract, shall furnish the owner with such instruments as the department may by regulation provide.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.84 Credit to owner on prepayment.—Any buyer may pay in full at any time before maturity the debt of any home improvement contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the time price differential charge or other interest charge, after first deducting from such charge an acquisition cost of $25, as the sum of the monthly time balances after the month in which prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the home improvement contract. When the amount of credit is less than $1 no refund need be made.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.85 Delinquency and collection charges; court costs and attorney's fees.—A home improvement contract may provide for the payment by the owner of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5 percent of such installment or $5, whichever is less. However, only one such delinquency and collection charge may be collected on any installment, regardless of the period during which it remains in default. A contract may also provide for the payment of court costs actually incurred and of attorney's fees not exceeding 20 percent of the amount due and payable under such contract, if it is referred to an attorney not a salaried employee of the contractor or holder for collection.

History.—s. 1, ch. 69-44; s. 1, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.86 Extension or deferment.—

(1) The holder of a home improvement contract, upon agreement in writing with the owner, may extend the scheduled due date, or defer the scheduled payment, of all or of any part of any installment. All terms of the agreement shall be in writing.

(2) The holder may charge and contract for the payment of an extension or deferral charge by the owner and collect and receive the same, but such charge may not exceed an amount equal to 1 percent

per month simple interest on the amount of the installment or installments or part thereof extended or deferred during the period of extension or deferral. A minimum charge of $1 for the period of extension or deferral may be made in any case where the extension or deferral charge when computed amounts to less than $1.

(3) Such agreement may also provide for the payment by the owner of the additional cost to the holder of the contract of premiums for continuing in force until the end of such period of extension or deferral any insurance coverages provided for in the contract.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.87 Receipt for cash payment; payment to assignor.—Whenever payment is made in cash on account of any home improvement contract, the person receiving such payment shall, at the time of receiving such payment, furnish to the person making such payment a written receipt showing the date, identification of the account, and the amount paid. Unless notice has been given to the owner of an assignment of a home improvement contract, payment thereunder or tender thereof by the owner to the last known holder of such contract shall be binding upon any holder or assignee thereof.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.88 Assignments of contracts or notes.—

(1) No holder shall sell, transfer, or assign any obligation in connection with a home improvement contract or any evidence of indebtedness thereunder to any person who is not authorized as a home improvement financing agency.

(2) Notice of any assignment shall be sent to the owner immediately after the assignment is made.

(3) No promissory note or other evidence of indebtedness may be negotiated or otherwise transferred without simultaneous delivery of the related contract.

(4) No right of action or defense arising out of the transaction which gave rise to the home improvement contract which the buyer has against the home improvement contractor and which would be cut off by assignment shall be cut off by assignment of the contract to any third person, whether or not he acquired the contract in good faith and for value.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.89 Promotions, signs.—

(1) Any provision for a payment or credit to any owner for the privilege of placing any sign on the premises where the work is being done or for recommending to the home improvement contractor the names of any persons who might be interested in making a home improvement contract shall be by written agreement and signed by the owner and the home improvement contractor.

(2) The department shall prescribe the form of the agreement.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.90 Prohibited acts.—The following acts are prohibited:

(1) Abandonment or willful failure to perform, without justification, any home improvement contract or project engaged in or undertaken by a home improvement contractor or willful deviation from or disregard of plans or specifications in any material respect without the consent of the owner.

(2) Failure of a salesman to account for or to remit to his home improvement contractor any payment received in connection with a home improvement transaction.

(3) Making any substantial misrepresentation in the procurement of a home improvement contract or making any false promise of a character likely to influence, persuade, or induce.

(4) Any fraud in the execution or in the material alteration of any contract, mortgage, promissory note, or other document incident to a home improvement transaction.

(5) Preparing or accepting any mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction with knowledge that it recites a greater monetary obligation than the consideration for the home improvement work, which consideration may be a time sale price.

(6) Directly or indirectly publishing any advertisement relating to home improvements which contains an assertion, representation, or statement of fact which is false, deceptive, or misleading, provided that any advertisement which is subject to and complies with the then existing rules, regulations, or guides of the Federal Trade Commission shall not be deemed false, deceptive, or misleading; or by any means advertising or purporting to offer the general public any home improvement work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public.

(7) Willful or deliberate disregard and violation of the building laws of this state or of any political subdivision or of the safety, labor, or workers' compensation insurance laws of this state.

(8) Doing any home improvement business with or through any person who is subject to the licensing requirements of this act with the knowledge that such person is not licensed as required.

(9) Misrepresentation of a material fact by an applicant in obtaining a license.

(10) Willful failure to notify the department of any change of control in ownership, management, business name, location, or of appointment of salesman.

(11) Conducting a home improvement business in any name other than the one in which the home improvement contractor or salesman is licensed.

(12) Willful failure to comply with any order, demand, or requirement lawfully made by the department.

(13) Knowingly or without the exercise of due

care failing to comply with or violating any provision of this act.

(14) Willful failure to perform any written agreement with an owner.

(15) Willful misrepresentation or failure to disclose any matter which is required to be stated to or furnished to the owner.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 2, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 78, ch. 79-40.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.91 Uttering a false completion certificate.—Any person who accepts or receives a completion certificate or other evidence that performance of a home improvement contract is complete or satisfactorily concluded, with knowledge that such document is false and that the performance is not completed, and who utters, offers, or uses such document in connection with making or accepting any assignment or negotiation of the right to receive any payment from the owner, under or in connection with a home improvement contract or for the purpose of obtaining or granting any credit or loan on the security of the right to receive any payment, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-44; s. 494, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.92 Compensation of other than licensee prohibited.—No home improvement contractor shall pay, credit, or allow any consideration or compensation of any kind to any other home improvement contractor or salesman, other than a licensee, for or on account of the performance of home improvement work or services except when the person or transaction to or for whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this act. However, after termination or revocation of a license, the licensee shall not be relieved of outstanding obligations and shall complete and be paid upon contracts made but not performed at the date of the termination or revocation.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.93 Burden on home improvement contractor, salesman, finance agency for acceptance of completed papers.—No home improvement contractor, salesman, or home improvement finance agency shall accept or request a home improvement contract, a promissory note, or a mortgage which contains any blank spaces.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.94 Revocation of license.—If the department determines any licensee is guilty of a violation of the provisions of this act, his license may be revoked.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.95 Information requested by department.—

(1) The department or its agent may at any time require information of an applicant or licensee and may require the production of books of account, financial statements, or other records which relate to the home improvement activity or qualification or compliance with this act whether such information or records are supplementary or additional to the contents of license applications or otherwise.

(2) The department or its agent shall have power to issue subpoenas to compel production of information or material provided for in subsection (1).

(3) On failure to obey a subpoena, court process may be had as provided in s. 520.94(5).

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]520.96 Investigations and complaints.—

(1) The department or its agent may, at intermittent periods, make such investigations and examinations of any licensee or other person engaged in the home improvement business as defined herein as it deems necessary to determine compliance with this part. For such purposes it may examine the books, accounts, records, and other documents or matters of any licensee. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during any 12-month period unless the department has good and sufficient reason to believe the licensee is not complying with the provisions of this act.

(2) The expenses of the department incurred in each examination of a salesman or home improvement contractor shall be paid by the home improvement contractor. Expenses incurred for each examination of a home improvement finance agency shall be paid by it. The expenses shall be paid within 30 days after demand by the department and shall not exceed $50 per day or fraction thereof for each examiner. For examinations conducted outside the state, such agency or contractor shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. The licensee shall not be required to pay a per diem fee and expenses of an examination which consumes more than 30 man days in any one year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed. Expense recovered under this subsection shall be deposited in the State Treasury as a reimbursement to the annual appropriation for expenses incurred in enforcing this act.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-149; s. 1, ch. 70-439; s. 6, ch. 73-276; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]**520.97 Records of all transactions.**—Every home improvement contractor and home improvement financing agency shall maintain, separate from any other documents, at its main office within the state, books, accounts, and records relating to all transactions under this act. Every home improvement contractor shall retain said documents for no less than 2 years after completion of the work, and every home improvement financing agency shall retain said documents for no less than 2 years after final entry.

History.—s. 1, ch. 69-44; s. 1, ch. 70-149; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.98 Penalty for doing business without a license.**—Any person who engages in the home improvement business as a salesman or contractor or home improvement finance agency without obtaining a license as required by this act, and any person who continues in business as a salesman or home improvement contractor or home improvement finance agency after revocation of his license, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-44; s. 495, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.99 General penalty.**—Any person who violates a provision of this act, in addition to any administrative penalty applicable, is guilty of a misdemeanor, unless a greater penalty is otherwise imposed, and upon conviction shall be punished by a fine not to exceed $500 or imprisonment not to exceed 6 months. Violation of any order, decree, or injunction issued pursuant to the provision of this act shall constitute prima facie proof of a violation of this section.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.991 Appropriation from general revenue fund prohibited.**—Provided, however, there shall be no funds hereafter appropriated, directly or indirectly, from the general revenue fund of the state, which would accrue to or inure for the benefit of any provision of this act.

History.—s. 2, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**520.992 Specific exemption.**—The provisions of ss. 520.60-520.99 shall not apply to home improvement loans made by building and loan associations, savings and loan associations or banks, nor to home improvement contracts purchased or otherwise acquired or held by any of them.

History.—s. 3, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 522

COMMISSION MERCHANTS

522.01 Fruit or produce brokers to make return of account sales.—Any person doing in this state the business of fruit or produce broker or commission merchant, receiving pineapples in car lots or less, grown in this state for shipment or consignment, shall make return of all account sales showing the cost and expenses charged against the returns, together with the name and address of the purchaser, within 10 days of the sale.

History.—s. 1, ch. 6235, 1911; RGS 4938; CGL 7025.

cf.—s. 1.01 "Person" defined.
s. 522.05 Penalty for failure of commission merchant to make returns.

522.02 "Produce or fruit broker" defined.—Any person maintaining an office or soliciting personally or by agent such business in this state shall be presumed to be doing business in this state.

History.—s. 2, ch. 6235, 1911; RGS 4939; CGL 7026.

522.03 Liability of broker for loss by reason of delayed account sales; measure of damages.—Any person doing the business of fruit or produce broker or commission merchant, receiving pineapples in carlots or less, grown in this state for shipment or consignment, and who has not returned an account sales showing the cost and expenses charged against the returns, also the name and address of the purchaser, within 10 days of the sale, shall be liable in damages for any loss by reason of delayed account sales. The loss a shipper or consignor may sustain on cars of pineapples consigned to the said person over what he could have obtained in other markets or by other agencies shall be considered a proximate damage from the delayed account sales. The measure of damages shall be the difference between the prevailing price in the general market at time of receipt by consignee and the price received for such cars or less, of pineapples consigned to said broker or commission merchant between the time the account sales were due and the time received.

History.—s. 4, ch. 6235, 1911; RGS 4940; CGL 7027.

522.04 Liability of broker in case of failure to return account sales.—In any suit for accounting against any person, doing the business of fruit or produce broker or commission merchant receiving pineapples in carlots or less, grown in this state for shipment or consignment, and who has not returned an account sales showing the cost and expenses charged against the returns, with the name and address of the purchaser, within 10 days of the sale, such person shall be held accountable to the shipper or consignee of said carlots, or less, of fruit for the full market price at the time of the receipt by such person of the said shipment or consignment.

History.—s. 5, ch. 6235, 1911; RGS 4941; CGL 7028.

522.05 Penalty for failure of commission merchant to make returns.—Any person, or agent or servant of such person failing to comply with the provisions of s. 522.01 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 3, ch. 6235, 1911; RGS 5666; CGL 7869; s. 496, ch. 71-136.

522.06 Produce commission merchant to furnish shipper duplicate sales account; shipper to have access to certain records; proviso.—All persons engaged in the business of selling any produce or other article on commission in this state shall, if the produce or other thing of value be shipped to them by any person from any place in the state, when the same is sold by them, issue in duplicate a sales account which shall prescribe the kind, quantity, quality and price received for the produce or article sold, and with check shall cause same to be delivered by mail or otherwise, within 7 days of such sale, to the party furnishing the produce or article for sale, and should such sale be unsatisfactory to the party furnishing said produce or article for sale, then at his request the commission house shall furnish to him, within 5 days, the name or names, and residences of the purchaser of said produce or article; he shall also have access to the original sales papers and books showing the name and address of the purchaser of the produce or article, to the commission house selling said produce or article, and every reasonable assistance extended to him to his satisfaction in the matter; provided, that the provisions of this section shall not apply to any consignment, or part thereof, sold at retail or in less quantity than original packages, nor to produce consigned to retail merchants, nor to lumber or naval stores.

History.—ss. 1, 2, ch. 6921, 1915; RGS 4942; CGL 7029; s. 195, ch. 77-104.

522.07 Violation of regulations as to sale of produce on commissions.—Any person violating any of the provisions of s. 522.06 shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding $500, or sentenced to the county jail for a period of not longer than 6 months.

History.—s. 3, ch. 6921, 1915; RGS 5667; CGL 7870.

CHAPTER 523

NAVAL STORES

523.01 Definitions.—When used in this chapter:

(1) "Naval stores" means spirits of turpentine and rosin.

(2) "Spirits of turpentine" includes gum spirits of turpentine and wood turpentine.

(3) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living pine tree.

(4) "Wood turpentine" includes steam-distilled wood turpentine, destructively distilled wood turpentine and sulphate wood turpentine.

(5) "Steam-distilled wood turpentine" means wood turpentine distilled with steam from the oleoresin within or extracted from the wood.

(6) "Destructively distilled wood turpentine" means wood turpentine obtained in the destructive distillation of the wood.

(7) "Sulphate wood turpentine" means wood turpentine obtained from the condensates that are recovered in the sulphate process of cooking woodpulp.

(8) "Adulterated spirits of turpentine" means the substance that is produced by mixing with or adding to spirits of turpentine any foreign substance which affects its weight, specific gravity, or purity.

(9) "Adulterated gum spirits of turpentine" means gum spirits of turpentine that has been adulterated or mixed in any proportion with any other foreign substance or adulterants whatever, or with wood turpentine.

(10) "Adulterated wood turpentine" means wood turpentine that has been adulterated or mixed in any proportion with any other foreign substance or adulterants whatever.

(11) "Rosin" includes gum rosin and wood rosin.

(12) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

(13) "Wood rosin" means rosin remaining after the distillation of steam-distilled wood turpentine.

(14) "Barrel" means any container of naval stores and includes package, drum, tank, tank car or other receptacle.

(15) "Person" includes partnerships, associations and corporations as well as individuals.

History.—s. 1, ch. 20935, 1941.

523.02 Label required; contents.—Every person who shall hereafter produce or manufacture for sale or shipment, or for other than his own use or consumption, any spirits of turpentine or rosin in the state, shall plainly and conspicuously mark or write on the outside of the barrel containing the same the true nature of the contents of such barrel, in such manner as to indicate whether the same contains gum spirits of turpentine, wood turpentine, adulterated gum spirits of turpentine, adulterated wood turpentine, gum rosin or wood rosin, as defined by the provisions of this chapter. It shall be unlawful for any person to manufacture or produce any gum spirits of turpentine, or wood turpentine, whether pure or adulterated, or any gum rosin or wood rosin for sale, consignment or shipment, or to sell, ship, consign or in any manner dispose of the same, without plainly marking or writing in the manner aforesaid, upon the outside of the barrel containing the same, the words "gum spirits of turpentine," or "wood turpentine," or "adulterated gum spirits of turpentine," or "adulterated wood turpentine," or "gum rosin," or "wood rosin," as the case may be; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 20935, 1941; s. 497, ch. 71-136.

523.03 Adulterated products; penalty for improper label, etc.—Any person who shall knowingly aid or assist in manufacture or sale, consignment or shipment, of adulterated gum spirits of turpentine or adulterated wood turpentine, which shall be placed or contained in a barrel not marked in the manner provided by law to indicate the character of its contents, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 20935, 1941; s. 498, ch. 71-136.

523.04 Adulterated products; penalty for improper shipping, sale, etc.—It shall be unlawful for any person knowingly to ship, consign, sell, or offer for sale as gum spirits of turpentine, any wood turpentine or adulterated gum spirits of turpentine, or to ship, consign, sell or offer for sale, as wood turpentine, any adulterated wood turpentine, or to ship, consign, sell or offer for sale as gum rosin any wood rosin; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 20935, 1941; s. 499, ch. 71-136.

523.05 Adulterated products; penalty for improper receiving, sale, etc.—Any person who shall knowingly purchase or receive, or offer for sale, or sell, any gum spirits of turpentine or wood turpentine, or gum rosin or wood rosin, which has not been marked, branded or stamped in accordance with the provisions of this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 20935, 1941; s. 500, ch. 71-136.

523.06 Adulterated products; penalty for improper advertising, etc.—Every person hereafter advertising or procuring to be advertised, in this state, any quantity of spirits of turpentine for sale shall plainly specify in such advertisement, in letters of equal size and prominence with the word "turpentine" which of the kinds of turpentine therein enumerated, i.e., whether gum spirits of turpentine or wood turpentine, is so advertised; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 20935, 1941; s. 501, ch. 71-136.

523.07 Adulteration of rosin, wood rosin; etc.—It shall be unlawful for any person to pack with rosin any foreign substance, or to pack with gum rosin any wood rosin, and it shall be unlawful for any person to knowingly sell or offer for sale any rosin containing any other substance than pure rosin, or to pack rosin in such manner that the sample withdrawn from the package in the usual manner, will fail to disclose the true grade and condition of the contents of the package. Anyone violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 20935, 1941; s. 502, ch. 71-136.

523.08 Naval stores inspectors; prerequisites to appointment.—The Governor may appoint a supervising inspector of naval stores, one or more inspectors of naval stores at large, and may appoint in each port in this state to which naval stores are, or may be consigned for sale or shipment, a sufficient number of competent inspectors for the business at such port. The supervising inspector, inspector of naval stores at large and inspectors of naval stores, shall be subject to removal by the Governor at any time for cause; and he shall have power at any time to fill vacancies in said offices. A person in order to be eligible to appointment to any of said offices must be a citizen of the state, must be skilled in the inspection of and familiar with the grades of naval stores, and competent to detect adulterations thereof. No person shall be appointed an inspector, inspector at large or supervising inspector of naval stores who, at the time of his appointment, is a producer or factor, or buyer of, or dealer in naval stores, or employed by or connected in business with any producer, factor, buyer or dealer; and it shall be unlawful and a cause for removal from office for any inspector, inspector at large or supervising inspector of naval stores, during his term of office, to become a producer, factor, buyer of or dealer in naval stores, or to be employed by or connected in business with any such producer, factor, buyer or dealer.

History.—s. 8, ch. 20935, 1941.

523.09 Supervising inspector; powers and duties.—The supervising inspector of naval stores of the state shall have general supervision and direction of all inspectors of naval stores appointed under the provisions of this chapter, including the inspectors of naval stores at large, and it shall be his duty to see that they fairly and honestly perform all the duties imposed upon them and in the manner prescribed by this chapter, or otherwise provided by law, and to report to the Governor any delinquencies or irregularity of any such inspector, and shall have power to suspend any inspector for falsely grading or branding spirits of turpentine or rosin, and for failure or neglect to perform the duties imposed on him by the provisions of this chapter, and to investigate complaints made by producers or others, or the conduct of any such inspector in the discharge by him of the duties of his office. The supervising inspector of naval stores shall also have supervision of all naval stores plants, yards, warehouses and other places where naval stores are kept or stored, and it shall be his duty to see that no adulteration of naval stores is permitted in this state, and to collect evidence of any adulteration which may come to his knowledge or be reported to him whenever the same may occur in this state; and to prosecute, or cause to be prosecuted, all persons violating the laws of this state in regard to the inspection, marking, branding or adulteration of naval stores. Said supervising inspector shall also perform such other duties as may be conferred upon him by law, but he shall not perform the duties of an inspector except when necessary to determine the correctness of any inspection made by an inspector. The supervising inspector of naval stores shall visit every yard where naval stores are stored for sale in the state at least twice each year, and shall thoroughly inspect said yards and examine the books and records of the local inspectors.

History.—s. 8, ch. 20935, 1941.

523.10 Inspectors; powers and duties.—The inspectors of naval stores shall have power to make inspections of naval stores at the respective ports for which they are appointed, but the inspector of naval stores at large shall have the power to make inspections at any point in the state. The compensation of the inspector of naval stores at large shall be the same for the like service as that hereinafter provided for inspectors of naval stores at ports. The supervisor

of naval stores inspectors shall have his office in the port of this state receiving the largest amount of naval stores for sale or shipment.

History.—s. 8, ch. 20935, 1941.
cf.—s. 523.18 Compensation of naval stores inspectors.
s. 523.22 Disposition of fees.

523.11 Bond of inspector and supervisor.—(1) The supervising inspector of naval stores shall give bond in the sum of $2,000 with a surety company qualified to do business in the state as surety, conditioned for the faithful discharge of all the duties of his office, and the said bond, before being accepted, shall be approved by the Department of Banking and Finance of the state and filed in the office of the Department of State.

(2) Before any inspector of naval stores at large or any inspector of naval stores shall be commissioned, he shall qualify and give bond to the state in the sum of $2,000, with a surety company qualified to do business in this state as surety, conditioned on the faithful discharge by him of the duties of his office, which bond shall be approved in like manner as is provided by general law for the approval of bonds of county officers.

History.—s. 9, ch. 20935, 1941; ss. 10, 12, 35, ch. 69-106.
cf.—s. 113.07 Bonds of officials.
s. 523.22 Disposition of fees.

523.12 Inspectors; recommendations for appointment required.—No person shall be appointed an inspector of naval stores or inspector of naval stores at large under this chapter who has not been recommended to the Governor in writing for the appointment by the supervising inspector of naval stores and at least two naval stores dealers doing business in this state.

History.—s. 10, ch. 20935, 1941.

523.13 Supervisor; inspection fees and compensation.—The supervising inspector of naval stores shall receive as compensation for his services one-half cent for each drum or barrel of rosin of approximately 500 pounds each, and for each 50 gallons of spirits of turpentine which may be inspected by inspectors appointed under the laws of this state, upon notice given as provided in s. 523.15, and liability for said fee shall be divided equally between the buyer and seller of such naval stores. In case of naval stores shipped in packages or receptacles other than barrels, his compensation shall be reckoned upon a basis of barrels or fractions thereof in the same manner as is provided for the payment of fees of inspectors under like conditions. The supervising inspector of naval stores shall have the right to recover from any person or corporation liable therefor the fees allowed him under this chapter in an action of assumpsit, or any other appropriate proceedings in any of the courts of this state having jurisdiction thereof.

History.—s. 11, ch. 20935, 1941.
cf.—s. 523.22 Disposition of fees.

523.14 Adulterated products; forfeiture; procedure.—Any person who shall knowingly have in his possession, custody or control any spirits of turpentine for sale, consignment or shipment which shall be in any manner adulterated, or any gum rosin or wood rosin that is not marked on the outside of the barrel with the words and in the manner required by this chapter, shall forfeit the same to the state. Upon sworn information thereof from any person, it shall be the duty of the state attorney for the circuit in which such property subject to forfeiture under this section may be found, to proceed forthwith to have the same forfeited and sold in the following manner: He shall file with the circuit court in the jurisdiction in which said property is found an information in the name of the state, setting forth the property whereof forfeiture is claimed, the owner thereof, or the person in whose possession the same is found, and the grounds for forfeiture; upon the filing of such information a summons and a writ of attachment, returnable to the return date not less than 10 days from the issuance thereof, shall be thereupon issued without bond or affidavit; such summons and writ of attachment shall be served in the manner provided for services of summons and writs of attachment in civil actions at law; the said writ of attachment shall be levied upon the property which it is sought to forfeit. Thereafter the case shall proceed in the same manner as a civil action at law. In case of attachment, and in the event the property shall be adjudged to be forfeited, the same shall be sold as is provided in the case of sales under execution. Any person claiming to own the property attached, or his agent or attorney, may in such proceeding intervene and defend the said proceedings as in case of attachment. All such proceedings shall be governed in other respects by the rules of pleading and practice applicable to suits at law in cases of attachment. The proceeds arising from said sales shall be paid into the registry of the court, to be paid by the clerk under the order of the court as follows, to wit: One-half to the informant, to be paid upon the certificate of the state attorney that the person claiming the same is entitled thereto as the informer, upon whose information said action was begun, and the remainder to be paid to the county treasurer of the county in which the conviction is had as a part of the fine and forfeiture fund. Neither the supervising inspector nor any other inspector shall be permitted to receive any part of the proceeds of any such forfeiture; and if the information be given by any such inspector, the entire proceeds shall be paid into said fine and forfeiture fund. The penalties, punishments and other provisions of this chapter and the enforcement of the same, shall be deemed several, and the enforcement of one shall not preclude or affect the enforcement of any other.

History.—s. 12, ch. 20935, 1941; s. 2, ch. 29737, 1955.

523.15 Inspectors; duty to attend at port on notice.—It shall be the duty of any inspector, upon notice given by any producer or agent of any producer, to attend at such time and place at or near the port for which he is appointed, or elsewhere if he be an inspector at large, as he may be required, for the purpose of inspecting spirits of turpentine and grading and weighing rosin, and to ascertain the true amount and quality thereof, and to mark the same by branding, or in some other durable manner, on each barrel, receptacle or package, and to issue at once in triplicate, sworn certificates of inspection, the original to be furnished to the producer or shipper; and the duplicate and triplicate to the buyer or

factor and the supervising inspector of naval stores respectively; and the person for whom such inspection is made shall be at liberty to appeal to the supervising inspector to establish the incorrectness of such inspection. If any such article be fraudulently mixed, it shall be condemned by the inspector and sold as provided by s. 523.14.

History.—s. 13, ch. 20935, 1941.

523.16 Unlicensed persons not to make inspections.—It shall be unlawful for a person other than a licensed state inspector, or an inspector appointed by the Department of Agriculture of the United States, to measure and inspect or grade, mark or brand, for a fee, or fees, any naval stores in this state. Any person not a licensed inspector in accordance with the provisions of the laws of this state, or not an inspector appointed by the Department of Agriculture of the United States, who shall perform the duties of inspector of naval stores, for a fee or fees, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 14, ch. 20935, 1941; s. 503, ch. 71-136.

523.17 Inspectors to conform to U. S. standards.—Insofar as any method, standard, type or grade shall have been or may be established by or under the authority of the Department of Agriculture of the United States, the inspection and grading of the quality of rosin and spirits of turpentine, or measuring the quantities thereof, shall conform with such method, standard, type or grade.

History.—s. 15, ch. 20935, 1941.

523.18 Inspectors; inspection fees and compensation.—An inspector of naval stores shall receive for his services in inspecting rosin, including weighing, inspection and cooperage, 6 cents per barrel of approximately 500 pounds, and for inspecting turpentine, including measuring of contents, inspection, bunging and cooperage, 9 cents per barrel of approximately 50 gallons, and no more, to be paid by the owner or party for whom the inspection is made. When any such rosin or turpentine shall be in any receptacle or package other than a barrel, the inspector for inspecting same shall receive for his services, per barrel or fraction thereof, the contents of such receptacle or package, the same fee or amount of compensation hereinbefore allowed for inspecting each barrel. An inspector shall not be obliged to inspect any article or quantity until the fee therefor shall have first been paid.

History.—s. 16, ch. 20935, 1941.
cf.—s. 523.22 Disposition of fees.

523.19 Penalty for removing or changing inspection marks.—When any inspector or inspector of naval stores at large shall have placed his mark or brand on any barrel, receptacle, or package, as provided by law, it shall be unlawful for any person other than a duly qualified inspector of naval stores, appointed under the provisions of the laws of this state, or inspector appointed by the Department of Agriculture of the United States, to change, remove, alter, erase or in any manner change the same or cause the same to be done, and for each and every violation of this section the person violating the same shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment at the discretion of the court.

History.—s. 17, ch. 20935, 1941.

523.20 Penalty for illegal or false markings by inspector.—If any inspector, or inspector of naval stores at large, shall knowingly and willfully place on any barrel, receptacle, or package of spirits of turpentine or rosin, any mark or brand falsely indicating the quality or quantity of the contents thereof, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 18, ch. 20935, 1941; s. 504, ch. 71-136.

523.21 Inspectors; right to enter premises for inspection.—The supervising inspector of naval stores, inspector of naval stores at large, or any other inspector of naval stores, if he shall have reason to believe that any gum spirits of turpentine, or wood turpentine, has been or is adulterated in any manner, shall have the right to enter the place where the same is stored or kept, and to open any barrel, or barrels, in which the same may be, and to take therefrom a sufficient quantity, not exceeding a pint from every barrel or package, as a sample for analysis and inspection. Each such sample shall be sealed by the supervising inspector or other inspector of naval stores taking the same, who shall at the time write, mark or label the same in such manner as to indicate the time and place of taking the same, and the ownership of the barrel from which it is taken, as well as any other fact necessary to identify the sample so taken with the original. The owner claiming or custodian of such spirits of turpentine shall have the right to be present if he desires in person or by agent at such sampling, and to demand and receive of said supervising inspector or inspector of naval stores, a sample in all respects like that taken by such supervising inspector or inspector of naval stores. The analysis of any such sample so taken by such inspector or supervising inspector, sworn to by any witnesses competent to make such analysis, shall be admissible in evidence in any action wherein the grade or quality of the original from which the sample shall have been taken shall be in issue. A certificate of the result of an analysis made and certified by the state chemist or assistant state chemist shall be prima facie evidence of the nature, composition and character of the contents of the barrel from which said sample was taken, and of the correctness of such analysis and for such purpose admissible in evidence in any court of this state.

History.—s. 19, ch. 20935, 1941.

523.22 Disposition of fees.—All fees or other compensation collected by the supervising inspector, inspectors at large and inspectors of ports under the provisions of ss. 523.10, 523.13 and 523.18 shall be deposited by the inspector collecting same with the State Treasurer and shall be accounted for as other state funds. The State Treasurer shall credit all such

receipts to the General Revenue Fund and the Legislature shall provide in its general appropriations act sufficient sums for the salaries and expenses including premiums on bonds required of all naval stores inspectors appointed under this chapter.

History.—s. 129, ch. 26869, 1951.

cf.—s. 113.07 Bonds of officials.

CHAPTER 525

GASOLINE AND OIL INSPECTION

525.01 Gasoline and oil to be inspected.—For the purpose of this chapter all gasoline, naphtha, kerosene, benzine, or other like products of petroleum under whatever name designated, used for illuminating, heating, cooking or power purposes, sold, offered or exposed for sale in this state, shall be subject to inspection and analysis as hereinafter provided. All manufacturers, wholesalers and jobbers, before selling or offering for sale in this state, any gasoline, kerosene or other mineral oil for power, illuminating, cooking or heating purposes, shall file with the Department of Agriculture and Consumer Services an affidavit that they desire to do business in this state, and shall furnish the name, brand or trademark of the oil or oils, which they desire to sell, together with the name and address of the manufacturer thereof, and that such oil or oils are in conformity with the standard prescribed by the department.

History.—s. 1, ch. 7905, 1919; CGL 3956; ss. 14, 35, ch. 69-106.

525.02 Analyses of gasoline and oil.—The Department of Agriculture and Consumer Services shall collect or cause to be collected from time to time by its duly authorized agent or agents, samples of any gasoline, illuminating or heating oils sold, offered or exposed for sale in this state, and cause same to be tested, or analyzed by the state chemist, who shall report his findings to the department as other analyses are reported. The certificate of analysis by the state chemist, when properly verified by affidavit of the state chemist, shall be prima facie evidence in any court of law or equity in this state.

History.—s. 2, ch. 7905, 1919; CGL 3957; ss. 14, 35, ch. 69-106.

525.03 Purchasers of gasoline, etc., may submit samples to department.—Any person purchasing any gasoline, illuminating, or heating oils from any manufacturer or vendor in this state for his own use may submit fair samples of said gasoline, illuminating, or heating oils to the Department of Agriculture and Consumer Services to be tested or analyzed by the state chemist. In order to protect the manufacturer or vendor from the submission of spurious samples the person selecting same shall do so in the presence of two or more disinterested persons, which samples shall be not less than 1 pint in quantity, and bottled, corked and sealed in the presence of said witnesses, and said samples shall be placed in the hands of a disinterested person who shall forward same at the expense of the purchaser to the department, and upon the receipt by it of any sample the department may require the state chemist to test or analyze same, and he shall return to such purchaser or purchasers a certificate of analysis, and such certificate when verified by the affidavit of the state chemist shall be competent evidence in any court of law or equity in this state.

History.—s. 2½, ch. 7905, 1919; CGL 3958; ss. 14, 35, ch. 69-106.

525.06 Gasoline, etc., below standard, subject to confiscation.—All oils enumerated and designated in this chapter that are used or intended to be used for power, illuminating, cooking or heating purposes, when sold under a distinctive name that shall fall below the standard fixed by the Department of Agriculture and Consumer Services, are declared to be illegal, and shall be subject to confiscation and sale by order of the department. All manufacturers, wholesalers and jobbers and distributors who sell, barter or exchange gasoline or other oils within this state, shall post conspicuously at the place of delivery to the consumer a card or sign not smaller than 12 by 15 inches, setting forth in size type not smaller than 1 inch in height, in the English language, the degree of gravity of the product sold, offered or exposed for sale.

History.—s. 6, ch. 7905, 1919; CGL 3962; ss. 14, 35, ch. 69-106.

525.07 Inspectors; duties, powers; penalties.—The Department of Agriculture and Consumer Services shall cause to be inspected, from time to time by its duly authorized agents or inspectors, all measuring devices used in selling or distributing gasoline or kerosene, both wholesale and retail. The department shall define and fix the tolerances to be allowed, in excess or deficiency, on all such measuring devices; that on all such devices found to be giving accurate measure within the tolerances fixed by the department shall be placed a lead and wire seal in such a way that the metering adjustment cannot be changed without breaking the seal. Any device that is found to be giving measure in excess of the tolerances fixed by the department shall be considered inaccurate and the department at its discretion shall either give the operator or owner of measuring device a reasonable time in writing to fix such device or the department may condemn or prohibit the further use of said device and by the use of a lead and wire seal obstruct the mechanism in such a way that it cannot be operated without breaking such seal and such device shall not again be operated in this state without the written consent of the department. Any person, company, firm or corporation who shall operate any pump without the written consent of the department, that has been condemned by a duly authorized inspector or agent of the department be-

cause of giving short measure in excess of the tolerances fixed by the department shall, upon conviction thereof, be punished as hereinafter provided. Any person, company, firm or corporation who shall install or operate a gasoline or kerosene measuring device in this state which by mechanical means is designed or used for the purpose of giving short measure shall be punished as hereinafter provided. It shall be unlawful for any person, company, firm or corporation, to break, cut, or remove any seal applied by the department, or its duly authorized inspectors or agents, to a gasoline or kerosene measuring device or container, and anyone convicted of breaking such seal shall be punished as hereinafter provided. Any person who violates any of the provisions of this section, or any regulation or tolerance issued pursuant thereto shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 7905, 1919; s. 2, ch. 10134, 1925; CGL 3963, 8119, 8120, 8121, 8122; s. 1, ch. 21883, 1943; s. 10, ch. 26484, 1951; ss. 14, 35, ch. 69-106; s. 1, ch. 70-439; s. 505, ch. 71-136; s. 1, ch. 71-152.

525.08 Department to have access to all stores, etc.—In the performance of their duties, any of the duly authorized agents of the Department of Agriculture and Consumer Services shall have free access at all reasonable hours to any store, warehouse, factory, storage house, or railway depot, where oils are kept or otherwise stored, for the purpose of examination or inspection and drawing samples. If such access be refused by the owner, agent or manufacturer of such premises, the department or its duly authorized inspectors or agents, may apply for a search warrant which shall be obtained in the same manner as provided for obtaining search warrants in other cases. The refusal to admit an inspector to any of the above-mentioned premises during reasonable hours, shall be construed as prima facie evidence of a violation of this chapter.

History.—s. 8, ch. 7905, 1919; CGL 3964; ss. 14, 35, ch. 69-106.
cf.—Ch. 933 Search warrants.

525.09 Inspection fee.—For the purpose of defraying the expenses incident to the inspection, testing and analyzing of oils in this state, there shall be paid to the Department of Agriculture and Consumer Services a charge of one-eighth cent per gallon on all gasoline, kerosene and signal oil sold within this state, which payment shall be made on or before the 25th day of each month. If any company fails to make the payment herein provided on or before the 25th day of each month the department may add 10 percent to the amount of such taxes already due as a penalty for failure of such company, dealers or agent to make such report and payment on the date herein provided, and shall proceed to collect such tax, together with all cost incident to such collection the same as other delinquent taxes are collected by law. All remittances to the department to cover the inspection tax herein provided shall be accompanied by a detailed report under oath showing the number of gallons of gasoline, kerosene and signal oil sold and delivered in each county. No inspection fee shall be charged on oils or gasoline unloaded in any of the Florida ports for shipment into other states.

History.—s. 9, ch. 7905, 1919; s. 3, ch. 10134, 1925; CGL 3965; s. 1, ch. 24176, 1947; ss. 14, 35, ch. 69-106.

525.10 Moneys to be paid into State Treasury; payment of expenses, etc.—All moneys payable under this chapter shall be payable to the Department of Agriculture and Consumer Services and shall be paid by it into the State Treasury monthly to constitute, together with other moneys collected for inspections, a fund to be known and designated as the General Inspection Trust Fund, out of which all expenses incurred in the enforcement of this chapter and other inspection laws of this state for which fees are collected, including acquirement of equipment and other property and the distribution of hog cholera serum when necessary to execute the agricultural fertilizer analysis and general inspection laws more economically and promptly, shall be paid by the State Treasurer on warrants issued by the Comptroller. No money shall be paid to any inspector or employee created under this chapter except from the funds collected from the administration of this chapter.

History.—s. 10, ch. 7905, 1919; s. 1, ch. 15615, 1931; CGL 3966; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

525.11 Comptroller to pay expenses.—The Comptroller shall issue warrants payable out of the General Inspection Trust Fund on vouchers approved by the Department of Agriculture and Consumer Services to cover all expenses incurred in the administration of this chapter.

History.—s. 11, ch. 7905, 1919; CGL 3967; s. 10, ch. 26484, 1951; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

525.13 Report of department.—The Department of Agriculture and Consumer Services shall include in its periodic report an account of the operation and expenses under this chapter.

History.—s. 13, ch. 7905, 1919; CGL 3969; ss. 14, 35, ch. 69-106; s. 1, ch. 73-305.

525.14 Rules and regulations.—The Department of Agriculture and Consumer Services shall promulgate such rules and regulations not inconsistent with the provisions of this chapter as in its judgment may be necessary to the proper enforcement of this chapter; and define and fix the standards and specifications for all the oils and gases referred to in s. 525.01. The standards and specifications shall be fixed before any of such oils and gases shall be sold or otherwise dispensed in this state.

History.—s. 14, ch. 7905, 1919; CGL 3970; ss. 14, 35, ch. 69-106.

525.15 Inspectors not to be interested in sales.—It is unlawful for any inspector to be interested, directly or indirectly, in the manufacturing or sale of any of the oils herein mentioned.

History.—s. 15, ch. 7905, 1919; CGL 3971.

525.16 Prosecution of cases by State Attorney.—The State Attorney, or other prosecuting officer within the jurisdiction of whose court the case may come, shall prosecute all cases certified to him for prosecution by the Department of Agriculture and Consumer Services immediately upon receipt of

the evidence transmitted by the department, or as soon thereafter as practicable.

History.—s. 17, ch. 7905, 1919; CGL 3972; ss. 14, 35, ch. 69-106.

525.17 Penalty for violations.—Any person who shall knowingly violate any of the provisions of this chapter or any rule or regulation promulgated by the Department of Agriculture and Consumer Services shall, unless otherwise provided, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 16, ch. 7905, 1919; CGL 8123; ss. 14, 35, ch. 69-106; s. 506, ch. 71-136.

525.18 Injunction against violations.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court, and such circuit court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter or any rule or regulation duly promulgated as in this chapter authorized, such injunction to be issued without bond.

History.—s. 1, ch. 71-119.

CHAPTER 526

SALE OF LIQUID FUELS; BRAKE FLUID

PART I SALE OF LIQUID FUELS (ss. 526.01-526.151)

PART II SALE OF BRAKE FLUID (ss. 526.50-526.56)

PART I

SALE OF LIQUID FUELS

526.01 Fraud and deception in sale, etc., of liquid fuel, lubricating oil, and greases; stop-sale order.—

(1) No person shall store, sell, offer, or expose for sale any liquid fuels, lubricating oils, greases, or other similar products in any manner whatsoever which may deceive or tend to deceive, or which has the effect of deceiving, the purchaser of said products as to the nature, quality, or quantity of the products so sold, exposed, or offered for sale.

(2)(a) Containers of reclaimed, recleaned, or reconditioned previously used lubricating oil, lubricants, or mixtures of lubricants shall be plainly labeled showing that content thereof is a previously used product.

(b) In the storage, sale, offering, or exposing for sale of lubricating oil composed in whole or in part of previously used lubricating oil, it is unlawful to:

1. Represent in any manner that used lubricating oil is new or unused;

2. Fail to disclose clearly and conspicuously that used lubricating oil has been previously used in all advertising and sales promotional material and on each front or face panel of the container. The front or face panel means the part of the container on which the brand name is usually featured and which is customarily exposed to the view of prospective purchasers when displayed at point of retail sales; or

3. Use the term "rerefined," or any other word or term of similar import, to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use have been removed by a refining process.

(3) Any product stored, sold, offered, or exposed for sale which is not permanently and conspicuously labeled as provided in this section is declared to be illegal. Any such illegal product shall be placed under written stop-sale order, directed to the owner or custodian, and held by the Department of Agriculture and Consumer Services or its representative at a place to be designated in the stop-sale order until properly labeled by the owner or custodian and released in writing by the department or its representative. If it is not properly labeled within 30 days after the issuance of the stop-sale order, any such product shall be disposed of by the department or its representative to any tax supported institution or agency of the state, if usable, or by destruction, if unusable.

(4) The attachment of stop-sale order to any such product is notice and warning to all persons whomsoever, including, but not limited to, the owner or custodian, to scrupulously refrain from moving, altering, or interfering in any manner with any such product or altering, defacing, or in any way interfering with the stop-sale order, or permitting the same to be done by another, except with the consent of the department or its representative.

(5) The violation of any of the provisions of this section is a misdemeanor, punishable under the provisions of s. 526.11.

History.—s. 1, ch. 16083, 1933; CGL 1936 Supp. 7315(2); s. 1, ch. 26883, 1951; s. 1, ch. 28114, 1953; s. 1, ch. 70-77; s. 1, ch. 70-439.

526.02 Proper trade name, etc., to appear upon container.—No person shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump, or other distributing device, other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon said container, tank, pump, or other distributing device in which such

products are sold, exposed or offered for sale or distributed.

History.—s. 2, ch. 16083, 1933; CGL 1936 Supp. 7315(3).

526.03 Imitating trade names, etc., liquid fuel prohibited.—It is unlawful for any person to disguise or camouflage his own equipment, by imitating the design, symbol, trade name, or the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products, are generally marketed.

History.—s. 3, ch. 16083, 1933; CGL 1936 Supp. 7315(4).

526.04 Sale of liquid fuel under trademark of another prohibited.—No person shall expose or offer for sale or sell under any trademark, trade name, or name or other distinguishing mark, any liquid fuels, lubricating oils, greases, or other similar products, other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark, or name or other distinguishing mark.

History.—s. 4, ch. 16083, 1933; CGL 1936 Supp. 7315(5).

526.05 Mixing, etc., of liquid fuels of different manufacturers prohibited.—No person shall mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of a manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose, offer for sale, or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturers or distributors, or as the unadulterated products of such manufacturer or distributor; provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name, or symbol to any product or material.

History.—s. 5, ch. 16083, 1933; CGL 1936 Supp. 7315(6).

526.06 Mixing, blending or compounding liquid fuels of same manufacturer prohibited.—It is unlawful for any person to mix, blend, compound or adulterate the liquid fuel, lubricating oil, grease, or similar product of a manufacturer or distributor with a liquid fuel, lubricating oil, grease or similar product of the same manufacturer or distributor of a character or nature different from the character or nature of the liquid fuel, lubricating oil, grease or similar product so mixed, blended, compounded or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor, or as the unadulterated product of any other manufacturer or distributor; provided, however, that nothing in this chapter shall be construed to prevent the lawful owner of such products from applying his or its own trademark, trade name or symbol to any product or material.

History.—s. 6, ch. 16083, 1933; CGL 1936 Supp. 7315(7).

526.07 Assisting another in deception, etc., prohibited.—No person shall aid or assist any other person in violating any of the provisions of this chapter, by depositing or delivering into any tank, pump, receptacle, or other container, any liquid fuels, lubricating oils, greases or other like products, other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor, or the trademark, trade name, name or other distinguishing mark of the product displayed on the container itself or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this chapter.

History.—s. 7, ch. 16083, 1933; CGL 1936 Supp. 7315(8).

526.08 Participation of officer, etc., of corporation in violations.—If any firm, copartnership, association or corporation violates any of the provisions of this chapter, every director, officer, agent, employee or member participating in, aiding or authorizing the act or acts constituting a violation of this chapter shall be guilty of violating this chapter, and shall be subject to the punishment herein provided.

History.—s. 8, ch. 16083, 1933; CGL 1936 Supp. 7315(9).

526.09 Department to enforce law; rules and regulations.—The Department of Agriculture and Consumer Services shall enforce the provisions of this chapter. The department is authorized to adopt, promulgate, and enforce such rules and regulations not inconsistent with the provisions of this chapter as in its judgment may be necessary to the proper enforcement of this chapter.

History.—s. 11, ch. 16083, 1933; CGL 1936 Supp. 7315(12); s. 2, ch. 28114, 1953; ss. 14, 35, ch. 69-106.

526.10 Department of Legal Affairs, state attorneys, etc., to assist in enforcing law.—The Department of Legal Affairs and each state attorney shall assist in the enforcement of the provisions of this chapter upon request of the Department of Agriculture and Consumer Services. The actual, reasonable, and necessary expenses of the Department of Legal Affairs and state attorney shall be paid in connection with the performance of additional duties imposed upon them by this chapter out of the General Inspection Trust Fund.

History.—s. 12, ch. 16083, 1933; CGL 1936 Supp. 7315(13); s. 2, ch. 61-119; ss. 11, 14, 35, ch. 69-106; s. 26, ch. 73-334.

526.11 Penalty for violations.—Any person who shall violate any of the provisions of this chapter shall, for a first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, for a second or subsequent offense, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 16083, 1933; CGL 1936 Supp. 7315(10); s. 507, ch. 71-136.

526.111 Prohibited display of gasoline prices; penalty.—

(1) It is unlawful for any person, firm, or corporation to display, or allow to be displayed on his premises, any sign, placard, or other advertisement relating to the retail price of gasoline unless numerals thereon indicating fractions or portions of a whole number are at least half the size of the largest whole number on such sign, and no such price of gasoline shall be advertised without the tax included. No such person, firm, or corporation shall be required to post prices pursuant to this section.

(2) Violation of the provisions of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 57-826; s. 508, ch. 71-136; s. 4, ch. 79-163.

526.121 Pricing restrictions; separation of gasolines.—

(1) The posting at retail service stations of a different price for the same grade of gasoline dispensed from one pump than from another pump supplied from a common storage at the same service station when represented to be and is sold as the same quality of gasoline is unlawful.

(2) This section shall not be construed to prohibit a price differential between self-service pumps and attendant-controlled pumps supplied from a common storage at the same service station.

History.—s. 1, ch. 67-506; s. 7, ch. 74-162.

526.131 Injunction against violations.—In addition to the remedies provided in this part, and notwithstanding the existence of any adequate remedy at law, the Department of Agriculture and Consumer Services is authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this part or from failing or refusing to comply with the requirements of this part or any rule or regulation duly promulgated, such injunction to be issued without bond.

History.—s. 1, ch. 70-437; s. 1, ch. 70-439.

526.141 Self-service gasoline stations; attendants; regulations.—

(1) This section authorizes the establishment of self-service gasoline stations.

(2) A "self-service gasoline station" shall be that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed, approved dispensing equipment into the fuel tanks of motor vehicles by persons other than the service station attendant.

(3) All self-service gasoline stations shall have at least one attendant on duty while the station is open to the public. The attendant's primary function shall be the proper administration, supervision, observation, and control of the dispensing of flammable and combustible liquids used as motor fuels while such liquids are actually being dispensed. It shall be the responsibility of the attendant to prevent the dispensing of flammable and combustible liquids used as motor fuels into portable containers unless such container bears a seal of approval of a nationally recognized testing agency; to control sources of ignition; and immediately to handle accidental spills and fire extinguishers if needed. The attendant on duty shall be mentally and physically capable of performing the functions and assuming the responsibility prescribed in the subsection.

(4)(a) The "attendant-control area" is that area reserved for the placing of the attendant, which shall be not more than 100 feet from the dispensing area and shall contain the fire-extinguishment equipment and emergency controls.

(b) The "dispensing area" is that area where the pumps used to dispense flammable and combustible liquids used as motor fuels are located. The dispensing area shall at all times be in clear view of the attendant, and the placing or allowing of any obstruction to vision between the dispensing area and the attendant control area shall be prohibited. The attendant shall at all times be able to communicate with persons in the dispensing area. Emergency controls shall be installed at a location acceptable to the authority having jurisdiction, but controls shall not be more than 100 feet from dispensers. Operating instructions and warning signs shall be conspicuously posted in the dispensing area.

(5) All self-service equipment used to dispense gasoline shall be approved by a nationally recognized testing agency. The dispensing nozzle shall be an automatic-closing type without a hold-open latch.

(6) The Insurance Commissioner, under his powers, duties, and functions as State Fire Marshal, shall promulgate rules and regulations for the administration and enforcement of this section. An inspection of the self-service gasoline station and operations shall be made and approved under his authority and rules and regulations thereby promulgated.

History.—ss. 1-6, ch. 74-162.

526.151 Petroleum products dealers; restrictions.—

(1) After October 1, 1974, no producer, refiner, or a subsidiary of any producer or refiner, shall operate, with company personnel, in excess of 3 percent of the total number of all classes of retail service stations selling its petroleum products, under its own brand or secondary brand.

(2) Every producer or refiner of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rental charges uniformly to all retail service station dealers which they supply.

(3) This section shall not apply to any service station operated by a producer or refiner of petroleum products who purchases or obtains more than 90 percent of the unrefined petroleum products to be so refined from another producer or refiner of petroleum products.

(4) A circuit court or circuit judge shall have jurisdiction, upon hearing and for cause shown, to grant an injunction restraining any person from violating or continuing to violate any of the provisions of this section.

History.—s. 1, ch. 74-387.

PART II

SALE OF BRAKE FLUID

526.50 Definition of terms.—As used in part II of this chapter, the following terms shall have the meanings respectively ascribed to them, unless the context otherwise requires:

(1) "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle operated upon the highways.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Person" includes individual, firm, corporation or association.

(4) "Sell" includes give, distribute, barter, exchange, trade, keep for sale, offer for sale or expose for sale, in any of their variant forms.

(5) "Labeling" includes all written, printed or graphic representations, in any form whatsoever, imprinted upon or affixed to any container of brake fluid.

(6) "Container" means any receptacle in which brake fluid is immediately contained when sold, but does not mean a carton or wrapping in which a number of such receptacles are shipped or stored or a tank car or truck.

(7) "Permit year" means a period of 12 months commencing July 1 and ending on the next succeeding June 30.

(8) "Registrant" means any manufacturer, packer, distributor, seller or other person who has registered a brake fluid with the department.

History.—s. 1, ch. 61-390; ss. 14, 35, ch. 69-106.

526.51 Registration, renewals and fees; expenses; cancellation, etc.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms to be supplied by the department. The applicant shall give his name and address, the brand name of the brake fluid, state that he owns said brand name and has complete control over the product sold thereunder in Florida and name and address of resident agent in Florida. Application shall be accompanied by a certified report of an independent testing laboratory, setting forth the analysis of said brake fluid which shall show its quality to be not less than the specifications established by the department for brake fluids. A sample of not less than one-half gallon of brake fluid shall be submitted, in a container or containers, labeled exactly as containers of brake fluid will be labeled when sold, and such sample and container shall be analyzed and inspected by the Division of Standards in order that compliance with the department's specifications and labeling requirements may be verified. Upon approval of such application, the department shall register the brand name of such brake fluid and issue to the applicant a permit authorizing the registrant to sell such brake fluid in this state during the permit year specified in the permit.

(b) Each applicant shall pay a fee of $100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of $50 on or before the last day of the permit year immediately preceding the permit year for which application is made for renewal of registration. To any fee not paid when due, there shall accrue a penalty of $25 which shall be added to the renewal fee. Renewals will be accepted only on brake fluids which have no change in formula, composition or brand name. Any change in formula, composition or brand name of any brake fluid shall constitute a new product which shall be registered in accordance with the provisions of part II of this chapter.

(2) All fees collected under the provisions of this section shall be credited to the General Inspection Trust Fund of the department and all expenses incurred in the enforcement of this part II of this chapter shall be paid from said fund.

(3) The department may cancel, refuse to issue or refuse to renew any registration and permit after due notice and opportunity to be heard if it finds that the brake fluid is adulterated or misbranded or that the registrant has failed to comply with the provisions of part II of this chapter or the rules and regulations promulgated thereunder.

History.—s. 1, ch. 61-390; s. 2, ch. 61-119.

526.52 Specifications, adulteration and misbranding.—

(1) The department shall establish specifications for brake fluid which shall promote the public safety in the operation of automotive vehicles and may amend such specifications by regulation, but in no event shall the specifications for brake fluid fall below the minimum specifications established by the Society of Automotive Engineers for brake fluid, heavy duty type.

(2) A brake fluid is deemed to be adulterated if its contents have been changed after registration, without reregistration, or its quality or characteristics fall below the specification for brake fluid established by the department.

(3) Brake fluid is deemed to be misbranded:

(a) If its container does not bear on its side or top a label on which is printed the name and place of business of the registrant of the product, the words "brake fluid," and a statement that the product therein equals or exceeds the minimum specification of the Society of Automotive Engineers for brake fluid, heavy duty type. By regulation the department may require that the duty type classification appear on the label.

(b) If the container does not bear on its side or top an accurate statement of the quantity of the contents in terms of liquid measure.

(c) If the labeling on the container is false or misleading in any particular.

(4) The words and letters required by this section shall appear on the label in legible type, in English.

History.—s. 1, ch. 61-390.

526.53 Enforcement; inspection and analysis, "stop-sale" and disposition, regulations.—

(1) The department shall enforce the provisions of part II of this chapter through the Division of Standards, and may sample, inspect, analyze and test any brake fluid manufactured, packed or sold within this state. The department, through its agents, shall have free access during business hours to all premises, buildings, vehicles, cars or vessels used in the manufacture, packing, storage, sale or transportation of brake fluid, and may open any box, carton, parcel or container of brake fluid and take

therefrom samples for inspection and analysis or for evidence.

(2)(a) When any brake fluid is sold in violation of any of the provisions of part II of this chapter, all such brake fluid of the same brand name on the same premises on which the violation occurred shall be placed under a "stop-sale" order by the department. The department shall withdraw its "stop-sale" order upon the removal of the violation or upon voluntary destruction of the product, or other disposal approved by the department, under the supervision of the department.

(b) In addition to being subject to the "stop-sale" procedures above, unregistered brake fluid shall be held by the department or its representative, at a place to be designated in the "stop-sale" order, until properly registered and released in writing by the department or its representative. If application has not been made for registration of such product within 30 days after issue of the "stop-sale" order, such product shall be disposed of by the department to any tax-supported institution or agency of the state if the brake fluid meets legal specifications or by destruction if it fails to meet legal specifications.

(3) Any brake fluid which becomes the subject of a court proceeding shall be disposed of by order of the court.

(4) The department shall have authority to promulgate and enforce such rules and regulations as are necessary to carry out the provisions of part II of this chapter.

(5) No labeling relating to any brake fluid shall contain any statement that the brake fluid has been approved by the department, but a statement that the brake fluid has been registered by the department may be included in such labeling.

History.—s. 1, ch. 61-390; s. 1, ch. 71-118.

526.54 Certified copy of analysis as evidence.—A certified copy of the analysis made by the department shall be admitted as prima facie evidence in any court proceeding involving the inspection, analysis, standards or specifications of brake fluid as defined and covered by part II of this chapter.

History.—s. 1, ch. 61-390.

526.55 Violation and penalties.—It is unlawful:

(1) To sell any brake fluid that is adulterated or misbranded, not registered or on which a permit has not been issued.

(2) For anyone to remove any "stop-sale" order placed on a product by the department, or any product upon which a "stop-sale" order has been placed.

(3) Any person who violates any of the provisions of part II of this chapter or any rule or regulation promulgated thereunder shall, for the first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, for a second or subsequent offense, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 61-390; s. 509, ch. 71-136.

526.56 Injunction against violations.—In addition to the remedies provided in this law, and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this law or for failing or refusing to comply with the requirements of this law or any rule or regulation duly promulgated as in this law authorized, such injunction to be issued without bond.

History.—s. 1, ch. 61-390; ss. 14, 35, ch. 69-106.

CHAPTER 527

SALE OF LIQUEFIED PETROLEUM GAS

[1]**527.01 Definitions.**—The following words and phrases when used in this chapter have the meanings respectively ascribed to them in this section:

(1) LIQUEFIED PETROLEUM GAS.—The term "liquefied petroleum gas" shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) PERSON.—Every individual, firm, partnership, corporation, company, association, organization or cooperative.

(3) DEALER IN LIQUEFIED PETROLEUM GAS.—Any person selling or offering to sell any liquefied petroleum gas to the ultimate consumer for industrial, commercial or domestic use.

(4) DEALER IN APPLIANCES FOR USE OF LIQUEFIED PETROLEUM GAS.—Any person selling or offering to sell, leasing or offering to lease, the apparatus, appliances and equipment necessary for the storage or converting of liquefied petroleum gas into flame for light, heat and power.

(5) ULTIMATE CONSUMER.—The person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial or domestic use.

(6) INSTALLATION.—The act of installing apparatus, piping and tubing, appliances and equipment necessary for storing and converting liquefied petroleum gas into flame for light, heat and power for use by the ultimate consumer.

(7) APPLIANCES AND APPARATUS FOR USE OF ULTIMATE CONSUMER.—The apparatus, appliances and equipment described in and contemplated by subsection (6).

(8) MANUFACTURER OF APPLIANCES AND EQUIPMENT FOR THE USE OF LIQUEFIED PETROLEUM GAS.—Any person manufacturing and offering for sale or selling in this state tanks, cylinders or other containers and necessary appurtenances thereof for use by dealers in liquefied petroleum gas in their storage, transportation or delivery of such gas to ultimate consumers thereof; and apparatus, appliances and equipment for use by the ultimate consumer for storing and converting liquefied petroleum gas into flame for light, heat or power.

(9) DEPARTMENT.—The Department of Insurance of this state.

History.—s. 1, ch. 24302, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 57-174; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 202, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.12.

[1]**527.02 License; fees.**—

(1) It shall be unlawful for any person to engage in this state in the business of a dealer in liquefied petroleum gas, in the business of manufacturer of appliances and equipment for the use of liquefied petroleum gas or in the business of dealer in appliances for use with liquefied petroleum gas, or in the business of installation as defined in s. 527.01, without first obtaining from the department a license to engage in one or more of these businesses, which license shall be granted to any applicant who files with the department a good and sufficient bond or certificate of insurance as hereinafter specified, and pays for such license annually the following fees, which fees as collected shall be deposited into the fund created by subsection (2), and such funds are hereby appropriated for the use of the department in administering the provisions of this law:

Manufacturer of appliances and equipment for use with liquefied petroleum gas $225
Dealer in appliances and equipment for use of liquefied petroleum gas only 15
Dealer in liquefied petroleum gas only 225
Installation only 100
Dealer in liquefied petroleum gas, in appliances and equipment for use of such gas and installation 225

(2) All revenues collected herein shall be deposited in the Insurance Commissioner's Regulatory Trust Fund for the purpose of administering the provisions of this chapter.

History.—s. 2, ch. 24302, 1947; s. 2, ch. 57-174; s. 2, ch. 61-119; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 1, ch. 70-35; s. 1, ch. 70-439; s. 1, ch. 74-296; s. 1, ch. 76-120; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.13.

cf.—s. 527.12 Cease and desist orders; hearing.

[1]**527.03 Annual renewal of license.**—All licenses required under this chapter shall be renewed annually subject to the license fees prescribed in s. 527.02 for the period beginning October 1 and shall expire on the following September 30 unless sooner suspended, revoked or otherwise terminated.

History.—s. 3, ch. 24302, 1947; s. 1, ch. 25105, 1949; s. 11, ch. 25035, 1949; s. 1, ch. 29667, 1955; s. 1, ch. 61-158; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.14.

[1]**527.04 Bond.**—No license shall be issued to an applicant to engage in any of such businesses, except dealers in appliances only, until such applicant shall have filed with the department a good and sufficient bond in the penal sum of $25,000, payable to the Governor of Florida, with the applicant as principal, and a surety company authorized to do business in this state as surety thereon, conditioned that the principal shall well and truly comply with the provisions of this chapter and such rules and regulations as the department may prescribe with respect to the conduct of such business for which the applicant seeks a license, and to indemnify and save harmless any and all persons from loss or damage by reason of the principal's failure to comply with such provisions, rules and regulations; provided, however, that the aggregated liability of the surety to all persons shall in no event exceed the sum of said bond. Should any bond so required for any reason become insufficient, the department may require a new bond to be filed forthwith and should the principal fail to do so, it shall be the duty of the department to cancel the license issued to such principal and to give such principal notice of said fact in writing and it shall be unlawful thereafter for such principal to engage in such business without such license; provided, however, that if the applicant shall furnish satisfactory evidence that such applicant is carrying a policy of bodily injury liability and property damage liability insurance covering the products and operations with respect to such business, in an insurance company authorized to do business in the state, for an amount not less than $25,000 and that the premiums on such insurance are paid, then a certificate of such insurance shall be accepted in lieu of the bond hereinabove specified; provided, however, that no new bond or insurance certificate shall be required as long as the original bond and insurance remains sufficient and in full force and effect.

History.—s. 3, ch. 24302, 1947; s. 1, ch. 25105, 1949; s. 11, ch. 25035, 1949; s. 1, ch. 29667, 1955; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.14.

[1]**527.05 Parties to suit; bond as evidence.**—Any person to whom there might accrue a cause of action on any such bond filed with the department may bring suit against the principal and surety of such bond, and a copy of such bond duly certified by the department shall be received in evidence in all the courts of this state without further proof. It shall be the duty of the department to furnish any person requiring the same a certified copy of such bond upon payment to it of its lawful fee for making and certifying such copy.

History.—s. 4, ch. 24302, 1947; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.15.

[1]**527.06 Rules and regulations.**—

(1) The department shall make, promulgate, and enforce rules and regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, or pipeline, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof. Said rules and regulations shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

(2) It is hereby declared that rules and regulations in substantial conformity with the published standards of the National Fire Protection Association for the design, installation, and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

(3) The department shall adopt within its rules and regulations Parts 191 and 192 of Title 49 of the Code of Federal Regulations and such amendments thereto as shall be effective and published in the Federal Register from time to time. Violation of any provision of the rules and regulations adopted pursuant to this subsection may be enjoined under the provisions of s. 527.09. Any person who violates any provision of the rules and regulations adopted pursuant to this subsection shall be subject to a civil penalty not to exceed $1,000 for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed $200,000, in aggregate, for any related series of violations. Any such civil penalty may be compromised by the department. In determining the amount of such penalty or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation shall be considered. Each penalty shall be a lien upon the real and personal property of said person and enforceable by the department as statutory liens under chapter 85, the proceeds of which shall be deposited in the Insurance Commissioner's Regulatory Trust Fund, as provided in s. 527.02.

(4) The provisions of chapter 75-83, Laws of Florida, shall be liberally construed in order to effectively carry out the purposes of said act in the interest of public safety.

History.—s. 5, ch. 24302, 1947; s. 1, ch. 61-158; ss. 10, 13, 35, ch. 69-106; s. 1, ch. 73-286; ss. 1, 2, ch. 75-83; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.16.

cf.—s. 316.302 Transportation of hazardous materials, explosives, flammable liquids, radioactive materials, etc.

[1]**527.07 Restriction on use of containers.**—No person, other than the owner and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for

any gas, compound, or for any other purpose whatsoever.

History.—s. 6, ch. 24302, 1947; s. 1, ch. 61-158; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.17.

[1]527.08 Penalty for violation.—It shall be unlawful for any person to violate any of the provisions of this chapter or of the rules and regulations of the department made pursuant to this chapter. Any person violating any of the provisions of this chapter or said rules and regulations made under the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 7, ch. 24302, 1947; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 510, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.18.

[1]527.09 Injunction.—In addition to the penalties and other enforcement provisions of this chapter, in the event any person engaged in any of the businesses covered by this chapter shall violate any provision of this chapter or any rule or regulation prescribed in pursuance of this chapter by the department, said department is authorized to resort to proceedings for injunction in the circuit court of the county where such person shall reside or have his or its principal place of business, and therein apply for such temporary and permanent orders as the department may deem necessary to restrain such person from engaging in any such businesses until such person shall have complied with the provisions of this chapter and such rules and regulations.

History.—s. 7, ch. 24302, 1947; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.18.

[1]527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into any container or system in this state that has been identified by the department or its duly authorized inspectors as not complying with all the requirements of the rules and regulations pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service granted by the department. Statement of violations of the rules and regulations that render such a system unsafe for use shall be furnished in writing by the department to the ultimate consumer or dealer in liquefied petroleum gas.

History.—s. 1, ch. 29742, 1955; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.181.

[1]527.11 Minimum storage.—

(1) All persons who engage in the distribution of liquefied petroleum gases for resale to domestic, commercial or industrial consumers as a prerequisite to obtaining a liquefied petroleum gas license shall install a bulk storage filling plant of not less than 12,000 gallons (water capacity) within the state.

(2) The dealers specifically exempt from the requirements of subsection (1) are those dealers who have or enter into a written agreement with a wholesaler that the wholesaler will provide liquefied petroleum gas to the dealer for a period of 12 continuous months, provided the said wholesaler shall have at least 12,000 gallons (water capacity) bulk storage within this state permanently connected for storage and used as such for each said dealer to whom gas is sold; provided however, that no wholesaler will be required under this section to have more than 300,000 gallons (water capacity) permanent bulk storage for their entire operations either retailer or wholesaler in the state.

(3) The independent dealers who do not have a written contract with a supplier or wholesaler are exempt from the requirements of subsection (1); provided, in lieu of the requirement set forth in said subsection (1), said independent dealers shall install a bulk storage tank with a capacity (water gallons) of not less than the total of liquefied petroleum gas sold by said independent dealer during the peak month of the preceding calendar year.

(4) The location of any bulk storage container or containers shall be approved in writing by the department before being installed. A sketch of the proposed location shall be furnished to the department before said container is installed. After said container is installed and before use the installation of said container must be inspected and approved for use before said container is placed in operation.

(5) A "wholesaler" as used in this section, is any person, as defined by s. 527.01(2), selling or offering to sell any liquefied petroleum gas for industrial, commercial or domestic use to any person except the ultimate consumer.

History.—ss. 1, 2, ch. 57-219; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.21.

[1]527.12 Cease and desist orders; administrative fine.—Whenever the department shall have reason to believe that any person is or has been violating provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, it may issue a cease and desist order or impose a civil penalty or may issue such cease and desist order and impose a civil penalty.

History.—s. 3, ch. 57-174; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 2, ch. 73-286; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 526.22.

[1]527.13 Administrative fine.—

(1) If any person violates any provision of this chapter or any rules or regulations adopted and promulgated pursuant thereto or a cease and desist order, the department may impose a civil penalty not to exceed $1,000 for each offense or suspend or revoke the license issued to such person. The cost of the proceedings may be added to any penalty imposed. The department may allow the licensee a reasonable period, not to exceed 30 days, within which to pay to

the department the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the licenses of the licensee shall stand revoked upon expiration of such period.

(2) All such fines, monetary penalties and costs received by the department shall be deposited in the Insurance Commissioner's Regulatory Trust Fund as provided in s. 527.02(2).

History.—s. 3, ch. 57-174; s. 1, ch. 61-158; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 3, ch. 73-286; s. 2, ch. 74-296; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.22(9).

[1]527.14 Suspension and revocation of license.—

(1) The violation by any person possessed of a license as provided in s. 527.02 of any provision of this chapter or any rules or regulations adopted and promulgated pursuant thereto or of a cease and desist order shall be cause for revocation or suspension of such license by the department after the department shall determine said person guilty of such violation.

(2) An order of suspension shall state the period of time of such suspension which period shall not be in excess of 1 year from the date of such order. An order of revocation may be entered for a period of not exceeding 2 years; and such order shall effect revocation of license then held by said person and during such period of time no license shall be issued said person. If during the period between the beginning of proceedings and entry of an order of suspension or revocation by the department a new license has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license held by such person.

(3) The provisions of this section are cumulative and shall not affect the penalty and injunctive provisions of ss. 527.08 and 527.09.

History.—s. 2, ch. 29742, 1955; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 4, ch. 73-286; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.181(2).

[1]527.15 Conduct of proceedings; record costs.—The state's portion of the cost of the stenographic record and transcription of department proceedings shall be paid out of the Insurance Commissioner's Regulatory Trust Fund provided for in s. 527.02(2). Any sums received from parties for copies of the stenographic record shall be deposited by the department into the State Treasury to the credit of such regulatory trust fund.

History.—s. 1, ch. 61-158; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 3, ch. 74-296; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 21, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]527.16 Witnesses and evidence.—

(1) As to the subject of any examination or investigation being conducted by the department, or an examiner appointed by it, it may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination or investigation is being conducted, or of the county wherein such person resides, on the department's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served and proof of such service made in the same manner as if issued by a circuit court. Witness fees and mileage if claimed shall be allowed the same as for testimony in a circuit court.

(4) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

(5) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents or other evidence in connection with any examination, hearing or investigation being conducted by the department's examiner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the department and the Department of Legal Affairs, nonetheless comply with such direction but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension or revocation of any license, permission or authority conferred or to be conferred pursuant to this chapter.

(6) Any such individual may execute, acknowledge and file in the office of the department a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

(7) Any person who refuses or fails without lawful cause to testify relative to the affairs of any person, when subpoenaed and requested by the department to so testify, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 1, ch. 61-158; ss. 11, 13, 35, ch. 69-106; s. 511, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**527.18 Cumulative effect of law.**—The provisions of this chapter are cumulative and shall not be construed as repealing or affecting any powers, duties or authority of the department under any other law of this state.

History.—s. 10, ch. 24302, 1947; s. 1, ch. 61-158; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 526.20.

CHAPTER 531

WEIGHTS, MEASURES, AND STANDARDS

531.36 Title.—This act may be cited as the "Weights and Measures Act of 1971."

History.—s. 1, ch. 72-101.

531.37 Definitions.—As used in this chapter:

(1) "Weights and measures" means all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

(2) "Weight" in connection with any commodity means net weight.

(3) "Correct" in connection with weights and measures means conformance to all applicable requirements of this chapter.

(4) "Primary standards" means the physical standards of the state which serve as the legal reference from which all other standards, weights, and measures are derived.

(5) "Secondary standards" means the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures.

(6) "Department" means the Department of Agriculture and Consumer Services.

(7) "Person" includes both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(8) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(9) "Package" means any container or wrapping in which any commodity is enclosed for use in the delivery or display of that commodity to purchasers.

History.—s. 1, ch. 72-101.

531.38 Systems of weights and measures.—The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure, the tables of weight and measure, and weight and measure equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History.—s. 1, ch. 72-101.

531.39 State standards.—Weights and measures that are traceable to the United States prototype standards supplied by the Federal Government (Public Law 89-164, 1965), or approved as being satisfactory by the National Bureau of Standards, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Bureau of Standards. In addition, there shall be provided by the state such secondary standards as may be necessary to carry out the provisions of this chapter. The secondary standards shall be verified upon their initial receipt and as often thereafter as deemed necessary by the department.

History.—s. 1, ch. 72-101.

531.40 Technical requirements for commercial devices.—The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, as determined by regulations adopted by the department, which regulations shall afford the greatest degree of protection to the public, shall conform to those adopted by the National Bureau of Standards to the extent possible. The department, notwithstanding the provisions of chapter 120, shall have the power to adopt by reference in a regulation or regulations adopted by it the specifications, tolerances, and technical requirements approved by the National Conference on Weights and Measures and published in Handbook 44 of the National Bureau of Standards. The department may, from time to time, adopt such regulations as may be necessary to conform the state standards to those of the National Bureau of Standards, which may be adopted by reference to supplements to, or revisions of, the National Bureau of Standards, Handbook 44.

History.—s. 1, ch. 72-101.

531.41 Powers and duties of the department.—The department shall:

(1) Maintain traceability of the state standards to the National Bureau of Standards.

(2) Enforce the provisions of this chapter.

(3) Adopt reasonable rules to implement, interpret, or make specific the provisions of this chapter, which rules shall have the force and effect of law.

(4) Establish, by rule, standards of weight, measure, or count and reasonable standards of fill for any commodity in package form, as necessary.

(5) Make, by rule, any exemptions from the provisions of this chapter when appropriate to the maintenance of good commercial practices within this state.

(6) Conduct investigations necessary to ensure compliance with this chapter.

(7) Delegate to appropriate personnel all duties and responsibilities necessary for the proper administration of this chapter.

(8) Test annually the standards of weight and measure used by any city or county and approve the same when found to be correct and reject same when found to be incorrect.

(9) Inspect and test all weights and measures kept or offered or exposed for sale.

(10) Inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) In determining the weight, measure, or count of commodities or things sold or offered or exposed for sale, on the basis of weight, measure, or count; or

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

In compliance with rules of the department, tests may be made on representative samples of such devices, and the lots of which samples are representative shall be held to be correct or incorrect on the basis of the results of the inspection and tests of such samples.

(11) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which funds are appropriated by the legislature of this state.

(12) Approve for use, and mark, such weights and measures as it finds to be correct, and reject, and mark as rejected, such weights and measures as it finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within a reasonable time, or if used or disposed of in a manner not specifically authorized. The department shall condemn, and may seize, weights and measures found to be incorrect that are not capable of being made correct.

(13) Weigh, measure, or inspect packaged commodities kept or offered or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept or offered or exposed for sale in accordance with this chapter or the rules adopted pursuant thereto. In carrying out the provisions of this subsection, the department may employ recognized sampling procedures such as are designated in National Bureau of Standards, Handbook 67, "Checking Prepackaged Commodities."

(14) Prescribe, by rule, the appropriate term or unit of weight or measure to be used, whenever it determines in the case of a specific commodity that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion.

(15) Inspect and test every grain moisture measuring device used to determine the moisture of corn, soybeans, and grains offered for sale, sold, purchased, or in the process of being purchased. The department shall also have authority to establish tolerances and specifications for the accuracy and condition of these devices.

History.—s. 1, ch. 72-101; s. 1, ch. 77-217.

531.42 Special police powers.—With respect to the enforcement of this chapter and rules pursuant thereto, the department is:

(1) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale, or sold in violation of the provisions of this chapter or rules adopted pursuant thereto.

(2) Authorized to enter any commercial premises during normal business hours for the purpose of performing its duties.

(a) In the event that such premises, or part thereof, are not open to the public, the representative of the department shall first present his credentials before seeking entry thereto.

(b) Any person refusing authorized entry is in violation of this chapter and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Such fine shall not be construed to be an elected alternative negating the authority to enter the establishment.

(c) In the event that such entry is denied, the representative of the department may apply for a search warrant from any person authorized to issue the same.

(3) On probable cause of violation of this chapter, empowered to stop any commercial vehicle, and the representative of the department may, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection. Any person refusing such inspection or failing to comply with any proper instructions is in violation of this chapter and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Such fine shall not be construed to be an elected alternative negating the authority to stop the vehicle, inspect the contents, or order that it be taken to a specified place.

(4) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept or offered or exposed for sale.

History.—ss. 1, 1A, ch. 72-101.

531.421 Powers and duties of local officials.—Any weights and measures official appointed for a county or city may exercise, in cooperation with the state, the duties enumerated in s. 531.41(9)-(13) and the powers enumerated in s. 531.42. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official

shall not extend to any city for which a weights and measures official has been appointed.
History.—s. 1, ch. 72-101.

531.43 Misrepresentation of quantity.—No person shall sell or offer or expose for sale less than the quantity he represents, nor take any more than the quantity he represents, when, as buyer, he furnishes the weight or measure by means of which the quantity is determined.
History.—s. 1, ch. 72-101.

531.44 Misrepresentation of pricing.—No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of a fraction shall be prominently displayed, and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of, the numerals representing the whole cent.
History.—s. 1, ch. 72-101.

531.45 Method of sale.—Except as otherwise provided by rule of the department, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by area or volume measure, or by count, so long as the method of sale provides accurate quantity information.
History.—s. 1, ch. 72-101.

531.46 Bulk sale.—Bulk sales in excess of $20 shall be accompanied by a delivery ticket containing the following information:
(1) The name and address of the vendor and purchaser;
(2) The date delivered;
(3) The net quantity delivered and the net quantity upon which the price is based, if this differs from the delivered quantity;
(4) The identity of commodity in the most descriptive terms commercially practicable including any quality representation made in connection with the sale; and
(5) The count of individually wrapped packages, if there are more than one of such packages.
History.—s. 1, ch. 72-101.

531.47 Information required on packages.—Except as otherwise provided in this chapter or by rules adopted pursuant thereto, any package introduced in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of:
(1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container.
(2) The net quantity of contents in terms of weight, measure, or count.
(3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept or offered or exposed for sale or sold in any place other than on the premises where packed.
History.—s. 1, ch. 72-101.

531.48 Declarations of unit price on random packages.—In addition to the declarations required by s. 531.47, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.
History.—s. 1, ch. 72-101.

531.49 Advertising packages for sale.—Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. When a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.
History.—s. 1, ch. 72-101.

531.50 Offenses and penalties.—
(1) Any person who willfully and knowingly violates the provisions enumerated in subsection (2) or any provision of this chapter or rules adopted pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a subsequent conviction, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
(2) No person shall:
(a) Use, or have in possession for use, in commerce any weight or measure not approved or corrected as provided in s. 531.41(12).
(b) Use or dispose of any rejected or condemned weight or measure without specific authorization from the rejecting authority.
(c) Remove any mark of rejection from a rejected weight or measure without specific authorization from the rejecting authority.
History.—ss. 1, 1A, ch. 72-101.

531.51 Injunction.—The department is authorized, without bond, to apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter.
History.—s. 1, ch. 72-101.

531.52 Presumptive evidence.—Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.
History.—s. 1, ch. 72-101.

531.53 Regulations to be unaffected by repeal of prior enabling statute.—The enactment of this chapter or any of its provisions shall not affect any rule adopted pursuant to the authority of any earlier enabling statute unless inconsistent with this chapter or modified or revoked by rule of the department.

History.—s. 1, ch. 72-101.

531.54 Salaries and expenses of enforcement.—All expenses incident to, and incurred in, the administration and enforcement of this chapter, including the salaries and expenses of such persons as the department shall designate or employ as inspectors for that purpose, shall be paid from the General Inspection Trust Fund of the state in the same manner as other state salaries and expenses are paid.

History.—s. 1, ch. 72-101.

531.55 Metric conversion; state policy.—

(1) INTENT.—It is the intent of the Legislature that the policy of this state shall be to allow and foster the use of the metric system as the primary system of physical measurement and measurement language in the state on a voluntary basis. It is further the intent of the Legislature to remove any legal impediments currently in law to the voluntary adoption and use of the metric system of measurement in this state.

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires:

(a) "Council" means the Florida Metric Council.

(b) "Customary system of measurement" means measurement by any method other than the metric system of measurement.

(c) "Metric system of measurement" means measurement in terms of units and related symbols and practices that are recognized by the Metric Conversion Act of 1975 (Pub. L. No. 94-168, 89 Stat. 1007; 15 U.S.C. s. 205a et seq.).

(d) "Administrator" means the Commissioner of Agriculture.

(e) "Interagency metric committee" means an organization composed of employees of state and local government agencies which may be set up to advise the council and to be a medium of exchange of information on governmental action affecting conversion of government to the metric system of measurement.

(f) "Local ordinance" means an ordinance, regulation, or other enactment having the effect of law, except a state law.

(g) "Authorized limits" means, with respect to a difference in measurement between a physical quantity as expressed in the metric system of measurement under this section and as expressed in the customary system of measurement:

1. Within the lesser of 1 cent in money or 1 percent of the physical quantity expressed in the customary system, in the case of a fee, tax, levy, or other charge imposed or required by or a rate or price or the practices relating thereto regulated by or pursuant to law.

2. Within 12.5 percent of the physical quantity expressed in the customary system, in any other case.

(3) ADMINISTRATION.—

(a) The Commissioner of Agriculture shall be responsible for the administration of this section.

(b) This section shall be administered based on the principle of voluntary conversion to the metric system of measurement in this state and shall be coordinated with developments in other states.

(4) FLORIDA METRIC COUNCIL.—The Florida Metric Council is hereby created. The Administrator shall be a member of the council and shall serve as the chairman of the council.

(a) In addition to the Administrator, the council shall be composed of 18 other members as follows: The Administrator shall appoint to the council one representative, respectively, from industry, agriculture, commerce, education, labor, tourism, small business, science, engineering, consumers, and local government officials and one representative from an interagency metric committee which may be formed pursuant to this section, and any six other persons the Administrator determines to be appropriate to carry out the purposes of this section.

(b) Terms of office for council members shall be for 2 years. The Administrator may remove any member for cause and shall fill all vacancies.

(c) The members of the council shall receive no compensation for their services, except that they may receive per diem and legal travel expenses, as provided in s. 112.061, when actually engaged on the business of the council.

(5) POWERS AND DUTIES OF THE COUNCIL.—

(a) The council shall:

1. Serve as the principal medium within the state for exchanging information on conversion to the metric system of measurement with federal, local, state, private, and public parties.

2. Utilize the 1978 Florida Metric Plan as the primary means to ensure the orderly conversion from a customary system of measurement to the metric system of measurement.

3. Revise the 1978 Florida Metric Plan as needed.

4. Receive and award funds to accomplish the purposes of this section.

5. Provide executive direction and maintain necessary staff to accomplish the purposes of this section.

6. Work with Senate and House standing committees to prepare and review legislation to remove legal barriers to the voluntary conversion to the metric system.

7. Elect a vice chairman and secretary annually, and adopt any necessary bylaws and other necessary operational guidelines.

8. Act at all times in cooperation with and under the general supervision of the Administrator and in accordance with the policies adopted by the Administrator.

9. Provide appropriate procedures whereby various groups, under the auspices of the council, may formulate and recommend or suggest to the council specific programs for coordinating the conversion to the metric system of any industry or segment thereof within this state.

10. Take into account activities in the private

sector and public sector, so as not to duplicate activities.

11. Serve as the primary communications vehicle on metric matters between Florida, the United States Metric Board existing under the Metric Conversion Act of 1975 (Pub. L. No. 94-168, 89 Stat. 1007; 15 U.S.C. s. 205a et seq.), and all other intrastate and interstate bodies and organizations.

(b) The council may establish an interagency metric council responsible to the Administrator which shall be composed of state and local governmental officials who shall be responsible for coordinating and planning specific metric conversion in the various governmental agencies.

(6) REPORTS.—

(a) The Administrator shall, upon the advice of the council, submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor by March 1, 1980, specific legislative recommendations to remove any existing legal barriers to the voluntary conversion to the metric system of measurement. In preparing recommendations, the Administrator shall propose amendments to any state statute containing a reference expressed in a customary system of measurement with a reference expressed in an appropriate unit expressed in the metric system of measurement within authorized limits. Such references to the metric system of measurement shall supplement the references to the customary system of measurement. In the event the Administrator adopts a reference in the metric system that is not the exact equivalent of the reference in the customary system, such report shall state the magnitude of the difference and the reason for selecting the reference adopted.

(b) Beginning March 1, 1981, the Administrator shall, upon the advice of the council, submit an annual report which clearly states the extent of metric conversion in this state with any necessary recommendations which may further the purposes of this section. Such report shall be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor.

(7) COURT RULES.—The Administrator, at the request of the Supreme Court, may, upon the advice of the council, recommend amendments to court rules to supplement existing references expressed in the customary system of measurement with references expressed in the metric system of measurement.

(8) LOCAL ORDINANCES AND LAWS.—The governing body of any political subdivision is encouraged to amend any local ordinance that contains any reference expressed in the customary system of measurement with a reference expressed in the metric system of measurement. The governing body of any political subdivision may recommend to the President of the Senate and the Speaker of the House of Representatives the amendment of any local or special law that contains any reference expressed in the customary system of measurement with a reference expressed in the metric system of measurement.

(9) EXPIRATION DATE.—The provisions of this section shall be void and inoperative on October 1, 1986.

History.—ss. 1-9, ch. 79-316.

CHAPTER 532

DEVICES ISSUED IN PAYMENT FOR LABOR

532.01 Payment by check, draft or other order for payment.—Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness issued in payment of wages or salary due or to become due must be negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance, and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer must have sufficient funds or credit, arrangement, or understanding with the drawee for its payment.

History.—s. 1, ch. 6914, 1915; RGS 2522; CGL 3944; s. 1, ch. 18004, 1937; s. 1, ch. 71-324.

532.02 Payment by other device.—Any person issuing coupons, punch-outs, tickets, tokens, or other device in lieu of cash as payment for labor, whether redeemable either wholly or partially in goods or merchandise, at his or any other place of business, shall, on demand of any legal holder thereof:

(1) Be liable for the full face value thereof in current money of the United States, on or after the thirtieth day succeeding the day of issuance.

(2) Be liable for payment in current money of the United States, notwithstanding any contrary stipulation or provision, which may be therein contained.

(3) Be subject to suit brought thereon in any court of competent jurisdiction, upon failure to comply with either subsection (1) or subsection (2), wherein any legal holder's recovery shall include the full face value of any such device, with legal interest from demand and, in the court's discretion, 10 percent of said amount as attorney's fees in the same suit.

History.—s. 2, ch. 6914, 1915; RGS 2523; CGL 3945; s. 1, ch. 71-324.

532.04 Payment by direct deposit of funds.—

(1) None of the provisions of this chapter shall be deemed or construed to prohibit the payor of wages or salary from causing the amount of such wages or salary to be deposited directly to the account of the payee in a financial institution by electronic or other medium if such direct deposit has been authorized in writing by the payee and if the payee has designated in writing the financial institution of his choice in which such deposit is to be made. However, at the time the order for payment of such direct deposit is received by the drawee, the payor of such wages or salary must have sufficient funds or credit or an arrangement or understanding with the drawee for payment thereof.

(2) No employer or payor of wages or salary shall terminate the employment of any employee or payee solely for refusing to authorize such direct deposit of wages or salary.

(3) An employee or payee of wages or salary may bring a civil action against any person violating subsection (2). Upon rendition of a judgment or decree by any of the courts of this state against the person violating subsection (2) and in favor of the employee or payee of wages or salary, the trial court, or, in event of an appeal in which the employee or payee prevails, the appellate court, shall adjudge or decree against the person violating subsection (2) and in favor of the employee or payee a reasonable sum as fees for the employee's or payee's attorney prosecuting the suit in which the recovery is had. The court may, in its discretion, provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violation of subsection (2). If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for reasonable attorney's fees incurred by the defendant. When so awarded, attorney's fees shall be included in the judgment or decree rendered in the case.

History.—s. 1, ch. 77-296.

CHAPTER 533

MINING WASTES

533.01 Deposits for mine wastes, etc.—Any person engaged in the business of mining any mineral or subterranean product in this state, shall provide necessary places of deposit for the waste, wash or debris of any mine or mines operated by such person; and shall provide settling pools of sufficient capacity to prevent the escape of waste, wash or debris into any waters of the rivers and streams of the state, except as provided in s. 533.02.

History.—s. 1, ch. 6202, 1911; RGS 2446; s. 1, ch. 10181, 1925; CGL 3853, 3858.
cf.—s. 1.01 "Person" defined.

533.02 Escape of waste, wash, and debris.—It is unlawful for any person to permit or allow the escape of waste, wash, or debris from any mine or mines operated by such person into any of the streams and rivers of this state, but the escape of water slightly discolored shall not be construed as the escape of waste, wash and debris, nor shall the washing away of water, or debris, due to excessive rains or floods which are beyond the control of persons operating such mine or mines be within the meaning of this chapter.

History.—s. 2, ch. 6202, 1911; RGS 2447; s. 2, ch. 10181, 1925; CGL 3854, 3859.

533.03 On affidavit filed with county commissioners, county to institute suit to enjoin.—Upon the presentation to the board of county commissioners of any county of this state of an affidavit, signed by at least 10 citizens, owning property in such county, which affidavit shall allege that some person conducting mining operations in this state, giving the name thereof, is not using due diligence to prevent the escape of waste or debris from any mine or mines, operated by such person, into any stream or river of this state, and that such waste or debris is escaping into a stream or river in the county in which the affiants reside, then the board of county commissioners shall immediately institute suit in the name of such county to enjoin such person from allowing waste or debris to escape. No prosecution for perjury shall be had on such affidavit. The joinder of any number of persons as defendants shall be no grounds of objections to the suit, and they may join parties defendants not named in the affidavit if necessary.

History.—s. 3, ch. 6202, 1911; RGS 2448; CGL 3855.

533.04 Venue in county wherein affidavit presented.—The cause of action shall be considered to arise in the county wherein the affidavit shall be presented to the board of county commissioners, and suit shall be commenced therein regardless of where the mine or mines from which the waste or debris is escaping are located.

History.—s. 4, ch. 6202, 1911; RGS 2449; CGL 3856.

533.05 Duty of state attorney; attorney's fee.—In the event the regular attorney of the board of county commissioners, represents any person engaged in mining in this state, the state attorney of the circuit in which the county bringing the suit is situated, shall conduct the suit, and if the injunction shall be granted, the county shall recover from the defendant or defendants such reasonable attorney's fee as shall be allowed by the court, which shall be paid to the attorney conducting the suit, in addition to the compensation regularly paid him.

History.—s. 5, ch. 6202, 1911; RGS 2450; CGL 3857.

533.06 Penalty for violation of ss. 533.01, 533.02.—Any person violating any of the provisions of s. 533.01 or s. 533.02 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 10181, 1925; CGL 7833; s. 522, ch. 71-136.

CHAPTER 534

LIVESTOCK; MARKS AND BRANDS; STAMPING BEEF

534.011 Duties of department.—The inspection and protection of livestock in the state are hereby placed under the jurisdiction of the Department of Agriculture and Consumer Services, herein called the department.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106.

534.021 Recording of marks and brands.—The department shall be the recorder of livestock marks and brands and such marks and brands shall not be recorded elsewhere in the state. Any livestock owner who uses a mark or brand to identify his livestock must register such mark or brand by applying to the department for such registration. The application shall be made on a form prescribed by the department and shall be accompanied by a facsimile of the brand applied for and a statement of the county or counties in the state that applicant has or expects to have livestock bearing the mark or brand to be recorded. The department shall, upon its satisfaction that the application meets the requirements of this chapter, record such mark or brand. If an application be made to record a mark or brand previously recorded, the department shall determine whether the county or counties in which the mark or brand will be used is near enough to another county or other counties in which the previously recorded mark or brand is to be used to probably cause confusion or to aid theft or dishonesty, and if so, it shall be the duty of the department to decline to admit to record such a mark or brand. If a conflict should arise between the owner of any presently recorded mark or brand and another claiming the right to record the same mark or brand, the department shall in all cases give preference to the present owner. The department shall charge and collect at the time of any such recording a fee of $10 for each mark or brand. No person, firm or corporation shall use any mark or brand to which another has a prior right of record. It shall be unlawful to brand any animal with a brand not registered with the department.

History.—s. 1, ch. 65-357; s. 1, ch. 69-333; ss. 14, 35, ch. 69-106; s. 1, ch. 75-37.

534.031 Certified copies of marks and brands.—Certified copies of recorded marks and brands shall be furnished by the department when and as requested and it shall charge and collect $2 for each certificate. Such certificates shall be admissible in evidence in all courts.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106; s. 1, ch. 75-37.

534.041 Renewal of certificate of mark or brand.—

(1) The registration of a mark or brand shall entitle the registered owner to exclusive ownership and use of such mark or brand for a period ending at midnight on the last day of the month 5 years from the date of registration. Such registration may be renewed, upon application and payment of a renewal fee of $5, for successive 5-year periods, each ending at midnight on the last day of the month 5 years from the date of renewal. At least 30 days prior to the month of expiration of a registration, the department shall notify by letter the registered owner of the mark or brand that, upon application for renewal and payment of the renewal fee, the department shall issue a renewal certificate granting the registered owner exclusive ownership and use of such mark or brand for another 5-year period ending at midnight on the last day of the month 5 years from the date of renewal. Failure to make application for renewal within the month of expiration of a registration shall cause the department to send a second notice to the registered owner by registered mail at his last known address. Failure of the registered owner to make application for renewal within 30 days after receipt of the second notice shall cause such owner's mark or brand to be placed on an inactive list for a period of 12 months, after which it shall be canceled and become subject to registration by another person on application.

(2) For the purpose of transition to this system of renewal, however, any mark or brand on record as of June 30, 1975, may be renewed within the period beginning July 1, 1976, and ending December 31, 1976, for a lesser period than that provided by subsection (1) and at a renewal fee computed on a prorated basis pursuant to a schedule of periods and fees to be promulgated and published by the department. Such schedule shall be designed to stagger all such renewals over a 5-year period, with each renewal occurring in the same month as that of original registration. Failure of the registered owner to make application for renewal prior to January 1, 1977, shall cause such owner's mark or brand to be placed on an inactive list for a period of 12 months, after

which it shall be canceled and become subject to registration by another person on application.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106; s. 1, ch. 70-152; s. 1, ch. 70-439; s. 1, ch. 75-37.
cf.—s. 1.01 Registered mail defined to include certified mail.

534.051 Transfer of ownership of mark or brand.—Marks or brands recorded under this act are the property of the person, firm or corporation causing the record to be made, and may be sold, assigned or donated as personal property. Any instrument affecting the title of such mark or brand shall be acknowledged in the presence of the recorded owner and a notary public, and shall be recorded by the department. The fee for recording a transfer of ownership shall be $10.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106; s. 1, ch. 75-37.

534.061 Transfer of ownership of cattle.—It shall be the duty of all purchasers of cattle, except for immediate slaughter, to remark or rebrand the same within 10 days, or have on request a bill of sale from the rightful owner of marks and brands on cattle, provided that this requirement shall not apply where an entire stock of cattle with the mark and brand or marks and brands carried by them shall be sold and conveyed.

History.—s. 1, ch. 65-357.

534.071 Rules and regulations.—The department shall prescribe and enforce suitable rules and regulations for the inspection of livestock and carcasses of livestock to the end that the true ownership thereof may at all times be protected and larceny prevented and for the enforcement of this chapter. The department is hereby authorized to employ all necessary inspectors and to use any other designated persons to enforce and administer the provisions of this chapter.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106.

534.081 Duties of law enforcement officers; appointment of special officers.—

(1) All law enforcement officers of the state or any political subdivision thereof, including investigators and road guard inspection special officers of the department and highway patrolmen, are authorized to stop any driver of a vehicle transporting livestock, carcasses of livestock, inedible raw products of livestock, used grease, used restaurant grease, or other such products and to require said driver to present for inspection the evidence of ownership or authority of possession of such livestock, carcasses of livestock, inedible raw products [1]of livestock, [1]used grease, used restaurant grease, or other such products.

(2) All law enforcement officers of the state or any political subdivision thereof, including investigators of the department, shall have the authority to visit all markets, slaughtering establishments, and places where slaughtered animals are offered for sale at reasonable intervals and to keep said markets under close observation.

(3)(a) The department may appoint as special officers the investigators of the department authorized by this section. Said special officers and all other law enforcement officers of the state shall have power and authority throughout the state in carrying out their duties specified in this section and in the enforcement of other criminal provisions in this chapter and other laws relating to livestock theft. Each such special officer shall be covered by a public employee's faithful performance of duty bond, with a corporate surety authorized to do business in this state, in the sum of $5,000, to be approved by the department, conditioned upon the faithful performance of his duties and payable to the governor and his successors in office.

(b) All such officers shall have power and authority to make arrests, with or without warrants, for the violations of the criminal provisions of this chapter and other laws relating to livestock theft, to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901. In each case when any of such officers effect an arrest, the sheriff of the county in which such arrest is made shall be entitled to the lawful fees as if such arrests had been effected by him or his deputies.

(c) In the enforcement of the provisions of this chapter and other laws relating to livestock theft, such officers may go upon all premises, posted or otherwise, when necessary for the enforcement of such laws. The department may, at any time for cause, withdraw the appointment as special officers from said investigators of the department. All such special officers shall have the same right and authority to carry arms as do the sheriffs of this state. The compensation of such special officers shall be fixed and paid by the department.

History.—s. 1, ch. 65-357; s. 2, ch. 69-333; ss. 14, 35, ch. 69-106; s. 1, ch. 70-235; s. 1, ch. 70-439; s. 1, ch. 79-323.
[1]Note.—The words "of livestock" and "used" were inserted by the editors.

534.082 Duties of livestock hide dealers.—Livestock hide dealers shall make and keep a record of all hides of livestock received by them, which record shall include the name and address of the person from whom the hides were purchased, a description of the hides, brands, and any other identifying information. Such record shall be maintained for public or official inspection for a period of 2 years.

History.—s. 3, ch. 69-333.

534.083 Livestock hauler's permit; display of permit on vehicle; bill of lading.—

(1) No person or company shall engage in the business of transporting or hauling for hire livestock along the public roads or highways of Florida without first having applied for and obtained from the department a permit on a form prescribed by the department. Said permit shall be renewed on or before January 1 each year. Cost of the permit shall be $5.

(2) The department shall issue a metal tag or plate to every person or company required to obtain a permit to transport or haul for hire livestock, which shall bear the serial number of the permit. Such a tag or plate shall be issued for each vehicle used by the hauler.

(3) The metal tag or plate required under this section shall be attached to each vehicle used for transporting or hauling livestock in a conspicuous place in an upright position on the rear of the vehicle. When livestock is transported in a trailer type

vehicle propelled or drawn by a motor truck or tractor, each such trailer shall have the tag or plate attached to the rear of the trailer in a conspicuous place in an upright position, and it shall not be necessary to have a tag attached to the motor truck or tractor.

(4) Persons engaged in the business of transporting or hauling livestock in the state shall, upon receiving such livestock for transportation, issue a waybill or bill of lading for all livestock transported or hauled by them, and such waybill or bill of lading shall accompany the shipment of livestock, with a copy thereof being furnished to the person delivering livestock to the hauler. The waybill or bill of lading shall show the place of origin and destination of the shipment, the name of the owner of the livestock, date and time of loading, name of person or company hauling the livestock, and the number of animals and a general description thereof. The waybill or bill of lading shall be signed by the person delivering the livestock to the hauler certifying that the information contained thereon is correct.

History.—s. 3, ch. 69-333; ss. 14, 35, ch. 69-106.

534.091 Claim of ownership without title.—It shall be unlawful for any person, firm or corporation to have the possession of livestock or carcasses of livestock under claim of ownership when in fact said person, firm, or corporation does not own said livestock or carcasses of livestock.

History.—s. 1, ch. 65-357.

534.101 Penalties.—Any person who shall violate the provisions of ss. 534.011-534.091, either by doing anything forbidden, or failing to do and perform anything required hereby, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-357; s. 523, ch. 71-136.

534.111 Injunction.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter, or for failing or refusing to comply with the requirements of this chapter, or any rule or regulation duly promulgated as in this chapter authorized, such injunction to be issued without bond.

History.—s. 1, ch. 65-357; ss. 14, 35, ch. 69-106.

534.47 Definitions.—As used in ss. 534.48-534.53:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Livestock market" means any location in the state where livestock is assembled and sold at public auction or on a commission basis during regularly scheduled or special sales. The term "livestock market" shall not include private farms or ranches or sales made at livestock shows, fairs, exhibitions, or special breed association sales.

(3) "Buyer" means the party to whom title of livestock passes or who is responsible for the purchase price of livestock, including, but not limited to, producers, dealers, meat packers, or order buyers.

History.—s. 1, ch. 73-40.

534.48 License and fee.—Prior to engaging in business, every livestock market shall make application to the department for a license. Such application shall be on a form provided by the department and shall be accompanied by an annual license fee of $100. Upon approval of the application by the department, a license shall be issued and shall remain in effect for 1 year from the date of issuance unless terminated by the department. All funds received as license fees shall be placed in the General Inspection Trust Fund.

History.—s. 2, ch. 73-40.

534.49 Livestock drafts; effect.—For the purposes of this section, livestock drafts given as payment at livestock auction markets for livestock purchases shall not be deemed an express extension of credit to the buyer and shall not defeat the creation of a lien on such an animal and its carcass and all products therefrom and proceeds thereof, to secure all or a part of its sales price, as provided in s. 534.54(4).

History.—s. 3, ch. 73-40; s. 1, ch. 75-212; s. 1, ch. 77-362; s. 1, ch. 79-18.

534.50 Report and notice of dishonored check or draft.—It shall be the duty and responsibility of each livestock market to report to the department within 24 hours after having knowledge that a check or draft issued in payment for livestock has been dishonored, and it shall be the duty and responsibility of the department to notify all licensed livestock markets of the fact of such dishonor of any such check or draft issued in payment for livestock.

History.—s. 4, ch. 73-40.

534.501 Livestock draft; unlawful to delay payment.—It shall be unlawful for the purchaser of livestock to delay payment of the livestock draft upon presentation of said draft at the payor's bank. Nothing contained in this section shall be construed to preclude a payor's right to refuse payment of an unauthorized draft.

History.—s. 2, ch. 77-362.

534.51 Prohibition against filing complaint.—A livestock market shall be prohibited from filing a complaint under s. 604.21 if such livestock market has violated any provision of ss. 534.47-534.53 in connection with any transaction included in the cause of action for said complaint.

History.—s. 5, ch. 73-40.

534.52 Violations; refusal, suspension, revocation; penalties.—

(1) For any violation of ss. 534.47-534.53, the department may refuse to renew a license or may suspend or revoke a license already issued, upon notice to the applicant or licensee of its intention so to refuse, suspend, or revoke by giving its reasons therefor. The applicant or licensee shall have 15

days thereafter in which to request a hearing on the department's intentions to refuse, suspend, or revoke his license, and upon his failure to do so within said time, refusal, suspension, or revocation shall become final without further procedure.

(2) In addition, or as an alternative to refusing, suspending, or revoking a license in cases involving violations, the department may impose a fine not to exceed $500 for the first offense and not to exceed $1,000 for the second or subsequent violations. When imposed and paid, such fines shall be deposited in the General Inspection Trust Fund.

(3) Failure to comply with the provisions of ss. 534.49 and 534.501 shall be a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 6, ch. 73-40; s. 3, ch. 77-362; s. 6, ch. 78-95.

534.53 Information and records.—The livestock auction market shall be required to record and maintain information or records necessary to properly administer and enforce ss. 534.47-534.53, and such records shall be made available for inspection by the department or its agents during regular business hours.

History.—s. 7, ch. 73-40.

534.54 Cattle or hog processors; prompt payment; penalty; lien.—

(1) As used in this section:

(a) "Livestock" means cattle or hogs.

(b) "Meat processor" means a person, corporation, association, or other legal entity engaged in the business of slaughtering cattle or hogs.

(2)(a) Except as otherwise provided with respect to livestock markets pursuant to s. 534.49, a meat processor who purchases livestock from a seller, or any person, corporation, association, or other legal entity who purchases livestock from a seller for slaughter, shall make payment by cash or check for the purchase price of the livestock and actually deliver the cash or check to the seller or his representative at the location where the purchaser takes physical possession of the livestock, on the day the transfer of possession occurs or shall wire transfer of funds on the business day within which the possession of said livestock is transferred. However, if the transfer of possession is accomplished after normal banking hours, said payment shall be made in the manner herein provided not later than the close of the first business day following said transfer of possession. In the case of "grade and yield" selling, the purchaser shall make payment by wire transfer of funds or by personal or cashier's check by registered mail postmarked not later than the close of the first business day following determination of "grade and yield."

(b) All instruments issued in payment hereunder shall be drawn on banking institutions which are so located as not artificially to delay collection of funds through the mail or otherwise cause an undue lapse of time in the clearance process.

(3) In all cases in which a purchaser who purchases livestock for slaughter from a seller fails to make payment for the livestock as required by this section or artificially delays collection of funds for the payment of the livestock, the purchaser shall be liable to pay the owner of the livestock, in addition to the price of the livestock:

(a) Twelve percent damages on the amount of the price.

(b) Interest on the purchase price of the livestock at the highest legal rate from and after the transfer of possession until payment is made as required by this section.

(c) A reasonable attorney's fee for the prosecution of collection of the payment.

(4)(a) Any person, partnership, firm, corporation, or other organization which sells livestock shall have a lien on such animal and its carcass, all products therefrom, and proceeds thereof to secure all or a part of its sales price.

(b) The lien provided in this subsection shall be deemed to have attached and to be perfected upon delivery of the livestock to the purchaser without further action, and such lien shall continue in the livestock and its carcass, all products therefrom, and proceeds thereof without regard to possession thereof by the party entitled to such lien without further perfection.

(c) If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products so that the identity thereof is lost, then the lien granted in this subsection shall extend to the same effect as if same had been perfected originally in all such animals, carcasses, and products with which it has become commingled. However, all liens so extended under this paragraph to such commingled livestock, carcasses, and products shall be on a parity with one another, and, with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this paragraph, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products or against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

History.—s. 1, ch. 76-62.

CHAPTER 535

HORSE SALES, SHOWS, AND EXHIBITIONS

535.01 License by department required to conduct public vendue of thoroughbred horses.—From and after the effective date of this act all persons, firms, or corporations, hereinafter referred to singularly as a "sales organization," shall be required to obtain a license issued and made available by the Department of Agriculture and Consumer Services prior to holding, sponsoring, or conducting a public vendue at which thoroughbred yearlings or 2-year-old thoroughbred horses are offered for sale within the state; and no license shall be issued to any such sales organization by the department until such sales organization shall furnish to the department, on forms made and supplied by the department, a statement of financial responsibility, location, details of said public sale and without complying with the minimum requirements established for sale facilities.

History.—s. 1, ch. 65-414; ss. 14, 35, ch. 69-106.

535.02 Rules and regulations by department.—The department shall establish reasonable regulations and rules and set requirements for the financial responsibility and the minimum requirements for sales facilities, which rules and regulations must be complied with by any sales organization prior to the issuance of a license referred to in s. 535.01, and an application for said license must be made at least 4 months prior to a sale date.

History.—s. 2, ch. 65-414; ss. 14, 35, ch. 69-106.

535.03 Inspection by licensed veterinarian.—(1) All sales entries of thoroughbred yearlings or 2-year-old thoroughbred horses offered for sale within the state at public vendue must be inspected and approved by a veterinarian approved and licensed by the department 60 days before the date of any public sale and all entries must be reinspected by said state-licensed veterinarian within 3 to 7 days prior to the sales session at which they are to be sold, and the state-licensed veterinarian shall issue a certificate of soundness and a certificate that said animal is free from infectious diseases upon so finding and no thoroughbred yearling or 2-year-old horse shall be entered for sale at public vendue in the state until the owner thereof shall obtain such certificate of soundness.

(2) This section applies only to a sale in which more than one-half of the horses entered have an appraised value equal to or greater than $12,500 per horse.

History.—s. 3, ch. 65-414; ss. 14, 35, ch. 69-106; s. 1, ch. 78-97.

535.04 Submission to department of detailed pedigree.—As a prerequisite of the entry of any thoroughbred yearling or 2-year-old thoroughbred horse in any public vendue in the state the owner of said animal must first submit to the Department of Agriculture and Consumer Services and to the sales organization a detailed pedigree of said animal at least 60 days prior to the opening of any such public vendue and the department is authorized and directed to establish the minimum requirements of the pedigree requirement provided for in this section.

History.—s. 4, ch. 65-414; ss. 14, 35, ch. 69-106.

535.05 License fee.—The department shall assess a reasonable fee to cover the cost of licensing the sales organization as herein provided for and said fee must be paid by the sales organization prior to obtaining a license hereunder.

History.—s. 5, ch. 65-414; ss. 14, 35, ch. 69-106.

535.06 Fee for examination of horses.—The department shall assess a reasonable fee to be paid by the owner of any thoroughbred yearling or 2-year-old thoroughbred horse for the cost of the examination of said animal by the state-approved and licensed veterinarian, and for the cost of the certificate of soundness herein provided for and said fee shall be paid by the said owner prior to the issuance of the certificate of soundness.

History.—s. 6, ch. 65-414; ss. 14, 35, ch. 69-106.

535.10 Horse sales or shows; soring of horses; prohibited acts.—

(1) For the purposes of ss. 535.10-535.13, a horse shall be considered to be sored if, for the purpose of affecting its natural gait:

(a) A blistering agent has been applied internally or externally to any of the legs, ankles, feet, or other parts of the horse;

(b) Burns, cuts, or lacerations have been inflicted on the horse;

(c) A chemical agent has been administered internally or externally, or tacks, nails, or wedges have been used on the horse; or

(d) Any other method or device has been used on the horse, which may reasonably be expected currently to result in physical pain to the horse when walking, trotting, or otherwise moving or to cause extreme fear or distress to the horse.

(2)(a) It is unlawful for any person to show or exhibit, or enter for the purpose of showing or exhibiting, in any horse show or exhibition, any horse which is sored.

(b) It is unlawful for any person to conduct any

horse show or exhibition in which they knowingly allow to be shown or exhibited a horse which is sored or drugged.

(3)(a) The Department of Agriculture and Consumer Services is authorized to make such inspections of any horse at any horse show or exhibition as may be deemed necessary by the department for the effective enforcement of ss. 535.10-535.13, and the owner or other person having custody of any such horse shall afford the department access to and opportunity so to inspect the horse.

(b) The person or persons in charge of any horse show or exhibition shall keep such records as the Department of Agriculture and Consumer Services may prescribe by regulation in order to enable the department to determine whether any horse has been sored, the identity of the owner or exhibitor of any horse at the show or exhibition, and other facts necessary for the effective enforcement of ss. 535.10-535.13. The person or persons in charge of any horse show or exhibition shall afford the representatives of the department access to and opportunity to inspect and copy such records at all reasonable times.

History.—s. 1, ch. 71-166.

535.11 Prohibition against administration of drugs; testing; search powers of department; penalties.—

(1) As used in this section, unless the context otherwise requires:

(a) "Stimulant" means any medication which stimulates the circulatory, respiratory, or central nervous system.

(b) "Depressant" means any medication which depresses the circulatory, respiratory, or central nervous system.

(c) "Forbidden substance" means any stimulant, depressant, tranquilizer, or local anesthetic which might affect the performance of a horse.

(d) "Trainer" means any adult who has the responsibility for the care, training, custody, or performance of a horse. Said person may be an owner, rider, agent, or coach, as well as trainer.

(2) No horse shall be entered, shown, or exhibited in any class in any horse show or exhibition, or entered, exhibited, or sold in a horse sale, if it has been administered, in any manner, any forbidden substance, in violation of the provisions of this section, or any new drug, regardless of how harmless or innocuous such drug might be, if such drug by its very nature might mask or screen the presence of a forbidden substance or prevent or delay testing procedures. Except for substances on the pastern area of walking horses, the full use of modern therapeutic measures for the improvement and protection of the health of the horse, including phenylbutazone, is permitted, unless the drug given may also stimulate or depress the circulatory, respiratory, or central nervous system or act as a tranquilizer or local anesthetic.

(3) In the absence of substantial evidence to the contrary, trainers are responsible for a horse's condition and for compliance with all laws and rules concerning the showing and exhibiting of horses and the sale of horses. If any trainer is prevented from performing his duties, including the responsibility for the condition of the horses in his care, by illness or other cause, or is absent from any show or sale where horses under his care are entered and stabled, he shall immediately notify the horse show or sales company management and, at the same time, appoint a substitute. Such substitute shall be equally responsible with the regular trainer for the condition of the horses in his care. When a minor exhibitor has no trainer, a parent or guardian must assume the responsibility of trainer.

(4) Any trainer or other person who administers, attempts to administer, instructs, aids, or conspires with another to administer, or employs anyone who administers or attempts to administer, a forbidden substance to a horse, either before or during a horse show or sale, without complying with the provisions of subsection (5), shall be subject to the penalties provided in s. 535.12.

(5) Any horse being exhibited at a horse show or entered in any sale that receives any medication which contains a forbidden substance shall not be eligible for competition in such show or to be sold at such sale unless the following requirements have been met and the facts requested are furnished in writing:

(a) The medication must be therapeutic and necessary for treatment of an illness or injury.

(b) The horse must be withdrawn from competition or from any sale for a period of not less than 24 hours after the medication is administered.

(c) The medication must be administered by a licensed veterinarian, if available, or in his absence, only by the trainer.

(d) A written statement setting forth the following information must be furnished:

1. Identification of the medication, and the amount, strength, and mode of administration.
2. Date and time of administration.
3. Identification of the horse's name, age, sex, color, and entry number, if available.
4. Diagnosis and reason for administration.

The statement shall be signed by the person administering the medication and filed with a representative of the management of the horse show or sale within 1 hour after administration, or within 1 hour after such representative returns to duty, if administration is made at a time other than during show or sale hours. The statement shall be signed by said representative, who shall also record the time of receipt on the statement.

(6) Any horse entered in any horse show or exhibition or entered in any horse sale shall be subject to examination by an approved veterinarian representing the Department of Agriculture and Consumer Services. The veterinarian may appoint a technician to perform certain duties under his direction. The examination may include physical, saliva, urine, and blood tests, and, with the trainer's consent, the administration of a drug to induce urination, or any other test or procedure, in the discretion of the veterinarian, necessary to effectuate the purposes of this section. The veterinarian may examine any or all horses in a class or in all classes in a show, or any horse entered in any class, whether in competition or not and whether or not on the show ground, or any horse withdrawn by an exhibitor within 24 hours

prior to the class for which it has been entered, or any horse entered in any horse sale. Every exhibitor, trainer, and consignor shall, upon request of the veterinarian, permit such test specimens as are necessary to be taken. Any person who refuses to submit a horse for examination or to cooperate with the veterinarian or his agents shall be subject to the penalties provided in s. 535.12.

(7) A representative of the Department of Agriculture and Consumer Services may enter the stable, tack room, automobile, van, or any other place within the enclosure of a horse show or horse sale to inspect or examine the personal effects and property of every trainer and his employees or agents. If reserpine or any drug containing reserpine is found in any of such locations, the trainer responsible for the area in which the drug is found shall be subject to the penalties provided in s. 535.12. If such representative has reason to believe that bottles or containers contain reserpine, such bottles or containers may be removed from the custody of any trainer or his employees or agents for testing. The Department of Agriculture and Consumer Services or its agents or any veterinarian representing the department shall not be liable for any actions lawfully taken by them in carrying out the provisions of this subsection.

(8) Each horse show and sales company shall set aside suitable facilities conveniently located for the veterinarian representing the Department of Agriculture and Consumer Services to make tests under the provisions of this section.

(9) If the chemical analysis of saliva, urine, or other samples taken from a horse indicate the presence of a forbidden substance, this shall be prima facie evidence that the forbidden substance has been administered to the horse. If any such analysis so indicates the presence of a forbidden substance, and all the requirements of subsection (5) have been fully complied with, the information contained in the statement required by paragraph (d) of said subsection and any other relevant evidence shall be considered in determining guilt or innocence of any person charged under the provisions of this section.

(10) The owner or owners of a horse found to have been administered a forbidden substance in violation of this section shall forfeit all prize money or sweepstakes and any trophies and ribbons won at any show by said horse and the same shall be redistributed accordingly.

History.—s. 2, ch. 71-166; s. 1, ch. 77-213; s. 220, ch. 79-400.

535.12 Horse shows or sales; penalties for violations.—

(1) Any person who violates the provisions of subsection (2) of s. 535.10 or subsections (4), (6), or (7) of s. 535.11 is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083. For a second or subsequent offense, such person is guilty of a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083.

(2) In addition to the penalties provided in subsection (1), any person convicted pursuant to said subsection shall be barred from showing, exhibiting, or offering for sale, at a public sale, any horses in this state for a period of 2 years from the date of the conviction for said violation.

History.—s. 3A, ch. 71-166; s. 2, ch. 77-213; s. 1, ch. 78-395.

535.13 Inapplicability to horse racing.—No provision contained in ss. 535.10-535.12 shall in any way affect existing statutes governing horse racing.

History.—s. 4, ch. 71-166.

535.14 Rules.—The department may make all necessary rules to carry out the provisions of ss. 535.10-535.12.

History.—s. 3, ch. 77-213.

535.15 Review commission.—

(1) There is created within the Department of Agriculture and Consumer Services a special review commission to further carry out the enforcement of this chapter.

(2) The review commission shall be appointed by the Commissioner of Agriculture and Consumer Services and shall consist of two members appointed from the department; two members who are active representatives of a horse show, sale, or exhibition; and one member licensed as a veterinarian in Florida. Each member of the commission shall serve for a term of 4 years and shall not be eligible to succeed himself.

(3) The commission is empowered to conduct hearings in accordance with the provisions of chapter 120 on any allegation of violations of s. 535.10 or s. 535.11.

(4) The commission shall meet only upon the call of the Commissioner of Agriculture and Consumer Services after the filing of a written complaint with the department by any person alleging violations of s. 535.10 or s. 535.11.

(5) If, in the opinion of a majority of the commission, a person has violated the provisions of s. 535.10 or s. 535.11, the commission may issue an order of suspension against said person from participation in any horse sale, show, or exhibition for a period of up to 6 months.

(6) The commission also may forward all information and evidence gathered on said violations to the appropriate state attorney's office.

(7) The department shall adopt rules to implement the provisions of this section.

History.—s. 2, ch. 78-395.

CHAPTER 536

TIMBER AND LUMBER

536.13 Stamp or brand for logs.—Any person engaged in this state in the business of getting out, buying, selling, or manufacturing saw logs, may adopt a stamp or brand for such logs, of such design as he may select.

History.—s. 1, ch. 4738, 1899; GS 1256; RGS 2393; CGL 3802.

536.14 Brands to be recorded by clerk of circuit court.—A person may execute a written declaration that he has adopted a brand, describing it, and after acknowledgment of such declaration before any officer authorized to take acknowledgments of deeds, may have the same recorded by the clerk of the circuit court in the record of mortgages, in any county in which he may desire to own or have in possession saw logs.

History.—s. 2, ch. 4738, 1899; GS 1257; RGS 2394; CGL 3803.

536.15 May prevent use by others.—Any person who has had his brand recorded in any county, may prevent other persons from using the same in said county by a writ of injunction, restraining such use.

History.—s. 4, ch. 4738, 1899; GS 1258; RGS 2395; CGL 3804.
cf.—Ch. 60 Injunctions.

536.16 Prima facie evidence of ownership.—Any log found in any county branded with a brand recorded in said county by any person shall be deemed prima facie to be the property of such person.

History.—s. 5, ch. 4738, 1899; GS 1259; RGS 2396; CGL 3805.

536.17 Where two or more brands the same.—In case there shall be recorded in the same county two or more brands the same, or substantially the same, the brand first recorded shall be the lawful brand, and the other shall be of no effect under this chapter.

History.—s. 6, ch. 4788, 1899; GS 1260; RGS 2397; CGL 3806.

536.18 Defacing the mark or brand of lumber and timber.—If any person shall fraudulently alter, change or deface the duly recorded mark, brand, or stamp of any lumber, logs or timber, or shall fraudulently mark, brand or stamp any unmarked or unstamped or unbranded lumber, logs or timber, with intent to claim the same or to prevent identification by the owner or owners thereof, the person so offending shall be punished as if he had committed larceny of the same property.

History.—s. 1, ch. 4191, 1893; GS 3708; RGS 5659; CGL 7862.

536.19 Unlawful use of recorded log brand or stamp.—Any person who shall unlawfully use any recorded log brand or stamp of another shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 4738, 1899; GS 3709; RGS 5660; CGL 7863; s. 525, ch. 71-136.

536.20 Inspection, buying or selling timber by illegal standard; penalty.—Any person buying or selling logs or square timber by any other measure or scale than Doyle's Rule and Log Book, or any timber inspector willfully making return of any inspection scale or measurement of timber except according to said book, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, when it is mutually agreed between the buyer and the seller, a measure or scale other than Doyle's Rule Book may be adopted and a survey can be made by a party other than a commissioned inspector.

History.—RS 2720, 2721; ss. 4, 5, ch. 3898, 1889; GS 3710; RGS 5661; CGL 7864; s. 526, ch. 71-136.

536.21 Penalty for false representations, etc.—Any commissioned timber inspector or other person furnishing specifications or certificates of inspection of sawed pine timber in this state, who shall falsely represent, or fail to show on such specification or certificate, the classification of such timber by law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 4415, 1895; GS 3711; RGS 5662; CGL 7865; s. 527, ch. 71-136.

536.22 Lumber, moisture content; enforcement.—

(1) All lumber 2 inches or less in thickness shall contain not more than 19 percent moisture content at the time such lumber is permanently installed into a structure or building used for human habitation. Such lumber shall at no time be less than American lumber standard sizes when such lumber is at 19 percent moisture content.

(2) It shall be the duty of every state attorney and sheriff, the Department of Agriculture and Consumer Services or its duly authorized representative, and any other appropriate state and county official to enforce the provisions of this section. The aforementioned officials are authorized to make application for injunction to the proper circuit court and the judge of said court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or both restraining any person from violating or continuing to violate any of the provisions of this section or from failing or refusing to comply with the requirements of this section, said injunction to issue without bond.

(3) The installation of any lumber which does not conform to the provisions contained in subsection (1) shall be prohibited and any person installing such lumber in a structure or building for human habitation shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 61-209; s. 1, ch. 63-359; ss. 14, 35, ch. 69-106; s. 528, ch. 71-136; s. 26, ch. 73-334.

CHAPTER 540

COMMERCIAL DISCRIMINATION

540.01 Unfair discrimination and competition prohibited; definition of commodity.—

(1) Any person doing business in the state, and engaged in the production, manufacture, sale or distribution of any commodity in general use, that shall, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is declared unlawful; provided, however, that nothing herein contained shall prevent discrimination in prices in the same or different sections, communities, or cities of this state made in good faith in an amount necessary to meet competition.

(2) As used in this chapter the word "commodity" shall include any article, product, thing of value, service or output of a service trade.

History.—s. 1, ch. 6945, 1915; RGS 2517; CGL 3939; s. 1, ch. 61-323; s. 1, ch. 67-485.

cf.—ss. 350.08, 350.32, 350.42 Discrimination in rates by rail carriers.
ss. 364.09, 364.12 Discrimination by telegraph and telephone.

540.02 Duty of state attorneys, etc.—The state attorneys and the Department of Legal Affairs shall enforce the provisions of s. 540.01 by appropriate actions in courts of competent jurisdiction.

History.—s. 3, ch. 6945, 1915; RGS 2518; CGL 3940; ss. 11, 35, ch. 69-106; s. 26, ch. 73-334.

540.03 Complaints made to Department of State; duty.—If complaint shall be made to the Department of State that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this chapter, the Department of State shall refer the matter to the Department of Legal Affairs which may, if the facts justify it, institute proceedings in the courts against such corporation.

History.—s. 4, ch. 6945, 1915; RGS 2519; CGL 3941; ss. 10, 11, 35, ch. 69-106.

540.04 Department of State to revoke permit of corporation found guilty of discrimination.— If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination within the terms of this chapter, the Department of State shall immediately revoke the permit of such corporation to do business in this state.

History.—s. 5, ch. 6945, 1915; RGS 2520; CGL 3942; ss. 10, 35, ch. 69-106.

540.05 Ouster of corporation found guilty.— If after revocation of its permit, such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this chapter, shall continue or attempt to do business in this state, the Department of Legal Affairs, by a proper suit in the name of the state, shall oust such corporation from all business of every kind and character in this state.

History.—s. 6, ch. 6945, 1915; RGS 2521; CGL 3943; ss. 11, 35, ch. 69-106.

540.06 Unfair commercial discrimination prohibited; penalty.—Any person, firm, company, association or corporation violating any of the provisions of s. 540.01, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 6945, 1915; RGS 5668; CGL 7871; s. 530, ch. 71-136.

540.08 Unauthorized publication of name or likeness.—

(1) No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

(a) Such person; or

(b) Any other person, firm or corporation authorized in writing by such person to license the commercial use of his name or likeness; or

(c) If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of his surviving spouse and surviving children.

(2) In the event the consent required in subsection (1) is not obtained, the person whose name, portrait, photograph, or other likeness is so used, or any person, firm, or corporation authorized by such person in writing to license the commercial use of his name or likeness, or, if the person whose likeness is used is deceased, any person, firm, or corporation having the right to give such consent, as provided hereinabove, may bring an action to enjoin such un-

authorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

(3) The provisions of this section shall not apply to:

(a) The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;

(b) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use of his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof; or

(c) Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.

(4) No action shall be brought under this section by reason of any publication, printing, display, or other public use of the name or likeness of a person occurring after the expiration of forty years from and after the death of such person.

(5) As used in this section, a person's "surviving spouse" is the person's surviving spouse under the law of his domicile at the time of his death, whether or not the spouse has later remarried; and a person's "children" are his immediate offspring and any children legally adopted by him. Any consent provided for in subsection (1) shall be given on behalf of a minor by the guardian of his person or by either parent.

(6) The remedies provided for in this section shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of his privacy.

History.—s. 1, ch. 67-57.

540.09 Unauthorized publication of photographs or pictures of areas to which admission is charged.—

(1) Any person who shall sell any photograph, drawing, or other visual representation of any area, building, or structure, the entry or admittance to which is subject to an admission charge or fee, or of any real or personal property located therein, or who shall use any such photograph, drawing, or other visual representation in connection with the sale or advertising of any other product, property or service, without the express written or oral consent of the owner or operator of the area, building, structure, or other property so depicted, shall be liable to such owner or operator for any loss, damage, or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and for punitive or exemplary damages, and such unauthorized sale or use may be enjoined.

(2) The provisions of this section shall not apply to:

(a) Photographs, drawings, or other visual representations in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such photographs, drawings, or other visual representations are not used for advertising purposes; or

(b) Photographs, drawings, or other visual representations in which the depiction of such property is incidental to the principal subject or subjects thereof and not calculated or likely to lead the viewer to associate such property with the sale, offering for sale or advertising of any property, product or service.

(3) Any person who by means of a tower or other structure to which directly or indirectly admission is charged shall permit any other person or persons to look into or view any previously established tourist attraction, the entry or admission to which for the purpose of viewing the same is subject to an admission charge or fee, without the express written or oral consent of the owner or operator of such previously established tourist attraction, shall be liable to the owner or operator of the previously established tourist attraction for any loss, damage or injury sustained by reason thereof and punitive or exemplary damages, and the use of a tower or other structure for such unauthorized viewing may be enjoined.

(4) The remedies provided for in this section shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the unauthorized sale or use for purposes of trade or advertising of photographs, drawings, or other visual representations of his property.

History.—s. 1, ch. 67-57; s. 1, ch. 69-243.

540.10 Exemption from liability of news media.—No relief may be obtained under s. 540.08 or s. 540.09, against any broadcaster, publisher or distributor broadcasting, publishing or distributing paid advertising matter by radio or television or in a newspaper, magazine, or similar periodical without knowledge or notice that any consent required by s. 540.08 or s. 540.09, in connection with such advertising matter has not been obtained, except an injunction against the presentation of such advertising matter in future broadcasts or in future issues of such newspaper, magazine, or similar periodical.

History.—s. 1, ch. 67-57.

540.11 Unauthorized copying of phonograph records, disc, wire, tape, film or other article on which sounds are recorded.—

(1) As used in this section, unless the context otherwise requires:

(a) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(b) "Performer" means the person or persons appearing in a performance.

(2)(a) It is unlawful:

1. Knowingly and willfully and without the consent of the owner, to transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell, or cause to be sold, for profit such article on which sounds are so transferred.

2. Knowingly and willfully and without the consent of the performer, to transfer to or cause to be transferred to any phonograph record, disc, wire, tape, film, or other article any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell, or cause to be sold, for profit or to be used to promote the sale of any product or such article onto which such performance is so transferred.

(b) Any person violating any provision of paragraph (a) of this subsection shall be guilty of a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084.

(3)(a) It is unlawful:

1. To sell or offer for sale any article with the knowledge, or with reasonable grounds to know, that the sounds thereon have been transferred without the consent of the owner.

2. To sell or offer for sale any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. To sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b) Any person violating any provision of paragraph (a) of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any recorded article produced in violation of subsections (2) and (3), or any equipment or components used in the production thereof, shall be subject to seizure and forfeiture and destruction by the seizing law enforcement agency.

(5) Possession of 5 or more duplicate copies or 20 or more individual copies of such recorded articles, produced without the consent of the owner or performer, shall create a rebuttable presumption that such articles are intended for sale or distribution in violation of subsections (2) or (3).

(6) This section shall neither enlarge nor diminish the right of parties in private litigation.

(7) This section does not apply:

(a) To any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

(b) To any person who transfers such sounds in the home for personal use and without compensation for such transfer.

History.—ss. 1, 1A, ch. 71-102; s. 2, ch. 77-440; s. 221, ch. 79-400.
Note.—Former s. 543.041.

CHAPTER 542

COMBINATIONS RESTRICTING TRADE OR COMMERCE

542.01 Definitions; "trust," "commodity." —

(1) A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce, or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodity;

(c) To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state nor the members, officers, agents or employees thereof or any of them, as such, shall be deemed to be a trust, a combination in restraint of trade, an illegal monopoly or any attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to be a trust, or be considered illegal or in restraint of trade.

(2) As used in this chapter, the word "commodity" shall include any article, product, merchandise, thing of value, service or output of a service trade.

History.—s. 1, ch. 6933, 1915; RGS 5719; s. 1, ch. 10283, 1925; CGL 7944; s. 1, ch. 61-324.

cf.—s. 448.045 Wrongful combinations against workmen.
s. 544.01 et. seq. Combinations against Florida meat.
s. 545.01 et. seq. Combinations restricting financing of motor vehicles.
s. 617.15, Corporation marketing commercial sponges.
s. 618.17 Marketing contracts of agricultural cooperative marketing associations.
s. 618.21 Agricultural cooperatives not in restraint of trade.
s. 619.02 Associations not in restraint of trade.

542.02 Forfeiture of charter of domestic corporations for violations.—Any corporation holding a charter under the laws of the state which shall violate any of the provisions of this chapter shall forfeit its charter and franchise, and its corporate existence shall cease.

History.—s. 2, ch. 6933, 1915; RGS 5720; CGL 7945.

542.03 Dissolution proceedings instituted by Department of Legal Affairs, etc.—For a violation of any of the provisions of this chapter by any corporation mentioned herein, the Department of Legal Affairs or any state attorney upon his own motion, and without leave or order of any court or judge, shall institute suit or quo warranto proceedings for the forfeiture of its charter rights and franchises and the dissolution of its corporate existence.

History.—s. 3, ch. 6933, 1915; RGS 5721; CGL 7946; ss. 11, 35, ch. 69-106.

542.04 Foreign corporation violating chapter denied right to do business in state.—Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The Department of Legal Affairs shall enforce this provision by injunction, or other proper proceedings, in the name of the state.

History.—s. 4, ch. 6933, 1915; RGS 5722; CGL 7947; ss. 11, 35, ch. 69-106.

542.05 Combinations prohibited; penalty.—

(1) Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any

business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodities;

(c) To prevent competition in the manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected

or any person who shall aid or advise in the creation or carrying out of any such combination, or knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, as principal, manager, director, agent, servant, or employee, or in any other capacity, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day during a violation of this provision shall constitute a separate offense.

(2) Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state, nor the members, officers, agents or employees thereof, or any of them as such, shall be deemed to be a combination prohibited under the meaning of this section nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to have created a combination prohibited herein.

History.—s. 5, ch. 6933, 1915; RGS 5723; s. 2, ch. 10283, 1925; CGL 7948; s. 531, ch. 71-136.

cf.—Cross references under s. 542.01.

s. 542.10 Contract violating chapter void.

542.06 Sufficiency of indictment.—In any indictment or information for an offense named in this chapter it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when, or where it was created.

History.—s. 6, ch. 6933, 1915; RGS 5724; CGL 7949.

542.07 Rule of evidence.—In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists, and that the defendant or defendants belonged to it or acted for or in connection with it, without proving all members belonging to it, or providing or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. General reputation may be given in evidence in all prosecutions of alleged combinations under the provisions of this chapter.

History.—s. 7, ch. 6933, 1915; RGS 5725; CGL 7950.

542.08 Criminal liability of nonresident.—Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons violating its provisions, whether within or without this state.

History.—s. 8, ch. 6933, 1915; RGS 5726; CGL 7951.

542.09 Daily penalty for continued violations.—Every person who shall in any manner violate any of the provisions of this chapter, shall, for each day that such violation shall be committed or continued, forfeit and pay the sum of $50, which may be recovered in the name of the state in any county where the offense is committed. The Department of Legal Affairs and state attorneys shall prosecute for and recover the same.

History.—s. 9, ch. 69-33, 1915; RGS 5727; CGL 7952; ss. 11, 35, ch. 69-106; s. 26, ch. 73-334.

542.10 Contract in violation of chapter void.—Any contract or agreement in violation of the provisions of this chapter shall be void and not enforceable either in law or equity.

History.—s. 10, ch. 6933, 1915; RGS 5728; CGL 7953.

542.11 Officers authorized to subpoena witnesses to testify as to violations; testimony of witnesses.—Any court, officer, or tribunal having jurisdiction of the offense defined in this chapter, the Department of Legal Affairs, any state attorney, or any grand jury may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of this chapter about which he may testify fully and without reservation.

History.—s. 11, ch. 6933, 1915; RGS 5729; CGL 7954; ss. 11, 35, ch. 69-106; s. 26, ch. 73-334.

542.12 Contracts in restraint of trade invalid; exceptions.—

(1) Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided by subsections (2) and (3) hereof, is to that extent void.

(2)(a) One who sells the goodwill of a business, or any shareholder of a corporation selling or otherwise

disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the goodwill from him, and so long as such employer continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

(b) The licensee, or any person deriving title from the licensee, of the use of a trademark and identifiable business format or system may agree with the licensor to refrain from carrying on or engaging in a similar business and from soliciting old customers of such licensor within a reasonably limited time and area, so long as the licensor, or any person deriving title from the licensor, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

History.—ss. 1-4, ch. 28048, 1953; s. 1, ch. 79-43.

542.13 Discriminatory trade practices.—

(1) It is an unlawful trust and an unlawful restraint of trade for any person who is chartered by, or authorized to do business in, this state to:

(a) Grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange or purchase of commodities when the letter of credit, contract, or other document contains any provision which requires such person to discriminate against, or to certify that it has not dealt or will not deal with, any other person on the basis of sex, race, color, religion, ancestry, or national origin, or on the basis of a person's lawful business associations, in order to comply with, further, or support a foreign boycott.

(b) Refuse to grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or refuse to enter into any contract for the exchange of commodities, on the ground that it does not contain such a discriminatory provision or certification as is described in paragraph (a) in order to comply with, further, or support a foreign boycott.

(c) Request or furnish information with regard to, or reflective of, a person's race, religion, sex, ethnic or national origin, or presence or absence on a blacklist, for the use of a foreign country or its nationals or residents, in order to comply with, further, or support a foreign boycott.

(d) Request or furnish information with regard to, or reflective of, the place where commodities were not manufactured or did not originate, for the use of a foreign country or its nationals or residents, in order to comply with, further, or support a foreign boycott.

(2) The prohibition against discrimination on the basis of a person's business associations shall not include the requiring of association with particular employment or a particular group as a prerequisite to obtaining group rates or discounts on insurance, recreational activities, or other similar benefits.

History.—s. 1, ch. 77-9; s. 222, ch. 79-400.

CHAPTER 544

COMBINATIONS AGAINST FLORIDA MEATS

544.01 Certain combinations against public policy.—Every arrangement, contract, agreement, trust or combination between persons made with a view to, or tending to prevent, hinder or obstruct the lawful sale in this state, or any place therein, of beef or other fresh meat of cattle or any other edible animal raised, fattened or fed in the state, or any other beef or fresh meat, or with a view to, or tending to prevent, hinder or obstruct the lawful sale of any cattle or other edible animal in this state, or any place therein, or which shall tend to monopolize or control the sale or price of beef or other fresh meat in this state, or any place therein, is declared to be against public policy.

History.—s. 1, ch. 4534, 1897; GS 3160; RGS 4986; CGL 7075.
cf.—s. 542.01 et seq. Combinations in restraint of trade.

544.02 Forfeiture of charter.—Any corporation chartered under the laws of this state, which shall violate any of the provisions of s. 544.01, shall forfeit its charter and franchises, and its corporate existence shall thereupon cease. Every foreign corporation which shall violate any of the provisions of s. 544.01 is prohibited from doing business in this state. The Department of Legal Affairs shall enforce this provision by due process of law.

History.—s. 2, ch. 4534, 1897; GS 3161; RGS 4987; CGL 7076; ss. 11, 35, ch. 69-106.

544.03 Jurisdiction of circuit court.—The circuit courts of this state are given jurisdiction in chancery, and shall restrain or enjoin any violation of this chapter in their respective circuits, and shall restrain or enjoin any raising or lowering the price of beef or other fresh meat in any place in such several circuits with intent to or tending to prevent, hinder or obstruct the sale of beef or other fresh meat or cattle or any other edible animal raised, fattened or fed in the state, or any other beef or fresh meat, or with intent to or tending to prevent, hinder or obstruct the lawful sale of any cattle or other edible animal in any such place.

History.—s. 4, ch. 4534, 1897; GS 3162; RGS 4988; CGL 7077.

544.04 Duty of state attorney.—The state attorneys shall institute and prosecute all proper suits in their respective circuits in the name of the state to enforce this chapter. Any citizen of this state also may institute and prosecute suit in his own name to enforce this chapter. In case decree shall be rendered in the circuit court in favor of the plaintiff, whether the state or an individual, the court may decree that the defendant or defendants pay a reasonable fee in the cause for the state attorney or plaintiff's solicitor therein. Nothing herein contained shall operate or be construed to deprive any person of any right to any damages, or of any remedy to recover damages which such person would have without this chapter in or about matter mentioned or included in this chapter.

History.—s. 4, ch. 4534, 1897; GS 3163; RGS 4889; CGL 7078.

544.05 Compelling testimony of witnesses.—No person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements, and documents on subpoena for the state, or as witness for the state, or on cross-examination for the state, in any prosecution, suit or proceeding, criminal or civil, authorized by or based upon this chapter or growing out of any violation thereof, when such prosecution, suit or proceeding is in the name of the state and prosecuted or carried on by the Department of Legal Affairs or state attorney, for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture. But no such person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which he may so testify or produce evidence; provided, that no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—s. 5, ch. 4534, 1897; GS 3164; RGS 4990; CGL 7079; ss. 11, 35, ch. 69-106.

544.06 Florida meats; combinations against sale of; penalty.—Any violation of any provisions of law relating to combinations against the sale of Florida meat is declared to be destructive of free competition and a conspiracy against trade, and any person who may engage in such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 4534, 1897; GS 3516; RGS 5402; CGL 7543; s. 534, ch. 71-136.

CHAPTER 545

COMBINATIONS RESTRICTING FINANCING OF MOTOR VEHICLES

545.01 Definitions of terms used in chapter.—(1) The term "person" as used in this chapter means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

(2) The terms "sell," "sold," "buy" and "purchase," as used in this chapter, include exchange, barter, gift, and offer to contract to sell or buy.

(3) The term "manufacturer" means any person engaged, directly or indirectly, in the manufacture of motor vehicles.

(4) The term "wholesale distributor" means any person engaged, directly or indirectly, in the sale or distribution of motor vehicles to agents or to dealers.

(5) The term "dealer" means any person who is engaged in, or who intends to engage in the business of selling motor vehicles at retail in this state. The term "dealer" shall also include "retail agent."

(6) The term "finance company" means any person engaged in the business of financing the sale of motor vehicles, or engaged in the business of purchasing or acquiring conditional bills of sale, or promissory notes, either secured by vendor's lien or chattel mortgages, or arising from the sale of motor vehicles in this state.

History.—s. 13, ch. 18031, 1937; CGL 1940 Supp. 4151(459).

545.02 Contracts designating finance company through which sale of motor vehicle to be financed declared void.—It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or contract for the sale of motor vehicles to any motor vehicle dealer on the condition, or with the agreement or understanding, expressed or implied, that such dealer shall in any manner finance the purchase or sale of any one or number of motor vehicles only through a designated finance company or shall sell and assign the conditional sales contracts or chattel mortgages or other paper arising from the sale of motor vehicles or any one or number thereof only to a designated finance company, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the finance company who is designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles, or to purchase such conditional sales contract, chattel mortgages or other paper, and any such condition, agreement, or understanding is declared to be void and against the public policy of this state.

History.—s. 1, ch. 18031, 1937; CGL 1940 Supp. 4151(460).
cf.—s. 542.01 et seq. Combinations restricting trade or commerce.

545.03 Threats by manufacturer or wholesaler as prima facie evidence of intent to violate law.—Any threat, expressed or implied, made directly or indirectly to any motor vehicle dealer, by any manufacturer, or wholesale distributor on authority or with the knowledge of any such manufacturer, or wholesale distributor, that such person will discontinue to sell, or will terminate a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of motor vehicles only with or through a designated finance company or sells and assigns the conditional sales contracts, chattel mortgages, or other paper arising from his retail sales of motor vehicles only to a designated finance company, shall be prima facie evidence of the fact that such manufacturer or wholesale distributor has sold or intends to sell motor vehicles, on the condition or with the agreement or understanding prohibited in s. 545.02.

History.—s. 2, ch. 18031, 1937; CGL 1940 Supp. 4151(461).

545.04 Threats by finance company presumed to be made by manufacturer or wholesaler.—Any threat, express or implied, made directly or indirectly to any motor vehicle dealer by any finance company or agent thereof, who is affiliated with or controlled by any manufacturer or wholesale distributor of motor vehicles, that such manufacturer or wholesale distributor will terminate his contract with or cease to sell motor vehicles to such dealer unless such dealer finance the purchase or sale of motor vehicles only with or through a designated finance company or sells and assigns the conditional sales contracts, chattel mortgages, or other paper arising from his retail sales of motor vehicles only to a designated finance company, shall be presumed to be made at the direction of and with the authority of such manufacturer or wholesale distributor of motor vehicles, and shall be prima facie evidence of the fact that such manufacturer or wholesale distributor of motor vehicles has sold or intends to sell motor vehicles on the condition or with the agreement or understanding prohibited in s. 545.02.

History.—s. 3, ch. 18031, 1937; CGL 1940 Supp. 4151(462).

545.05 Paying or giving anything to finance company to lessen competition prohibited.—It is unlawful for any manufacturer or wholesale distributor of motor vehicles, to pay or give, or contract to pay or give any thing or service of value to any finance company if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the finance company which receives or accepts such thing or service of value.

History.—s. 4, ch. 18031, 1937; CGL 1940 Supp. 4151(463).

545.06 Acceptance of anything of value by finance company resulting in lessening competition prohibited.—It is unlawful for any finance company to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing or service of value from any manufacturer or wholesale distributor of motor vehicles, if the effect of the acceptance or receipt of any such payment, thing, or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives such payment, thing, or service of value, or contracts or agrees to accept or receive the same.

History.—s. 5, ch. 18031, 1937; CGL 1940 Supp. 4151(464).

545.07 Acceptance of benefits by finance company for purpose of lessening competition prohibited.—It is unlawful for any finance company who accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in s. 545.06, or contracts, either directly or indirectly, to receive any such payment or thing or service of value, to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages or other paper on motor vehicles sold at retail in this state.

History.—s. 6, ch. 18031, 1937; CGL 1940 Supp. 4151(465).

545.08 Department of Legal Affairs or state attorney to institute suit upon violation of law.—For a violation of any of the provisions of this chapter by any corporation mentioned herein, the Department of Legal Affairs or the state attorney of the proper county shall institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation, and for the dissolution of the same under the general statutes of the state.

History.—s. 7, ch. 18031, 1937; CGL 1940 Supp. 4151(466); ss. 11, 35, ch. 69-106.

545.09 Department of Legal Affairs to enjoin violations by foreign corporations; revocation of license by Department of State.—Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this chapter, is denied the right and prohibited from doing any business in this state, and the Department of Legal Affairs shall enforce this provision by bringing proper proceedings by injunction, or otherwise. The Department of State may revoke the license of any such corporation or association authorized by it to do business in this state.

History.—s. 8, ch. 18031, 1937; CGL 1940 Supp. 4151(467); ss. 10, 11, 35, ch. 69-106.

545.10 Contract in violation of law declared void.—Any contract or agreement in violation of the provisions of this chapter shall be void and shall not be enforceable either in law or equity.

History.—s. 10, ch. 18031, 1937; CGL 1940 Supp. 4151(468).

545.11 Remedy for persons injured by violation of law.—In addition to the criminal and civil penalties herein provided, any person who is injured in his business or property by any other person, by reason of anything forbidden or declared to be unlawful by this chapter, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, and recover twofold the damages sustained by him, and the costs of suit. When it shall appear to the court before whom any proceeding under this chapter is pending, that the ends of justice require that other parties be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

History.—s. 12, ch. 18031, 1937; CGL 1940 Supp. 4151(469).

545.12 Penalty for violations of chapter.—Any person who violates any of the provisions of this chapter, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this chapter, and any employee, agent, or officer of any such person, who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this chapter, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 18031, 1937; CGL 1940 Supp. 8135(39); s. 535, ch. 71-136.

CHAPTER 548

PUGILISTIC EXHIBITIONS

548.01 Prizefighting, pugilistic exhibitions; penalty.—Any person who shall voluntarily engage in any pugilistic exhibition, fight or encounter, with or without gloves, for money or anything of value, or upon the result of which any money or anything of value is to be collected, acquired, bet or wagered, or to see which any admission fee is charged, directly or indirectly, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 4402, 1895; GS 3253; RGS 5084; CGL 7186; s. 1, ch. 71-12; s. 536, ch. 71-136.

548.02 Second, stakeholder, etc.; penalty.—

(1) Any person who shall act as second, stakeholder, counselor or advisor, or who shall render aid of any such character, for or to the principal or either of them in such exhibition, encounter, or fight shall be deemed a principal in the offense, and shall be punished as prescribed in s. 548.01.

(2) The sheriff or his deputies, in any county where there is cause to believe that such an encounter or contest is about to occur, shall enter any house or enclosure, or any other place, and arrest, without warrant, any party engaged or about to engage in such contest.

History.—s. 2, ch. 4402, 1895; GS 3254; RGS 5085; CGL 7187.

548.03 "Pugilistic exhibition" defined.—The term "pugilistic exhibition, encounter or fight, with or without gloves," as used in this chapter, means any voluntary fight or personal encounter, by blows, between two or more persons, for money, prize of any character, points, distinction or fame, or other thing of value, or upon the results of which any money or thing of value is bet or wagered, or for which an admission fee is charged, directly or indirectly; provided, that nothing contained herein or in any law or municipal regulation shall be construed as applying to boxing exhibitions held by and under the auspices of the American Legion, Disabled American Veterans, Veterans of Foreign Wars of the United States, Spanish-American War Veterans, or companies or detachments of the Florida National Guard, Y. M. C. A., Jaycees, Knights of Columbus, or any college which is a member of any recognized amateur athletic association and the Circulo Cubana Club, a charitable organization now in existence, whether an admission fee is charged or not; provided further, that nothing contained herein shall be construed to prohibit any municipality from exercising its police powers to regulate boxing and wrestling exhibitions held under the auspices of the above-named organizations.

History.—s. 3, ch. 4402, 1895; GS 3255; RGS 5086; s. 1, ch. 12213, 1927; CGL 7188; s. 1, ch. 14831, 1931; s. 1, ch. 17179, 1935; s. 1, ch. 26729, 1951; s. 1, ch. 57-782; s. 1, ch. 70-293.

548.04 Physician.—At any boxing, sparring or wrestling match or exhibition permitted under s. 548.03 there shall be in attendance a duly licensed physician, whose duty it shall be to observe the physical condition of the boxers or wrestlers and advise the referee or judges with regard thereto; any competent physician who has not had less than 3 years' experience as a practitioner may be licensed. No boxer or wrestler shall be permitted to enter the ring unless, not more than 3 hours before, a physician shall certify in writing that the boxer or wrestler is physically fit to engage in the proposed contest. The physician's fee shall be paid by the licensee conducting the match or exhibition.

History.—s. 1, ch. 57-154.

CHAPTER 549

AUTOMOBILE RACE MEETS

549.01 Holding automobile race meets; notice to sheriff.—Any persons intending to hold any automobile race meet in any public place within the state shall give notice thereof in writing to the sheriff of the county wherein it is proposed to hold such race meet, at least 10 days prior to the holding thereof, stating the time when and the place where such race meet is to occur. Notice shall be given to the sheriff of each county into which any such meet shall extend.

History.—s. 1, ch. 5438, 1905; RGS 2359; CGL 3763.

549.02 Duties of sheriffs.—Every sheriff who shall receive the notice provided for in s. 549.01, or who shall have other notice or knowledge of the proposed occurrence of any race meet within his county, shall forthwith take such measures as shall be reasonably necessary for the safeguarding of the public and the protection of persons from injury while such race shall be in progress. Every sheriff may appoint a sufficient number of deputies to thoroughly police the course over which such race is to take place, and may designate and maintain the boundaries prescribed for such course by stakes, ropes or otherwise, wherever it may seem necessary.

History.—s. 2, ch. 5438, 1905; RGS 2360; CGL 3764.

549.03 Sheriff to exclude from course vehicles and persons.—Every sheriff and every deputy appointed by him shall exclude from the course over which any race shall be about to occur, and at least 30 minutes prior to the starting thereof, all animals, vehicles and persons, except those officiating or participating in such race, and their assistants, and shall keep such course free from the intrusion of any animal, vehicle or person, except as above-provided, for a period beginning at least 30 minutes prior to the starting of such race and extending during the whole time such race shall be in progress.

History.—s. 3, ch. 5438, 1905; RGS 2361; CGL 3765.

549.04 Association holding race to pay sheriff's fees.—Every sheriff and deputy sheriff participating in the policing of any racecourse, as provided in this chapter, shall receive the sum of $2 per day during the period in which such races are in progress, which shall be paid by the persons holding the races.

History.—s. 5, ch. 5438, 1905; RGS 2362; CGL 3766.

549.05 Holding race meet without notice to sheriff; penalty.—Any person participating in any automobile race meet in any public place within this state, when the notice required to be given to the sheriff of the county wherein it is proposed to hold such race meet as required by this chapter has not been given, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 1, ch. 5438, 1905; RGS 5644; CGL 7839; s. 537, ch. 71-136.

549.06 Failure of person to remove from automobile racecourse; penalty.—Any person, except those officiating or participating in such race, and their assistants, who, upon being requested so to do by the sheriff or deputy sheriff, shall fail or refuse to move beyond the boundaries of the course over which any automobile race is about to occur, or who shall fail or refuse to remove from within such boundaries any animal or vehicle owned or controlled by him, or who shall knowingly enter within such boundaries after being warned therefrom by such sheriff or deputy sheriff, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and shall be subject to immediate arrest and removal by such sheriff or deputy sheriff.

History.—s. 4, ch. 5438, 1905; RGS 5645; CGL 7840; s. 538, ch. 71-136.

CHAPTER 550

DOGRACING AND HORSERACING

550.011 Fixing dates for racing.—The Florida Pari-mutuel Commission shall hear and approve the dates for racing in any county where one or more horse tracks or one or more dog tracks are seeking to race and hold ratified permits upon which any track can operate in any county, apportioning such dates to the several tracks in such counties as provided by law. However, where only one licensed dog track is located in a county, such track may operate 90 days during the racing season at the option of said dog track. No horse tracks licensed to engage in the conduct of running races located within 100 air miles of each other shall operate on the same dates, and any track licensed to engage in the conduct of harness races located within 100 air miles of another permittee or licensee authorized to conduct either harness races or running races shall be apportioned not more than 40 days within the legal horseracing season, which may be the same dates awarded to a permittee or licensee conducting running races. The commission shall not delegate this function to any subordinate officer or division of the Department of Business Regulation.

History.—s. 2, ch. 14832, 1931; s. 2, ch. 17276, 1935; CGL 1936 Supp. 4151(50); s. 1, ch. 22072, 1943; s. 1, ch. 24348, 1947; s. 2, ch. 71-98; s. 138, ch. 73-333; s. 5, ch. 79-4.

Note.—Former s. 550.02(1).

550.02 The powers and duties of the Division of Pari-mutuel Wagering of the Department of Business Regulation.—The Division of Pari-mutuel Wagering of the Department of Business Regulation shall carry out the provisions of this chapter and supervise and check the making of pari-mutuel pools and the distribution therefrom, and:

(1) Make an annual report to the Governor showing its own actions, receipts derived under the provisions of this chapter, the practical effects of the application of this chapter and any suggestions it may approve for the more effectual accomplishments of the purposes of this chapter.

(2) Require an oath to each and every application by the person or executive officer of the association or corporation, stating that such information contained in the application is true.

(3) Make rules and regulations for the control, supervision and direction of all applicants, permittees and licensees, and for the holding, conducting and operating of all racetracks, race meets, races held in this state; provided, such rules and regulations shall be uniform in their application and effect, and the duty of exercising this control and power is made mandatory upon the division. The division may take testimony concerning any matter within its jurisdiction and issue summons and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the division under its seal and signed by the director.

(4) Require of each applicant an application setting forth:

(a) The full name of the person, association or corporation, and if a corporation the name of the state under which the same is incorporated.

(b) If an association or corporation, the nationality, color and residence of the members of the association and the names of the stockholders and directors of the corporation.

(c) The exact location where it is desired to conduct or hold a race meeting.

(d) Whether or not the racing plant is owned or leased, and if leased, the name, color and residence of the fee owner, or if a corporation, of the directors and stockholders thereof; provided, however, that nothing in this chapter shall prevent a person from applying to the division for a permit to conduct races, regardless of whether the racing plant has been constructed or not, and having an election held in any county at the same time when elections are held for the ratification of any permit in said county.

(e) A statement of the assets and liabilities of the person making such application.

(f) The kind of racing to be conducted and the desired period.

(g) Such other information as the division may require.

(5) Require of each applicant a deposit of a sufficient sum, in currency or by check certified by a bank licensed to do business in the state with the county commissioners of the county in which the election is to be held, in an amount necessary to pay all expenditures in connection with the holding of the election mentioned in s. 550.06.

(6) Upon receipt of such application and any amendments properly made thereto, the division shall further investigate the matters contained in the application and if any applicant shall duly fulfill and meet all requirements, conditions and qualifications set forth in this chapter and the rules and regulations of the division hereunder, then the division

shall grant the permit to such qualified applicant as hereinabove provided.

(7) In the event the division shall refuse to grant the permit, then the money deposited with the county commissioners for the holding of such election shall be refunded to the applicant. In the event the division shall grant the permit applied for, the board of county commissioners shall order an election in said county to decide whether such permit shall be approved and the license issued and race meetings permitted in such county, as hereinafter provided for in s. 550.07.

(8) Each licensed thoroughbred running track in the state shall be required to run an average of one race per racing day in which horses bred in Florida and duly registered with the Florida Thoroughbred Breeders' Association shall have preference as entries over non-Florida-breds, and to require all licensed thoroughbred racetracks to write the conditions for such races in which Florida-breds are preferred so as to assure that all Florida-bred horses available for racing at such tracks be given full opportunity to run in the class races for which they are qualified, said opportunity of running to be afforded to each class of horses in proportion that the number of horses in this class bears to the total number of Florida-breds available; and provided that no track shall be required to write conditions for a race to accommodate a class of horses for which a race would otherwise not be run at such track during its meeting.

History.—s. 2, ch. 14832, 1931; s. 2, ch. 17276, 1935; CGL 1936 Supp. 4151(50); s. 1, ch. 22072, 1943; s. 1, ch. 24348, 1947; s. 10, ch. 26484, 1951; s. 1, ch. 57-180; s. 1, ch. 59-406; s. 1, ch. 61-178; s. 2, ch. 71-98; s. 138, ch. 73-333.

550.021 Records of division, open for inspection; penalty.—All books, records, maps, documents, and papers of the Division of Pari-mutuel Wagering, including those filed with said division as well as those prepared by or for it, shall at all times be open for the personal inspection of any officer of the state or any county of Florida or of any official investigative body or committee, and no person having charge or custody thereof shall refuse this privilege to any such officer, investigative body, or committee. Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 26850, 1951; s. 2, ch. 71-98; s. 539, ch. 71-136; s. 139, ch. 73-333.

[1]550.025 Thoroughbred racing advisory committee; creation; membership.—The Governor shall appoint to serve, at his pleasure, a five-member advisory committee to consist of one citizen who is a member of the Horsemen's Protective Benevolent Association, one citizen who is a member of the Florida Thoroughbred Breeders' Association, and three citizens who are either owners or breeders or interested directly in thoroughbred racing in this state. Such advisory committee shall advise with the Division of Pari-mutuel Wagering, the Department of Business Regulation, and the Florida Pari-mutuel Commission in the conducting of thoroughbred racing.

History.—s. 1, ch. 71-98; s. 2, ch. 77-109; s. 4, ch. 78-323; s. 6, ch. 79-4.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

550.03 Charity racing days.—

(1) The Florida Pari-mutuel Commission may extend said limitations of time for horseracing or dogracing or jai alai operation not to exceed 2 days at any one track beyond the period otherwise provided by law so that any such track or fronton may conduct a charity day of racing for any one or more recognized and established charitable institutions located within 100 miles road travel of the racetrack or fronton holding such charity day of racing. For the purposes of this section the University of Miami, Jacksonville University, Nova University of Advanced Technology and other institutions of higher learning, including community colleges, not already participating in charity or scholarship racing days shall be deemed to be charitable institutions. A portion of the proceeds available for the charitable purposes in an amount not less than 25 percent may be paid over to and for the benefit of said charitable institutions of higher learning in said areas.

(2)(a) If said second additional day as authorized herein for charitable purposes is conducted by a track located in Duval County or Clay County, the proceeds for charity purposes shall be allocated by payment of 50 percent thereof to institutions of higher learning or community colleges in Duval County, 25 percent to the St. Johns River Community College in Putnam County and 25 percent to the Lake City Community College in Columbia County.

(b)1. The Florida Pari-mutuel Commission may extend said limitations of time for horseracing or dogracing or jai alai operation, in addition to the 2 days heretofore provided, to an additional third day at each racetrack or fronton in Dade County.

2. If said third additional day as authorized herein is conducted by a track or fronton located in Dade County, the proceeds for charity purposes shall be allocated by payment of 50 percent thereof to the University of Miami and 50 percent to the degree-granting state college authorized under s. 239.012, to be established in Dade County.

(c)1. The Florida Pari-mutuel Commission may extend said limitation of time for horseracing or dogracing or jai alai operation in Sarasota, Marion, Manatee, Palm Beach, Escambia, Hillsborough, St. Lucie, or Washington Counties to provide for a total of 3 charity days.

2. If said third additional day as authorized herein is conducted by a track or fronton located in Sarasota or Manatee Counties, the proceeds for charity purposes shall be allocated by payment to Manatee Community College.

3. If a third additional charity day is conducted at any track or fronton in Palm Beach County, 40 percent of the proceeds for charitable purposes from such day shall be paid to Palm Beach Community College, 40 percent of the proceeds for charitable purposes from such day shall be paid to Florida Atlantic University, and the remaining 20 percent of the proceeds for charitable purposes from such day shall be paid to Marymount College.

4. If a third additional charity day is conducted at any track or fronton in Escambia County, 50 percent of the proceeds for charitable purposes from such day shall be paid to the University of West Florida and the remaining 50 percent of the proceeds for charitable purposes from such day shall be paid to Pensacola Community College.

5. If a third additional charity day is conducted at any track or fronton in Washington County, 50 percent of the proceeds for charitable purposes from such day shall be paid to Gulf Coast Community College and the remaining 50 percent of the proceeds for charitable purposes from such day shall be paid to Okaloosa-Walton Community College.

6. If a third additional charity day is conducted at any track or fronton in St. Lucie County, the proceeds for charitable purposes from such day shall be paid to the Indian River Community College.

7. If a third additional charity day is conducted at any track or fronton in Marion County, the proceeds for charitable purposes from such day shall be paid to the Central Florida Community College.

8. If a third additional charity day is conducted at any track or fronton in Hillsborough County, the proceeds for charitable purposes from such day shall be paid to the Brandon Cultural Center Civic Association.

(d)1. The Florida Pari-mutuel Commission may extend said limitations of time for horseracing, in addition to the 2 days heretofore provided, to an additional third day at each horse track in Hillsborough County.

2. If said third additional day as authorized herein is conducted by a horse track located in Hillsborough County, the proceeds for charity purposes shall be allocated by payment to the Pasco-Hernando Community College.

(e)1. The Florida Pari-mutuel Commission may authorize the Florida Downs and Turf Club, Inc., to conduct a charity day in addition to the charity days presently allowed Florida Downs and Turf Club, Inc., under general law.

2. If said additional charity day is authorized by the commission and thereafter conducted by the Florida Downs and Turf Club, Inc., 50 percent of the proceeds of said day shall be allocated to the trustees of Hillsborough Community College for use in scholarships, and the remaining 50 percent of said proceeds shall be allocated to the St. Petersburg Junior College Alumni Association, Inc., for use in scholarships.

3. The total of all profits derived from the operation of such racing on said additional charity day, less actual operating costs, including all taxes payable to the state or any agency thereof for this extra day's operation, shall be and become a part of the charity trust fund for which such racing on such day is conducted.

(f)1. The Florida Pari-mutuel Commission may extend said limitations of time for jai alai operations, in addition to the other days heretofore provided, to an additional day at each fronton in Palm Beach County.

2. If the additional day as authorized herein is conducted by a fronton located in Palm Beach County, the proceeds for charity purposes shall be allocated by payment thereof to the Civic Opera of Palm Beach.

(g)1. The Florida Pari-mutuel Commission may extend said limitations of time for jai alai operation, in addition to the 2 days heretofore provided, to an additional third day at each fronton in Seminole County.

2. If said third additional day as authorized herein is conducted by a fronton located in Seminole County, the proceeds for charity purposes shall be allocated by payment thereof to Florida Agricultural and Mechanical University.

(h)1. The Florida Pari-mutuel Commission may authorize the Jefferson County Kennel Club to conduct a charity day that is in addition to the charity days presently allowed the Jefferson County Kennel Club under general law.

2. If said additional charity day is authorized by the commission and thereafter conducted by the Jefferson County Kennel Club, 50 percent of the proceeds of said day of operation shall be allocated and paid to the Monticello Opera Company of Monticello.

3. Subsection (3) shall be applicable to this additional charity day as well as all other pertinent provisions of this chapter and the rules and regulations of the Division of Pari-mutuel Wagering relating to charity days.

(i)1. The Florida Pari-mutuel Commission shall authorize the Palm Beach Jai Alai Fronton to conduct a charity day in addition to the charity days presently allowed the jai alai frontons in Palm Beach County under general law.

2. The funds derived from the operation of the additional charity day as herein authorized shall be allocated and paid to the Harry-Anna Crippled Children's Hospital, located in Eustis.

(j)1. The Florida Pari-mutuel Commission may authorize the Big Bend Jai Alai Fronton in Gadsden County to conduct 2 charity days in addition to the charity days presently allowed any jai alai fronton in Gadsden County under general law.

2. The funds derived from the operation of the additional charity days as herein authorized shall be allocated and paid to the Florida Agricultural and Mechanical University, located in Tallahassee.

(k)1. The Florida Pari-mutuel Commission shall authorize the Daytona Beach Jai Alai Fronton in Volusia County to conduct a charity day in addition to the charity days presently allowed any jai alai fronton in Volusia County under general law.

2. The funds derived from the operation of the additional charity day herein authorized shall be allocated and paid to the Daytona Beach Community College, located in Daytona Beach, to be used for athletic scholarships.

(l)1. The Florida Pari-mutuel Commission may authorize any licensed racetrack or fronton to conduct an additional charity day of racing.

2. If said additional charity day is authorized by the commission and thereafter conducted by said track or fronton, the proceeds shall be allocated and paid to the benefit of the Historic Preservation Trust Fund.

3. Subsection (3) shall be applicable to this additional charity day as well as all other pertinent provisions of this chapter and the rules of the Division

of Pari-mutuel Wagering relating to charity days.

(m)1. The Florida Pari-mutuel Commission may authorize the jai alai frontons in Broward County to conduct a charity day in addition to the charity days presently allowed to the jai alai frontons in Broward County under general law.

2. The funds derived from the operation of the additional charity day as herein authorized shall be allocated and paid to the Broward Community College Foundation, Inc., to be used for the general welfare and benefit of Broward Community College.

(3) In determining profits derived from such racing on such charity day, which profits shall include all taxes payable to the state or any agency thereof for such day's operations without the initial expense of operational allowance provided by law for dog tracks, said tracks and frontons shall only be entitled to deduct from the profits accruing from all receipts on such charity day of racing their actual operating costs, which costs shall be those expenses incurred by the racetrack or fronton solely by reason of holding said charity day of racing and shall not be deemed to include such expenses constant from day to day and which would have been incurred had the race on that day not been held, including, but not limited to, such items as capital expenditures, interest on debts, real estate taxes and annual license fees, donations, bad debts, and such other items of daily or prorated expense as the division may by rule prescribe. The total of all profits derived from the operation of such racing on such charity day, including all moneys which would otherwise be received by the Division of Pari-mutuel Wagering as taxes for such day's operation, shall be and become a part of the charity trust fund for which such racing on such days is conducted.

History.—s. 3, ch. 14832, 1931; s. 3, ch. 17276, 1935; CGL 1936 Supp. 4151(51); s. 1, ch. 20843, 1941; s. 1, ch. 57-283; s. 2, ch. 61-119; s. 15, ch. 63-400; s. 1, ch. 63-444; s. 1, ch. 65-352; s. 1, ch. 67-540; s. 1, ch. 68-32; ss. 1, 2, ch. 71-98; s. 70, ch. 72-221; s. 137, ch. 73-333; s. 1, ch. 74-94; s. 1, ch. 74-266; s. 1, ch. 74-269; ss. 1-3, ch. 74-330; s. 1, ch. 74-331; ss. 1, 2, ch. 74-349; s. 1, ch. 74-350; s. 1, ch. 75-241; s. 1, ch. 77-472; s. 2, ch. 78-319; s. 4, ch. 78-357; s. 1, ch. 78-381; s. 7, ch. 79-4.

cf.—s. 550.13 Division among counties of moneys derived under this law.
s. 550.30 Racetrack funds guaranteed from General Revenue Fund.

550.031 Limitation on number of charity days.—No horseracing or dogracing or jai alai operation may conduct more charity days than authorized by law for the preceding meeting of that particular operation. This section shall supersede all general acts and special acts in conflict.

History.—ss. 1, 2, ch. 69-249.

550.04 Racing meetings authorized; restrictions.—Any person desiring to operate a racetrack in this state may, subject to the provisions of this chapter, hold and conduct one or more racing meetings at such track each year. Horse racetrack meetings shall be held only from and including the period extending from December 1 of each year to and including April 20 of the year following, which period shall be known as the horseracing season, and the dog racetrack meetings shall be held only during the period extending from and including November 1 of each year to and including May 31 of the year following, which period shall be known as winter dogracing season; provided, however, that summer dog track meetings shall be held only during the period beginning with and including June 1 and up to and including September 30, in counties lying wholly east of the St. Johns River, south of an east-west line from the Matanzas Inlet to said river, and north of latitude 28 degrees 35 minutes; and provided further that both horserace meetings and dograce meetings shall be limited to the aggregate number of racing days as provided in s. 550.08. No racing shall be permitted on Sunday, and no minors except jockey apprentices, exercise boys, and grooms shall be permitted to attend said races or to be employed in any manner by the track provided, however, nothing in this chapter shall be construed to prohibit the use of any dogracing plant or facility for the conducting of "hound dog derbies" or "mutt derbies" from being used on one Sunday during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" where only dogs other than those usually used in dogracing (greyhounds) are permitted to race and where adults and minors may participate as dog owners or spectators, and provided further that during such racing events betting and gambling and the sale or use of alcoholic beverages shall be strictly and absolutely prohibited.

History.—s. 4, ch. 14832, 1931; s. 4, ch. 17276, 1935; CGL 1936 Supp. 4151(52); ss. 1, 3, ch. 21636, 1943; ss. 2, 3, ch. 22072, 1943; s. 1, ch. 22599, 1945; s. 1, ch. 24360, s. 1, ch. 23862, 1947; s. 2, ch. 57-180; s. 9, ch. 59-406.

cf.—s. 1.01 Minors defined.

550.05 Application for permit to conduct race meetings.—

(1) Between June 1 and July 1 of each year, but at no other time, any person possessing the qualifications prescribed in this chapter shall apply to the Division of Pari-mutuel Wagering for a permit to conduct race meetings and racing under this chapter. No application thus received by the division shall be amended after August 10 of each year; and on or before August 15, but not thereafter, of each year, after receipt of any application, the division shall convene to consider and act upon permits applied for, and all applications not definitely acted upon by the division on or prior to August 15 of each year shall be void.

(2) Upon all applications filed and approved a permit shall be issued to the applicant setting forth the name, the location of the racetrack, the kind of racing desired to be conducted and a statement showing qualifications of the applicant to conduct racing at said track under this chapter; provided, however, no permit shall be effectual to authorize any race until ratified by a majority of the electors participating in said election, and in the county in which applicant proposes to conduct racing; and provided further that no application shall be considered and no permit shall be issued by the division nor voted upon in any county to conduct running horseraces, harness horseraces or dograces at a location within 100 miles of another location for which a permit has been issued and a racing plant located, said distance to be measured on a straight line from the nearest property line of one racing plant to the nearest property line of the other, except that permits heretofore issued and ratified by a majority of

the electors of any county shall not be affected by this proviso.

History.—s. 5, ch. 14832, 1931; s. 5, ch. 17276, 1935; CGL 1936 Supp. 4151(53); s. 1, ch. 24349, 1947; s. 2, ch. 59-406; s. 2, ch. 71-98.
cf.—s. 550.33 Quarter horse races.

550.055 Greyhound dogracing permits; relocation within a county; conditions.—

(1) It is the finding of the legislature that parimutuel wagering on greyhound dogracing provides substantial revenues to the state. It is the further finding that, in some cases, this revenue-producing ability is hindered due to the lack of provisions allowing the relocation of existing dogracing operations. It is therefore declared that state revenues derived from greyhound dogracing will continue to be jeopardized if provisions allowing the relocation of such greyhound racing permits are not implemented. This enactment is made pursuant to, and for the purpose of, implementing such provisions.

(2) Any holder of a valid outstanding permit for greyhound dogracing in a county in which there is only one dogracing permit issued is authorized, without the necessity of an additional county referendum required under s. 550.06, to move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided that said move does not cross the county boundary, that such relocation is approved under the zoning regulations of the county or municipality in which the permit is to be located, and that such a move is approved by the Department of Business Regulation after it is determined at a proceeding pursuant to chapter 120 in the county affected that said move is necessary to ensure the revenue-producing capability of the permittee without deteriorating the revenue-producing capability of any other pari-mutuel permittee within 50 miles, said distance to be measured on a straight line from the nearest property line of one racing plant to the nearest property line of the other.

History.—ss. 1, 2, ch. 74-267; s. 1, ch. 77-174; s. 9, ch. 78-95; s. 8, ch. 79-4.

550.06 Elections for ratification of permits.—

(1) The holder of any permit may have submitted to the electors of the county designated therein the question whether or not said permit shall be ratified or rejected. Such questions shall be submitted to the electors for approval or rejection at a special election to be called for that purpose only. The board of county commissioners of the county designated, upon the presentation to said board at a regular or special meeting of a written application, accompanied by a certified copy of the permit granted by the Division of Pari-mutuel Wagering, and asking for an election in the county in which said application was made, shall order a special election in said county for the particular purpose of deciding whether such permit shall be approved and license issued and race meetings permitted in such county by such permittee; and shall cause the clerk of such board to give notice of said special election by publishing the same once each week for 2 consecutive weeks in one or more newspapers of general circulation in said county; each permit covering each track shall be voted upon separately and in separate elections and no election shall be called more often than once every 2 years for the ratification of any permit covering the same track.

(2) All elections ordered under this chapter shall be held within 90 days and not less than 21 days from the time of presenting such application to said county commissioners, and the inspectors of election shall be appointed and qualified as in cases of general elections and they shall count the votes cast and make due returns of same to the county commissioners without delay. The county commissioners shall canvass the returns, declare the results, and cause the same to be recorded as provided in the general law concerning elections so far as applicable.

(3) Provided, that where a permit has been granted by the division and no application to the board of county commissioners has been made by the permittee within 6 months after the granting of the permit, the same shall be void, and the division shall cancel such permit without notice to the holder thereof, and the board of county commissioners holding the deposit for the election shall refund to the holder of the permit said deposit upon being notified by the division that the permit has become void and canceled; provided further, that where, upon a permit issued, an election has been held and such permit ratified, as herein provided, and the holder of the ratified permit has failed to construct a track suitable to conduct a race meeting within 12 months after the ratification of said permit, then the permit shall be void and the division shall cancel such permit without notice to the holder thereof.

(4) For such election all electors duly registered and qualified to vote at the last preceding general election held in such county shall be qualified electors for such election, and in addition thereto the registration books for such county shall be opened on the 10th day (if the 10th day be Sunday or a holiday, then on the next day not a Sunday or holiday) after said election is ordered and called, and shall remain open for a period of 10 days for additional registrations of persons qualified for registration but not already registered, and electors for such special election shall have the same qualifications for and prerequisites to voting in elections as under the general election laws.

(5) If at any such special election the majority of the electors voting on the question of ratification or rejection of any permit shall vote against such ratification, then such permit shall be void. If a majority of the electors voting on the question of ratification or rejection of any permit shall vote for such ratification, then such permit shall become effectual and the holder thereof may conduct racing upon complying with the other provisions of this chapter. The county commissioners shall immediately certify the results of the election to the division; provided, that the expense of holding the said election shall be paid for by the permitholder as provided for in s. 550.02(6).

History.—s. 6, ch. 14832, 1931; s. 6, ch. 17276, 1935; CGL 1936 Supp. 4151(54); s. 3, ch. 57-180; s. 2, ch. 71-98.
cf.—s. 550.33 Quarter horse races.

550.061 Cancellation of permit to conduct race meeting.—Where the holder of a ratified permit issued pursuant to law, for the conduct of horse, in harness using a sulky, race meetings has failed to

construct a track suitable to conduct such race meetings by July 1, 1948, or within 1 year from the date on which such permit was issued, whichever period of time be the longest, then such permit shall be void and the Division of Pari-mutuel Wagering may cancel such permit.

History.—s. 1, ch. 24359, 1947; s. 2, ch. 71-98; s. 9, ch. 78-95.

550.065 Harness racing; certain permits validated; license.—

(1) Any permit issued by the Division of Pari-mutuel Wagering, subsequent to June 1, 1946, to conduct horseracing, in harness, which permit, having been ratified in the manner prescribed by law, in any county of the state where no running horse tracks or dog tracks are located and established, is hereby validated and restored to the permittee or permittees, or his or their lawful assignee, and the time within which the holder of any such ratified permit shall construct a racetrack is hereby extended for a period of 12 months from such time as restrictions and limitations against such construction now imposed by federal regulations, are removed.

(2) Any horseracing track, in harness with sulky, which may be established and shall operate by virtue of the provision of subsection (1) shall be entitled to a license from the division for a meet or meetings for a period of not exceeding 90 days of racing during the established racing season, fixed by law, for horseracing, and during such meet or meeting racing may be conducted by a valid permittee at such track either in the daytime or nighttime, at the option of the permitholder, or at the election of the permitholder, the racing season may be divided so that part of the racing during any one season may be conducted at nights and part in the daytime; provided, however, there shall be no racing on Sunday, and when racing is being conducted at nights, there shall be no racing in the daytime of the same day.

(3) The commission of a licensee on a pari-mutuel pool on horseraces, where such license is issued to conduct horseracing in harness, and in the counties affected by the provisions of this section, shall be the same as allowed and received by a licensee on a pari-mutuel pool on dograces as now fixed and established by law.

(4) In all respects the provisions of this chapter shall be applicable to the subject matter of this section, except those provisions thereof which are inconsistent herewith.

History.—ss. 1-4, ch. 26485, 1951; s. 2, ch. 71-98.

550.066 Harness racing; conduct of races, approval of division.—Upon approval by the Division of Pari-mutuel Wagering any holder of a ratified permit to conduct horseracing in harness, which permit was validated and restored by s. 550.065(1), is hereby authorized to conduct not more than three quarter horse races per day upon the racetrack of the ratified permitholder, said three quarter horse races to be instead and in lieu of three horseraces in harness with sulky during the regular race meeting of the permitholder; provided, however, that the quarter horses participating in such races shall be duly registered by the American Quarter Racing Association and certified to the permitholder by a bona fide cooperative association organized under the laws of Florida, which has been in existence for 2 years or more and which has for its purpose the cooperative agricultural activity of breeding and training quarter running horses. All of the provisions of this chapter, and rules and regulations of the division relating to harness horse racing with sulky shall apply to any quarter horse race allowed by this section.

History.—s. 1, ch. 57-807; s. 2, ch. 71-98.

550.067 Dogracing; validation of certain permits; exemptions.—

(1) All permits for dogracing or to hold and conduct dog racetrack meetings granted by the Division of Pari-mutuel Wagering on or subsequent to June 7, 1949, and submitted to and ratified by a majority of the electors of the county designated in such permits voting on the question of ratification or rejection of such permits are hereby declared valid and lawful for the purpose for which issued and to permit the operation of a dog racetrack and to conduct dog racetrack meetings on the premises described in such permits.

(2) The provisions of this section shall not apply to permits which have been suspended, canceled or revoked either by the division or in a recall election pursuant to the provisions of s. 550.18, nor shall the same affect or apply to permits canceled and annulled pursuant to the provisions of s. 550.062.

(3) This section shall not prevent the cancellation or revocation of any permit in any future recall election or the suspension, cancellation or revocation of any permit by the division in the manner and for such causes as other permits may be suspended, canceled or revoked by the division.

History.—ss. 1-3, ch. 57-237; s. 2, ch. 71-98.

550.068 Harness racing; certain permits validated.—

(1) Any permit to conduct horseracing in harness or to hold harness horse race meetings granted and issued by the Division of Pari-mutuel Wagering subsequent to July 1, 1956, and prior to the effective date of this act and submitted to and ratified by a majority of the electors of the county designated in such permit and on the basis of which ratified permit the holder thereof was issued license to conduct harness horse racing and in reliance thereon the holder of such permit and license constructed racing plant or track, and which permit and license was thereafter held and declared to be invalid as violative of the provisions of this chapter, and particularly the 100-mile distance requirements of s. 550.05, is hereby declared to be valid and the same is hereby restored, ratified and confirmed the same as if never held or declared to be invalid, notwithstanding the distance provisions of this chapter and s. 550.05 is hereby repealed and declared to be ineffective and inoperative as to any such permit and license issued and ratified as aforesaid.

(2) It is hereby declared to be the legislative purpose and intent to ratify and confirm all actions of the Division of Pari-mutuel Wagering in the issuance of any permit described in subsection (1), and to ratify, confirm and validate all proceedings in relation to the issuance and ratification of any such permit and to repeal and declare any law or laws in

conflict herewith to be inoperative, ineffective and inapplicable to any such permit.

History.—ss. 1, 2, ch. 61-9; s. 2, ch. 71-98; s. 140, ch. 73-333.

550.069 Harness racing; daily license fee.—

(1) Any duly licensed harness horse racetrack having an average daily pari-mutuel pool of less than $100,000 per day shall, in lieu of the payment of the taxes imposed upon such tracks as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which fee shall be determined from the following schedule:

(a) Up to $50,000 per day..... $1,000.
(b) Over $50,000 per day but not exceeding $75,000 per day ..... 3,000.
(c) Over $75,000 per day but not exceeding $100,000 per day 5,000,

three-fourths of which daily license fee shall be distributed equally to the 67 counties of the state and the remaining one-fourth to the state's General Revenue Fund.

(2) Whenever any harness horse track exceeds the sum of $100,000 per day in its pari-mutuel pool totals this section shall not apply, and such harness horse track shall be taxed as provided by other general laws.

(3) It is hereby declared to be the legislative purpose and intent to ratify, confirm and validate actions of the Division of Pari-mutuel Wagering in the issuance of any permit described in s. 550.068(1), and the placing in operation the fixed daily license fee provided for herein.

History.—ss. 1-3, ch. 63-261; s. 2, ch. 71-98.

550.07 Issuance of license by division; revocation of license; penalty in lieu thereof.—After a permit has been granted by the Division of Pari-mutuel Wagering, and after the same has been ratified and approved by the majority of the electors participating in such election of the county designated therein, the division shall grant to the lawful holder of such permit, subject to the conditions hereof, a license to conduct racing under this chapter, and the Florida Pari-mutuel Commission shall fix annually the time, place, and number of days during which racing may be conducted by such permitholder at the location fixed in said permit and ratified in said election. After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent annual applications for a license by said ratified permitholder shall be accompanied by proof in such form as the division may require, that the ratified permitholder still possesses all the qualifications prescribed by this chapter, and that the permit has not been recalled at a later election held in such county as provided for in s. 550.18. The division may revoke any permit or license hereunder upon the willful violation by the licensee of any of the provisions of this chapter or of any rule or regulation issued by the division under the provisions of this chapter. In lieu of the suspension or revocation of licenses, the division may impose a civil penalty against any licensee for violations of this chapter or chapter 551 or any rule or regulation promulgated by the division. No penalty so imposed shall exceed $1,000 for each count or separate offense and all penalties imposed and collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

History.—s. 7, ch. 14832, 1931; s. 7, ch. 17276, 1935; CGL 1936 Supp. 4151(55); s. 4, ch. 57-180; s. 2, ch. 71-98; s. 1, ch. 74-19; s. 9, ch. 78-95; s. 9, ch. 79-4.

cf.—s. 550.33 Quarter horse races.

550.08 Maximum length of race meeting.—

(1) No license shall be granted to any person or to any racetrack for a meet or meeting in any county to extend longer than an aggregate of 50 racing days for thoroughbred horse racing, 120 days for quarter horse racing, and 105 days for dogracing in any racing season; provided the Florida Pari-mutuel Commission is authorized to grant 1 additional day of racing during the race meeting period granted to any track as provided by law, upon application and agreement by any track in which 1 specific day of any meet shall be set aside, and all profit, less actual operating costs, from such specific day's operations of such track including all taxes payable to the state or any agency thereof for such day's operation shall be paid into the state treasury for a scholarship trust fund which shall be administered by the Board of Regents for the granting of scholarships for the purpose of attending the institutions of higher learning of the state upon such terms and conditions as the said board may from time to time prescribe. Actual operating costs of any track conducting such additional day of racing to be deducted from all receipts on such additional day of racing shall not include expenses constant from day to day and which would have been incurred had the race on that day not been held; including, but not limited to, such items such as capital expenditures; interest on debts; real estate taxes and annual license fees; donations; bad debts; and such other items of daily or prorated expense as the Division of Pari-mutuel Wagering may by rule prescribe.

(2) The provisions of this section are supplemental to s. 550.081 and shall be construed as authority for granting additional days of racing above the total of 120 days' limitation therein except that each horse racetrack may run only 1 additional day as herein provided during its race meeting period as authorized by said law and the 120 days' limitation therein shall in no event be extended beyond 3 additional days.

History.—s. 8, ch. 14832, 1931; CGL 1936 Supp. 4151(56); s. 2, ch. 21636, 1943; ss. 1, 2, ch. 25258, 1949; s. 2, ch. 61-119; s. 1, ch. 63-315; s. 1, ch. 70-226; ss. 1, 2, ch. 71-98; s. 10, ch. 79-4.

cf.—s. 550.13 Division among counties of moneys derived under this law.
s. 550.30 Racetrack funds guaranteed from General Revenue Fund.

[1]550.081 Allocation of horseracing periods of operation.—

(1) When there are three or more winter thoroughbred horse racing permittees located within a 35-mile radius of each other, an annual winter thoroughbred racing season consisting of 144 racing days, plus authorized charity and scholarship racing days, exclusive of Sundays, is hereby authorized. Each of said winter permittees is hereby authorized to operate in only one of the three periods of racing hereinafter set out, and all racing days, including charity and scholarship days, shall be run consecu-

tively. Each racing period is hereby established as follows:

(a) The first period shall consist of 50 racing days, plus charity and scholarship racing days.

(b) The second period shall consist of 44 racing days. No charity or scholarship racing days may be operated during the second period.

(c) The third period shall commence upon the completion of the second period and shall consist of 50 racing days, plus charity and scholarship racing days.

In allocating the racing periods contained herein, the [3]Board of Business Regulation shall not permit the second period of racing set forth above to commence before January 15 of each year and shall take into account the ability of all winter permitholders to maximize handle throughout the entire racing season so as to generate overall the maximum state revenues from winter permitholders collectively. Charity and scholarship racing days authorized for the permittee operating the second period may be assigned to the permittee operating the first or third periods to be operated for the benefit of the permittee operating the second period, but there shall be no requirement that the permittee operating the first or third period shall operate any charity or scholarship days without said permittee's consent.

(2) On or before May 1 of each year, each of the winter thoroughbred horserace permittees shall file in writing with the [4]Board of Business Regulation its request for the racing period and the number of days and dates the permittee wishes to operate. On or before May 15 of each year, the Division of Pari-mutuel Wagering shall issue an annual license authorizing the permittee to conduct a racing meet during the period granted by the [3]Board of Business Regulation for the number of days applied for by each permitholder.

(3) In the event any winter thoroughbred horse racing track is prevented from operating any portion of the racing period allocated to it as a result of prohibition of law or as a result of fire, strike, or circumstances beyond the control of the track involved, the track so prevented from operating shall be entitled to allocate its unused days and dates to another winter thoroughbred horse track permitholder located within a 35-mile radius of such track; however, no such allocation shall change or alter any other annual racing period already assigned. In the event the track so prevented [2][from operating] is unable to allocate its unused days and dates within 1 racing day after it becomes necessary, the Director of the Division of Pari-mutuel Wagering is specifically authorized to so allocate the unused days and dates as to protect the tax revenue of the state.

(4) The Division of Pari-mutuel Wagering is hereby prohibited from granting any permit, and there shall be no election in any county for the ratification or rejection of any permit, to conduct horseracing or sulky or harness racing at a location in an area in which there are three horse racetracks located within 100 air miles of each other. However, permits issued prior to May 21, 1968, and permits for summer thoroughbred horse racing and quarter horse racing shall not be affected by this subsection.

History.—ss. 1-6, ch. 23728, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 69-14; s. 2, ch. 70-226; ss. 1, 2, ch. 71-98; ss. 7, 12, ch. 75-43; ss. 10, 22, ch. 77-167; s. 2, ch. 79-300.

[1]**Note.**—Section 2, ch. 79-300, provides that s. 550.081, as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.081 as it existed on May 28, 1975, to read as follows:

550.081 Allocation of horseracing periods of operation.—

(1) It is the finding of the Legislature of the state that the operation of horseracing and legalized pari-mutuel and mutuel betting at horse racetracks in this state is a substantial business compatible to the best interests of the state and the taxes derived therefrom constitute an integral part of the tax structures of the state and counties. It is the further finding of the Legislature that two or more horse racetracks located within a radius of 100 air miles of each other cannot operate on the same racing days without endangering the tax revenue derived therefrom and the general welfare of the public. It is the further finding of the Legislature that where more than one horse racetrack is located in a radius of 100 air miles of one or more horse racetracks and the allocation and distribution of periods of operation to and between said horse racetracks is vested solely in the discretion of the Board of Business Regulation, that the power to change, alter, and vary such racing periods from year to year, as it may see fit, is unsound and unwise, and creates a condition of uncertainty which retards the natural expansion and development of this business and influences and affects the financial stability of the state and counties. It is therefore declared to be the policy of the state that the present danger to the growth and welfare of horseracing and to the tax structure of the state and counties be eliminated insofar as the discretionary powers of the Board of Business Regulation in allocating dates to the horse tracks are concerned, and this enactment is made pursuant to and for the purpose of carrying out such policy.

(2) When three or more horse racetracks in this state are located in a radius of 100 air miles of each other, the annual period of operation of such horse racetracks shall begin on December 1 of each year and continue for a full period of 120 consecutive days, exclusive of Sundays, and each of said horse racetracks is hereby permitted to race for a full period of 40 consecutive racing days, exclusive of Sundays. Such 40-day racing periods are hereby established as follows: The first period to consist of the first consecutive 40 racing days of such annual racing period, the second period to consist of the second consecutive 40 racing days of such annual racing period, and the third period to consist of the third consecutive 40 racing days of such annual racing period. The periods of operation described in this section refer to the winter thoroughbred horse racing season and the provisions of this section shall in no way affect the summer thoroughbred horse racing season defined in s. 550.41. The holder of a winter thoroughbred horse racing permit shall not conduct summer thoroughbred horse racing, and a permitholder for summer thoroughbred horse racing shall not conduct winter thoroughbred horse racing.

(3) The three racing periods hereinabove established shall be annually allocated by the Board of Business Regulation in the following manner: The horse racetrack having produced the largest amount of tax revenue during the preceding year of its operation shall be granted its choice of the three established racing periods. The horse racetrack having produced the second largest amount of tax revenue during the preceding year of its operation shall be granted its choice of the remaining two established racing periods. The horse racetrack having produced the third largest amount of tax revenue during the preceding year of its operation shall be allocated the racing period remaining after the two tracks producing the largest amount of tax revenue shall have made their selections; provided, however, that if any one or more tracks entitled to a choice of racing periods as provided for herein shall fail to make a selection, the board shall thereupon assign a 40-day racing period to said track or tracks, which period it shall be required to operate unless relieved therefrom by order of the board; provided further, that if any track heretofore allocated racing dates shall fail or refuse to operate for its full 40-day period, unless prohibited by law or causes beyond its control, then the board may, upon request of any one of the other two tracks affected by this law, allocate the remaining racing dates to either or both of the two established horse racing tracks.

(4) On or before May 1 of each year, each of the horse racetracks shall file in writing with the board in accordance with the procedure set forth in subsections (2) and (3) its selection of the racing period hereinabove established that it desires to operate and conduct its racing meet. On or before May 15 of each year the Division of Pari-mutuel Wagering shall issue an annual license authorizing the permitholder to conduct a racing meet during the period set forth therein. Such license shall be issued by the Division of Pari-mutuel Wagering to the permitholder on the basis of and in accordance with the procedure set forth in subsections (2) and (3).

(5) In the event any track shall be prevented from operating a full 40-day racing season, as a result of prohibition of law, fire, strike or circumstances beyond the control of the track involved, then the Board of Business Regulation in allocating and setting racing dates for the following racing season shall be governed by the amount of tax revenue produced by each track during the last racing season in which all tracks governed by this bill operated a full 40-day racing period and dates shall be allocated to the tracks under such circumstances in the manner set forth in subsections (2) and (3).

(6) The Division of Pari-mutuel Wagering is hereby prohibited from granting any permit and there shall be no election in any county for the ratification or rejection of any permit to conduct horseracing, sulky or harness racing at a location in the area in which there are three horse racetracks located within 100 air miles of each other; however, permits issued prior to May 21, 1968, and permits for summer thoroughbred horse racing and quarter horse racing shall not be affected by this subsection.

[2]**Note.**—Bracketed language inserted by the editors.

[3]**Note.**—Sections 1 and 3, ch. 78-131, Laws of Florida, abolished the Board of Business Regulation and created the Florida Pari-mutuel Commission with authority to hear and approve the dates and changes of dates for racing and the dates within which any track may be operated.

[4]**Note.**—Sections 1 and 3, ch. 78-131, Laws of Florida, abolished the Board of Business Regulation and directed that references to the board be changed to "Department of Business Regulation" or "department." The change will be implemented by means of reviser's bill.

Note.—See ch. 28499, 1953, Hillsborough County; racing, extra day; athletic scholarships.

550.082 Special allocation of periods of operation of certain dogracing tracks.—

(1) Where there are three or more dogracing tracks operating under valid outstanding permits, issued by the Division of Pari-mutuel Wagering, located within a radius of 35 miles of each other, one of such permitholders within said area shall be permitted, at its option, but shall not be required, during the period beginning July 1 and ending the first Monday of September following, both dates inclusive, of any year, to conduct upon dates of its choice not more than 50 days of its aggregate number of operating days allowed by s. 550.08; provided that where two or more of such permittees apply for racing dates, as herein provided, the Florida Pari-mutuel Commission shall designate the permittee entitled to conduct such racing during such 50-day period, and the remaining number of said aggregate days under s. 550.08 shall be granted to and utilized by such permittee within the period provided in s. 550.04.

(2) This section shall be cumulative and shall not be construed as repealing any other provisions of law, and shall not be construed as permitting or allowing any permitholder to operate for a period of time in excess of the number of days now provided by law.

History.—ss. 1, 3, ch. 59-417; s. 2, ch. 71-98; s. 11, ch. 79-4.

550.083 Dogracing; periods of operation generally; exceptions.—

(1) Owners of valid outstanding permits for dogracing in this state may hold race meetings at any time they choose during the "racing season" for the aggregate number of racing days fixed and permitted by law and subject to the approval of the Florida Pari-mutuel Commission, except that no racing shall be conducted on Sunday. The words "racing season" as used herein mean that period of time extending from September 5 of each year through September 4 of the following year, commencing with September 5, 1973.

(2) The provisions of this act shall not apply to or affect holders of valid permits to conduct greyhound racing or jai alai at greyhound racetracks or jai alai frontons located in Florida in the area between the parallels of 28° N. latitude and 30° N. latitude and lying east of the meridian of 82° W. longitude.

History.—ss. 1, 2, ch. 61-509; s. 1, ch. 69-250; ss. 1, 2, ch. 71-98; s. 1, ch. 73-23; s. 12, ch. 79-4.

550.0831 Dogracing; racing periods.—Any pari-mutuel permitholder conducting dogracing in 1977 and thereafter in a county having only one such racetrack may conduct dograce meets or meetings upon the days and dates of such permitholder's choice, except that no racing shall be conducted on Sunday, not to exceed the total of 105 racing days in each racing year, plus charity and scholarship days.

History.—s. 1, ch. 78-319.

550.0841 Restoration of performances lost by permittee.—The Florida Pari-mutuel Commission may, upon application by a racetrack or jai alai permittee, grant additional performances to the permittee for the purpose of restoring any performances lost due to circumstances beyond the control of the permittee. The commission shall determine when said additional performances will be run by the permittee. In the event that insufficient days remain in a permittee's season to enable the granting of additional performances, the commission may grant the additional performances in the subsequent season, notwithstanding the limitations of the number of days contained in ss. 550.08(1) and 551.12.

History.—s. 1, ch. 76-48; s. 1, ch. 77-174; s. 13, ch. 79-4.
Note.—Former s. 550.084.

550.09 Moneys to be paid to division for operation of racetrack.—

[1](1) Every person engaged in the business of conducting race meetings under this chapter shall pay to the State Treasurer, in his capacity as ex officio treasurer of the Division of Pari-mutuel Wagering, for the use of the division a sum equal to 3 percent of the total contributions to all pari-mutuel pools conducted or made on any and every racetrack licensed under this chapter and on every race at such track. In addition to the aforesaid taxes, every permitholder licensed by the Division of Pari-mutuel Wagering under the laws of this state shall collect from each person attending such races 15 percent of the established admission price or the sum of 10 cents, whichever sum is the greater, as an admission tax, which tax shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state. The admissions tax hereby imposed shall be calculated on the total of the entrance gate admission charge made by any permittee. Payments shall be made every 30th day of any race meeting and shall be accompanied by a report under oath showing the total of all gate admissions on the races covered by such report.

(2) If any free passes or complimentary cards shall be issued to guests by any licensee, the licensee of any such track shall pay to the division the same tax upon such complimentary admission cards each time they are used for admission to the track as though such complimentary passes or cards had been sold at the regular and usual admission rate; provided that the person conducting any race meeting in this state may issue tickets for admission, showing the amount of admission and the amount of tax to be paid by each person; however, this provision shall not be construed to mean that the association will not be held liable for the payment of the admission tax to the State Treasurer as ex officio treasurer of the division; provided, however, that a racetrack permitholder may, by and with the consent of the division, issue tax-free passes to its officers, officials and employees or other persons actually engaged in working at such racetrack, including persons actually employed and accredited press representatives, such as reporters and editors, and may also issue tax-free passes and tax-free box seats to other racing plant permitholders. A list of all per-

sons to whom tax-free passes or tax-free box seats are issued shall be filed with the division.

History.—s. 9, ch. 14832, 1931; s. 8, ch. 17276, 1935; CGL 1936 Supp. 4151(57); s. 3, ch. 59-406; s. 2, ch. 71-98; ss. 17, 22, ch. 77-167; s. 3, ch. 79-300.

[1]**Note.**—Section 3, ch. 79-300, provides that s. 550.09(1), as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.09(1) as it existed on June 8, 1977, to read as follows:

(1) Every person engaged in the business of conducting race meetings under this chapter shall pay to the State Treasurer in his capacity as ex officio treasurer of the Division of Pari-mutuel Wagering for the use of the division a sum equal to 3 percent of the total contributions to all pari-mutuel pools conducted or made on any and every racetrack licensed under this chapter, and on every race at such track. In addition to the aforesaid taxes, each person authorized to conduct race meetings under this chapter shall collect from each person attending such races 15 percent of the established admission price or the sum of 10 cents from each person attending such race meeting, whichever sum is the greater, as an admission tax, and said person shall pay to the State Treasurer as ex officio treasurer of the division the tax hereinabove provided for. Payments shall be made every seventh day of any and every race meeting and shall be accompanied by a report under oath, showing the total of all contributions and admissions on the races covered by such report and such other information as the division may require.

cf.—s. 550.16 Additional tax on pari-mutuel pool.

s. 550.161 License fee in lieu of pari-mutuel pool tax.

[1]550.091 Additional commission required to be withheld by dogracing and horseracing permittees.—In addition to the 17 percent commission authorized to be withheld on every dograce and horserace conducted pursuant to this chapter, each dog and horse track permittee shall withhold an additional 0.6 percent from the total contributions to the pari-mutuel pool on each and every race there conducted. The additional 0.6 percent shall be paid to the State Treasurer for deposit in the General Revenue Fund. However, this section shall not apply to any permittee conducting quarter horse racing under the provisions of s. 550.33.

History.—ss. 1, 5, ch. 77-166; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

550.10 Occupational license tax to be paid by employees; denial and revocation of license.—

(1) All persons connected with racetracks shall pay an annual occupational license tax, this occupational tax to be payable for each specified job performed. The scheduled license fees are as follows:

(a) Contractual concessionaires with permitholders, $25.

(b) Professional persons such as owners, trainers, veterinarians, doctors, nurses, officials and supervisors of all departments, $10.

(c) Jockeys, apprentice jockeys, jockey agents, and jai alai players, $5.

(d) Permitholder employees, concession employees, grooms, exercise boys, hot-walkers, miscellaneous stable help, platers and all others not specifically provided, $4.

(2) It is unlawful for any person to take part in or officiate in any way or to serve in any capacity at any racetrack without first having secured said license and paid said occupational tax.

(3) Every racetrack operating in the state and having a license from the Division of Pari-mutuel Wagering shall be required to employ at least 85 percent of their employees from bona fide residents and citizens of the state, exclusive of jockeys or apprentices, exercise boys, owners, trainers, clockers and governing and managing officials and heads of the departments of the track.

(4)(a) The division may deny or revoke a license to any person who shall have been refused a license by any other state racing commission or racing authority; provided, however, that the state racing commission or racing authority of such other state extends to the Florida Division of Pari-mutuel Wagering reciprocal courtesy to maintain the disciplinary control.

(b) The Division of Pari-mutuel Wagering may deny or revoke any license where the holder thereof has violated the rules and regulations of the division governing the conduct of persons connected with the racetracks.

History.—s. 9B, ch. 14832, 1931; s. 9, ch. 17276, 1935; CGL 1936 Supp. 4151(58); s. 7, ch. 22858, 1945; s. 4, ch. 59-406; s. 1, ch. 67-565; s. 37, ch. 69-353; s. 2, ch. 71-98.

550.11 Tax imposed to be in lieu of other taxes, except city.—The tax imposed by s. 550.10 shall be in lieu of all license, excise or occupational taxes to the state or any county, city, town or other political subdivision thereof, except that when any race meeting is held or conducted in any incorporated city or town, such city or town may assess and collect an additional tax against any person conducting racing within its corporate limits not to exceed $150 per day for horseracing, and not to exceed $50 per day for dogracing; and except as herein provided, no incorporated city or town shall by ordinance or resolution enacted after the effective date of this act, assess or collect any additional excise or revenue tax against any person conducting race meetings within the corporate limits of such city or town, or against any patron of any such person.

History.—s. 10, ch. 14832, 1931; CGL 1936 Supp. 4151(59); s. 1, ch. 65-351.

550.12 Uniform reporting system.—

(1)(a) It is the finding of the Legislature that a uniform reporting system should be developed to provide acceptable uniform financial data and statistics which the state may use to review the operations of pari-mutuel permitholders in order to exercise a reasonable degree of control over the activities of the pari-mutuel industry.

(b) It is further the finding of the Legislature that this reporting system should also provide the various permitholders and industry groups and associations with a source of comparable data which may be used to analyze and improve operations of a single permitholder or of permitholder groups.

(2)(a) Every person conducting race meetings or jai alai exhibitions under this chapter shall so keep records as clearly to show the total number of admissions and the total amount of money contributed to every pari-mutuel pool on each race or exhibition separately and the amount of money received daily from admission fees and, within 120 days after the conclusion of its fiscal year, shall submit to the Division of Pari-mutuel Wagering a complete annual report of its accounts, certified by a public accountant licensed to practice in the state. If the fiscal year of a track or fronton should end during the course of its meet or exhibition, the report shall be filed with the division within 120 days after the end of such meet or exhibition.

(b) Each holder of a pari-mutuel permit shall, commencing May 29, 1975, and every 4 years thereafter, file with the division an appraisal, prepared by a member of any nationally recognized professional appraisal society or association, of the fair value of

the business, plant, and properties incident to the conduct and operation of the business of the pari-mutuel permittee. In the case of new permittees, said appraisal shall be filed within 180 days after commencing operation and every 4 years thereafter.

[1](c) The division may make rules for the form and content of such reports, including, but not limited to, requirements for a statement of assets and liabilities, operating revenues and expenses, and net worth, and for any supporting informational schedule found necessary by the division to verify the foregoing financial statement, to permit the division to:

1. Assess the profitability and financial soundness of permitholders, both individually and as an industry;

2. Plan and recommend measures necessary to preserve and protect the pari-mutuel revenues of the state; and

3. Completely identify the holdings, transactions, and investments of permitholders with other business entities.

Such reports shall be certified by a public accountant licensed to practice in this state.

(d) The Auditor General may audit and check the books and records of any such person and upon the request of the division shall do so. Any association whose meeting has terminated prior to the effective date of this act shall submit its audit under prior existing rule. These audit reports shall become part of, and be maintained in, the division files.

History.—s. 11, ch. 14832, 1931; CGL 1936 Supp. 4151(60); s. 5, ch. 59-406; s. 1, ch. 61-476; s. 8, ch. 69-82; s. 1, ch. 69-251; s. 2, ch. 71-98; s. 1, ch. 75-45; s. 1, ch. 77-43; ss. 3, 5, ch. 77-166; ss. 11, 22, ch. 77-167; s. 3, ch. 79-300.

[1]**Note.**—Section 3, ch. 79-300, provides that s. 550.12(2)(c), as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.12(2)(c) as it existed on June 8, 1977, to read as follows:

(c) The division may make rules for the form and content of such reports, including, but not limited to, requirements for a statement of assets and liabilities, operating revenues and expenses, and net worth, and for any supporting informational schedule found necessary by the division to verify the foregoing financial statement, to permit the division to:

1. Assess the profitability and financial soundness of permitholders both individually and as an industry,

2. Plan and recommend measures necessary to preserve and protect the pari-mutuel revenues of the state,

3. Completely identify the holdings, transactions, and investments of permitholders with other business entities.

550.13 Division of moneys derived under this law.—All moneys received by the State Treasurer as ex officio treasurer of the Division of Pari-mutuel Wagering shall be distributed in the following proportions in the manner and at the times hereinafter specified:

(1) All such moneys, after expenses of the division are paid, shall, to the extent to which such moneys after expenses do not exceed in any year the total of such moneys after expenses so paid for the fiscal year 1971, be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county, and any excess of such moneys after expenses during any year shall be paid into the General Revenue Fund.

(2) Distribution among the several counties shall begin each racing year on or before January 5 and shall continue monthly through April 5; and on or before May 5 the State Comptroller shall determine and make a finding of all receipts and all moneys paid out upon warrants of the Comptroller during the year, and the balance remaining on hand as shown by such statement shall be distributed among the several counties of the state, except that prior to making such distribution there shall be retained and reserved in the State Treasury a sum not to exceed $40,000 to the credit of the division for salaries and expenses.

(3) This section shall be construed to permit, after expenses of the division are paid, the retention in the State Treasury from and after January 5 of each year and until May 5 of each year a sum not to exceed an amount equalling 10 percent of the total receipts under this chapter to insure sufficient moneys on hand at all times for current operating expenses of the division, and the Comptroller shall distribute the balances over and above such 10 percent on or before January 5, February 5, March 5 and April 5. It shall further be construed to mean that, after all salaries and necessary expenses of the division have been paid for each racing season, up to but not exceeding $40,000 shall be retained to the credit of the division to meet its expenses accruing before further moneys are received under this chapter, and that all the balance of said money shall be apportioned equally and paid to the several counties of the state by the Comptroller on or before May 5 of each year or as soon thereafter as may be practicable.

History.—s. 12, ch. 14832, 1931; s. 1, ch. 16113, 1933; CGL 1936 Supp. 4151(61); s. 1, ch. 19170, 1939; s. 2, ch. 71-98; s. 1, ch. 71-129.

550.131 Payment of racing funds to district school boards.—In all cases when it is provided by local or special laws that one-half of all moneys accruing to any county of the state under the provisions of this chapter, (the same being Division of Pari-mutuel Wagering funds), shall be paid to the Treasurer of the state as ex officio treasurer of the Teachers Salary Fund, to the credit of the district school board, such moneys shall be paid direct to the school board of such county.

History.—s. 1, ch. 24144, 1947; s. 1, ch. 69-300; s. 2, ch. 71-98.

550.14 Use of moneys by counties.—When the moneys mentioned in s. 550.13 have been transmitted to the county commissioners of the several counties of the state in accordance with the provisions of this chapter, the county commissioners of the several counties may determine whether such moneys, or any part thereof, shall be converted into the county school fund, or to some other lawfully authorized fund, or shall be equally or otherwise apportioned to any two or more of such funds; provided, however, that if the Supreme Court of this state shall hold the foregoing use of said moneys mentioned in s. 550.13 to be an illegal use of the same, then said funds so remitted to the several counties of this state shall be held by the respective county commissioners in a fund to be designated "Special Road Fund," to be used by and under the direction of the board of county commissioners of each county, who are designated ex officio agencies of the state for the purposes of this chapter, for one or more of the following purposes which are expressly recognized and declared to be proper state objects, and the expenses thereof incurred for a general and state purpose:

(1) For the construction and maintenance of such state roads, or any of them, within such county as have not been taken over for maintenance by the Department of Transportation; or

(2) The whole or any part of the moneys so remitted may, by resolution of the board of county commissioners of each county, be paid over by the county commissioners for use by the school board of such county, to be used by such school board in payment of teachers' salaries or in payment of cost of transportation of pupils in the public school system of such county; provided, that in those instances where, by virtue of any local or special law now in force or hereafter enacted, any portion of such funds is earmarked for use by the school board of any county of this state, the county commissioners shall, upon receipt of such funds, remit the proportionate allocated part thereof to such school board, and the money so remitted shall be used for the exclusive purposes aforesaid; provided, further, in those instances where any other method of remittance is prescribed by local or special law then such method shall be followed.

This section shall be liberally construed.

History.—s. 13, ch. 14832, 1931; CGL 1936 Supp. 4151(62); ss. 1, 2, ch. 19106, 1939; ss. 23, 35, ch. 69-106; s. 1, ch. 69-300; s. 196, ch. 77-104.

550.15 Bond required of licensees to conduct race meeting.—Every person to whom a license may be granted under this chapter, at his own cost and expense, shall, before any such license is delivered, give a bond in the penal sum of $50,000 payable to the Governor of the state and his successors in office, with a surety or sureties to be approved by the division and the State Treasurer, conditioned to faithfully make the payments to the State Treasurer in his capacity as treasurer of the division and to keep his books and records and make reports as provided, and to conduct his racing in conformity with this chapter.

History.—s. 14, ch. 14832, 1931; CGL 1936 Supp. 4151(73); s. 2, ch. 71-98.

550.16 Pari-mutuel pool authorized within track enclosure; commissions, breaks, etc.—

(1) The sale of tickets or other evidences showing an interest in or a contribution to a pari-mutuel pool is hereby permitted within the enclosure of any horse racetrack and dog racetrack licensed and conducted under this law, but not elsewhere in this state except as is provided in chapter 551. The sale and purchase of tickets or other evidences showing an interest in or a contribution to pari-mutuel pools in this state shall be under the supervision of the Division of Pari-mutuel Wagering and shall be done subject to such regulations as the division shall from time to time prescribe.

(2) The commission on a pari-mutuel pool on every running horserace which may be withheld by the licensee and the state from the total contributions made to such pari-mutuel pool shall in no event exceed 17 percent of the amount contributed thereto; the commission on a pari-mutuel pool on every harness race which may be withheld by the licensee and the state from the total contributions made to such a pari-mutuel pool shall in no event exceed 19 percent of the amount contributed thereto; and the commission on a pari-mutuel pool on every dograce which may be withheld by the licensee and the state from the total contributions made to such pari-mutuel pool shall in no event exceed 17 percent of the amounts contributed thereto, which said maximum commissions shall include the 3 percent tax heretofore provided by s. 550.09, together with the additional tax of 4.5 percent of the total contributions to all pari-mutuel pools conducted on every horserace and the additional tax of 4 percent of the total contributions to all pari-mutuel pools conducted on every dograce, hereinafter provided for old age assistance and other purposes.

(3) After deducting a commission or license and the "breaks" (hereinafter defined), a pari-mutuel pool shall be redistributed to the contributors.

(4) Redistribution of funds otherwise distributable to the contributors of a pari-mutuel pool shall be a sum equal to the next lowest multiple of 10 on horse and dograces.

(5) No distribution of a pari-mutuel pool shall be made of the odd cents of any sum otherwise distributable, which odd cents shall be known as the "breaks."

(6) The "breaks" shall be known as the difference between the amount contributed to a pari-mutuel pool and the total of the commissions and sums redistributed to the contributors.

(7) No person or corporation shall directly or indirectly purchase pari-mutuel tickets or participate in the purchase of any part of a pari-mutuel pool for another for hire or for any gratuity and no person shall purchase any part of a pari-mutuel pool through another, wherein he gives or pays directly or indirectly such other person anything of value, and any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) In addition to the 3 percent pari-mutuel tax provided for by s. 550.09, and any and all other taxes otherwise levied and assessed, every person, association or corporation conducting a horserace meet shall pay a tax equal to 4.5 percent, and every person, association or corporation conducting a dograce meet shall pay a tax equal to 4 percent of the total contributions to all pari-mutuel pools there conducted and made on any and every horserace and dograce for operation of such horse and dog tracks, which additional tax of 4.5 percent on horserace pari-mutuel pools and one-half of the additional 4 percent tax on dograce pari-mutuel pools shall be known as the "old age assistance tax" and shall be paid to the State Treasurer for deposit in the General Revenue Fund. The remaining one-half of the additional 4 percent tax on dograce pari-mutuel pools shall be paid to the State Treasurer as ex officio treasurer of the Division of Pari-mutuel Wagering and shall be distributed among the 67 counties of the state. Such money shall be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county. Distribution among the several counties shall be as provided by s. 550.13.

(9) Provided that in the event the tax equal to 3 percent of the total contributions to all pari-mutuel pools conducted or made on any and every horse racetrack, plus the $3,000 license fee from horse (running) tracks having an average daily pari-mutuel pool of less than $175,000 per day for the preceding season, and on any and every dog racetrack as

provided by s. 550.09, plus the $300 license fee from dog tracks having an average daily pari-mutuel pool of less than $20,000 per day for the preceding racing season, distributed equally to the 67 counties of this state, produces during any full and complete racing season authorized by law, less than the total amount from said source distributed to the said counties during the racing season 1940-1941, such deficiency and no more shall be paid into said fund created by the said 3 percent tax and license fee as aforesaid for distribution to the 67 counties of this state according to law, from and out of the additional tax equal in the amount of 4.5 percent on all pari-mutuel pools at horserace meets and the $1,000 license fee for old age assistance from horse (running) tracks having an average daily pari-mutuel pool of less than $175,000 per day for the preceding season and 2 percent on all pari-mutuel pools at dog race meets, and the $200 license fee for old age assistance from dogracing tracks having an average daily pari-mutuel pool of less than $20,000 per day for the preceding racing season, as herein levied and designated for old age assistance, and the balance of said additional tax of 4.5 percent and the $1,000 license fee for old age assistance from horse (running) tracks having an average daily pari-mutuel pool of less than $175,000 per day for the preceding season, on horse racetracks and 2 percent on dog racetracks having an average daily pari-mutuel pool of less than $20,000 per day for the preceding racing season, shall be paid into said General Revenue Fund as herein provided, and for the purposes set forth.

(10) The taxes levied by subsection (8) to be known as the old age assistance tax shall in nowise affect or be construed to repeal or affect any other tax on horse or dog racetracks or races or the apportionment thereof in equal portions to each county of the state.

(11) The taxes levied by subsection (8) shall be paid at the times and places as provided by law for the payment of other taxes based on a percent of pari-mutuel pools.

(12) Any willful or wanton failure by any licensee to make payment into the State Treasury as required by law shall constitute sufficient ground for the Division of Pari-mutuel Wagering to revoke the permit of such licensee and no further license or permit shall be issued to such former licensee.

(13) The commission on a pari-mutuel pool on each quarter horse race, which shall be withheld by the licensee and the state from the total contributions made to such pari-mutuel pool, shall in no way exceed 18 percent of the amount of contributions thereto. The additional 1 percent authorized to be withheld by the licensees licensed under chapter 550 from the total contributions made to the pari-mutuel pool on each race conducted by a quarter horse licensee under this chapter shall be withheld and paid by said licensee into the State Treasury, to be kept in a special fund to be designated as the Florida Quarter Horse Racing Promotion Trust Fund. The Department of Agriculture and Consumer Services shall administer such funds and prescribe suitable and reasonable rules for the administration thereof. It is the intent of the Legislature that the moneys in the Florida Quarter Horse Racing Promotion Trust Fund be allocated for the supplementing and augmenting of purses and prizes and for the general promotion of the owning and breeding of racing quarter horses in Florida.

History.—s. 16, ch. 14832, 1931; s. 10, ch. 17276, 1935; CGL 1936 Supp. 4151(74), 8135(6b); ss. 1-6, ch. 20306, 1941; ss. 1-6, 9, ch. 21744, 1943; s. 1, ch. 22589, 1945; s. 1, chs. 25257, 26334, 1949; s. 1, ch. 28058, 1953; ss. 1-3, ch. 29694, 1955; s. 2, ch. 61-119; s. 1, ch. 61-516; s. 1, ch. 63-314; s. 1, ch. 69-86; s. 2, ch. 71-98; s. 540, ch. 71-136; s. 1, ch. 71-146; s. 1, ch. 72-129; ss. 1, 6, ch. 75-42; s. 4, ch. 77-166; s. 1, ch. 77-177.

cf.—s. 550.09 Moneys to be paid division for operation of racetrack.
s. 550.26 "Breaks" tax deposited in General Revenue Fund.

550.161 Pari-mutuel pools of less than $400,000 daily; license fee; distribution.—

[1](1) Any duly licensed horse (running) racetrack having an average daily pari-mutuel pool of less than $400,000 per day for the current racing season shall, in lieu of a payment of the tax to the state from pari-mutuel pools as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which shall be determined from the current racing season's daily pari-mutuel pool of the licensee, and which is hereby fixed according to the following schedule:

Up to $175,000	$4,000
Over $175,000 but not exceeding $200,000	5,000
Over $200,000 but not exceeding $225,000	6,000
Over $225,000 but not exceeding $250,000	7,000
Over $250,000 but not exceeding $275,000	9,000
Over $275,000	11,000

three-fourths of which daily license fee shall be distributed equally to the 67 counties of this state and the remaining one-fourth to the state's General Revenue Fund. In no event shall the daily license fee exceed $11,000 per day.

(2) The tax imposed by s. 550.26 shall be retained by tracks defined in this section and the proceeds from said breaks shall be distributed by such tracks as follows:

(a) For the payment of breeders' awards pursuant to the provisions of s. 550.38 of this chapter.

(b) The balance of the proceeds from said breaks and 50 percent of net commissions shall be distributed by said tracks for the payment of purses as approved by the Division of Pari-mutuel Wagering.

(3) No contract or agreement shall be valid or enforceable which requires or provides for any of such tracks to distribute in purses a percentage of their individual pari-mutuel handle in a manner different or for a greater or lesser amount than that herein provided for. Owners and trainers, by application for and acceptance of a license to race their horses in this state, shall be deemed to have read and understand fully the provisions of this section, and willful refusal to enter horses because of the overall purse structure herein required shall be deemed grounds for revocation of such license by the division.

History.—ss. 1, 2, ch. 28193, 1953; s. 24, ch. 57-1; s. 6, ch. 59-406; s. 2, ch. 61-119; s. 2, ch. 69-86; ss. 1, 2, ch. 69-368; s. 2, ch. 71-98; ss. 11, 22, ch. 77-167; s. 3, ch. 79-300.

[1]**Note.**—Section 3, ch. 79-300, provides that s. 550.161(1), as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.161(1) as it existed on June 8, 1977, to read as follows:

(1) Any duly licensed horse (running) racetrack having an average daily pari-mutuel pool of less than $400,000 per day for the preceding racing season shall, in lieu of the payment of the 4.5 percent and 3 percent tax paid to the state from pari-mutuel pools as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which shall be determined from the preceding racing season's daily average pari-

mutuel pool of the licensee, and which is hereby fixed according to the following schedule:

Up to $175,000	$4,000
Over $175,000 but not exceeding $200,000	5,000
Over $200,000 but not exceeding $225,000	6,000
Over $225,000 but not exceeding $250,000	7,000
Over $250,000 but not exceeding $275,000	9,000
Over $275,000 but not exceeding $300,000	11,000
Over $300,000 but not exceeding $325,000	13,000
Over $325,000 but not exceeding $350,000	15,000
Over $350,000 but not exceeding $375,000	18,000
Over $375,000 but less than $400,000	21,000

three-fourths of which daily license fee shall be distributed equally to the 67 counties of this state and the remaining one-fourth to the state's General Revenue Fund.

550.162 Dogracing; daily operational cost allowance.—

(1)(a) It is the finding of the Legislature of Florida that the operation of a dog track and legalized pari-mutuel betting at dog tracks in this state is a privilege and is an operation which requires strict supervision and regulation in the best interests of the state; that pari-mutuel wagering at dog tracks in this state is a substantial business and taxes derived therefrom constitute part of the tax structures of the state and counties. It is the further finding of the Legislature that the operators of dog tracks should pay their fair share of taxes to the state, and at the same time this substantial business interest should not be taxed to an extent as to cause a track which is operated under sound business principles to be forced out of business.

(b) It is the further finding of the Legislature that all dog racetracks have in common a "daily initial expense of operation." This "daily initial expense of operation" is created by certain factors which are common to all dog tracks and which remain relatively uniform and constant among the several dog tracks throughout a race meeting.

(2) Each licensed dog track holding a permit to conduct racing in this state under the authority of this chapter, and the state by and through the Division of Pari-mutuel Wagering, is authorized to withhold from the total maximum commission of 17 percent that may be withheld from the total amounts contributed to pari-mutuel pool on dograces the sum of $170 per race, and not to exceed 105 days during any race meeting, which said amounts shall be credited to the dog track operators as a daily "initial expense of operation." No tax shall be levied or collected on said $170 so withheld, and all taxes imposed by ss. 550.09 and 550.16 or by any other act of the Legislature shall be imposed upon the 17 percent of total amounts contributed to any pari-mutuel pool at dog tracks less the above described $170 "initial expense of operation" amount per race. The daily "initial expense of operation" allowance shall be deducted from the 17 percent commission prior to any tax being imposed on said pool, and said allowance shall be credited to the track operator.

(3) All allowances granted by this section to the track operator known as the "initial expense of operation" allowance shall appear on the report tendered by the licensee as provided by s. 550.09, and shall be shown on the tax report submitted by the licensee every 7th day of the race meeting.

(4) Nothing in this section shall be construed so as to allow any dog track in this state an "initial expense of operation" allowance as provided herein for any day on which races may be held for the benefit of educational scholarships or charitable organizations.

History.—ss. 1-4, ch. 29693, 1955; s. 2, ch. 71-98; ss. 2, 6, ch. 75-42; s. 4, ch. 77-166; s. 1, ch. 77-449.

550.163 Dogracing; daily license fee.—

(1) Any duly licensed dog racetrack, having a daily pari-mutuel pool of less than $25,000 per day in a racing season, shall, in lieu of the payment of the tax imposed in ss. 550.09 and 550.16, or any other law imposing a tax upon the 17 percent of the total pari-mutuel pool at dog racetracks, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee which fee shall be determined from the following schedule:

Up to and including $20,000	$150
Over $20,000 per day and not exceeding $21,000 per day	200
Over $21,000 per day and not exceeding $22,000 per day	250
Over $22,000 per day and not exceeding $23,000 per day	300
Over $23,000 per day and not exceeding $24,000 per day	350
Over $24,000 per day and not exceeding $25,000 per day	400

(2) Whenever any dog racetrack exceeds the sum of $25,000 per day in its pari-mutuel pool totals, this section shall not apply and such dog racetrack shall be taxed as provided by other general laws, and at such time such dog track shall receive any "daily initial cost of operation" credit allowed by general law.

(3) Three-fifths of such daily license fee shall be distributed equally to the 67 counties of the state and the remaining two-fifths to the state's General Revenue Fund.

History.—ss. 1-3, ch. 29751, 1955; (3) a. by s. 2, ch. 61-119.

550.164 Escheat to state of abandoned interest in or contribution to pari-mutuel pools.—

(1) It is hereby declared to be the public policy of the state, while protecting the interest of the owners thereof, to possess all unclaimed and abandoned interest in or contribution to any pari-mutuel pool conducted in this state under the provisions of this chapter and chapter 551, for the benefit of all the people of the state, and this law shall be liberally construed to accomplish such purpose.

(2) All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any licensee authorized to conduct pari-mutuel pools in this state for a period of 1 year from the date said pari-mutuel ticket was issued, when the rightful owner or owners thereof have made no claim or demand for such money or other property within the aforesaid period of time, is hereby declared to have escheated to or to escheat to, and to have become the property of the state.

(3) All money or other property which shall have escheated to and become the property of the state as provided herein, and which is held by such licensees, authorized to conduct pari-mutuel pools in this state, shall be paid by such licensees to the State Treasurer annually within 60 days after the close of the race

meeting of the said licensee. Such moneys so paid by said licensees to the State Treasurer shall be deposited in the State School Trust Fund to be used for the support and maintenance of public free schools as required by s. 6, Art. IX, State Constitution.

History.—ss. 1-4, ch. 29688, 1955; s. 7, ch. 59-406; s. 2, ch. 61-119; s. 26, ch. 69-216.

550.17 Proof of referendum required.—

(1) The Division of Pari-mutuel Wagering shall not issue any license under this chapter except upon proof in such form as the division may prescribe that a referendum election has been held in the county where the applicant for such license desires to conduct a race meeting and that a majority of the electors voting on that question in such election voted in favor of licensing such racing.

(2)(a) Notwithstanding any provisions of this chapter, no thoroughbred horse racing permit or license issued under this chapter shall be transferred, or reissued when such reissuance is in the nature of a transfer, so as to permit or authorize a licensee to change the location of a thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:

1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license.

2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.

(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s. 550.06. The expense of each such referendum shall be borne by the licensee requesting the transfer.

History.—s. 17, ch. 14832, 1931; CGL 1936 Supp. 4151(75); s. 2, ch. 71-98; s. 1, ch. 76-179.

550.18 Petition for election to revoke license. —Upon petition of 20 percent of the qualified electors of any county wherein any racing has been licensed and conducted under this chapter, the county commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election the question of whether any permit or permits theretofore granted shall be continued or revoked, and if a majority of the electors voting on such question in such election shall vote to cancel or recall the permit theretofore given, then the Division of Pari-mutuel Wagering shall not thereafter grant any license on the permit so recalled. Every signature upon every such recall petition shall be signed in the presence of the clerk of the board of county commissioners at the office of the clerk of the circuit court of the county and the petitioner shall present at the time of such signing his registration receipt showing his qualification as an elector of the county at the time of the signing of the petition. Not more than one permit shall be included in any one petition and in all elections wherein the recall of more than one permit shall be voted on, the voters shall be given an opportunity to vote for or against the recall of each permit separately. Nothing in this chapter shall be construed to prevent the holding of later referendum or recall elections.

History.—s. 18, ch. 14832, 1931; s. 11, ch. 17276, 1935; CGL 1936 Supp. 4151(76); s. 7, ch. 22858, 1945; s. 2, ch. 71-98.

550.181 Certain persons prohibited from holding racing or jai alai permits; suspension and revocation.—

(1) No corporation, general or limited partnership, sole proprietorship, business trust, joint venture or unincorporated association, or other business entity shall hold any horseracing or dogracing permit or jai alai fronton permit in this state if any one of the persons or entities specified in paragraph (a) has been determined by the division not to be of good moral character or has been convicted of any offense specified in paragraph (b).

(a)1. The permitholder;

2. An employee of the permitholder;

3. The sole proprietor of the permitholder;

4. A corporate officer or director of the permitholder;

5. A general partner of the permitholder;

6. A trustee of the permitholder;

7. A member of an unincorporated association permitholder;

8. A joint venturer of the permitholder;

9. The owner of more than 10 percent of any equity interest in the permitholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary; or

10. An owner of any interest in the permit or permitholder, including any immediate family member of the owner, or holder of any debt, mortgage, contract or concession from the permitholder, who by virtue thereof is able to control the business of the permitholder.

(b)1. A felony in this state;

2. Any felony in any other state which would be a felony if committed in this state under the laws of Florida;

3. Any felony under the laws of the United States;

4. A felony under the laws of another state if related to gambling which would be a felony under the laws of Florida if committed in this state; or

5. Bookmaking as defined in s. 849.25.

(2)(a) If the applicant for permit as specified under subsection (1) or a permitholder as specified in paragraph (1)(a), has received a full pardon or a restoration of civil rights with respect to the conviction specified in paragraph (1)(b), then the conviction shall not constitute an absolute bar to the issuance or renewal of a permit or grounds for the revocation or suspension of a permit.

(b) Any permitholder as specified in paragraph (1)(a) who on June 9, 1977, had been convicted of any offense specified in paragraph (1)(b) and who had not received as of June 9, 1977, a full pardon or restora-

tion of civil rights with respect to such conviction, shall have until July 1, 1978, to obtain a full pardon or restoration of civil rights under Florida law.

(c) A corporation which has been convicted of a felony shall be entitled to apply for and receive a restoration of its civil rights in the same manner and on the same grounds as an individual.

(3) After notice and hearing, the Division of Pari-mutuel Wagering shall refuse to issue or renew or shall suspend, as appropriate, any permit found in violation of subsection (1). The order shall become effective 120 days after service of the order upon the permitholder and shall be amended to constitute a final order of revocation unless the permitholder has, within that period of time, either caused the divestiture, or agreed with the convicted person upon a complete immediate divestiture, of his holding, or has petitioned the circuit court as provided in subsection (3) or, in the case of corporate officers or directors of the holder or employees of the holder, has terminated the relationship between the permitholder and those persons mentioned. The Division of Pari-mutuel Wagering may, by order, extend the 120-day period for divestiture, upon good cause shown, to avoid interruption of any jai alai or race meeting or to otherwise effectuate this section. If no action has been taken by the permitholder within the 120-day period following the issuance of the order of suspension, the division shall, without further notice or hearing, enter a final order of revocation of the permit. When any permitholder or sole proprietor of a permitholder is convicted of an offense specified in paragraph (1)(b), the Department of Business Regulation may approve a transfer of the permit to a qualified applicant, upon a finding that revocation of the permit would impair the state's revenue from the operation of the permit or otherwise be detrimental to the interests of the state in the regulation of the industry of pari-mutuel wagering. In such approval, no public referendum shall be required, notwithstanding any other provision of law. Petitions for transfer after conviction must be filed with the department within 30 days after service upon the permitholder of the final order of revocation. The timely filing of such a petition shall automatically stay any revocation order until further order of the department.

(4) The circuit courts shall have jurisdiction to decide a petition brought by a holder of a pari-mutuel permit who shows that his or its permit is in jeopardy of suspension or revocation under subsection (2) and that it is unable to agree upon the terms of divestiture of interest with the person specified in subparagraphs (1)(a)3.-9. who has been convicted of an offense specified in paragraph (1)(b). The court shall determine the reasonable value of the interest of the convicted person and order a divestiture upon such terms and conditions as it finds just. In determining the value of the interest of the convicted person, the court may consider, among other matters, the value of the assets of the permitholder, its good will and value as a going concern, recent and expected future earnings, and other criteria usual and customary in the sale of like enterprises.

(5) The Division of Pari-mutuel Wagering shall make such rules for the photographing, fingerprinting, and obtaining of personal data of individuals described in paragraph (1)(a) and the obtaining of such data regarding the business entities described in paragraph (1)(a) as is necessary to effectuate the provisions of this act.

History.—ss. 1-3, ch. 26832, 1951; s. 2, ch. 71-98; s. 5, ch. 74-379; s. 1, ch. 77-168; s. 14, ch. 79-4; s. 223, ch. 79-400.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

s. 550.33 Quarter horse races.

550.19 Chapter not applicable to racing conducted by fair associations.—No part of this chapter shall be construed to apply to racing conducted by county or state fair associations or to any racing whatsoever except running or harness horse races and dograces.

History.—s. 19, ch. 14832, 1931; CGL 1936 Supp. 4151(77).

550.21 Permits not assignable.—

(1) No permit granted under the provisions of this chapter shall be transferred or assigned except upon application to, and written consent and approval of the transfer by, the division pursuant to the provisions of s. 550.181.

(2) At all times prior to approval of a transfer or assignment of the permit the transferor shall be deemed to be the permitholder.

(3) Whenever a permit to conduct pari-mutuel wagering is held by a corporation or business entity other than an individual, no transfer of 10 percent or more of the stock or other evidence of ownership or equity in the permitholder shall be made, absent the prior approval of the transferee by the division pursuant to the provisions of s. 550.181.

History.—s. 21, ch. 14832, 1931; s. 12, ch. 17276, 1935; CGL 1936 Supp. 4151(79); s. 2, ch. 71-98; s. 2, ch. 77-168.

550.215 Costs of investigation; division to charge applicants.—

(1) The division is authorized to charge any anticipated costs incurred by the division, in determining the eligibility of any person or entity specified in paragraph 550.181(1)(a) to hold any horseracing, dogracing, or jai alai fronton permit, against such person or entity.

(2) The division may, by rule, determine the manner of payment of its anticipated costs and the procedure for filing applications for permit eligibility in conjunction with payment of said costs.

(3) The division shall furnish to the applicant an itemized statement of actual costs incurred during the investigation to determine eligibility.

(4) In the event there are unused funds at the conclusion of such investigation, such funds shall be returned to the applicant within 60 days after the determination of eligibility has been made.

(5) In the event actual costs of investigation exceed anticipated costs, the division shall assess the applicant those moneys necessary to recover all actual costs.

History.—s. 1, ch. 78-391.

550.22 Moneys to be held by State Treasurer if distribution held illegal.—In the event the Supreme Court of the state should hold invalid the apportionment and distribution as now or hereafter provided of any part or all of the excise or license taxes now collected by the state incident to the oper-

ation of any racetrack or of the game of jai alai or pelota, or pari-mutuel pools conducted in conjunction therewith, then all such funds levied and collected by the state from the operation thereof shall be held in a separate fund by the State Treasurer of this state, such fund to be known and designated as the "Special Division of Pari-mutuel Wagering Fund," until such time as the Legislature of this state shall authorize the distribution thereof. The fund so impounded shall not be subject to transfer, temporarily or permanently, to any other fund.

History.—s. 22, ch. 14832, 1931; s. 1, ch. 19114, 1939; CGL 1940 Supp. 4151(72dd); s. 2, ch. 71-98.

550.23 Application of laws inconsistent with this chapter.—All laws and parts of laws inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person participating or engaged in racing or making or contributing to pools thereon as authorized by and conducted under this chapter.

History.—s. 23, ch. 14832, 1931; CGL 1936 Supp. 4151(81).

550.24 Conniving to prearrange result of race; stimulating or depressing horse or dog; penalty.—Any person who shall influence or have any understanding or connivance with any owner, jockey, groom or other person associated with or interested in any stable, kennel, horse or dog or race in which any horse or dog participates, to prearrange or predetermine the results of any such race, or any person who shall stimulate or depress a dog or horse for the purpose of affecting the results of a race, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 9, ch. 17276, 1935; CGL 1936 Supp. 8135(6a); s. 541, ch. 71-136.

550.25 Penalty for conducting unauthorized race meeting.—Every race meeting at which racing is conducted for any stake, purse prize or premium, except as allowed by this chapter, is prohibited and declared to be a public nuisance, and every person acting or aiding therein or conducting, or attempting to conduct, racing in this state not in conformity with this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 14832, 1931; CGL 1936 Supp. 8135(6); s. 542, ch. 71-136.

550.26 Tax on breaks; distribution.—

(1) A tax is hereby levied upon every pari-mutuel pool conducted by horse tracks and dog tracks within the state authorized by law so to do equal to the "breaks," which said "breaks" shall be the difference between:

(a) The amount contributed to a pool; and

(b) The total of the commissions and the sums actually redistributed to the contributors, which tax shall be known as the "breaks tax."

(2) The tax hereby levied shall be paid at the times and places as provided by law for the payment of other taxes based on a percent of the pari-mutuel pool.

(3) It shall be the duty of every such horse racetrack licensee and of every such dog racetrack licensee to pay unto the State Treasurer the tax hereby levied and said licensee shall be liable therefor.

(4) The breaks tax hereby levied on pari-mutuel pools conducted by horse tracks, and three-fourths of the breaks tax hereby levied on pari-mutuel pools conducted by dog tracks, shall be deposited by the State Treasurer into, and it shall become and be made a part of, the General Revenue Fund. The remaining one-fourth of the breaks tax levied on pari-mutuel pools conducted by dog tracks shall be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county. This distribution to the counties shall be made at the times and in the manner provided by s. 550.13.

(5) Fifty percent of the breaks tax levied on pari-mutuel pools conducted by harness racing tracks shall be paid into the State Treasury to be kept in a special fund to be designated as the "Florida Harness Horse Racing Promotion Trust Fund." The Department of Agriculture and Consumer Services shall administer such fund and prescribe suitable and reasonable rules for the administration thereof. It is the intention of the Legislature that the moneys in the Florida Harness Horse Racing Promotion Trust Fund be allocated for the supplementing and augmenting of purses and prizes and for the general promotion of owning and breeding of standardbred horses in Florida. Such payments may be made directly to the Florida Standardbred Breeders' and Owners' Association despite the provisions of s. 216.331.

(6) Fifty percent of the breaks tax levied on pari-mutuel pools conducted by quarter horse licensees shall be paid into the State Treasury to be kept in a special fund to be designated as the "Florida Quarter Horse Racing Promotion Trust Fund." The Department of Agriculture and Consumer Services shall administer such fund and prescribe suitable and reasonable rules and regulations for the administration thereof. It is the intention of the Legislature that the moneys in the Florida Quarter Horse Racing Promotion Trust Fund be allocated for the supplementing and augmenting of purses and prizes and for the general promotion of owning and breeding of racing quarter horses in Florida.

History.—ss. 1-4, ch. 20307, 1941; s. 1, ch. 22588, 1945; s. 7, ch. 24337, 1947; s. 1, ch. 29810, 1955; s. 2, ch. 61-119; s. 2, ch. 63-314; s. 1, ch. 65-381; s. 2, ch. 69-50; ss. 3, 5, ch. 69-86; ss. 14, 35, ch. 69-106; s. 4, ch. 70-226; s. 1, ch. 70-439; s. 1, ch. 78-337.

[1]550.261 Winter horseracing; purse requirements.—The sum of 4 percent of the total contributions to the pari-mutuel pool at each winter horse racetrack, based on the current year's pari-mutuel handle, shall be paid by each winter thoroughbred horse track for purses during its authorized racing period. Overpayments and underpayments of estimated seasonal purse requirements shall be adjusted in the next succeeding racing season.

History.—s. 4, ch. 69-86; s. 2, ch. 71-98; ss. 9, 12, ch. 75-43; ss. 12, 22, ch. 77-167; s. 2, ch. 79-300.

[1]**Note.**—Section 2, ch. 79-300, provides that s. 550.261, as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.261 as it existed on May 28, 1975, to read as follows:

550.261 Horseracing; winter season purse pool.—

(1) It is the finding of the Legislature that when well-bred horses are racing, horse tracks are likely to attract more of the wagering public with a concomitant increase in the amount wagered, resulting in increased revenue to the state and the counties. It is the further finding of the Legislature that the purse structure of the three horse racetracks operating consecutive 40-day racing meets, as authorized by s. 550.081, should be coordinated in such a

manner as to induce the owners of such well-bred horses to race at all three of the racetracks conducting consecutive racing meets as aforesaid since frequently horses stabled at one track are vanned to and race at the other two tracks.

(2) It is the further finding of the Legislature that legislative bodies in other states have authorized additional days of horseracing which directly conflict with the winter horseracing season in this state and certain racetracks in those states are highly competitive from the standpoint of purses, thereby inducing the owners of well-bred horses to remain in such other states and not to ship their stables to Florida for the 120-day winter racing season. It is the further finding of the Legislature that it is necessary to strengthen and augment the purses being paid at each of the three racetracks so as to provide higher minimum purses and improved stake programs in order to successfully compete with horse racetracks in other states.

(3) It is the further finding of the Legislature that purses paid by a horse racetrack are historically conditioned on a percentage of the total amount of the pari-mutuel pool at such racetrack during its preceding racing meet. It is the further finding of the Legislature that when one or more of the three racetracks operating successive meets as aforesaid has a substantially lower pari-mutuel handle than one or more of the other tracks, substantially lower purses are paid by such track or tracks in the succeeding year, thereby discouraging many owners from shipping to or remaining in Florida for the 120-day winter racing season. It is the further finding of the Legislature that the purse structure at each of the three tracks should be coordinated insofar as practicable so as to provide for a balanced and coordinated program of horseracing by such tracks.

(4) In order to insure such a well-balanced and coordinated program of winter horseracing at said three tracks, a common purse pool is hereby established. One-fourth of the commission authorized by s. 550.16, to be withheld by each of the three licensees from its pari-mutuel pool, the same being equivalent to 4 percent thereof, shall be credited by each track to the common purse pool. The total sum credited to said purse pool during the 120-day winter racing season as well as the amount credited thereto from the conduct of charity or scholarship days of racing shall be thereafter allocated and distributed as follows: 29.5 percent thereof to the track operating the first 40-day period; 38 percent thereof to the track operating the middle 40-day period; and 32.5 percent thereof to the track operating the final 40-day period. The apportionment of and accounting for the amount credited to or to be withdrawn from such Division of Pari-mutuel Wagering so as to insure that the 4 percent withheld by each licensee from its pari-mutuel pool is used solely and exclusively for the payment of purses. Breeders' awards shall be paid by the tracks.

(5) Distribution and allocation of funds for purses to the track or tracks entitled thereto pursuant to the provisions hereof shall be made on or prior to November 1 of each year on the basis of the total amount credited to the common purse pool by the three tracks during the immediately preceding winter horserace season.

(6) It is the further finding of the Legislature that a distribution of the commissions withheld by each track as herein provided for will benefit each of the three tracks operating successive meets and will insure a well-coordinated 120-day program of winter horseracing with improved purses at each track, which in turn will induce the owners of the best stables and of well-bred horses not only to race in Florida but also to remain in this state throughout the entire 120-day winter meeting.

(7) No contract or agreement shall be valid or enforceable which requires or provides for any of such tracks to distribute in purses a percentage of their individual pari-mutuel handle in a manner different or for greater or lesser amount than that herein provided for. Owners and trainers, by application for and acceptance of a license to race their horses in this state and their written acknowledgment that they have read and understand this section, shall be deemed to have agreed to the provisions of this section, and willful refusal to enter horses because of the overall purse structure herein required shall be deemed grounds for revocation of such license by the division.

550.2615 Distribution of certain funds to a horsemen's association.—

(1) Each licensee who holds a permit for thoroughbred horseracing in this state shall deduct from the purses required by s. 550.261 or s. 550.44, an amount of 1 percent of the total purse pool and shall pay said amount to a horsemen's association for its use in accordance with the stated goals of its articles of association filed with the Department of State.

(2) Said funds shall be payable to a horsemen's association only upon presentation of a sworn statement by the officers of the association that the horsemen's association represents a majority of the owners and trainers of thoroughbred horses stabled in Florida for a continuous 12-month period who conduct racing at the licensee's place of business.

(3) The Division of Pari-mutuel Wagering shall audit all distribution of such funds to the horsemen's association and shall promulgate rules to facilitate orderly transfer of funds in accordance with the provisions of this law.

(4) If the division finds that said funds have not been used by the horsemen's association in accordance with its state articles of association, no further funds shall be permitted to be designated for the use of the horsemen's association, and the division shall bring the matter to the attention of the Legislature.

History.—s. 1, ch. 78-167.

550.262 Horseracing; Florida breeders' awards and overnight purses.—

(1) It is the finding of the Legislature that purse structure and the availability of breeder awards are important factors in attracting the entry of well-bred horses in Florida racing meets, which in turn helps to produce maximum racing revenues for the state and the counties.

(2) In addition to amounts otherwise required by law, 1 percent of the total contributions made to the pari-mutuel pool on each horserace shall be paid by the licensee for Florida breeders' awards and overnight purses out of the amounts which may be withheld from pari-mutuel pools under ss. 550.16 and 550.42.

[1](3)(a) Every permitholder licensed by the Division of Pari-mutuel Wagering under the laws of this state to conduct a harness race meeting shall, by the acceptance of said license, be deemed to have agreed, as a condition of the granting thereof, that such licensee shall, within 30 days after the expiration of such meeting, pay to the breeder of each Florida standardbred horse winning an overnight race at such meeting a sum not exceeding 15 percent of the announced gross purse or $100, whichever is greater. The amount of the breeders' award shall not in any case be deducted from the amount of the purse. No breeders' award or stallion award shall be paid when the purse includes an award to the breeder or owner of the stallion equal to or greater than the amount herein specified. The amount paid as a breeders' award or stallion award shall not be included in estimating the value of the race to the winner. A stallion award shall be paid for all stake races, including races for Florida standardbreds exclusively; however, no breeders' award shall be required or paid on stake races. Whenever a Florida standardbred wins a stake race, the owner or owners of the sire of such winning Florida standardbred shall be entitled to a sum equal to 15 percent of the announced gross purse if the stallion is registered with the Florida Standardbred Breeders and Owners Association and if the breeding occurred, and the stallion is still standing, in Florida. The Florida Standardbred Breeders and Owners Association shall maintain complete records showing awards earned, received, and distributed and shall be permitted to charge the breeder a reasonable fee for this service.

(b) In order for a breeder of a Florida standardbred horse to be eligible to demand and receive a breeders' award, the horse winning the race must have been registered as a Florida standardbred with the Florida Standardbred Breeders and Owners Association, and a registration certificate under seal with proper serial number of the United States Trotting Association registry [2][must show] that the winner is duly registered as a Florida standardbred. The Florida Standardbred Breeders and Owners Associa-

tion shall be permitted to charge the registrant a reasonable fee for this verification and registration.

History.—s. 2, ch. 71-146; s. 2, ch. 72-129; ss. 13, 22, ch. 77-167; s. 3, ch. 79-300.

[1]Note.—Section 3, ch. 79-300, provides that s. 550.262(3), as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.262(3) as it existed on June 8, 1977, to read as follows:

(3) In the event that a harness racing licensee chooses to withhold from the redistribution of any pari-mutuel pool conducted by it an amount exceeding 17 percent of the total contributions to such a pool, all of the excess over 17 percent shall be paid currently as additional purses and prizes. Licensees withholding such an excess amount from one or more pools during any season shall furnish the Board of Business Regulation, at such times and in such form as it may require, evidence from their regular and usual business records showing that their total purses and prizes actually paid over the course of the preceding season have been increased during the current season by the full amount of such excess and that the total of such purses and prizes apart from those payable under this subsection has not been reduced from that of the preceding season.

[2]Note.—Bracketed language substituted by the editors for "showing."

550.265 Quarter horse racing; breeders' awards.—

(1) LEGISLATIVE FINDINGS.—It is the finding of the Legislature that:

(a) Breed improvement is an important factor in encouraging quarter horse racing in Florida;

(b) Acquisition and maintenance of quarter horse breeding farms in Florida will greatly enhance the tax revenue derived by the state and counties;

(c) Many jobs will be created through the encouragement of the quarter horse breeding industry in Florida, thereby supplying much needed taxes and revenue to the state and counties; and

(d) By encouraging quarter horse breeding farms, better horses will be available for racing, thereby increasing the pari-mutuel handle which will increase taxes for the state and counties.

(2) POWERS AND DUTIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.—The Department of Agriculture and Consumer Services shall administer this section and have the following powers and duties:

(a) To establish a registry for Florida-bred quarter horses on a voluntary basis.

(b) To make quarter horse breeders' awards available to qualified individuals from funds derived from the Florida Quarter Horse Racing Promotion Trust Fund under the authority of s. 550.26(6) and under rules adopted.

(3) ADVISORY COUNCIL.—

(a) There is hereby created a Quarter Horse Advisory Council consisting of seven members as follows:

1. A representative of the Department of Agriculture and Consumer Services designated by the commissioner.

2. Six members appointed by the Department of Agriculture and Consumer Services, the majority of whom shall be Florida breeders of racing quarter horses.

(b) Members shall serve for a term of 2 years from date of appointment.

(c) The member representing the Department of Agriculture and Consumer Services shall be secretary of the council.

(d) At the first organizational meeting of the council there shall be elected a chairman from the membership and each 2 years thereafter the council shall elect a chairman from its then-constituted membership.

(e) Members of the Quarter Horse Advisory Council shall receive no compensation for their services, except that they shall receive per diem and travel expenses as provided in s. 112.061 when actually engaged in the business of the council.

(4) ADVISORY COUNCIL DUTIES.—The duties of the advisory council shall be advisory only, with the following powers and duties:

(a) To recommend rules.

(b) To receive and report to the department complaints or violations of the above-named law.

(c) To assist the department in the collection of information and data which the department may deem necessary to the proper administration of this law.

(5) FRAUDULENT ACTS AND MISREPRESENTATIONS.—Any person registering unqualified horses or misrepresenting information in any way shall be denied any future participation in breeders' awards, and all horses misrepresented will be deemed to be no longer Florida-bred.

(6) REGISTRATION FEES.—

(a) To provide funds to defray the necessary expenses incurred by the department in administration of this section:

1. Owners who participate in this program for Florida-bred quarter horse foals under 1 year of age shall pay to the department a registration fee in the amount of $10 per horse;

2. Owners who participate in this program for Florida-bred quarter horse yearlings from 1 to 2 years of age shall pay to the department a registration fee in the amount of $25 per horse; and

3. Owners who participate in this program for Florida-bred quarter horses 2 years of age or over shall pay to the department a registration fee in the amount of $100 per horse,

except that owners of all horses registered as Florida-bred quarter horses between July 1, 1972 and July 1, 1973 shall pay a fee of $10.

(b) The fees collected hereunder shall be deposited in the General Inspection Trust Fund of the State Treasury in a special account to be known as the "Quarter Horse Racing Fund," and shall be used to defray the necessary expenses incurred by the Department of Agriculture and Consumer Services in the administration of this section.

(7) RULES.—The Department of Agriculture and Consumer Services may adopt rules to implement, make specific, or interpret the provisions of this section.

History.—s. 1, ch. 72-158.

550.27 Employment of residents required.—

(1) The licensees of each racetrack or fronton now or hereafter operating in this state shall during each racing season employ at least 85 percent of their employees from bona fide residents and citizens of Florida and shall pay them at least said percentage of each weekly payroll, excepting jockeys, apprentices, exercise boys, owners, trainers, clockers, jai alai players, player managers and trainers, jai alai basket and ball makers, and all governing and managing officials and heads of departments of such track or fronton.

(2) A person shall have resided and have made his home in Florida for 2 years continuously last prior to the date of employment by any racetrack or

fronton to be deemed a bona fide resident or citizen under the terms hereof, providing, further, that registration and voting in the primary or general election last prior to such date shall be prima facie evidence of such bona fide residence and citizenship.

(3) It shall be the duty of the Division of Pari-mutuel Wagering, before issuing any occupational license to any person to take part in or officiate in any way or serve in any capacity or be employed at any racetrack or jai alai fronton, to require and obtain from each applicant for such occupational license, by affidavit and by such other evidence as the division shall deem necessary, sufficient and satisfactory proof of such applicant's residence and citizenship as herein defined, and to state upon each such occupational license issued by the division the residence and citizenship so ascertained.

(4) Whenever it shall be made to appear to the division that any licensee of any racetrack or fronton is exceeding the amount of 15 percent in employees or amount of payroll as herein provided, the division shall notify said licensee of such excess, and if same be not corrected before the next payroll the division shall have the power and it shall be its duty to suspend a sufficient number of occupational licenses issued to employees of said racetrack or fronton who are not residents and citizens of Florida as herein defined to bring the number of employees and amount of payroll within the limitations herein set forth.

(5) Any person or the licensee of any racetrack or fronton knowingly and willfully violating the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-5, ch. 20740, 1941; s. 2, ch. 71-98; s. 543, ch. 71-136.

550.28 Obtaining feed, etc., for racehorses, dogs, etc., with intent to defraud.—

(1) Any owner, trainer or custodian of any racehorse, or greyhound racing dogs, who shall obtain food, drugs, transportation, veterinary services or supplies for the use or benefit of said racehorses or greyhound racing dogs, with intent to defraud the person or persons, from whom said services or supplies are obtained, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In prosecutions under the preceding section, proof that the supplies or services had been furnished and not paid for, and that the owner, trainer or custodian of said racehorses or greyhound racing dogs, was removing or attempting to remove any of said racehorses or greyhound racing dogs, out of the state and beyond the jurisdiction of the courts of this state, shall be prima facie evidence of the fraudulent intent mentioned in the preceding section.

History.—ss. 1, 2, ch. 20882, 1941; s. 544, ch. 71-136.

550.29 Reallocation of racing dates.—The Florida Pari-mutuel Commission shall have the right to reallocate or reassign, to any other licensed horseracing track, any racing dates previously allocated or assigned to a licensed horseracing track, when said racing dates have been vacated, abandoned, or will not be used, for any reason whatsoever, provided the aggregate total number of horseracing days permitted hereunder shall not exceed 100 days for any one horseracing licensee.

History.—s. 1, ch. 20859, 1941; s. 1, ch. 71-98; s. 15, ch. 79-4.

550.291 Racing and jai alai, periods of operation; limitation.—

(1) The Florida Pari-mutuel Commission may annually allocate to the owners of valid outstanding permits under and by virtue of which greyhound racing and harness racing is now conducted in this state, not less than 90 days of racing, and not more than the number of racing days allocated or permitted to jai alai permittees, plus scholarship days and charity days allowed by law, Sundays excepted and excluded. Provided, however, the commission shall not allocate, for any one greyhound, harness or jai alai permittee, less than 90 or more than 105 days of racing, plus scholarship days and charity days, Sundays excepted and excluded.

(2) The provisions of this section are supplemental to other provisions of this chapter.

History.—ss. 1, 2, ch. 65-435; s. 1, ch. 71-98; s. 16, ch. 79-4.

550.30 Racetrack funds guaranteed from General Revenue Fund.—

(1) There is hereby appropriated from any funds in the General Revenue Fund of the state derived from taxes which may be legally disbursed for the purposes herein set forth, or from proceeds of estate taxes and taxes upon intangible personal property, the sum of $2,211,000 per annum during the period in which this section shall be in force and effect, or so much thereof as shall be necessary to carry into effect the purpose of this section.

(2) In the event that the share of each county of the state in the distribution of funds received from the Division of Pari-mutuel Wagering shall be less than $33,000 for any year during the period in which this section shall be in force and effect the Comptroller shall draw warrants payable respectively to the board of county commissioners, the school board of each county of the state, or to such other authority as is authorized by law to receive the same, as now or hereafter provided by law for the apportionment of division funds, for such amounts as added to the amount distributed to each county from funds received from the division shall cause each county to receive in the aggregate from funds received from the division and under the provisions of this section, the sum of $33,000 annually, during the period in which this section shall be in force and effect.

(3) When the moneys provided for in subsection (2) have been received by the respective boards or officials authorized by law to receive the same, it shall be the duty of such boards or officials to distribute or use such funds in such manner as will provide that each distributee under the provisions of the general or special law regulating distribution of racetrack funds in such county will receive the respective amounts contemplated by the provision of the general or special law regulating distribution of racetrack funds in such county.

(4) This section shall be construed to be cumulative and supplemental to any and all other laws now or hereafter in effect providing for distribution of funds from the State Treasury to the several counties of the state; provided, however, that this section

shall not be construed as supplemental or cumulative to any other law now in existence or hereafter enacted for the purpose of providing funds to the several counties in replacement of any loss of revenue due to failure of taxes upon racing to yield to each county the sum of $33,000 or more each per year.

History.—ss. 1-5A, ch. 21947, 1943; ss. 1-4, ch. 22896, 1945; s. 1, ch. 69-300; s. 2, ch. 71-98.

cf.—s. 198.34 Disposition of proceeds from taxes.
s. 550.13 Division among counties of money derived under this law.

550.32 Resumption of dogracing at certain tracks authorized.—Where two or more racing meetings in successive racing seasons have been heretofore conducted at the dog racetrack of the holder of a ratified permit to conduct dogracing under the laws of this state, and racing at such racetrack shall have been discontinued for any reason, and where such permit has not been revoked in a referendum election, and where such racetrack is not located closer than 10 miles from an existing and operating dog racetrack by the most direct paved road, and when such racetrack was and is the only racetrack located in the county of its location, and where the present owner of such dog racetrack desires to resume racing at such racetrack, the Department of Business Regulation, upon the application of such owner therefor, shall annually issue unto such owner of such racetrack license to conduct dogracing meetings at such track for the same number of racing days each dogracing season to which dog racetracks in counties having not more than one dog track are by law entitled, any provision of any law or rule in conflict herewith or to the contrary notwithstanding.

History.—s. 1, ch. 22707, 1945; s. 1, ch. 71-98; s. 17, ch. 79-4.

550.33 Quarter horse racing.—

(1) Subject to all the applicable provisions of this chapter, any person possessing the qualifications prescribed in this chapter may apply to the Division of Pari-mutuel Wagering for a permit to conduct quarter horse race meetings and racing under this chapter. After receipt of any application, the division shall convene to consider and act upon permits applied for. Upon all applications filed and approved, a permit shall be issued setting forth the name of the applicant and a statement showing qualifications of the applicant to conduct racing under this chapter.

(2)(a) After a quarter horse racing permit has been granted by the division, the Department of Business Regulation shall grant to the lawful holder of such permit, subject to the conditions hereof, a license to conduct quarter horse racing under this chapter, and the Florida Pari-mutuel Commission shall fix annually the time, place, and number of days upon which racing may be conducted by such quarter horse racing permitholder. After the first license has been issued to the holder of a permit for quarter horse racing, all subsequent annual applications for a license by a permitholder shall be accompanied by proof in such form as the division may require that the permitholder still possesses all the qualifications prescribed by this chapter. The Division of Pari-mutuel Wagering may revoke any permit or license hereunder upon the willful violation by the licensee of any of the provisions of this chapter or any rule or regulation issued by the division under the provisions of this chapter.

(b) In lieu of the suspension or revocation of licenses, the division may impose a civil penalty against any licensee for violations of this chapter, chapter 551, or any rule or regulation promulgated by the division. No penalty so imposed shall exceed $1,000 for each count or separate offense, and all penalties imposed and collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

(3) Any quarter horse racing permitholder is authorized to conduct quarter horse races throughout the year, except on Sundays. Such races may be continuous or portioned at various periods of time, not to exceed 120 days annually. Said races may be performed only at any one or more licensed tracks and may be conducted by day or night or part by day and part by night. The operator of any licensed racetrack is hereby authorized to lease such track to any quarter horse racing permitholder for the conduct of quarter horse racing under this chapter. The quarter horse racing permitholder shall pay a daily license fee and make distribution thereof of the schedule provided in s. 550.39(2).

(4) Sections 550.05, 550.06, 550.07, 550.17 and 550.18, are hereby declared to be inapplicable to quarter horse racing as permitted herein; and all other provisions of this chapter shall apply to, govern, and control such racing, and the same shall be conducted in compliance therewith.

(5) Quarter horses participating in such races shall be duly registered by the American Quarter Horse Association, and before each race such horses shall be examined and declared in fit condition by some qualified person designated by the division.

(6) Any quarter horse racing days permitted under this section shall be in addition to any other racing permitted under the license issued the track where such quarter horse racing is conducted.

(7) Any quarter horse racing permitholder operating under a valid permit issued by the Division of Pari-mutuel Wagering is authorized to substitute other races of other breeds of horses which are, respectively, registered with the International Arabian Horse Association, Appaloosa Horse Club, American Paint Horse Association, or the Palomino Horse Breeders of America, for no more than 50 percent of the quarter horse races daily. In addition to the breeds authorized for substitution, horses registered with the Jockey Club may be substituted for quarter horse races at any time for any number of races, provided the total days do not exceed 20 percent of the maximum number of days authorized for quarter horse racing as provided in s. 550.08. Substitution of races of horses registered with the Jockey Club shall be subject to the taxes imposed by s. 550.161, the provisions of this act to the contrary notwithstanding. Any permittee operating within an area of 50 air miles of a licensed thoroughbred track cannot substitute thoroughbred races under this section while a thoroughbred horserace meet is in progress within said 50 miles. No races comprised of thoroughbred horses under this section registered with the Jockey Club shall be permitted during the

period beginning September 1 and ending on January 5 of each year in any county where there is one or more licensed dog tracks conducting a race meet. Nothing contained herein shall be interpreted in any manner to affect the competitive award of matinee performances to jai alai frontons or dog tracks in opposition to races comprised of thoroughbred horses registered with the Jockey Club under this section.

(8) A quarter horse racing permitholder is authorized to conduct no more than 12 races per racing day.

History.—s. 1, ch. 25354, 1949; s. 1, ch. 59-492; s. 1, ch. 69-50; s. 3, ch. 70-226; ss. 1, 2, ch. 71-98; s. 2, ch. 74-19; ss. 1, 2, ch. 74-178; s. 1, ch. 75-142; s. 1, ch. 76-257; s. 1, ch. 77-174; s. 9, ch. 78-95; s. 18, ch. 79-4.

550.34 Dogracing at North Florida tracks.—

(1) Any dog racing track holding a valid outstanding permit for dogracing in the state and located north of latitude 30° may hold race meetings at any time during the calendar year; provided, that no permit shall be issued for racing on Sunday or at any one location in excess of the aggregate of 90 days in any one calendar year.

(2) This section shall be cumulative and not construed as repealing any other racing laws.

History.—ss. 1, 2, ch. 25413, 1949.

550.35 Transmission of racing information for illegal gambling purposes.—

(1) It shall be unlawful for any person to transmit or communicate to another or receive or secure by any means whatsoever the results, changing odds, track conditions, jockey changes, or any other information relating to any horserace or dograce from any racetrack in this state, between the period of time beginning 1 hour prior to the first race of any day and ending 30 minutes after the posting of the official results of each race as to that particular race, except that the foregoing limitations shall not apply to the results of the last race of each day's meet. Provided, however, that the Division of Pari-mutuel Wagering may, by rule, permit the immediate transmission by radio, television, or press wire of any pertinent information concerning not more than two feature races each week; provided, further, that the foregoing limitation of two feature races per week shall not apply to so-called "name stake races" which if broadcast or televised nationally the division may in its discretion permit.

(2) It shall be unlawful for any person to transmit by any means whatsoever racing information to any other person, or to relay the same to any other person by word of mouth, by signal, or by use of telephone, telegraph, radio, or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes, or in furtherance of such gambling.

(3) This section shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state and all of the provisions herein shall be liberally construed for the accomplishment of this purpose.

(4) Any person violating the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Nothing contained in this section shall be construed as amending or repealing the provisions of any other law or affecting any rule of the Florida Public Service Commission, relating to the regulation of public utilities in the furnishing to others of any communication, wire service, or other similar service or equipment; it is intended that this section shall be supplemental to other laws and a further aid in the elimination of transmission of information for illegal gambling purposes.

History.—ss. 1-5, ch. 26722, 1951; s. 5, ch. 57-180; s. 8, ch. 59-406; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 71-98; s. 545, ch. 71-136.

550.351 Effect of certain 1957 amendments.—1957 amendments to ss. 550.02(4), 550.04, 550.06, 550.07 and 550.35(1) shall not be construed to repeal the provisions of s. 550.34.

History.—s. 6, ch. 57-180.

550.36 Use of electronic transmitting equipment; permit by division required.—Any person who has in his possession or control on the premises of any licensed horse or dog racetrack or jai alai fronton any electronic transmitting equipment or device which is capable of transmitting or communicating any information whatsoever to another person, without the written permission of the Division of Pari-mutuel Wagering, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. This section shall not apply to the possession or control of any telephone, telegraph, radio or television facilities installed by any such licensee with the approval of said division.

History.—s. 1, ch. 59-173; s. 2, ch. 71-98; s. 546, ch. 71-136.

550.361 Bookmaking on the grounds of a permitholder; penalties; duties of track employees; penalty; certain exceptions.—

(1) Any person who shall engage in bookmaking, as defined in s. 849.25, on the grounds or property of a permitholder of a horse or dog track or jai alai fronton shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(2) Any person who, having been convicted of violating subsection (1), thereafter commits the same crime shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking in this state or any other state of the United States or foreign country shall be denied admittance to and shall not attend any racetrack or fronton in this state during its racing seasons or operating dates, including any practice or preparational days. Any such person knowingly violating this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) If the activities of a person show that this law is being violated, and such activities are either witnessed or are common knowledge by any track or fronton employee, it shall be the duty of that employee to bring the matter to the immediate attention of the permitholder, manager, or his designee who shall notify a law enforcement agency having jurisdiction. Willful failure on the part of any track or fronton employee to comply with the provisions of this subsection shall be grounds for the division to suspend or revoke that employee's license for track or fronton employment.

(5) Each permittee shall display, in conspicuous places at a track or fronton and in all race and jai alai daily programs, a warning to all patrons concerning the prohibition and penalties of bookmaking contained in this section and s. 849.25. The division shall establish rules concerning the uniform size of all warnings and the number of placements throughout a track or fronton. Failure on the part of the permittee to display such warnings may result in a $500 fine by the division for each offense.

(6) The provisions of this section shall not apply to any person attending a track or fronton or employed by a track or fronton who places a bet through the legalized pari-mutuel pool for another person, provided that such service is rendered gratuitously and without fee or other reward.

(7) This section shall not apply to any prosecutions filed and pending at the time of passage hereof, but all such cases shall be disposed of under existing law at the time of institution of such prosecutions.

History.—s. 2, ch. 78-36.

550.37 Operation of certain harness tracks.—

(1) It is the finding of the Legislature of the state that the operation of harness tracks and legalized pari-mutuel and mutuel betting at harness tracks in this state will become a substantial business compatible to the best interests of the state, and the taxes derived therefrom will constitute an important and integral part of the tax structure of the state and counties. It is the further finding of the Legislature that the operation of harness tracks within the state will establish and encourage an important industry within the state, namely, the acquisition and maintenance of breeding farms for the breeding of standard-bred horses utilized in harness races. It is further the finding of the Legislature that harness tracks operating at night within the immediate vicinity of other racetracks will greatly enhance the tax revenue derived by the state and counties from racing and will not endanger the general welfare of the public. It is the further finding of the Legislature of the state that this increase in tax revenue is needed by the state and the counties. It is the further finding of the Legislature that harness racing is an exhibition sport which will attract a large tourist business to the state and will afford entertainment at night to such tourists during the winter racing season, and many of such tourists who are thus attracted by harness racing do not attend other forms of racing or engage in other forms of pari-mutuel betting. It is the further finding of the Legislature that the Division of Pari-mutuel Wagering should be empowered to consider and grant the application of any dog track, horse track and harness track permittee and licensee to conduct without further elections harness racing with sulky during the winter racing season at a location within any county wherein two or more elections have been held in which a majority of the electors voting in such elections voted in favor of the operation of pari-mutuel pools within the county at horse and dog tracks; provided, the applicant for the 2 years immediately preceding the presentation thereof to the Division of Pari-mutuel Wagering has had an average daily mutuel pool of less than $20,000 for a seasonal operation of 50 days or more for each of such years.

(2) Harness racing at harness tracks when used herein shall mean the racing of standard-bred horses in harness with sulky. Horseracing at horse tracks shall mean racing of thoroughbred horses with jockeys.

(3) Any permittee or licensee authorized under the provisions hereof to transfer the location of its permit shall conduct harness racing at night only. A permit so transferred shall apply only to the locations as hereinafter provided. The Division of Pari-mutuel Wagering shall authorize such permittees and licensees to operate harness racing from 7 p.m. until 12 midnight. The provisions of this chapter which prohibit the location and operation of a licensed harness track permittee and licensee within 100 air miles of the location of a racetrack authorized to conduct racing under the provisions of said chapter and which prohibit the Division of Pari-mutuel Wagering from granting any permit to a harness track at a location in the area in which there are three horse tracks located within 100 air miles thereof shall not be applicable to a licensed harness track which is required by the terms of this act to race at night.

(4) No permit shall be issued by the Division of Pari-mutuel Wagering for the operation of a harness track within 75 air miles of a location of a harness track licensed and operating under the provisions of this chapter. All harness tracks licensed under the provisions of this chapter shall be granted by the Florida Pari-mutuel Commission racing dates during the winter horseracing season as provided by s. 550.291, which racing dates may commence on or after October 1 of each year and shall conclude on or before June 1 of each year, and such permittee and licensee shall be permitted and authorized to race every day except Sunday. Nothing herein contained shall enlarge the number of racing days of any harness track permittee when, by statute applicable thereto, a lesser number of days has heretofore been fixed.

[1](5) The owners and operators of a harness track permitted and licensed by the Division of Pari-mutuel Wagering to conduct harness racing shall pay a tax equal to 5.3 percent of the total contributions to all pari-mutuel pools there conducted and made on any and every harness race, which tax shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state. In addition to the foregoing percentage tax, each licensee operating a harness race track shall pay the breaks tax provided for in s. 550.26, which tax revenue shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state. In addition to the aforesaid taxes,

each person authorized to conduct race meetings under this section shall pay an admission tax as provided in s. 550.09.

(6) All holders of permits and licenses for dogracing and all holders of permits and licenses for horseracing and all holders of permits and licenses for harness racing issued by the Division of Pari-mutuel Wagering authorized to operate in the winter horserace season whose average daily pari-mutuel pool (computed by dividing the total pari-mutuel pool for the racing season by the number of actual days raced at said meet, exclusive of charity days) for each of the 2 consecutive years next prior to the filing of the application as herein provided, during its racing seasons which shall have been 50 days or more for each year, was less than $20,000 at the option of each of said permittees and licensees evidenced by its application to the Division of Pari-mutuel Wagering for such purpose, shall be issued a license under its permit to operate only harness racing with sulky for a total period of 90 racing days during the winter horseracing season at such location as may be designated by said applicant and hereinafter authorized in subsection (7) within any county in which two or more elections have been held in which a majority of the electors in such elections voted in favor of the operation within said county of pari-mutuel pools at racetracks. Nothing herein contained shall authorize the transfer of a permit to any county in which there is located a horse track licensed by the Division of Pari-mutuel Wagering whose average daily pari-mutuel pool (computed by dividing the total pari-mutuel pool for the racing season by the number of actual days raced at said meet, exclusive of charity days) for each of the 2 consecutive years next prior to the filing of the application as hereinabove provided, during its racing season which shall have been 50 days or more for each year, was less than $400,000.

(7) Such permittee and licensee upon the approval of its application by the Division of Pari-mutuel Wagering pursuant to the provisions of this act may conduct harness racing at the facilities or plant leased by it from any horserace permittee or licensee in any county within the authorized area designated in this act not more than 40 miles from the applicant's designated location, provided the said horserace permittee has a valid permit and license issued to it under the provisions of this chapter and said applicant-permittee and licensee may conduct such harness race meetings at said leased premises provided, that said permittee and licensee may thereafter construct its own facilities and its own plant at the location designated in its approved application. Such applicant-permittee and licensee may, pending the construction of its permanent facilities, operate at said leased premises and may thereafter divide its season of racing between its leased location and its permanent location so long as said locations remain within the authorized county or counties as elsewhere herein defined. If said permittee's season of racing is divided as aforesaid, the limitation of 75 miles between harness track locations shall not apply. The 75-mile limitation between the harness tracks hereinabove provided in regard to other permittees shall be measured from the location designated in said permittee's application to the Division of Pari-mutuel Wagering. Nothing herein contained shall authorize the permittee and licensee to operate more than 90 racing days. Provided no such permit or harness racing may be moved to or permitted in any county having two or more horse track permits.

(8) The distance provisions contained in ss. 550.02 and 550.05 shall not be applicable to any harness race permittee who is required by the terms of this act to conduct harness racing at night only, nor shall s. 550.17 be applicable to any permittee whose permit is transferred under the provisions of this section.

(9) The provisions of this chapter as the same pertain to horseracing shall be applicable to harness racing except those provisions which are inconsistent herewith, and where the provisions of this chapter are by implication inconsistent with or are, in fact, in conflict with the provisions of this act, then this act shall govern harness racetrack permittees or licensees, and harness racing.

(10) Each licensed harness track in the state shall be required to schedule an average of one race per racing day in which horses bred in Florida and duly registered as standard-bred harness horses shall have preference as entries over non-Florida-bred horses, and to require all licensed harness tracks to write the conditions for such races in which Florida-bred horses are preferred so as to assure that all Florida-bred horses available for racing at such tracks be given full opportunity to perform in the class races for which they are qualified, said opportunity of performing to be afforded to each class of horses in proportion that the number of horses in this class bears to the total number of Florida-bred horses available; provided that no track shall be required to write conditions for a race to accommodate a class of horses for which a race would otherwise not be scheduled at such track during its meeting.

(11) Where a permit has been transferred from a county under the provisions of this act, no other transfer may be permitted from such county.

(12) A harness racing permitholder is authorized to conduct no more than 12 races per racing day.

(13)(a) Any holder of a ratified permit to conduct harness racing under the laws of this state, which permit has not been revoked in a referendum election, is hereby entitled to apply to the Department of Business Regulation for a license to conduct dograce meetings at such track, in lieu of harness racing, for the same number of racing days each season to which dog racetracks in counties having not more than one dogracing track are entitled by law, subject to all of the provisions of the law concerning pari-mutuel taxes paid by tracks conducting dogracing, provided the following conditions are met:

1. The average daily pari-mutuel pool in any racing meet conducted by the harness track during the 10 years preceding application to the Department of Business Regulation, as herein provided, has not exceeded $25,000.

2. The gross revenue to the state for the operation of the harness track for the 10 years immediately preceding application to the Department of Business Regulation, as herein provided, does not exceed the sum of $70,000.

3. The days on which dogracing in lieu of harness racing shall be conducted by the applicant pursuant to law shall not conflict with or coincide with the days in which dogracing is conducted by any dogracing track within a radius of 100 statute miles from the site of said track.

(b) The Department of Business Regulation, upon application of the owner of a racetrack which meets the requirements of paragraph (a), shall annually issue to the owner of such a racetrack a license to conduct dograce meetings as set forth above, provided the conditions stated herein are met at the time of the initial application to conduct dogracing, any provision of any law or rule in conflict herewith or to the contrary notwithstanding.

History.—ss. 1, 2, ch. 63-130; s. 1, ch. 69-159; s. 1, ch. 70-310; ss. 1, 2, ch. 71-98; s. 2, ch. 74-178; s. 1, ch. 76-24; ss. 14, 22, ch. 77-167; s. 19, ch. 79-4; s. 3, ch. 79-300.

[1]**Note.**—Section 3, ch. 79-300, provides that s. 550.37(5), as it existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date it shall be superseded by s. 550.37(5) as it existed on June 8, 1977, to read as follows:

(5) The owners and operators of a harness track permitted and licensed by the Division of Pari-mutuel Wagering shall be entitled to the same commission from the pari-mutuel pool as is provided for dog track owners, operators and permittees, and shall pay the same tax as that imposed upon pari-mutuel pools at dog tracks, however, without the benefit of the daily operational cost allowance provided by s. 550.162 and without the benefit of the fixed daily license fee as provided by s. 550.163.

550.371 Harness racing; authority to conduct on leased and permanent locations in certain counties.—All holders of harness racing permits who are authorized by law to divide their season of racing between a leased location and their permanent location shall have the right and privilege in accomplishing the division of their racing season to lease facilities in a county having two or more horse tracks operating under valid permits, and to conduct at such leased facilities harness racing for not more than 45 percent of their allowable racing days.

History.—s. 1, ch. 65-530.

550.38 Horseracing; award to breeders of Florida-bred horses.—

(1) Every permitholder licensed by the Division of Pari-mutuel Wagering under the laws of this state to conduct a running horserace meeting shall, by the acceptance of said license, be deemed to have agreed, as a condition of the grant thereof, that said licensee shall, within 30 days after the expiration of such meeting, pay to the breeder of each Florida-bred horse winning an overnight running horserace at such meeting a sum equal to 15 percent of the announced gross purse at winter thoroughbred tracks and 15 percent of the announced gross purse at summer thoroughbred tracks or $100, whichever is greater. The amount of the breeder's award paid shall in no event be deducted from the amount of the purse. No breeder's award or stallion award shall be paid when the purse includes an award to the breeder or owner of the stallion equal to or greater than the amount herein specified. The amount paid as a breeder's award or stallion award shall not be included in estimating the value of the race to the winner. A stallion award shall be paid for all stake races, including races for Florida-breds exclusively; however, no breeder's award shall be required or paid on stake races. Whenever a registered Florida-bred horse wins a stake race, the owner or owners of the sire of the winning registered Florida-bred horse shall be entitled to a stallion award of a sum equal to 15 percent of the announced gross purse at winter thoroughbred tracks and 15 percent of the announced gross purse at summer thoroughbred tracks, if the stallion is registered with the Florida Thoroughbred Breeders Association, and provided that the breeding of the registered Florida-bred horse occurred in Florida and that the stallion is standing permanently in Florida or, in the event of the death of the stallion, that it stood permanently in Florida for a period of not less than 1 year immediately prior to its death. Removal of a stallion from this state for any reason, other than exclusively for prescribed medical treatment, shall render the owner or owners of the stallion ineligible to receive a stallion award under any circumstances for offspring sired prior to said removal; however, if a removed stallion shall be returned to this state, all offspring sired subsequent to such return shall make the owner or owners of such stallion eligible for the stallion award, but only for those offspring sired subsequent to such return to this state. The Florida Thoroughbred Breeders Association shall maintain complete records showing the date the stallion arrived in this state for the first time, whether or not said stallion remained in the state permanently, the stallion's location, and whether the stallion is still standing in this state and complete records showing awards earned, received, and distributed and shall be permitted to charge the owner or owners or breeder a reasonable fee for this service.

(2) In order for a breeder of a Florida-bred horse to be eligible to demand and receive a breeders' award, the horse winning the race must have been registered as a Florida-bred horse with the Florida Thoroughbred Breeders Association, and the Jockey Club certificate for the winning horse must show that said winner has been duly registered as a Florida-bred horse, as evidenced by the seal and proper serial number of the Florida Thoroughbred Breeders Association registry. The Florida Thoroughbred Breeders Association shall be permitted to charge the registrant a reasonable fee for this verification and registration.

History.—ss. 1-3, ch. 63-161; s. 2, ch. 71-98; ss. 15, 22, ch. 77-167; ss. 1, 2, ch. 78-39; s. 1, ch. 78-130.

550.39 Summer horseracing authorized for certain harness tracks.—

(1) Any permitholder authorized by s. 550.068 to conduct horseracing in harness at any track west of the St. Johns River shall be permitted during the summer racing season, as hereinafter defined and set forth, to conduct at permittee's option and at its location up to 90 days of horseracing in harness, quarter horse or thoroughbred racing in any county of the state where no thoroughbred horse racetrack is located and established, exclusive of Sundays, upon dates allocated by the Florida Pari-mutuel Commission. Such racing may be conducted either by day or night or part by day and part by night. Provided, further that in all such counties the winter season for all pari-mutuel operations shall be during the period extending from and including October 1 in each year to and including April 15 of the following year and the summer season for all pari-mutuel operations in all such counties where horseracing in harness is conducted pursuant to s.

550.068 shall be during the period extending from and including April 16 in each year to and including September 30 of the same year.

(2) Any such permittee conducting a summer harness or thoroughbred horseracing meet shall, in lieu of the payment of taxes imposed upon such tracks as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee which is hereby fixed according to the following schedule:

(a) Up to $50,000 ..... $1,000
(b) Over $50,000 but not more than $100,000 2,000
(c) Over $100,000 but not more than $150,000 3,000
(d) Over $150,000 4,000

three-fourths of which daily license fee shall be distributed equally to the 67 counties and the remaining one-fourth to the General Revenue Fund. Such permittee shall also pay the breakage tax imposed on horse tracks by s. 550.26, which tax shall be distributed as therein provided.

(3) Any such permittee conducting a quarter horse race meet shall, in lieu of the payment of taxes imposed upon such tracks as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which fee is hereby fixed according to the following schedule:

(a) Up to $200,000 ..... $1,000
(b) Over $200,000 but not more than $250,000 2,000
(c) Over $250,000 but not more than $300,000 3,000
(d) Over $300,000 but not more than $350,000 4,000
(e) Over $350,000 but not more than $400,000 5,000
(f) Over $400,000 6,000

three-fourths of which daily license fee shall be distributed equally to the 67 counties and the remaining one-fourth to the General Revenue Fund. Such permittee shall also pay the breakage tax imposed on horse tracks by s. 550.26, which tax shall be distributed as therein provided.

(4) Section 550.44 shall not apply to a summer harness, thoroughbred or quarter horse racing meet conducted pursuant to the provisions of this section but in all other respects the provisions of this chapter, pertaining to the conduct of thoroughbred horse racing shall apply to such permittee except those provisions thereof which are inconsistent herewith.

History.—ss. 1-3, ch. 65-383; s. 1, ch. 71-98; s. 1, ch. 77-176; s. 20, ch. 79-4.

550.40 Policy of the Legislature to authorize summer thoroughbred horse racing.—It is the finding of the Legislature that the operation of summer thoroughbred horse racing and legalized pari-mutuel and mutuel betting at a summer thoroughbred horse racetrack in this state is a substantial business compatible to the best interest of the state and that the taxes derived therefrom will substantially benefit the state and counties. It is the further finding of the Legislature that the clientele attending a summer thoroughbred racetrack will be substantially different from the clientele attending winter thoroughbred horse racetracks. It is the further finding of the Legislature that summer thoroughbred racing in the state is a new business requiring a large investment in a new summer thoroughbred horse racetrack and that a different daily license fee should be applied to the daily average mutuel pool of such summer thoroughbred horse racetrack up to a daily average mutuel pool of $400,000. It is therefore recognized and declared to be the policy of the state that summer thoroughbred horse racing will substantially contribute to the growth and welfare of horseracing in the state, will substantially benefit the state and counties, and will enhance the incentive for the breeding of horses in the state; further that summer thoroughbred horse racing is a new business substantially different from winter thoroughbred horse racing and this enactment is made pursuant to and for the purpose of carrying out such policies.

History.—s. 2, ch. 69-14.

550.41 Summer thoroughbred horse racing period authorized; additional days for charitable and scholarship purposes.—

(1) When there are three or more thoroughbred horse racetracks operating under valid outstanding permits issued by the Division of Pari-mutuel Wagering located within a radius of 100 miles of each other, the division may issue a new permit for summer thoroughbred horseracing only. Such new permitholder within the area shall be permitted, during the period beginning on May 6 and ending on or before November 12 of each year, to conduct an additional 120 days of thoroughbred horseracing between the hours of 12 noon and 12 midnight eastern standard time or daylight saving time, exclusive of Sundays, upon dates allocated to it by the Florida Pari-mutuel Commission, which additional period of racing shall be known as the "summer thoroughbred horse racing period." The horseracing season beginning December 1 of each year and ending May 5 referred to in s. 550.04, shall hereafter be known as the annual "winter thoroughbred horse racing season."

(2) The "annual period" of operation for thoroughbred horse racetracks as used and referred to in s. 550.081 shall refer to the annual winter racing period of such horse racetracks, and the additional days of summer thoroughbred racing as authorized herein shall be in addition and supplemental thereto. In determining the tax revenue produced by a horse racetrack during its preceding year of operation as provided for and required by s. 550.081(3), there shall be excluded therefrom the tax revenues produced by a track as the result of its having conducted a horserace meet during the summer thoroughbred racing period.

(3) The limitation of days of horseracing in any one county as set forth in s. 550.08 and the provisions of ss. 550.04 and 550.29, and the provisions of s. 550.081 prohibiting the Division of Pari-mutuel Wagering from granting new permits shall not apply to the summer thoroughbred racing season or period. No racing shall be permitted on Sunday and no minors, except jockey apprentices, exercise boys, and grooms shall be permitted to attend said races or to be employed in any manner by a track.

(4) Notwithstanding anything in this act to the contrary, the Florida Pari-mutuel Commission may extend the summer thoroughbred horse racing period not to exceed 4 days in any one track beyond the period provided in subsection (1) so that any such track may conduct 4 charity days of racing for any one or more recognized and established charitable institutions located within 100 miles road travel of the racetrack holding such charity days of racing. For the purposes of this act, the University of Miami, Jacksonville University, Nova University of Advanced Technology, Children's Mental Research Foundation doing business as Hope School for Retarded Children, Inc., and other institutions of higher learning, including community colleges not already participating in charity or scholarship racing days, shall be deemed to be charitable institutions, and a portion of the proceeds available for the charitable purposes in an amount not less than 25 percent may be paid over to and for the benefit of the said charitable institutions of higher learning in said areas. The total of all profits derived from the operations of such racing on such charity days, including all moneys which would otherwise be received by the Division of Pari-mutuel Wagering as taxes for such days' operations, shall be and become a part of the charity trust fund for which such racing on such days is conducted. In determining profits derived from such racing on such charity days, which profits shall include all taxes payable to the state or any agency thereof for such days' operations without the initial expense of operational allowance provided by law for dog tracks, said tracks shall only be entitled to deduct from the profits accruing from all receipts on such charity days of racing their actual operating costs, which costs shall be those expenses incurred by the racetrack solely by reason of holding said charity days of racing and shall not be deemed to include such expenses as are constant from day to day and which would have been incurred had the race on that day not been held, including, but not limited to, such items as capital expenditures, interests on debts, real estate taxes and annual license fees, donations, bad debts, and such other items of daily or prorated expense as the Division of Pari-mutuel Wagering may by rule prescribe.

(5) In addition to any charity days as herein provided, the Florida Pari-mutuel Commission is authorized to grant 4 additional days of racing during the summer thoroughbred horse racing period upon application and agreement by any track in which specific days of any meet shall be set aside and all profit, less actual operating costs, from such specific days' operations of such track, including all taxes payable to the state or any agency thereof for such days' operations, shall be paid into the State Treasury for a scholarship trust fund which shall be administered by the Board of Regents of the state for the granting of scholarships for the purpose of attending the institutions of higher learning of the state upon such terms and conditions as the said board may from time to time prescribe. Actual operating costs of any track conducting such additional days of racing to be deducted from all receipts on such additional days of racing shall not include expenses which are constant from day to day and which would have been incurred had the race on those days not been held, including, but not limited to, such items as capital expenditures, interests on debts, real estate taxes and annual license fees, donations, bad debts, and such other items of daily or prorated expense as the Division of Pari-mutuel Wagering may by rule prescribe.

(6) In addition to any charity days as herein provided, the Florida Pari-mutuel Commission is authorized to grant one additional day of racing during the summer thoroughbred racing period in which all profits, as defined in s. 550.03(2), from said day of operation shall be allocated and paid to the Florida State University for the use and benefit of the Florida State University Department of Intercollegiate Athletics. The total of all profits derived from operation of such racing on said additional charity day, including all moneys which would otherwise be received by the Division of Pari-mutuel Wagering as taxes for such day's operation, shall be and become a part of the charity trust fund for which such racing on such day is conducted. In addition to s. 550.03(2), all other pertinent provisions of this chapter and the rules and regulations of the Division of Pari-mutuel Wagering relating to charity days shall be applicable to the additional charity day.

(7) In addition to any charity days as herein provided, the Florida Pari-mutuel Commission is authorized to grant one additional day of racing during the summer thoroughbred racing period, in which all profits, as defined in s. 550.03(3), from said day of operation shall be allocated and paid to the Juvenile Diabetes Research Foundation for its use and benefit. The total of all profits derived from operation of such racing on said additional charity day, including all moneys which would otherwise be received by the Division of Pari-mutuel Wagering as taxes for such day's operation, shall become a part of the charity trust fund for which such racing on such day is conducted. In addition to s. 550.03(3), all other pertinent provisions of this chapter and the rules and regulations of the Division of Pari-mutuel Wagering relating to charity days shall be applicable to the additional charity day.

(8) In addition to any charity days as herein provided, the Florida Pari-mutuel Commission is authorized to grant one additional day of racing during the summer thoroughbred racing period, in which all profits as defined in s. 550.03(2) from said day of operation shall be allocated and paid to Boys' Town of Florida for its use and benefit. The total of all profits derived from operation of such racing on said additional charity day, including all moneys which would otherwise be received by the Division of Pari-mutuel Wagering as taxes for such day's operation, shall be and become a part of the charity trust fund for which such racing on such day is conducted. In addition to s. 550.03(2), all other pertinent provisions of chapter 550 and the rules and regulations of the Division of Pari-mutuel Wagering relating to charity days shall be applicable to the additional charity day.

History.—s. 2, ch. 69-14; ss. 1, 2, ch. 71-98; s. 1, ch. 72-200; s. 70, ch. 72-221; s. 1, ch. 74-268; s. 2, ch. 75-241; s. 21, ch. 79-4.

[1]550.42 Summer thoroughbred racing; tax; commission; breaks tax; admissions and occupational license tax.—

(1) The licensee conducting a horserace meeting during the summer thoroughbred racing season shall pay a tax equal to 5.6 percent of the total contributions to all pari-mutuel pools there conducted and made on any and every horse race, which tax shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state every 30th day of the racing meet.

(2) The commission on a pari-mutuel pool on every horserace which may be withheld by the licensee and the state from the total contributions shall in no event exceed 17.6 percent.

(3) Each licensee operating a horse racetrack during the summer thoroughbred racing season shall retain the breaks tax provided for in s. 550.26. The proceeds of the breaks tax retained by the licensee shall be allocated for the payment of breeders' awards as provided in s. 550.38, and for no other purpose. Any excess proceeds after the maximum payment provided in s. 550.38 shall be paid to the State Treasurer for deposit in the General Revenue Fund.

(4) In addition to the aforesaid taxes, each person authorized to conduct race meetings under this section shall pay an admission tax as provided in s. 550.09.

(5) All persons connected with a horse racetrack in connection with its summer thoroughbred racing meet shall pay the annual occupational tax provided for in s. 550.10. However, nothing contained in this chapter or in chapter 551 shall be construed as requiring any person to purchase more than one annual occupational license from the Division of Pari-mutuel Wagering.

(6) The provisions of s. 550.11 shall apply to a horse racetrack conducting a summer thoroughbred racing meet, and no other license, excise, admissions, or occupational tax shall be levied or charged by any city, county, or town against any such horse racetrack or patron thereof, whether heretofore or hereafter authorized by special act of the Legislature.

History.—s. 2, ch. 69-14; s. 2, ch. 71-98; s. 3, ch. 71-146; ss. 3, 6, ch. 75-42; s. 4, ch. 77-166; ss. 16, 22, ch. 77-167; s. 3, ch. 78-39; s. 1, ch. 78-130; s. 4, ch. 79-300.

[1]**Note.**—Section 4, ch. 79-300, provides that s. 550.42(1), (2), (4), (5), and (6), as they existed on June 30, 1979, shall remain in effect until July 1, 1980, on which date they shall be superseded by s. 550.42(1), (2), (3), (6), (7), and (8) as they existed on May 28, 1975. Consequently, on July 1, 1980, s. 550.42 will read as follows:

550.42 Summer thoroughbred racing; tax; commission; breaks tax; admissions and occupational license tax.—

(1) The licensee conducting a horserace meeting during the summer thoroughbred racing season shall pay a tax equal to 5 percent of the total contributions to all pari-mutuel pools there conducted and made on any and every horserace, which tax shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state, up to an average daily amount of $400,000, which average shall be calculated at the end of each summer thoroughbred racing period.

(2) The licensee conducting a horserace meeting during the summer thoroughbred racing season shall pay a tax equal to 8 percent of the total contributions to all pari-mutuel pools there conducted and made on any and every horserace, which tax shall be paid to the State Treasurer in his capacity as ex officio treasurer of the division, on all contributions to such pari-mutuel pools in excess of a daily average of $400,000, which average is calculated as above. After expenses of the division are paid, the State Treasurer as ex officio treasurer of the division shall distribute said contributions as follows: 5 percent of the total contributions shall be paid into the General Revenue Fund of the state, and the remaining 3 percent shall be divided by the State Treasurer into as many equal parts as there are counties in the state, and the Treasurer shall remit one part to each county on or before December 1 of each year during which summer thoroughbred horse racing is conducted.

(3) The commission on a pari-mutuel pool on every horserace which may be withheld by the licensee and the state from the total contributions shall in no event exceed 17 percent of the amount contributed thereto, which commission shall include the percentage tax hereinabove provided for.

(4) Each licensee operating a horse racetrack during the summer thoroughbred racing season shall retain the breaks tax provided for in s. 550.26. The proceeds of the breaks tax retained by the licensee shall be allocated for the payment of breeders' awards as provided in s. 550.38, and for no other purpose. Any excess proceeds after the maximum payment provided in s. 550.38 shall be paid to the State Treasurer for deposit in the General Revenue Fund.

(5) In addition to the foregoing taxes, the licensee shall also pay the tax on admissions as provided for in s. 550.09, which tax revenues shall be distributed as provided by subsection (2).

(6) All persons connected with a horse racetrack in connection with its summer thoroughbred racing meet shall pay the annual occupational tax provided for in s. 550.10. However, nothing herein contained shall be construed as requiring such person to pay more than one annual occupational license tax.

(7) The provisions of s. 550.11 shall apply to a horse racetrack conducting a summer thoroughbred racing meet, and no other license, excise, admission, or occupational tax shall be levied or charged by any city, county, or town against any such horse racetrack, or patron thereof, whether heretofore or hereafter authorized by special act of the Legislature.

550.43 Annual license; summer thoroughbred racing period.—On or before January 4 of each year, beginning January 4, 1970, the thoroughbred horse racetrack desiring to conduct summer thoroughbred racing may file in writing with the Department of Business Regulation its application for permission to conduct a thoroughbred horse race meeting for a period of not to exceed 120 days, exclusive of Sundays, during the summer thoroughbred racing season commencing on or after May 6, 1970, and in each of the following years. On or before March 1 of each year, the Division of Pari-mutuel Wagering shall issue a license authorizing the permitholder to conduct a racing meet during the summer thoroughbred racing season, during the period and for the number of days set forth therein.

History.—s. 2, ch. 69-14; ss. 1, 2, ch. 71-98; s. 22, ch. 79-4.

550.44 Minimum purse per race.—The permitholder licensed to conduct a summer thoroughbred horse race meeting shall pay a minimum purse for each race conducted by it of not less than $2,000 and shall distribute in total purse money during its meet not less than 10 percent more than its daily minimum purse requirement. Such permitholder, by application for and acceptance of a license for a summer race meeting, shall be deemed to have agreed as a condition of the grant thereof that such minimum purses will be paid. In addition to the above purses, an amount equal to 1 percent of the commission withheld on the pari-mutuel pool on each and every horserace shall be withheld by the licensee and shall be distributed among the horsemen as the Division of Pari-mutuel Wagering shall direct.

History.—s. 2, ch. 69-14; s. 2, ch. 71-98.

550.45 Allocation or reallocation of racing days.—The Florida Pari-mutuel Commission shall have the right to allocate or assign to another track or other tracks authorized to conduct summer thoroughbred horse racing, upon application therefor, any days or dates during the summer thoroughbred racing season which have not been applied for; provided the aggregate total number of summer thoroughbred horse racing days shall not exceed 120 days, exclusive of Sundays, and exclusive of charity days and scholarship days as provided for in s. 550.41(4), (5) for any one horseracing licensee during the summer thoroughbred racing period; and provided further that such application must be filed on or before January 4 of each year, beginning January 4, 1970; and provided further, that the new permit-

holder for summer thoroughbred racing shall never conduct winter thoroughbred horse racing. The permitholders for winter thoroughbred racing shall never conduct summer thoroughbred horse racing. The permitholders for winter thoroughbred horse racing in the areas described in s. 550.081 shall not conduct summer thoroughbred horse racing. However, the operator of any thoroughbred horse racetrack, including a new track constructed to conduct summer thoroughbred racing, is hereby authorized to lease such track to any other permitholder holding a permit for summer thoroughbred horse racing or winter thoroughbred horse racing in the area where three or more horse racetracks in this state are located in a radius of 100 air miles of each other. The commission shall have the right to reallocate or reassign to any other track or other tracks authorized to conduct summer thoroughbred horse racing any racing dates previously allocated or assigned to a licensed thoroughbred horse racing track when said summer racing dates have been abandoned or surrendered or will not be used for any reason whatsoever; provided the aggregate total number of summer thoroughbred horse racing days permitted hereunder shall not exceed 120 days, exclusive of Sundays, and exclusive of charity days and scholarship days as provided for in s. 550.41(4), (5), for any one horseracing licensee. The failure of any thoroughbred horse racetrack to apply for dates to conduct a summer thoroughbred racing meet in any one or more years shall not preclude such track from making such application in any subsequent year.

History.—s. 2, ch. 69-14; s. 1, ch. 71-98; s. 23, ch. 79-4.

550.46 Summer thoroughbred racing period, application of this chapter.—In all respects the provisions of this chapter shall be applicable to the summer thoroughbred horse racing season herein authorized except those provisions thereof which are inconsistent herewith.

History.—s. 2, ch. 69-14.

550.47 Lease of pari-mutuel facilities by pari-mutuel permitholders.—

(1) Holders of valid pari-mutuel permits for the conduct of thoroughbred and standard-bred horse racing in this state shall be entitled to lease any and all of their facilities to any other holder of a valid pari-mutuel permit for thoroughbred or standard-bred horse racing, when located within a 35-mile radius of each other; and such lessee shall be entitled to a permit and license to operate its race meet at said leased premises.

(2) Notwithstanding the provisions of subsection (1), no thoroughbred horse racing permitholder may lease another thoroughbred horse racing permitholder's facilities unless the permittee seeking to lease facilities and the permittee owning said facilities are located within the same county.

History.—s. 1, ch. 71-180; s. 2, ch. 76-179.

550.48 Totalisator licensing.—

(1) As used in this section:

(a) "Totalisator" means a mechanical or electrical machine used for recording, computing, and displaying on the mutuel board at a pari-mutuel facility, in plain view of the public, the total amount of sales on each race or game and the amount of award or dividend to winning patrons.

(b) "Totalisator owner or operator" means any entity engaged in the operation of totalisator machines at pari-mutuel facilities.

(2) No totalisator shall be operated at a horsetrack, dogtrack, or jai alai fronton licensed pursuant to chapter 550 or chapter 551, unless the person or entity owning or operating the totalisator holds a totalisator license issued by the Division of Pari-mutuel Wagering of the Department of Business Regulation in accordance with this section.

(3) Each person connected with totalisator operations located on any horsetrack, dogtrack, or jai alai fronton licensed pursuant to chapter 550 or chapter 551 shall pay an annual totalisator license fee in the following amount:

(a) A totalisator owner or operator, $25.

(b) An employee directly concerned with totalisator operations, $4.

(4)(a) As a condition precedent to the annual issuance of a totalisator license, an applicant for a totalisator license agrees that the division may audit and check the books and records of any such totalisator owner or operator at any time in order to guarantee reliability, trustworthiness, and security in the operations of the totalisator. To carry out this responsibility, the division may:

1. Take testimony concerning any matter within its jurisdiction and issue summonses, subpoenas, and subpoenas duces tecum in connection with any matter within its jurisdiction, under its seal and signed by the director;

2. Make necessary public or private investigations within or outside of this state;

3. Require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to all facts and circumstances concerning the matter to be investigated; and

4. Designate an officer who may administer oaths or affirmations.

(b) Upon motion of the division or upon request of any party to such investigation or proceeding, the division shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to circuit court for an order compelling compliance.

(5) Each totalisator owner and operator shall conduct his operations at horsetracks, dogtracks, and jai alai frontons in accordance with rules adopted by the division, in such form, content, and frequency as the division by rule may determine.

(6)(a) The division, after due process in accordance with chapter 120, may suspend or revoke any license issued pursuant to this section at any track or fronton, upon the willful violation by the licensee

of any of the provisions of this section or of any rule adopted by the division under the provisions of this section.

(b) In lieu of the suspension or revocation of a license, the division, after notice and hearing pursuant to the provisions of chapter 120, may impose a civil penalty against any licensee for a violation of this section or any rule adopted by the division. The penalty shall not exceed $1,000 for each count or separate offense. All penalties imposed and collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

History.—s. 1, ch. 78-243; s. 158, ch. 79-164.

[1]550.49 Legislative intent.—

(1) It is the finding of the Legislature that the attendance and wagers at winter horse racetracks and harness tracks have significantly declined in recent years as a result of various factors not caused by the permittees, and that a continuation of such decline will seriously jeopardize state revenues as well as the future existence of these tracks.

(2) It is the further finding of the Legislature that it is in the best interest of the state to stimulate interest in all types of horseracing, in horse farms, in the horse breeding industry, and in the expansion and continuation thereof; to enhance the ability of all horse tracks to operate profitably; and to attract horses of high caliber and quality which are generally associated with the major horse tracks in the nation. The inability of the state's racetracks to match or exceed, on a consistent basis, the average daily purses necessary to make racing attractive to horse owners and Florida breeders places the industry in the position that the state's horse tracks cannot regularly compete for quality horses, and, as a result thereof, many high caliber, well-bred, quality horses do not compete in this state.

(3) It is the further finding of the Legislature that the state's horse tracks cannot offer adequate purses and breeders' awards at the existing level of pari-mutuel handle at each horse racetrack without causing a detriment to each individual permittee's solvency.

(4) It is the further finding of the Legislature that all horseracing facilities have certain fixed operational costs, which are substantial and which remain relatively uniform and consistent throughout a racing meeting, and further have substantial recurring fixed and variable operational costs and expenses, which regularly increase without regard to the level of pari-mutuel handle at a race meeting, and that such operational costs and expenses have increased to the extent that the continued existence of all horse racetracks in Florida is in jeopardy.

(5) It is the further finding of the Legislature that the level of pari-mutuel handle and attendance at the horse racetracks, compared to the increase in the substantial fixed [2][costs] and variable operational costs and expenses, significantly affects the ability of all horse racetracks to continue their business operations, in that the tracks' shares of commissions withheld under current law are less than the economic value of the privilege granted to such permittees, and, therefore, an adjustment in the allocation of such commissions whereby the tracks will receive and retain a larger share of the commissions is necessary and justified.

(6) It is the further finding of the Legislature that thoroughbred racing in Dade and Broward Counties is comprised of racing periods which traditionally generate different levels of pari-mutuel handle and different opportunities to earn profits and, as a result of the different levels of pari-mutuel handle, different levels of income to the individual permittees occur when the same tax rate is applied in each racing period. The Legislature finds, as a result thereof, that the second winter racing period provided for in s. 550.081 is the most lucrative racing period and that a greater tax should be paid by the permittee operating during said racing period in order that all racing periods be more fairly treated insofar as an opportunity to generate income is concerned. Nothing contained herein shall be construed as evidencing a legislative intent to establish any basis for classification for racing date allocations between permittees affected hereby, it being the intention of the Legislature to apportion the tax burden paid by winter thoroughbred permittees according to the varying levels of economic enjoyment of franchise privileges generated during different racing periods.

(7) It is the intention of the Legislature that the tax rates levied herein be commensurate with the privilege enjoyed so that the horserace permittees may earn an operating profit for their normal operations during the authorized racing season for each permittee as provided by law. By enacting a tax rate enabling the horserace permittees to earn an operating profit, it is the intention of the Legislature that each permittee shall operate the full number of regular racing days authorized by law during the racing period authorized for each permittee.

(8) It is the further intention of the Legislature that, prior to July 1, 1979, a complete and thorough legislative study shall be made of the tax rate of all Florida horserace permittees to review the effect of this act and to determine, if necessary, the implementation of a permanent tax decrease which shall insure the preservation of such racing and the continuation of state revenues at a level commensurate with the privilege enjoyed by the horserace permittees.

History.—ss. 1, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[2]**Note.**—Bracketed word inserted by the editors.

[1]550.4901 Winter thoroughbred horse racing; per-race purse allowance.—

(1) Where there are three or more permittees authorized to conduct winter thoroughbred horse racing located within a 35-mile radius of each other, it is determined that, in order to insure a more well-balanced and coordinated program of racing at said tracks, a special per-race allowance for additional overnight purses is hereby established, to be administered by the Division of Pari-mutuel Wagering under rules promulgated consistent with the provisions of this section. Funds so retained by the tracks pursuant to this section shall be distributed solely and exclusively for the payment of additional overnight purses.

(2) Each of the winter thoroughbred permittees shall be entitled to deduct, from the taxes levied on

said permittees, an amount equal to $1800 per race per day, said $1800 per race per day to be paid for overnight purses only.

(3) The winter thoroughbred permittees operating charity and scholarship days shall be entitled to deduct an amount equal to $2100 per race per day on each charity day, to be retained by such permittee operating the charity and scholarship days to be distributed solely and exclusively for the payment of additional overnight purses on each charity day from which said $2100 per race per day is deducted.

History.—ss. 2, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4902 Winter thoroughbred horse racing; tax; commission; breaks tax; admissions and occupational license taxes.—

(1) Notwithstanding any other provision of this chapter, a permittee conducting a horserace meeting during the winter thoroughbred racing season shall pay a tax of 5.6 percent of the total contributions to all pari-mutuel pools, except that the permittee assigned the second winter thoroughbred racing period shall pay a tax of 6.2 percent of the total contributions to all pari-mutuel pools, which taxes shall be paid to the State Treasurer for deposit in the General Revenue Fund of the state every 30th day of any and every racing meeting.

(2) The commission on a pari-mutuel pool on every horserace operated during the winter thoroughbred racing season which may be withheld by the licensee and the state from the total contributions shall in no event exceed 17.6 percent of the amount contributed thereto, which commission shall include the percentage tax hereinabove provided for.

(3) In addition to the foregoing percentage taxes, each licensee operating a horse racetrack during the winter thoroughbred racing season shall pay the tax on breaks provided for in s. 550.26, which tax revenue shall be distributed as therein provided.

(4) In addition to the aforesaid taxes, each person authorized to conduct race meetings under this section shall pay an admission tax as provided in s. 550.09.

(5) All persons connected with a horse racetrack in connection with its winter thoroughbred racing meet shall pay the annual occupational tax provided in s. 550.10. However, nothing contained in this chapter or in chapter 551 shall be construed as requiring any person to purchase more than one annual occupational license from the Division of Pari-mutuel Wagering.

History.—ss. 3, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4903 Thoroughbred horse racing; summer racing purse allowance.—Each licensed thoroughbred horse racetrack holding a permit in this state under the authority of s. 550.41 and pursuant to the rules of the Division of Pari-mutuel Wagering shall be permitted to deduct from the taxes levied by s. 550.42 an amount equal to a maximum of $2,100 per race per day, said $2,100 to be distributed solely and exclusively for the payment of additional overnight purses.

History.—ss. 4, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4904 Summer thoroughbred racing dates; exceptions to beginning and ending period.—The beginning date for the conduct of summer thoroughbred racing as set forth in s. 550.41 shall vary in accordance with the provisions of s. 550.081 and shall not begin before the first day following the last racing day of the third period of winter racing and shall terminate no later than the last day prior to the first day of the first period of winter thoroughbred racing. In the event of any conflict between this section and s. 550.04 insofar as it applies to the conduct of the winter racing season, this section shall control. In no event shall winter racing commence prior to November 1 of each year.

History.—ss. 5, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4905 Harness racing; special purse allowance.—Each harness racing permittee shall be entitled to deduct from the taxes levied in s. 550.37(5) an amount equal to $450 per race per day, said $450 to be paid for overnight purses according to the rules of the Division of Pari-mutuel Wagering. However, the total amount which may be deducted and paid for overnight purses pursuant to this section shall not exceed $450,000 in any one racing season. If a harness racing permittee operates charity and scholarship days, such permittee shall be entitled to deduct [3][the] $450 per race per day [2][authorized by this section] on such charity [2][and scholarship] days, to be retained by the permittee operating the charity and scholarship days. All moneys so deducted pursuant to the provisions hereof shall be distributed solely and exclusively by the permittee for the payment of additional overnight purses.

History.—ss. 6, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[2]**Note.**—Bracketed language inserted by the editors.

[3]**Note.**—Bracketed language substituted by the editors for "an amount equal to."

[1]550.4906 Harness racing; purses.—The sum of 4 percent of the current pari-mutuel handle shall be paid by each harness track for purses during its authorized racing period. Such sum shall include breeders' awards and stallion awards. Overpayments and underpayments of estimated seasonal purse requirements shall be adjusted in the next succeeding racing season.

History.—ss. 7, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4907 Thoroughbred horse racing; purse allowance for racetracks with average daily handles of less than $400,000.—Each licensed thoroughbred horse racetrack holding a permit in this state under the authority of this chapter and the rules of the Division of Pari-mutuel Wagering which has an average daily pari-mutuel handle of less than $400,000 shall be permitted to deduct from the taxes levied by s. 550.161 an amount equal to a maximum of $400 per race per day, said $400 to be distributed

solely and exclusively for the payment of additional overnight purses.

History.—ss. 8, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

[1]550.4908 Thoroughbred horse racing; track allowance for all tracks with an average daily handle of less than $400,000.—Each licensed thoroughbred horse racetrack holding a permit in this state under the authority of this chapter and pursuant to the rules of the Division of Pari-mutuel Wagering which has an average daily pari-mutuel handle of less than $400,000 shall be permitted to deduct from the taxes levied by s. 550.161 an amount equal to a maximum of $300 per race per day, excluding charity and scholarship racing days, and not to exceed a total of $200,000 in any one racing season, said deduction to be used by the track solely and exclusively for daily operational expenses as determined by the rules of the Division of Pari-mutuel Wagering.

History.—ss. 9, 22, ch. 77-167; s. 1, ch. 79-300.

[1]**Note.**—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

CHAPTER 551

FRONTONS

551.01 Operation of frontons for exhibition of jai alai or pelota.—Any person desiring to operate a fronton for the exhibition of the Spanish ball game called jai alai, or pelota, may do so upon compliance with the terms and provisions of this chapter.

History.—s. 1, ch. 17074, 1935; CGL 1936 Supp. 4151(353).
cf.—s. 550.27 Employment of residents.

551.02 "Frontons" defined.—The word "fronton" as used in this chapter means a building or enclosure in which is provided a playing court with three walls so designed and constructed for the playing of that game of ball as played in Spanish-speaking countries, called jai alai or pelota.

History.—s. 11, ch. 17074, 1935; CGL 1936 Supp. 4151(354).

551.03 Division of Pari-mutuel Wagering to supervise operation.—The operation of all frontons shall be under the supervision of the Division of Pari-mutuel Wagering of the Department of Business Regulation and subject to the terms, powers, duties and liabilities as set out in chapter 550, except as herein otherwise provided.

History.—s. 2, ch. 17074, 1935; CGL 1936 Supp. 4151(355); ss. 16, 35, ch. 69-106; s. 2, ch. 71-98.
cf.—s. 550.03 Charity racing days.
s. 550.031 Limitation on number of charity days.
s. 550.0841 Restoration of performances lost by permittee.
s. 550.10 Occupational tax to be paid by employees; denial and revocation of license.
s. 550.12 Uniform reporting system.
s. 550.181 Certain persons prohibited from holding racing permits; suspension or revocation of permits.
s. 550.27 Employment of residents required.
s. 550.36 Use of electronic transmitting equipment; permit by division required.

551.031 Fixing dates for operation of frontons.—The Florida Pari-mutuel Commission shall hear and approve the dates within which any fronton may be operated. However, this section shall not be construed as authorizing the commission to fix and set dates for the operation of any fronton in any county where there is not more than one fronton in operation. The commission shall not delegate this function to any subordinate officer or division of the Department of Business Regulation.

History.—s. 3, ch. 17074, 1935; CGL 1936 Supp. 4151(356); s. 2, ch. 71-98; s. 138, ch. 73-333; s. 24, ch. 79-4.
Note.—Former s. 551.04(1).

551.04 Powers and duties of Division of Pari-mutuel Wagering.—The Division of Pari-mutuel Wagering shall carry out the provisions of this chapter, and to that end such division may:

(1) Supervise and check the making of pari-mutuel pools and wagers and the distribution therefrom.

(2) Require any applicant for a permit to operate a fronton to file an application setting forth:

(a) The full name of the person, firm, corporation or association, and if a corporation, the name of the state under which it is incorporated, as well as the names of the officers, directors and stockholders of said corporation, and their places of residence, or if an association, the name, nationality, race and residence of the members of the association;

(b) The exact location where it is desired to operate a fronton exhibiting the Spanish ball game aforesaid;

(c) Whether or not the fronton is owned or leased, and if leased, the name, nationality, residence and address of the owners or lessees, or if the owner or lessee be a corporation, the name and address of the officers, directors and stockholders thereof;

(d) A statement of the assets and liabilities of the person, firm, corporation or association making application for such permit;

(e) Such other information as the division may require.

Such applications shall be duly sworn to.

(3) Make rules and regulations for the holding, conducting and operating of exhibitions of jai alai or pelota, which rules and regulations shall be uniform in their application and effect, and the duty of exercising this control and power is made mandatory upon such division.

History.—s. 3, ch. 17074, 1935; CGL 1936 Supp. 4151(356); s. 2, ch. 71-98; s. 138, ch. 73-333.

551.06 License fees.—Every person engaged in conducting exhibitions of the Spanish ball game known as jai alai or pelota, under this chapter, shall pay to the treasurer of the state in his capacity as ex officio treasurer of the Division of Pari-mutuel Wagering, for the use of the division, a sum equal to 3 percent of the total contributions to all pari-mutuel pools or point wagers won, conducted or made on

every Spanish ball game of jai alai or pelota in any fronton operated under the provisions of this chapter. In addition to the aforesaid taxes, each person authorized to conduct exhibitions of jai alai or pelota herein, shall pay to the state treasurer 15 percent of all moneys received each day from admissions paid by persons attending such exhibitions, or the sum of 10 cents on each admission whichever sum is greater; said payments shall be made every 7th day during the season or period of operation of any fronton, and shall be accompanied by report, under oath, showing the total of all contributions, wagers and admissions on the Spanish ball game called jai alai or pelota covered by such report and such other information as the division may require. If any free passes or complimentary admission cards shall be issued to any guests by any licensee, the licensee of such fronton shall pay to the division the same upon such complimentary admission cards as if the same were sold at the regular and usual admission rates; but nothing herein shall be construed to prohibit the issuance of tax-free passes to officials and actual employees at such fronton, or engaged in such Spanish ball games; provided, however, that the issuance of all such tax-free passes shall be under the regulations or orders of the Division of Pari-mutuel Wagering and a list of all officers, employees and participants shall be filed with the division.

History.—s. 4, ch. 17074, 1935; CGL 1936 Supp. 4151(358); s. 2, ch. 71-98.

551.07 Tax to be in lieu of all other taxes, except city; occupational license tax.—The tax imposed shall be in lieu of all other license, excise or occupational taxes to the state or any county, city, town or political subdivision thereof, except that when any such fronton for exhibition of jai alai or pelota is being operated in any incorporated city or town, such city or town may assess and collect an additional tax against any person operating said fronton within its corporate limits at a sum not to exceed $10 per day for each day that such fronton is actually operated. The same occupational license tax required under s. 550.10 to be paid by all persons connected with racetracks shall likewise be paid by all persons connected with the operation of any fronton.

History.—s. 5, ch. 17074, 1935; CGL 1936 Supp. 4151(359); s. 2, ch. 67-565; s. 37, ch. 69-353.

[1]551.071 Additional commission required to be withheld by jai alai permittees; designation of funds.—In addition to the 17 percent commission authorized to be withheld on every jai alai contest conducted pursuant to this chapter, each jai alai permittee shall withhold an additional six-tenths of 1 percent from the total contributions to the pari-mutuel pool on each and every contest there conducted. The additional six-tenths of 1 percent shall be paid to the State Treasurer for deposit in the General Revenue Fund.

History.—s. 2, ch. 77-166; s. 1, ch. 79-300.
[1]Note.—The expiration of this section on July 1, 1979, was nullified by s. 1, ch. 79-300. Repealed effective July 1, 1980.

551.08 Method of bookkeeping prescribed.—Every person operating a fronton under this chapter shall so keep his books and records as to clearly show the total number of admissions, the total amount of money wagered or contributed to every pari-mutuel pool on each game separately, and the amount of money received daily from admission fees, and, within 60 days after the end of the season of each fronton, shall submit to the Division of Pari-mutuel Wagering a complete audit of its accounts, certified to by a public accountant qualified to practice in the state, and in addition every person operating a fronton under this chapter shall submit a detailed annual audit to the Division of Pari-mutuel Wagering. The Auditor General may audit and check the books and records of any such person, and upon the request of said division shall do so.

History.—s. 6, ch. 17074, 1935; CGL 1936 Supp. 4151(360); s. 1, ch. 61-475; s. 8, ch. 69-82; s. 2, ch. 71-98.
cf.—s. 550.12 As to horse and dogracing.

551.09 Wagers and pari-mutuel pools permitted within enclosure of fronton.—

(1) Within the enclosure of any fronton licensed and conducted under this chapter but not elsewhere, wagering on the respective scores or points of the game of jai alai or pelota and the sale of pari-mutuel pools under such regulations as the Division of Pari-mutuel Wagering shall prescribe, are hereby authorized and permitted.

(2) The commission of a licensee on such pari-mutuel pools and wagers shall in no event exceed 17 percent of the amounts contributed thereto, and said maximum of 17 percent of said amounts shall include the 3 percent tax heretofore provided by law, together with the additional tax of 2 percent hereinafter provided for old age assistance.

(3) After deducting a commission and the "breaks" (hereinafter defined), a pari-mutuel pool shall be redistributed to the contributors.

(4) Redistributions of funds otherwise distributable to the contributors to such pari-mutuel pools shall be a sum equal to the next lowest multiple of 10.

(5) No distribution of a pari-mutuel pool shall be made of the odd cents of any sum otherwise distributable, which odd cents shall be known as the "breaks."

(6) The "breaks" shall be known as the difference between the amount contributed to a pari-mutuel pool and the total of the commission of the licensee and the sums actually redistributed to the contributors.

(7) No person or corporation shall directly or indirectly purchase pari-mutuel tickets or participate in the purchase of any part of a pari-mutuel pool for another for hire or for any gratuity, and no person shall purchase any part of a pari-mutuel pool through another, wherein he gives or pays directly or indirectly such other person anything of value, and any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) In addition to any and all other taxes otherwise levied or assessed, every person, association or corporation conducting a fronton for the exhibition of the Spanish ball game known as jai alai or pelota shall pay to the treasurer of the state, for operating said fronton, a tax equal to 2 percent of the total contributions to all pari-mutuel pools or point wagers conducted or made on any and every such Span-

ish ball game of jai alai or pelota in any fronton operated under the provisions of this chapter, which additional 2 percent tax shall be deposited in the General Revenue Fund and when collected shall be known as the "old age assistance tax."

History.—s. 7, ch. 17074, 1935; CGL 1936 Supp. 4151(361); s. 1, ch. 22817, 1945; s. 2, ch. 61-119; s. 2, ch. 71-98; s. 547, ch. 71-136; ss. 4, 6, ch. 75-42.

551.10 Disposition of funds.—All moneys mentioned in this chapter derived from taxes on admission, wagers and pari-mutuel pools shall be disbursed by the state treasurer pursuant to existing laws relating to the disposition of funds derived from the operation of racetracks, and in the same manner.

History.—s. 8, ch. 17074, 1935; CGL 1936 Supp. 4151(362).

cf.—s. 550.13 Disposition of funds derived from operation of racetracks.
s. 550.22 Funds to be held by State Treasurer if distribution held illegal.

551.11 Location of frontons.—No permit shall be issued for the operation of any fronton to be constructed or operated within 1,000 feet of any existing church or public school, nor shall any such exhibition be held on Sunday.

History.—s. 9, ch. 17074, 1935; CGL 1936 Supp. 4151(363).

551.12 Elections; applicability of racetrack law.—No license to construct or operate a fronton for the exhibition of jai alai or pelota shall be issued until and unless the permit issued by the Division of Pari-mutuel Wagering has been ratified by the electors of the county involved pursuant to the requirements of s. 550.06, except this provision shall not apply to frontons which have been issued valid permits and licenses to operate prior to June 30, 1959, and which are now in effect. All other pertinent provisions of chapter 550 dealing with the powers, duties, and liabilities of the Division of Pari-mutuel Wagering and of the operators of dogracing tracks and dealing with the location thereof and with the issuance and granting of permits and licenses to conduct dogracing and dealing with the petition for the election to revoke licenses not inconsistent with the express provisions of this chapter shall be construed to relate to and govern the division and the operators of any fronton and the location thereof and the issuance and granting of permits and licenses for the operation of frontons under the provisions of this chapter as fully as if the same were herein expressly set out; provided, however, that in no event shall any jai alai fronton permit or license be issued to conduct jai alai and pari-mutuel pools at a location within 50 miles of another location where pari-mutuel pools are conducted under chapter 550 or this chapter, said distance to be measured on a straight line, said straight line shall be measured from property line to property line at the points nearest to each other, except this proviso shall not apply to frontons which have been issued valid permits and licenses to operate prior to June 30, 1959, and which are now in effect; provided, further, that if all or any substantial portion of a fronton shall be taken by eminent domain, the division may on application of the holder of the permit and license of such original fronton filed within 2 years after such taking (and in lieu of the original permit and without requiring the ratification by the electors of the permit and without regard to the foregoing 50-mile limitation) issue a permit and grant licenses to the holder of the permit and license of such original fronton for the operation of a substitute fronton at any location in the same county within 10 miles, as so measured, of the location of the original fronton. Provided, also, that the Florida Pari-mutuel Commission shall not limit the number of presently authorized operation days in any 12-month period for such operators of licensed frontons during the period extending from and including December 1 in each year to and including April 10 of the following year. An operation day shall be a continuous period of 24 hours starting with the beginning of the first game of a public exhibition of jai alai or pelota, even though such operation day may start during 1 calendar day and extend past midnight to 2 a.m. into the following calendar day; provided, however, that no game shall be started later than 1:30 a.m. and before 12 noon on any operation day, or 12 midnight on any Saturday night; provided, further, that a permittee shall conduct no more than 12 games during any performance. No minors except jai alai players' apprentices and ball boys shall be permitted to attend such exhibitions or to be employed in any manner about the operation of frontons. All laws and parts of laws inconsistent with the express provisions of this chapter are expressly declared not to apply to any person engaged in the operation of a fronton, or making wagers or contributing to pools therein, as authorized and conducted under this chapter.

History.—s. 10, ch. 17074, 1935; CGL 1936 Supp. 4151(364); s. 1, ch. 22614, 1945; s. 1, ch. 59-453; s. 1, ch. 69-354; ss. 1, 2, ch. 71-98; s. 1, ch. 78-380; s. 25, ch. 79-4.

551.13 Tax on "breaks"; distribution.—

(1) A tax is hereby levied upon every pari-mutuel pool conducted at a fronton for the exhibition of the Spanish ball game known as jai alai or pelota within the state authorized by law so to do, equal to 50 percent of the "breaks" as defined in s. 551.09(5)(6).

(2) It shall be the duty of every such fronton licensee to pay unto the state treasurer the tax hereby levied and said licensee shall be liable therefor.

(3) When the tax hereby levied is paid into the state treasury it shall become and be made a part of the "old age assistance tax fund" and all such funds on hand in the office of the state treasury in the "old age assistance tax fund" shall stand appropriated and shall be available to meet any contributions on behalf of the United States for the benefit of the citizens or inhabitants of this state when age shall be a basis or cause.

History.—s. 2, ch. 22817, 1945.

551.14 Payment of taxes; penalties.—

(1) The "old age assistance tax" and the "breaks tax" levied shall be paid at the times and places as provided by law for the payment of other taxes based on a percent of pari-mutuel pools.

(2) Any willful or wanton failure by any licensee to make such payments into the state treasury as required by law shall constitute sufficient ground for the Division of Pari-mutuel Wagering to revoke the permit of such licensee and no further license or permit shall be issued to such former licensee.

History.—s. 3, ch. 22817, 1945; s. 2, ch. 71-98.

551.15 Special allocation of periods of operation for certain frontons.—

(1) Where there are two or more jai alai frontons operating under valid outstanding permits, issued by the Division of Pari-mutuel Wagering, located within a radius of 35 miles of each other, one of such permitholders within said area shall be permitted, at its option, but shall not be required, during the period beginning July 1 and ending the first Monday of September following, both dates inclusive, of any year, to conduct upon dates of its choice not more than 50 days of its aggregate number of operating days allowed by s. 551.12; provided that where two or more of such permittees apply for operating dates, as herein provided, the Florida Pari-mutuel Commission shall designate the permittee entitled to conduct such jai alai fronton operation during such 50-day period, and the remaining number of said aggregate days under s. 551.12 shall be granted to and utilized by such permittee within the period provided in s. 551.12; provided, that when a fronton permittee elects to receive the benefits of this section and is granted summer operation dates hereunder, such permittee shall not operate jai alai fronton exhibitions more than a total of 100 days (plus scholarship and charity days) in the 12-month period in which said summer operation hereunder is permitted.

(2) This section shall be cumulative and shall not be construed as repealing any other provisions of law, and shall not be construed as permitting or allowing any permitholder to operate for a period of time in excess of the number of days now provided by law.

History.—ss. 2, 3, ch. 59-417; ss. 1, 2, ch. 71-98; s. 26, ch. 79-4.

551.16 Amateur jai alai contests permitted under certain conditions.—Nothing in this chapter shall be construed to prohibit the use of any fronton, jai alai plant, or facility for the conduct of amateur jai alai or pelota contests or games, from being used on one Sunday during each fronton season by any charitable, civic or nonprofit organization for the purpose of conducting jai alai contests or games where only players other than those usually used in jai alai contests or games are permitted to play and where adults and minors may participate as players or spectators, and provided further that during such jai alai games or contests betting and gambling and the sale or use of alcoholic beverages shall be strictly and absolutely prohibited.

History.—s. 1, ch. 67-556.

551.17 Ratified permit; extension of time to construct fronton.—The time within which the holder of a ratified permit for jai alai or pelota has to construct and complete a fronton may be extended by the Division of Pari-mutuel Wagering for a period of 24 months from the date of the issuance of said permit, anything to the contrary in any statute notwithstanding.

History.—s. 1, ch. 70-447; s. 2, ch. 71-98; s. 143, ch. 71-355.

CHAPTER 552

MANUFACTURE, DISTRIBUTION, AND USE OF EXPLOSIVES

552.081 Definitions.—As used in this chapter:

(1) "Explosive materials" means explosives, blasting agents, or detonators.

(2) "Explosives" means any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerin, trinitrotoluene, other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. "Explosives" does not include cartridges for firearms and does not include fireworks as defined in chapter 791.

(3) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive, provided the finished product, ready for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

(4) "Detonator" means any device containing a detonating charge that is used for initiating detonation of an explosive and includes, but is not limited to, blasting caps and electric blasting caps of instantaneous and delay types.

(5) "Person" means any natural person, partnership, association, or corporation.

(6) "Manufacturer-distributor" means a person engaged in the manufacture, compounding, combining, production, or distribution of explosives.

(7) "Dealer" means a person engaged in the wholesale or retail business of buying and selling explosives.

(8) "User" means a dealer or manufacturer-distributor who uses an explosive as an ultimate consumer or a person who, as an ultimate consumer of an explosive, purchases such explosive from a dealer or manufacturer-distributor.

(9) "Blaster" means a person employed by a user who detonates or otherwise effects the explosion of an explosive.

(10) "Sale" and its various forms includes delivery of an explosive with or without consideration.

(11) "Highway" means any public highway in this state, including public streets, alleys, and other thoroughfares, by whatever name, in any municipality.

(12) "Manufacturer's mark" means the mark placed on each carton of and each individual piece of explosive by the manufacturer to identify the manufacturer and the location, date, and shift of manufacture.

(13) "Two-component explosives" means any two inert components which, when mixed, become capable of detonation by a No. 6 blasting cap, and shall be classified as a Class "A" explosive when so mixed.

(14) "Division" means the Division of State Fire Marshal of the Department of Insurance.

(15) "Purchase" and its various forms means acquisition of any explosive by a person with or without consideration.

History.—s. 1, ch. 29944, 1955; ss. 1, 2, ch. 59-83; ss. 13, 35, ch. 69-106; s. 205, ch. 71-377; s. 2, ch. 77-84.

552.091 License or permit required of manufacturer-distributor, dealer, user, or blaster of explosives.—

(1) It shall be unlawful for any person to engage in the business of a manufacturer-distributor or to acquire, sell, possess, store, or engage in the use of explosives in this state, except in conformity with the provisions of this chapter.

(2) Each manufacturer-distributor, dealer, user, or blaster must be possessed of a valid and subsisting license or permit issued by the division, except that if a manufacturer-distributor makes sales to users, such manufacturer shall not be required to obtain an additional license as a dealer.

(3) In the case of multiple locations for storage of

explosives, each manufacturer-distributor, dealer, or user maintaining more than one permanent storage magazine location shall possess an additional license, as herein set forth, for each such location.

(4) The manufacturer-distributor of two-component explosives is required to purchase a manufacturer-distributor explosive license. Dealers of two-component explosives are required to purchase a dealer's explosive license. A user's explosive license is required of any person to purchase, mix, or use two-component explosives from a dealer or manufacturer-distributor. A blaster's explosive permit is required of any person employed by a user to mix, detonate, or otherwise effect the explosion of two-component explosives.

(5) Licenses, permits, and fees therefor are required for each license year for the following:

Manufacturer-distributor license	$500
Dealer license	250
User license	50
Blaster permit	25

(6) Said licenses and permits shall be issued by the division for each license year beginning October 1 and expiring the following September 30.

History.—s. 2, ch. 29944, 1955; s. 1, ch. 57-184; s. 3, ch. 59-83; s. 1, ch. 65-59; ss. 13, 35, ch. 69-106; s. 3, ch. 77-84.

552.092 Forms for applications for licenses and permits.—

(1) The forms for applications for explosives licenses and permits shall be prescribed by the division.

(2) Each application for a license required under this chapter shall be filed in writing with the division. Each application for a license shall require, as a minimum, the full name, date of birth, place of birth, social security number, physical description, residence address, and business address of the applicant; the types of explosives to be manufactured, distributed, or used by the applicant; and the purpose for which the license is sought in relation to explosives. Each application shall be accompanied by an accurate and current photograph of the applicant and a complete set of fingerprints of the applicant taken by an authorized law enforcement officer, unless the applicant has possessed a valid license during the prior license year and such license has not lapsed or been suspended or revoked. If fingerprints are required, the set of fingerprints shall be submitted by the division to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. If the application does not require a set of fingerprints, the division shall submit the name of the applicant to the Department of Law Enforcement for processing. Each application shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant or, if the applicant is a corporation, the application shall be sworn to by an officer thereof. The officer applying on behalf of a corporation shall provide all the information and data, and meet all other requirements, which are required for a natural person.

(3) Each application for a permit required under this chapter shall be filed in writing with the division. Each application for a permit shall require, as a minimum, the full name, date of birth, place of birth, social security number, physical description, and residence address of the applicant and the name and the license number of the user employing such blaster. Each application shall be accompanied by an accurate and current photograph of the applicant and a complete set of fingerprints of the applicant taken by an authorized law enforcement officer, unless the applicant has possessed a valid permit during the prior permit year and such permit has not lapsed or been suspended or revoked. If fingerprints are required, the set of fingerprints shall be submitted by the division to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. If the application does not require a set of fingerprints, the division shall submit the name of the applicant to the Department of Law Enforcement for processing. Each application shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant.

(4) The division may require any applicant to furnish such other information or data not required by this section if such information or data is deemed necessary.

History.—s. 4, ch. 77-84; s. 20, ch. 79-8; s. 1, ch. 79-174.

552.093 Competency examinations required; exceptions.—

(1) No license or permit shall be issued by the division until the applicant for such license or permit has satisfactorily passed an examination proving to the satisfaction of the division that he is thoroughly competent and familiar with explosives and the operation to be performed.

(2) Any licensee or permittee who possesses, on October 1, 1977, a valid license or permit for the period 1976-1977 shall, upon proper application, be issued a license or permit without being required to submit to an examination of competency. Any licensee or permittee who allows his license to lapse or whose license or permit is suspended or revoked shall be required to submit to and satisfactorily pass an examination prior to issuance of a license or permit.

(3) Each applicant required to submit to a competency examination shall be required to pay a filing fee of $20 upon application for the required license or permit. Such fee shall not be refundable in the event the applicant does not appear for examination or does not successfully pass the examination.

(4) The division shall formulate the competency examinations and shall establish the minimum passing grade for such examinations.

History.—s. 5, ch. 77-84.

552.094 Issuance of licenses, permits; prohibitions.—

(1) Each license issued by the division shall set forth, as a minimum, the full name, date of birth, and physical description of the licensee; the purpose for which the license is to be used in relation to explosives; the type of explosives to be manufactured, distributed, or used; a license number; and any restrictions placed upon the licensee by the division.

(2) Each permit issued by the division shall set forth, as a minimum, the full name, date of birth,

and physical description of the permittee; the purpose for which the permit is to be used in relation to explosives; a permit number; the name and license number of the user employing such blaster; and any restrictions placed upon the permittee by the division.

(3) A blaster's permit shall be valid solely for use by the holder thereof in the course of his employment by the licensed user named therein.

(4) The division may, in its discretion, include other information and data in the license or permit.

(5) No license or permit shall be issued, renewed, or be allowed to remain in effect for any natural person:

(a) Under 18 years of age.

(b) Who has been convicted of a felony and has not been pardoned or had his civil rights restored.

(c) Who has been adjudicated mentally incompetent and has not had his civil rights restored.

(6) No license or permit shall be issued to any person by the division pursuant to an application unless the division shall determine from the information set forth in the application that the purpose for which the applicant seeks the permit or license falls within the purview of this chapter and that such purpose is not violative of any other laws of the state.

(7) It is unlawful for any person knowingly to withhold information or present to the division any false, fictitious, or misrepresented application, identification, document, information, or data intended or likely to deceive the division for the purpose of obtaining a license or permit.

History.—s. 6, ch. 77-84.

552.101 Possession without license prohibited; exceptions.—It is unlawful for any person to possess an explosive unless he is the holder of a current, valid license or permit, as above provided, and possesses such explosive for the purpose covered by the license or permit he holds. However, there is excepted from this provision common, contract, and private carriers, as described in s. 552.12, possessed of an explosive in connection with transportation of the same in the ordinary course of their business.

History.—s. 3, ch. 29944, 1955; s. 4, ch. 59-83; s. 7, ch. 77-84.

552.111 Maintenance of records and sales of explosives by manufacturer-distributors and dealers; inspections.—

(1) It is unlawful for any licensed manufacturer-distributor to sell or distribute explosives to any person except a person presenting a current, valid dealer's explosive license or user's explosive license.

(2) It is unlawful for any licensed dealer to sell or distribute explosives to any person except a person presenting a current, valid user of explosives license or dealer's explosive license.

(3) Each sale shall be evidenced by an invoice or sales ticket, which shall bear the name, address, and explosives license number of the purchaser, the date of sale, quantity sold, type of explosive sold, manufacturer's mark, and use for which the explosive is purchased. All original invoices or sales tickets shall be retained by the manufacturer-distributor or dealer and a copy thereof provided to the purchaser.

(4) Each manufacturer-distributor and each dealer shall keep an accurate and current written account of all inventories and sales of explosives. Such records shall be maintained by the manufacturer-distributor or dealer for a period of 5 years.

(5) Such records and inventories shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(6) It is unlawful for any person knowingly to withhold information or to make any false or fictitious entry or misrepresentation upon any sales invoice, sales ticket, or account of inventories.

History.—s. 4, ch. 29944, 1955; s. 5, ch. 59-83; ss. 13, 35, ch. 69-106; s. 8, ch. 77-84.

552.112 Maintenance of records by users; inspection.—

(1) It is unlawful for any user of explosives to purchase, store, or use explosives without maintaining an accurate and current written inventory of all explosives purchased, possessed, stored, or used.

(2) Such records shall include, but not be limited to, invoices or sales tickets from purchases, location of blasting sites, dates and times of firing, the amount of explosives used for each blast or delay series, the name of the person in charge of loading and firing, and the license or permit number and name of the person making such entry into the records. Such records shall be maintained by users for a period of 5 years.

(3) Such records shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(4) It is unlawful for any person knowingly to withhold information or make any false or fictitious entry or misrepresentation upon any such records.

History.—s. 6, ch. 59-83; ss. 13, 35, ch. 69-106; s. 9, ch. 77-84.

552.113 Reports of thefts, illegal use or illegal possession.—

(1) Any sheriff, police department, or peace officer of this state shall give immediate notice to the division of any theft, illegal use, or illegal possession of explosives within the purview of this chapter, coming to his attention, and shall forward a copy of his final written report to the division.

(2) It is unlawful for any holder of an explosives license or permit who incurs a loss, unexplained shortage, or theft of explosives, or who has knowledge of a theft or loss of explosives, to fail to report such loss or unexplained shortage or theft, within 12 hours after discovery thereof, to the nearest county sheriff or police chief and the division. Such report shall include the amount and type of explosives missing, the manufacturer's mark, if available, the approximate time of occurrence, if known, and any other information such licensee or permittee may possess. Any other person who has knowledge or information concerning a theft shall immediately inform the nearest county sheriff or police chief of such occurrence.

(3) The division shall investigate, or be certain that a qualified law enforcement agency investigates, the cause and circumstances of each theft, illegal use, or illegal possession of explosives which

occurs within the state. A report of each such investigation shall be made and maintained by the division.
History.—s. 6, ch. 59-83; ss. 13, 35, ch. 69-106; s. 10, ch. 77-84.

552.114 Sale, labeling, and disposition of explosives; unlawful possession.—No person shall sell, accept, or deliver any explosives unless each carton and each individual piece of such explosive is plainly labeled, stamped, or marked with the manufacturer's mark. It shall only be necessary for such identification marks to be on the containers used for packaging such explosives for explosive materials of such small size as not to be suitable for marking on the individual item. It is unlawful for any person to use or have in his possession any explosives not marked as required in this section. All unmarked explosives found in the possession of any person shall be confiscated and disposed of in accordance with the provisions of this chapter.
History.—s. 11, ch. 77-84.

552.12 Transportation of explosives without license prohibited; exceptions.—No person shall transport any explosive into this state or within the boundaries of this state over the highways, on navigable waters or by air, unless such person is possessed of a license or permit; provided, there is excepted from the effects of this sentence common, contract and private carriers, as mentioned in the next succeeding sentence. Common carriers by air, highway, railroad or water transporting explosives into this state, or within the boundaries of this state (including ocean-plying vessels loading or unloading explosives in Florida ports), and contract or private carriers by motor vehicle transporting explosives on highways into this state, or within the boundaries of this state, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission or department, shall be fully subject to the provisions of this chapter; provided, that in any instance where the Federal Government, acting through the Interstate Commerce Commission or other federal officer, agency, bureau, commission or department, by virtue of federal laws or rules or regulations promulgated pursuant thereto, has preempted the field of regulation in relation to any activity of any such common, contract or private carrier sought to be regulated by this chapter, such activity of such a carrier is excepted from the provisions of this chapter.
History.—s. 5, ch. 29944, 1955; s. 7, ch. 59-83.

552.13 Promulgation of regulations by the Division of State Fire Marshal.—The division shall make, promulgate, and enforce regulations setting forth minimum general standards covering manufacture, transportation (including loading and unloading), use, sale, handling, and storage of explosives. Said regulations shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons possessing, handling, and using such materials, and shall be in substantial conformity with generally accepted standards of safety concerning such subject matters. Such regulations shall be adopted by the division pursuant to the provisions of chapter 120.
History.—s. 6, ch. 29944, 1955; s. 8, ch. 59-83; ss. 13, 35, ch. 69-106; s. 1, ch. 70-299; s. 12, ch. 77-84.

552.151 Procedure for cease and desist orders; administrative fine.—
(1) Whenever the division shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, it shall proceed to determine the matter.
(2) If the division shall determine that the acts complained of are in violation of the provisions of this law, or the rules and regulations adopted and promulgated in pursuance thereto, it shall issue to the person charged with the violation an order requiring such person to cease and desist from such violation or imposing an administrative fine, or both.
History.—s. 9, ch. 65-59; ss. 13, 35, ch. 69-106; s. 13, ch. 77-84; s. 21, ch. 78-95.

552.161 Administrative fines.—
(1) If any person violates any provision of this chapter or any rule or regulation adopted pursuant thereto, or violates a cease and desist order, the division may impose an administrative fine, not to exceed $1,000 for each offense, or suspend or revoke the license or permit issued to such person. The division may allow the licensee or permittee a reasonable period, not to exceed 30 days, within which to pay to the division the amount of the penalty so imposed. If the licensee or permittee fails to pay the penalty in its entirety to the division at its office in Tallahassee within the period so allowed, the licenses or permits of the licensee or permittee shall stand revoked upon expiration of such period.
(2) All such fines, monetary penalties, and costs received by the division in connection with this chapter shall be deposited in the Insurance Commissioner's Regulatory Trust Fund.
History.—s. 10, ch. 65-59; ss. 13, 35, ch. 69-106; s. 14, ch. 77-84; s. 21, ch. 78-95.

552.171 Suspension or revocation of license or permit.—
(1) The violation, by any person possessed of a license or permit as provided in s. 552.091, of any provision of this chapter or any rule or regulation adopted pursuant thereto or of a cease and desist order shall be cause for revocation or suspension of such license or permit by the division after it shall determine said person guilty of such violation.
(2) If the division should find said violation proved, it shall enter its order suspending or revoking the license or permit of the person charged. An order of suspension shall state the period of time of such suspension, which period shall not be in excess of 1 year from the date of such order. An order of revocation may be entered for a period of not exceeding 2 years, and such order shall effect the revocation of the license or permit then held by said person, and during such period of time no license or permit shall be issued to said person. If during the period between the beginning of proceedings and entry of an order of suspension or revocation by the division

a new license or permit has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license or permit held by such person.

(3) The provisions of this section are cumulative and shall not affect the penalty and injunctive provisions of ss. 552.22 and 552.23.

History.—s. 11, ch. 65-59; ss. 13, 35, ch. 69-106; s. 15, ch. 77-84; s. 21, ch. 78-95.

552.181 Conduct of hearings.—All hearings shall be conducted in accordance with the provisions of chapter 120.

History.—s. 12, ch. 65-59; ss. 13, 35, ch. 69-106; s. 16, ch. 77-84.

552.20 Review of order of the division.—All review of orders of the division shall be in accordance with the provisions of chapter 120.

History.—s. 14, ch. 65-59; ss. 13, 35, ch. 69-106; s. 1, ch. 69-267; s. 17, ch. 77-84.

552.21 Confiscation and disposal of confiscated explosives.—

(1) Whenever the division shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, the division may, without further process of law, confiscate the explosives in question and cause them to be stored in a safe manner, or, if any explosives are deemed by the division to be in such a state or condition as to constitute a hazard to life or property, the division may dispose of such explosives without further process of law. The division is authorized to dispose of any abandoned explosives that it deems to be hazardous to life or property.

(2) If the person so charged is found guilty of violating the provisions of this chapter or any rule or regulation adopted pursuant thereto with regard to the possession, handling, or storage of explosives, the division is authorized to dispose of the confiscated materials in such a way as it shall deem equitable.

(3) Costs incurred in the confiscation and disposal of such explosives shall be paid from the Insurance Commissioner's Regulatory Trust Fund.

History.—s. 15, ch. 65-59; ss. 13, 35, ch. 69-106; s. 18, ch. 77-84; s. 21, ch. 78-95.

552.211 Explosives; general.—

(1) All explosive materials shall be stored in magazines which are in conformity with the rules or regulations of the division, except when they are in the process of manufacture, being used, or being loaded or unloaded into or from transportation vehicles, or while in the course of transportation.

(2) Use of explosives, except by written consent of the division, shall be conducted only during daylight hours.

(3) The division may restrict the quantity and use of explosives at any location within the state when the division deems the use of such explosives is likely to cause injury to life or property.

History.—s. 19, ch. 77-84.

552.212 Inspection of buildings, vehicles, vessels, aircraft, equipment, or premises.—The division may, when it deems necessary, inspect, at any reasonable hour, any building, storage facility, vehicle, vessel, aircraft, equipment, or premises where explosive materials are stored, kept, transported, used, manufactured, distributed, or sold, to determine if there is any violation of this chapter or of any rule or regulation of the division.

History.—s. 20, ch. 77-84.

552.22 Penalties.—

(1) Any person who manufactures, purchases, transports, keeps, stores, possesses, distributes, sells, or uses any explosive with the intent to harm life, limb, or property, is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Manufacturing, purchasing, possessing, distributing, or selling explosives under circumstances contrary to the provisions of this chapter or such regulations as are adopted pursuant thereto shall be prima facie evidence of an intent to use the same for destruction of life, limb, or property.

(2) Any person who possesses any explosive materials, knowing or having reasonable cause to believe that such explosive materials were stolen, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who knowingly withholds information or presents to the division any false, fictitious, or misrepresented application, identification, document, information, statement, or data, intended or likely to deceive, for the purpose of obtaining an explosives license or permit, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly withholds information or makes any false or fictitious entry or misrepresentation upon any records required by s. 552.111 or s. 552.112 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who is the holder of an explosives license or permit and who fails to report the loss, theft, or unexplained shortage of any explosive materials as required by s. 552.113 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any person who violates any order, rule, or regulation of the division, an order to cease and desist, or an order to correct conditions issued pursuant to this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Any person who is the holder of an explosives license or permit and who abandons any explosive material is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) The license or permit of any person convicted of violating subsection (1) or (2), is automatically and permanently revoked upon such conviction.

(9) The license or permit of any person convicted of violating subsection (3), (4), (5), (6), or (7) is automatically revoked upon such conviction, and the division shall not issue a license or permit to such person for 2 years from the date of such conviction.

History.—s. 7, ch. 29944, 1955; s. 9, ch. 59-83; s. 2, ch. 65-59; s. 548, ch. 71-136; s. 21, ch. 77-84; s. 224, ch. 79-400.

Note.—Former s. 552.14.

552.23 Injunction.—In addition to the penalties and other enforcement provisions of this chapter, in the event any person engaged in any of the activities covered by this chapter shall violate any provision of this chapter or any rule or regulation adopted or promulgated in pursuance thereto, the division is authorized to resort to proceedings for injunction in the circuit court of the county where such person shall reside or have his or its principal place of business, and therein apply for such temporary and permanent orders as the division may deem necessary to restrain such person from engaging in any such activities, until such person shall have complied with the provisions of this chapter and such rules and regulations.

History.—s. 16, ch. 65-59; ss. 13, 35, ch. 69-106; s. 22, ch. 77-84.

552.24 Exceptions.—Nothing contained in this chapter shall apply to the regular Military or Naval Forces of the United States; or to the duly organized military force of any state or territory thereof; or to police or fire departments in this state, provided they are acting within their respective official capacities and in the performance of their duties.

History.—s. 9, ch. 29944, 1955; s. 4, ch. 65-59.
Note.—Former s. 552.16.

552.241 Limited exemptions.—The licensing, permitting, and storage requirements of this chapter shall not apply to:

(1) Dealers who purchase, sell, possess, or transport:

(a) Smokeless propellant or commercially manufactured sporting grades of black powder in quantities not exceeding 150 pounds, provided such dealer holds a valid federal firearms dealer's license.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational, and cultural purposes, provided such dealer holds a valid federal firearms dealer's license.

(2) Users who are natural persons and who purchase, possess, or transport:

(a) Smokeless propellant powder in quantities not to exceed 150 pounds, or commercially manufactured sporting grades of black powder not to exceed 25 pounds, provided such powder is for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers, provided such small arms ammunition primers are for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

History.—s. 1, ch. 77-145; s. 23, ch. 77-84.

552.25 Municipal ordinances, rules, and regulations.—Nothing contained in this chapter shall affect any existing ordinance, rule or regulation pertaining to explosives of any incorporated city or town in this state not less restrictive than the provisions of this chapter and regulations promulgated pursuant thereto, or affect, modify or limit the power of such incorporated cities or towns to make ordinances, rules or regulations hereunder pertaining to explosives within their respective corporate limits.

History.—s. 10, ch. 29944, 1955; s. 5, ch. 65-59.
Note.—Former s. 552.17.

552.26 Administration of chapter; personnel; fees to be deposited in Insurance Commissioner's Regulatory Trust Fund.—

(1) The division is authorized to employ such persons as it may deem qualified and necessary, and incur such other expenses as may be required, in connection with the administration of this chapter.

(2) All fees collected for licenses and permits and competency examination filing fees required by this chapter shall be deposited in the Insurance Commissioner's Regulatory Trust Fund and are hereby appropriated for the use of the division in the administration of this chapter.

History.—s. 11, ch. 29944, 1955; s. 6, ch. 65-59; ss. 13, 35, ch. 69-106; s. 24, ch. 77-84.
Note.—Former s. 552.18.

552.27 Construction of chapter.—The provisions of this chapter are cumulative and shall not be construed as repealing or affecting any powers, duties, or authority of the division under any other law of this state, except that with respect to the regulation of explosives as herein provided, in instances in which the provisions of this chapter may conflict with any other such law, the provisions of this chapter shall control.

History.—s. 12, ch. 29944, 1955; s. 7, ch. 65-59; ss. 13, 35, ch. 69-106; s. 25, ch. 77-84.
Note.—Former s. 552.19.

CHAPTER 553

BUILDING CONSTRUCTION STANDARDS

PART I PLUMBING (ss. 553.01-553.13)

PART II ELECTRICAL CODE (ss. 553.15-553.23)

PART III GLASS (ss. 553.24-553.28)

PART IV FACTORY-BUILT HOUSING (ss. 553.35-553.42)

PART V ACCESSIBILITY BY HANDICAPPED PERSONS (ss. 553.45-553.49)

PART VI STATE MINIMUM BUILDING CODES (ss. 553.70-553.89)

PART VII THERMAL EFFICIENCY STANDARDS (ss. 553.900-553.908)

PART I

PLUMBING

553.01 Short title.—Part I of this chapter shall be known by the title of "Florida Plumbing Control Act of 1951."

History.—s. 1, ch. 26904, 1951.

553.02 Purpose.—The purpose of this part is to promote the public health and safety in this state by the regulation of plumbing contractors and plumbing.

History.—s. 1, ch. 26904, 1951.

553.03 Definitions.—For the purpose of this part, the following terms, when used in this part or the rules and regulations, or orders made pursuant thereto, shall be construed, respectively to mean:

(1) A "plumbing contractor" is any person, except an employee of a licensed, bonded plumbing contractor, who is engaged in or working at the business of plumbing in the state who has furnished the necessary bond that he will do all plumbing in this state in compliance with the minimum requirements of the State Plumbing Code and who obtains a state and county occupational license and any other license, when required, to engage in or work at the business of plumbing.

(2) "Plumbing" is the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping fixtures, appliances, and appurtenances in connection with any of the following: Sanitary drainage or storm drainage facilities, the venting system, and the public or private water-supply systems, within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of the storm water or sewerage and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

(3) "Plumbing fixtures" are installed receptacles, devices, or appliances which are supplied with water or which receive or discharge liquids or other liquid-borne water, with or without discharge, into the drainage system with which they may be directly or indirectly connected.

(4) "Minor maintenance" is those repairs involving only the working parts of a faucet or valve, the clearance of stoppage, repairing of leaks, or replacement of defective faucets or valves.

History.—s. 2, ch. 26904, 1951.

553.04 Bond of plumbing contractor; requisites; form.—

(1) Any person, except an employee of a licensed, bonded plumbing contractor, who desires to engage in or work at the business of plumbing in counties in the state that have, through their boards of county commissioners, elected to place said counties under the operation of this part, shall, before engaging or working at the business of plumbing in said counties, give bond in the sum of $5,000, payable to the governor of the state and his successors in office with two or more good and sufficient sureties to be approved by the board of county commissioners of the county in which the said person intends to engage or work as a plumbing contractor and to be filed with the clerk of the circuit court of the county in which the

said person intends to so engage or work, which said bond shall be conditioned upon the said person complying with the minimum requirements of the State Plumbing Code in regards to all plumbing done by said person in this state. Upon said plumbing contractor obtaining said bond and filing said bond with the clerk of circuit court as aforesaid, the said plumbing contractor is thereby entitled to have issued to him, by the said clerk of circuit court, a certificate to the effect that said bond has been filed by said plumbing contractor in said county. Said certificate shall be accepted, in lieu of bond, by other counties in which said plumbing contractor may desire to work.

(2) The requisite of two sureties and justification of same shall not apply where surety is by a solvent surety company authorized to do business in this state.

(3) The form of said bond shall be substantially as follows:

(a) Know all men by these presents that we, ..., (hereinafter called the principal) and ....., a corporation duly qualified and authorized under the laws of the State of Florida to act as surety on bonds (hereinafter called the Surety) are held and firmly bound unto ....., Governor of the State of Florida, and his successors in office in the penal sum of $5,000, lawful money of the United States of America, the true payment whereof well and truly to be made we do bind ourselves, our respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this bond.

(b) The condition of this bond is that if the above bonded principal, the said ....., shall protect the State of Florida against all loss or damage occasioned by the negligence of the said principal herein in failing to properly execute and protect all plumbing done by said principal or the employees of said principal or under the direction and supervision of said principal and from all loss or damage occasioned by or arising in any manner from any such work done by said principal or the employees of said principal or under the direction or supervision of said principal which is not caused by the negligence of the State of Florida or its agents, or employees, or by the negligence of the agents or employees of the county in which such plumbing is performed or by the negligence of the employees of the city in which such plumbing is performed, and further will keep and observe all laws of the State of Florida relating in any way to plumbing and all local ordinances where such plumbing is done, which relate in any way to plumbing and shall do all the plumbing in compliance with the minimum requirements of the State Plumbing Code and shall further without additional cost to the person for whom the plumbing is done, remedy any defects in said work due to faulty material furnished or used by said principal and shall further reconstruct and repair any such defective plumbing work or material to the satisfaction of the county plumbing inspector of the county where such plumbing is done or to the satisfaction of the city plumbing inspector, where such plumbing is done in cities of 7,500 or more population or to the satisfaction of the city or district plumbing inspector, where such plumbing is done in cities and towns of less than 7,500 population or legislatively created governing, service, or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, at any time within 1 year after the construction, alteration, or installation thereof by said principal, or under his direction or supervision and within 48 hours after notice from the county plumbing inspector or the city plumbing inspector or the district plumbing inspector to reconstruct or repair same, then this obligation shall become null and void; else to remain in full force and effect.

(c) Any failure or default on the part of the principal in remedying any defects in plumbing due to faulty workmanship and incorrect construction or due to faulty material furnished or used by principal shall give the person for whom such work is performed a direct right of action against the principal and surety under this obligation; provided, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this bond, after 1 year from the date of the final completion of such plumbing by the principal for such third person.

(d) The premium anniversary date of this bond shall be on October 1 of each year, the first anniversary being October 1, 1951.

Signed, sealed, and delivered
in the presence of:

.....(Principal).....
(SEAL)

.....
.....
As to the Principal

..... (SEAL)

.....
.....
As to the Surety

By .....(Attorney in fact).....

Approved:

.....
Clerk of Board of County
Commissioners of ..... County.

History.—s. 3, ch. 26904, 1951; s. 1, ch. 28181, 1953; s. 1, ch. 28252, 1953.

553.041 Exemptions.—No person desiring to engage in or work as a plumbing contractor in the state in any county in which the board of county commissioners shall not have employed a plumbing inspector as provided in s. 553.05 shall be required to give bond as required by the provisions of s. 553.04 before engaging in or working as a plumbing contractor; anything in the provisions of this part to the contrary notwithstanding.

History.—s. 1, ch. 28038, 1953.

553.05 County plumbing inspectors; employment, qualifications, duties; exemption of certain municipalities and districts.—

(1) Each county in this state, acting through its board of county commissioners may, at the discretion of said board of county commissioners, employ one or more plumbing inspectors to inspect all plumbing installed within such county, except within the corporate limits of cities of 7,500 or more population. Each said plumbing inspector as aforesaid must be a practical plumber of not less than 10 years' experience and shall not be connected with

the plumbing business in any manner after such employment. The said plumbing inspector shall be under the direct supervision of the board of county commissioners, and his salary shall be determined by said board. In counties having county health units, it would be desirable to have inspector work in cooperation with such units. The said plumbing inspector shall be qualified to perform duties in matters pertaining to the gathering of evidence in any violation of the provisions of this part, swearing out warrants, appearing before courts in prosecution, and any other matters pertaining to the enforcement of the provisions of this part, but said inspector shall not be entitled to receive any witness or other fees out of the fine and forfeiture fund of any county on account of his testifying as a witness or any other services rendered by him under this part. It shall be the duty of the plumbing inspector to inspect plumbing in his county with respect to mode of installation, materials used, workmanship employed, State Plumbing Code specifications met, and testing used, all to comply with and conform with the minimum requirements of the State Plumbing Code and the laws of the state in regard to plumbing. Each said county, acting through its board of county commissioners, may exempt from county plumbing inspection cities and towns of less than 7,500 population and legislatively created governing, service, or sanitary districts, which said cities and towns and districts have in existence or which enact plumbing code ordinances meeting or surpassing the minimum requirements for plumbing as set out in State Plumbing Code and which hire only plumbing inspectors who meet the minimum requirements and qualifications as hereinabove set out for county plumbing inspectors and which said cities and towns and districts conduct inspections complying with the minimum state requirements.

(2) Two or more counties may jointly hire one or more plumbing inspectors to act as inspectors or inspector for such counties jointly hiring such inspector or inspectors.

(3) It shall be the duty of the plumbing inspectors in cities of 7,500 or more population and also in cities and towns of less than 7,500 population and legislatively created governing, service, or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, to inspect plumbing in their respective corporate limits with respect to mode of installation, materials used, workmanship employed, State Plumbing Code specifications met, and testing used, all to comply with the minimum requirements of the State Plumbing Code and the laws of the state and the ordinances of the particular municipality or district in regard to plumbing. Cities of 7,500 or more population and also cities of less than 7,500 population and legislatively created governing, service, or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners are hereby authorized to use their own inspection system, provided the said cities and towns and districts comply with the minimum requirements of the State Plumbing Code. Nothing herein shall prohibit such cities and towns and legislatively created governing, service or sanitary districts from enacting more stringent requirements in regard to plumbing and inspection than are set out in this part.

(4) If the board of county commissioners of any county so desires it may designate a qualified city or governing, service, or sanitary district plumbing inspector as its county plumbing inspector.

History.—ss. 5, 7, ch. 26904, 1951; s. 1, ch. 28181, 1953.

553.06 State Plumbing Code adopted.—Chapter VIII of the Florida State Sanitary Code of the Department of Health and Rehabilitative Services, adopted in accordance with chapter 381, is hereby adopted as the State Plumbing Code, and all installations, repairs, and alterations to plumbing shall from October 1, 1951, be performed in accordance with its provisions. At least three copies of said Chapter VIII of the Florida State Sanitary Code shall be kept on file at the board of county commissioners in each said county of the state and shall be marked with the words "County of....., official copy."

History.—s. 6, ch. 26904, 1951; ss. 19, 35, ch. 69-106; s. 451, ch. 77-147.

553.07 Plumbing permits; inspection fee, amount, disposition; exception.—The board of county commissioners of each county, except within the corporate limits of cities of 7,500 or more population and also except within the corporate limits of cities and towns of less than 7,500 population and legislatively created governing, service, or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, may charge and collect a reasonable fee for the cost of inspection, which fee shall not be less than $1.50 for each plumbing permit issued for each building and $1 for each fixture up to and including the first eight fixtures and 50 cents for each fixture thereafter installed in connection with such plumbing work in such county. The said permit shall be issued in triplicate, the original going to the plumbing contractor, one copy to be retained by the issuing officer, who should be the plumbing inspector in the county, and one copy to be filed in the records of the county depositor. All such fees shall be paid at the time of the application for a permit to do such work and prior to the installation of any plumbing material, and all such fees collected under this part shall be deposited by the plumbing inspector in the county depository and shall be used for the inspection of plumbing and the enforcement of this part in such county.

History.—s. 7, ch. 26904, 1951; s. 1, ch. 28181, 1953.

553.08 Inspectors for municipalities, service or sanitary districts; permits; inspection fee, amount.—Cities of 7,500 or more population and also cities and towns of less than 7,500 population and legislatively created governing, service, or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, shall employ one or more plumbing inspectors to inspect plumbing within the corporate limits of said city or district, and for such inspection service shall charge and collect a reasonable fee for the cost of such inspections, which fee shall not be less than $1.50 for each plumbing installation permit issued for each building and $1 for each fixture

up to and including the first eight fixtures and 50 cents for each fixture thereafter installed in connection with such plumbing to be performed within the corporate limits of such cities or districts; all such fees to be paid at the time of application for a permit to do such work and prior to the installation of any plumbing material. All fees collected under this part by the cities and districts shall be used for the inspection of plumbing and the enforcement of this part in such cities and districts.

History.—s. 8, ch. 26904, 1951; s. 1, ch. 28181, 1953.

553.09 Advisory council for uniform interpretation of plumbing code; members, terms, etc.—As an aid to uniform interpretation of the State Plumbing Code a voluntary advisory council may be organized immediately after October 1, 1951. This advisory council shall be composed of three members, one of whom shall be selected by the plumbing inspectors in this state, one of whom shall be selected by the plumbing contractors in this state, and one of whom shall be selected by the Division of Health. The members of the said council shall serve terms in the following manner: The first person selected by the said Division of Health shall serve on said council for a period of 3 years; the first person selected by the said plumbing inspectors shall serve on said council for a period of 2 years; and the first person selected by said plumbing contractors shall serve on said council for a period of 1 year; all persons who shall thereafter serve on said council shall serve for a period of 3 years. The members of said council shall serve without pay unless their respective organizations which selected them shall see fit to reimburse them for their time and expenses incurred while serving on said council. The said council shall give its opinion and advice to the said plumbing inspectors of this state on the construction and interpretation of the State Plumbing Code. The construction and interpretation of the said State Plumbing Code as given by the said council shall be given great weight by the said plumbing inspectors of this state.

History.—s. 11, ch. 26904, 1951; ss. 19, 35, ch. 69-106.

553.10 Penalty for violations.—Any person violating any provisions of this part shall, upon conviction of each violation thereof, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 12, ch. 26904, 1951; s. 549, ch. 71-136.

553.11 Construction, limitation of this part.—

(1) Nothing herein contained shall limit or repeal the authority of the Department of Health and Rehabilitative Services as granted by law; however, this part shall not affect laws or parts of laws establishing plumbing codes nor shall it be applicable in counties where plumbing codes have been established by local or special laws or general bills of local application at the option of county commissioners of said counties.

(2) The provisions of this part shall not apply to minor maintenance or repairs of plumbing fixtures by persons, firms, or corporations upon their own property provided the minimum requirements of the State Plumbing Code are observed.

(3) The provisions of this part shall not be construed as being in conflict with chapter 469, relating to plumbers.

(4) Nothing herein contained shall prohibit any bona fide owner from personally installing plumbing in his own residence.

History.—ss. 4, 9, 10, 14, ch. 26904, 1951; ss. 19, 35, ch. 69-106; s. 11, ch. 79-12.

553.12 Counties excepted from this part.—The provisions of this part shall not apply to:

(1) Any county having a population of less than 26,000 according to the last official census.

(2) Any county having a population according to the last official census of not less than 50,000 nor more than 52,000.

(3) Counties having a population of more than 70,000 and less than 74,200 according to the latest official decennial census.

(4) Counties having a population according to the last official census of not less than 80,000 and not more than 90,000.

History.—ss. 2, 5, 14, ch. 26904, 1951; s. 1, ch. 29976, 1955; s. 1, ch. 61-44; s. 1, ch. 69-320.

cf.—s. 11.031 Official census.

553.13 Counties exempt from provisions of chapter 28181, Laws of Florida, 1953.—The provisions of chapter 28181, acts of 1953 shall not apply to any county which is excepted from the provisions of this part in s. 553.12. The provisions of chapter 28181, acts of 1953 shall not apply to the Counties of Madison, Taylor, Jefferson, Alachua, Lake, Bradford, Union, Levy, Dixie, Gilchrist, Columbia, Baker, Clay, Gulf, Calhoun, Washington, Wakulla, Franklin, Liberty, Santa Rosa, Walton, Holmes, St. Johns, Flagler, Hardee, Glades, DeSoto, Highlands, Sumter, Citrus, Hernando, Hamilton, Marion, Suwannee, and Lafayette.

History.—s. 2, ch. 28181, 1953; s. 1, ch. 57-1993; s. 2, ch. 69-320.

PART II

ELECTRICAL CODE

553.15 Short title.—Part II is entitled the "Florida Electrical Code" and may be so cited. Hereafter in part II of this chapter it is referred to as "this code."

History.—s. 1, ch. 70-332.

553.16 Purpose.—The purpose of this electrical code is to provide certain uniform minimum standards, regulations, and requirements for safe and stable design, methods of construction, and uses of ma-

terials in electrical wiring, apparatus, or equipment used for light, heat, or power which will afford reasonable protection for public safety, health, and general welfare.

History.—s. 2, ch. 70-332.

553.17 Application.—This code shall apply statewide in both incorporated and unincorporated areas to all new buildings and structures, both private and public, and to all alterations in any new or existing building or structure, but shall not apply to nonresidential farm buildings.

History.—s. 3, ch. 70-332.

553.18 Scope.—

(1) The standards prescribed by this code constitute minimum electrical requirements for the protection of the health and the safety of the public.

(2) County, municipal, improvement district, or state governing bodies may adopt and enforce additional or more stringent standards or administrative procedures and requirements than those prescribed by this code, including but not limited to fees if the standards or administrative procedures and requirements are in conformity with standards set forth in s. 553.19.

(3) Nothing in this code shall be construed as repealing or superseding provisions of electrical codes legally in use by any municipality or county, when such provisions are not inferior to those set forth in this code.

History.—s. 4, ch. 70-332.

553.19 Adoption of electrical standards.—For the purpose of establishing minimum electrical standards in this state, the following standards are adopted:

(1) "National Electrical Code 1978," NFPA No. 70-1978.

(2) Underwriters' Laboratories, Inc., "Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps," UL 57-1972 and UL 153-1976.

(3) Underwriters' Laboratories, Inc., "Standard for Electric Signs," UL 48-1976.

(4) The provisions of the following codes, which provisions prescribe minimum electrical standards:

(a) NFPA No. 56A-1973, "Inhalation Anesthetics 1973."

(b) NFPA No. 56B-1976, "Respiratory Therapy 1976."

(c) NFPA No. 56C-1973, "Laboratories in Health-related Institutions 1973."

(d) NFPA No. 56D-1976, "Hyperbaric Facilities."

(e) NFPA No. 56F-1974, "Nonflammable Medical Gas Systems 1974."

(5) Chapter 10D-29 of the rules and regulations of the Department of Health and Rehabilitative Services, entitled "Nursing Homes and Related Facilities Licensure."

(6) The minimum standards for grounding of portable electric equipment, chapter 8C-27 as recommended by the Industrial Standards Section, Division of Workers' Compensation, Department of Labor and Employment Security.

(7) NFPA No. 76A-1973, "Essential Electrical Systems for Health Care Facilities 1973."

History.—s. 5, ch. 70-332; s. 1, ch. 72-292; s. 1, ch. 73-283; s. 1, ch. 75-55; s. 452, ch. 77-147; s. 1, ch. 77-174; s. 1, ch. 78-62; s. 46, ch. 79-7; s. 79, ch. 79-40.

553.20 State, county, and municipal responsibility.—It is the responsibility of the governing bodies of the state and each county and municipality of the state to provide for the enforcement of this code in the areas of their jurisdiction.

History.—s. 6, ch. 70-332.

553.21 Enforcement districts.—Any county or municipality, or any two or more counties or municipalities, or any combination thereof, may be created into an enforcement district for the purpose of enforcing and administering the provisions of this code.

History.—s. 7, ch. 70-332.

553.22 District enforcement departments.—Each enforcement district created pursuant to s. 553.21 by appropriate action of the governing body or bodies thereof shall:

(1) Establish and operate an enforcement department.

(2) Employ an official or inspector who shall be the department's administrative officer.

(3) Employ such inspectors and other personnel as may be necessary to administer and enforce the provisions of this code. Inspectors shall have at least 10 years' previous background and experience in the electrical trade. Personnel employed pursuant to this subsection may be on a fee, part-time, contractual, or other basis acceptable to the enforcement authorities.

History.—s. 8, ch. 70-332.

553.23 Furnishing copies of local codes.—The governing body of any county or municipality shall furnish to the Department of State upon request a certified copy of any current electrical code being enforced by it.

History.—s. 9, ch. 70-332.

PART III

GLASS

553.24 Purpose.—The purpose of part III is to require the use of safety glazing materials in all glass doors, bathtub and shower enclosures, and hazardous locations in all phases of construction which will protect the public safety, health, and general welfare.

History.—s. 1, ch. 70-377.

553.25 Definitions.—

(1) "Hazardous locations" means those fixed glazed panels adjacent to a door or which may be mistaken for means of ingress or egress, the dimen-

sions of which are more than 24 inches in width and more than 6 feet in height and the bottom of which is less than 2 feet above the floor level.

(2) "Glass doors" means all doors whether sliding or swinging for which the dimensions of the glass are more than 18 inches in width or more than 4 feet in height.

History.—s. 2, ch. 70-377.

553.26 Application.—Part III shall apply statewide in both incorporated and unincorporated areas to all new buildings and structures, both public and private, and to all alterations or permanent replacements in any new or existing building or structure.

History.—s. 3, ch. 70-377.

553.27 Adoption of standards.—The following are adopted as minimum standards for transparent and obscure glazing material used in all glass doors, bathtub and shower enclosures, and hazardous locations:

(1) All such glass shall meet the requirements of the United States of America Standard Z97.1-1966, which shall apply to obscure as well as transparent glazing materials.

(2) Glass shall be labeled to show the name of the manufacturer, quality, type, and thickness.

History.—s. 4, ch. 70-377.

553.28 Warranty; noncompliance a misdemeanor.—

(1) Any person or firm that installs any glass subject to this part warrants that said glass is in compliance with this part.

(2) Any person who does not comply with the standards established by this part in any phase of construction in this state is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The provisions of this part shall not apply to louver glass doors or windows with screens.

History.—s. 5, ch. 70-377; s. 550, ch. 71-136.

PART IV

FACTORY-BUILT HOUSING

[1]**553.35 Short title.**—This part shall be known and may be cited as the "Florida Manufactured Building Act of 1979."

History.—s. 1, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]**553.36 Definitions.**—The definitions contained in this section govern the construction of this part unless the context otherwise requires.

(1) "Approved" means conforming to the requirements of the Department of Community Affairs.

(2) "Approved inspection agency" means an organization determined by the department to be especially qualified by reason of facilities, personnel, experience, and demonstrated reliability to investigate, test, and evaluate manufactured building units or systems or the component parts thereof, together with the plans, specifications, and quality control procedures to ensure that such units, systems, or component parts are in full compliance with the standards adopted by the department pursuant to this part and to label such units complying with those standards.

(3) "Closed construction" means that condition when any building, component, assembly, subassembly, or system is manufactured in such a manner that all portions cannot be readily inspected at the installation site without disassembly or destruction thereof.

(4) "Open construction" means any building, building component, assembly, or system manufactured in such a manner that all portions can be readily inspected at the building site without disassembly thereof, damage thereto, or destruction thereof.

(5) "Component" means any assembly, subassembly, or combination of parts for use as a part of a building, which may include structural, electrical, mechanical, and fire protection systems and other systems affecting health and safety.

(6) "Department" means the Department of Community Affairs.

(7) "Insignia" means an approved device or seal issued by the department to indicate compliance with the standards and rules established pursuant to this part.

(8) "Install" means the assembly of a manufactured building component or system on site and the process of affixing a manufactured building component or system to land, a foundation, or an existing building, and service connections which are a part thereof.

(9) "Local government" means any municipality, county, district, or combination thereof comprising a governmental unit.

(10) "Manufacture" means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, semifinished, or finished materials.

(11) "Manufactured building" means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection, with or without other specified components, as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. This part does not apply to mobile homes. Manufactured building may also mean, at the option of the manufacturer, any

building of open construction made or assembled in manufacturing facilities away from the building site for installation, or assembly and installation, on the building site.

(12) "Mobile home" means any residential unit constructed to standards promulgated by the United States Department of Housing and Urban Development.

(13) "Site" is the location on which a manufactured building is installed or is to be installed.

(14) "System" means structural, plumbing, mechanical, heating, electrical, or ventilating elements, materials, or components combined for use in a building.

History.—s. 2, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]553.37 Rules; inspections; and insignia.—

(1) The department is authorized to promulgate rules, enter into contracts, and do such things as may be necessary and incidental to the administration of its authority pursuant to this part.

(2) After the effective date of the rules adopted pursuant to this part, no manufactured building, except as provided in subsection (9), shall be installed in this state unless it is approved and bears the insignia of approval of the department. The rules promulgated under the Florida Factory-Built Housing Act of 1971 shall continue until that date, and approvals issued by the department under provisions of the prior part shall be deemed to comply with the requirements of this part.

(3) All manufactured buildings issued and bearing insignia of approval pursuant to subsection (2) shall be deemed to comply with the requirements of all ordinances or rules enacted by any local government which governs construction.

(4) No manufactured building bearing department insignia of approval pursuant to subsection (2) shall be in any way modified prior to installation except in conformance with the rules of the department.

(5) Manufactured buildings which have been issued and bear the insignia of approval pursuant to this part upon manufacture or first sale shall not require an additional approval or insignia by a local government in which they are subsequently sold or installed.

(6) If the department determines that the standards for construction and inspection of manufactured buildings prescribed by statute or rule of another state are at least equal to rules prescribed under this part and that such standards are actually enforced by such other state, it may provide by rule that the manufactured building which has been inspected and approved by such other state shall be deemed to have been approved by the department and shall authorize the affixing of the appropriate insignia of approval.

(7) The department, by rule, shall establish a schedule of fees to pay the cost incurred by the department for the work related to administration and enforcement of this part.

(8) The department may delegate its enforcement authority to a state department having building construction responsibilities or a local government. The department itself shall not inspect manufactured buildings but shall delegate its inspection authority to a state department having building construction responsibilities, a local government, an approved inspection agency, or an agency of another state.

(9) Custom or one-of-a-kind prototype manufactured buildings shall not be required to have state approval but must comply with all local requirements of the governmental agency having jurisdiction at the installation site.

History.—s. 3, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]553.38 Application and scope.—

(1) The department shall promulgate rules which protect the health, safety, and property of the people of this state by assuring that each manufactured building is structurally sound and properly installed on site and that plumbing, heating, electrical, and other systems thereof are reasonably safe, and which interpret and make specific the provisions of this part.

(2) The department shall enforce every provision of this part and the rules adopted pursuant hereto, except that local land-use and zoning requirements, fire zones, building setback requirements, side and rear yard requirements, site development requirements, property line requirements, and subdivision control, as well as the review and regulation of architectural and aesthetic requirements, are specifically and entirely reserved to local authorities. Such local requirements and rules which may be enacted by local authorities must be reasonable and uniformly applied and enforced without any distinction as to whether such building is a conventionally constructed or manufactured building. A local government shall require permit fees only for those inspections actually performed by the local government for the installation of a factory-built structure. Such fees shall be equal to the amount charged for similar inspections on conventionally built housing.

History.—s. 4, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-323; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]553.39 Injunctive relief.—The department may seek injunctive relief from the circuit court of appropriate jurisdiction to enjoin the sale, delivery, or installation of a manufactured building, upon an affidavit specifying the manner in which the building does not conform to the requirements of this part or to rules issued pursuant thereto.

History.—s. 6, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]**553.40 Annual report.**—The department shall submit an annual report to the President of the Senate and the Speaker of the House of Representatives not later than 30 days prior to the opening of the annual legislative session. Such report shall include an evaluation, including recommendations, of the statutes concerning manufactured buildings and any changes in the rules governing manufactured buildings which have been adopted by the department.

History.—s. 8, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]**553.41 Penalties.**—Any person who violates any of the provisions of this part is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 5A, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

[1]**553.42 Legislative intent.**—Nothing herein shall act to nullify or supersede the provisions of chapter 527 relating to sale, use, or storage of liquefied petroleum gas, except that inspections made pursuant to chapter 527 shall be made at the place of manufacture.

History.—s. 7, ch. 71-172; s. 1, ch. 74-208; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 79-152.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-152, provides that, if part IV of ch. 553 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 1, ch. 79-152, shall also be repealed on the same date as is therein provided.

PART V

ACCESSIBILITY BY HANDICAPPED PERSONS

553.45 Definitions.—For purposes of this part:

(1) "Physically handicapped person" means any person suffering from a physical disability, including blindness, and the loss of one or more life functions leaving that person mobility-impaired or sensory-impaired requiring the use of prosthetic equipment, including, but not limited to, crutches, walkers, canes, or wheelchairs.

(2) "Living unit" means a single unit providing independent living facilities for one or more persons including permanent provisions for living, eating, cooking, or sleeping and shall include, but not be limited to, motels, apartment houses, rooming houses, dormitories, and other similar facilities.

History.—s. 1, ch. 74-292; s. 1, ch. 78-333.

553.46 Obstruction of common or emergency exits prohibited; standards of accessibility; penalty.—

(1) No first floor or ground level licensed business establishment conducting business with the general public and to which the general public is invited shall obstruct common or emergency entrances and exits so as to prevent a physically handicapped person from using same. At least one easily accessible entrance and exit used by the general public and appropriate to the needs of physically handicapped persons shall be available, and these entrances and exits shall conform to the standards set forth by the American National Standards Institute standard "Making Buildings and Facilities Accessible to and Viable by the Physically Handicapped," (ANSI A117.1). The provisions of this subsection shall not apply to buildings or facilities which are either existing, under construction, or under contract for construction on October 1, 1974.

(2) Posts or similar barricades at common or emergency entrances and exits of establishments that are existing, under construction, or under contract for construction which would prevent a person from using such entrances or exits shall be removed.

(3) Any person who violates, or fails to comply with, the provisions of this section is guilty of a misdemeanor of the second degree, punishable only by fine as provided in s. 775.083.

History.—s. 2, ch. 74-292; s. 2, ch. 78-333.

553.47 Building classifications.—For the purposes of this part, the following classifications are adopted:

(1) Assembly occupancy: Theaters, auditoriums, motion-picture houses, exhibition halls, skating rinks, gymnasiums, poolrooms, nightclubs, meeting rooms, passenger rooms, recreation piers, restaurants, churches, and all other similar uses.

(2) Educational and institutional occupancy: Schools, jails, prisons, reformatories, asylums, and all other similar uses.

(3) Storage and business occupancy: Warehouses, storage buildings, freight depots, public garages, gasoline service stations, aircraft hangars, retail stores, shops, salesrooms, markets, office buildings, banks, civic administration buildings, telephone exchanges, museums, art galleries, libraries, and all other similar uses.

(4) Residential occupancy: Hotels, motels, apartment hotels, apartment houses, bungalow courts, roominghouses, dormitories, fraternity houses, sorority houses, monasteries, and all other similar uses.

History.—s. 3, ch. 74-292; s. 1, ch. 75-85; s. 3, ch. 78-333.

553.48 Accessibility features required of new buildings; exceptions.—

(1) For the purposes of this part, a new building shall be considered to be one which is not under construction contract on October 1, 1974.

(2) All new buildings as defined in this part, except those exempted pursuant to subsection (3), which the general public may frequent, live in, or work in shall be made accessible as required in this section:

(a) Where accessibility is required, paths shall be provided for the physically disabled or handicapped and shall be unobstructed and devoid of curbs, stairs, or other abrupt changes in elevation.

(b) Ramps, where provided along such paths, shall slope not more than 1 inch vertically in 12 inches horizontally.

(c) Corridors, including such paths, shall be not less than 44 inches between walls, when part of a required means of egress.

(d) Single leaf walk-through swinging doors and one leaf of manually operated multiple leaf swinging doors shall be not less than 32 inches in width.

(e) All other walk-through openings shall provide not less than 29 inches in clear width.

(f) Accessibility to such buildings shall be provided from rights-of-way and parking areas by means of curb-cuts or ramps, or both, to at least one entrance generally used by the public and from such entrance to elevators, where provided.

(g) Accessibility shall be provided in such buildings at each floor and at ground floor level, except as provided in subsection (3).

(h) Required restrooms shall be made accessible, except as provided in this subsection, and each shall be provided with at least one accessible toilet stall complying with the standard set forth in paragraph (l). Access to such restrooms shall be marked by readily visible signs or symbols in all cases where the accessible restrooms are not immediately visible from all public areas on each floor.

(i) Restroom vestibules providing screens or a series of doors shall have an unobstructed width of not less than 4 feet and an unobstructed length of not less than 5 feet.

(j) Restrooms made accessible to the handicapped shall provide an unobstructed passage 44 inches wide for wheelchairs to approach accessible toilet facilities and a space not less than 5 feet in diameter for 180-degree turns.

(k) Changes in level in excess of ½ inch at doorways requiring accessibility shall be ramped.

(l) The mandatory portions of the standard "Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," of the American National Standards Institute, ANSI A117.1, except as modified by this part, and except as otherwise provided in s. 399.035 relating to the accessibility of passenger elevators to the physically handicapped, are hereby adopted.

(3) The following exceptions shall apply to the accessibility features required of new buildings under this section. However, nothing in this subsection shall be construed to prohibit incorporation of the features required in subsection (2) in any building exempted in this subsection.

(a) In building maintenance and storage areas where only employees have occasion to enter and within which the work cannot reasonably be performed by the handicapped, the provisions of this part need not apply unless such areas provide the only path between areas normally used by the handicapped.

(b) Buildings having accessibility at habitable grade levels where no elevator is provided shall not be required to comply with the provisions of this part at floors above such levels if facilities normally sought and used by the public in such buildings are accessible to and usable by the physically handicapped at such habitable grade levels.

(c) Residential occupancies: Two-story and three-story buildings with less than 49 units, having accessibility at habitable grade levels, shall not be required to comply with the provisions of this part at floors above such levels except where an elevator is provided. Twenty-five percent of the total number of living units shall comply with the provisions of this part; provided that accessory facilities such as pools, patios, sauna rooms, recreational buildings, laundry rooms, and similar areas shall comply with the provisions of subsection (2).

(d) Within living units, hallways having no walk-through openings in the sidewalls may be less than 44 inches wide, but shall not be less than 36 inches wide.

(e) Within living units, toilet rooms providing 29-inch clear passage need not comply with the provisions of this section.

(f) Single-family dwellings and duplexes shall be exempted from this part.

(g) Handrails shall not be required on ramps 7 feet or less that are integral with walkways, platforms, courtyards, or other paved areas, where the sides of such ramps are protected by curbs or flared sides.

History.—s. 4, ch. 74-292; s. 2, ch. 75-85; ss. 2, 4, ch. 78-235; s. 3, ch. 78-333.

553.49 Modifications and waivers; advisory committee.—

(1) The Florida Board of Building Codes and Standards shall provide by regulation criteria for granting individual modifications of, or exceptions from, the literal requirements of this part upon a determination of unnecessary or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by an advisory committee consisting of the following four members: Executive Director, Governor's Committee on Employment of the Handicapped; Director, Division of Blind Services; Director, Office of Vocational Rehabilitation; and President, Florida Council of Handicapped Organizations; or their designees. Upon application made in the form provided, an individual waiver or modification may be granted by the board so long as such modification or waiver is not in conflict with more stringent standards provided in another chapter.

(2) Meetings of the advisory committee shall be held in conjunction with the regular quarterly meetings of the board.

History.—s. 3, ch. 78-333.

PART VI

STATE MINIMUM BUILDING CODES

553.70 Short title.—This part shall be known and may be cited as the "Florida Building Codes Act."

History.—s. 1, ch. 74-167; s. 1, ch. 77-365.

553.71 Definitions.—As used in this part:

[1](1) "Board" means the Board of Building Codes and Standards created by this part.

(2) "Department" means the Department of Community Affairs.

(3) "Local enforcement agency" means the agency of local government with authority to make inspections of buildings and to enforce the codes which establish standards for construction, alteration, repair, or demolition of buildings.

(4) "Secretary" means the Secretary of Community Affairs.

(5) "Housing code" means any code or rule intending postconstruction regulation of structures which would include, but not be limited to: Standards of maintenance, condition of facilities, condition of systems and components, living conditions, occupancy, use, and room sizes.

History.—s. 2, ch. 74-167; s. 1, 75-111; s. 1, ch. 77-365; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

553.72 Intent.—The purpose and intent of this act is to provide a mechanism for the promulgation, adoption, and enforcement of state minimum building codes which contain standards flexible enough to cover all phases of construction and which will allow reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.

History.—s. 3, ch. 74-167.

553.73 State Minimum Building Codes.—

(1) By January 1, 1978, local governments and state agencies with building construction regulation responsibilities shall adopt a building code which shall cover all types of construction. Such code shall include the provisions of part V relating to accessibility by handicapped persons and shall be in addition to the requirements set forth in chapter 527, which pertains to liquefied petroleum gas, and parts I, II, and III of this chapter which pertain to plumbing, electrical, and glass construction standards, respectively.

(2) There is hereby created the State Minimum Building Codes which shall consist of the following nationally recognized model codes:

(a) Standard Building Code, 1976 edition;
(b) National Building Code, 1976 edition;
(c) EPCOT Code, 1977 edition;
(d) One and Two Family Dwelling Code; and
(e) The South Florida Building Code, 1976 edition.

Each local government and state agency with building construction regulation responsibilities shall adopt one of the State Minimum Building Codes as its building code. If the One and Two Family Dwelling Code is adopted for residential construction, then one of the other recognized model codes must be adopted for the regulation of other residential and nonresidential structures. The State Minimum Building Codes shall include the provisions of part V relating to accessibility by handicapped persons.

(3) After January 1, 1978, local governments and state agencies with building construction regulation responsibilities may provide for more stringent requirements than those specified in the State Minimum Building Codes, provided:

(a) There is a determination by the local governing body of a need to strengthen the requirements of the State Minimum Building Codes adopted by such governing body, based upon demonstrations by the local governing body that local conditions justify more stringent requirements than those specified therein, for the protection of life and property; and

(b) Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

(4) All code requirements in effect in any code enforcement jurisdiction on January 1, 1978, which are not inferior to the requirements of any model code specified in subsection (2) are presumed to meet the conditions of subsection (3).

(5) It shall be the responsibility of each municipality and county in the state and of each state agency with statutory authority to regulate building construction to enforce the specific model code of the State Minimum Building Codes adopted by that municipality, county, or agency, in accordance with the provisions of s. 553.80.

(6) The specific model code of the State Minimum Building Codes adopted by a municipality, county, or state agency shall regulate every type of building or structure, wherever it might be situated in the code enforcement jurisdiction; however, such regulations shall not apply to nonresidential farm buildings on farms, to temporary buildings or sheds used exclusively for construction purposes, or to any construction exempted under s. 553.80(3) by an enforcement district or local enforcement agency. The codes may be divided into a number of segments, as determined by the municipality, county, or state agency. These

segments, may be identified as building, mechanical, electrical, plumbing, or fire prevention codes or by other titles as are deemed proper. However, the State Minimum Building Codes shall not contain a housing code, nor shall the state interpose in the area of local housing codes, except upon request originating from an enforcement district or local enforcement agency.

(7) The board may, from time to time, make recommendations to revise, alter, repeal, or update the State Minimum Building Codes, either on its own motion or upon application from any affected industry, citizen, state agency, or political subdivision of the state. In recommending any amendment, the board shall comply with the procedural requirements of chapter 120.

History.—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400.

[1]553.74 State Board of Building Codes and Standards.—

(1) There is hereby created within the Department of Community Affairs the Board of Building Codes and Standards which shall be appointed by the Governor not later than 60 days after the effective date of this act. Members appointed by the Governor shall be subject to confirmation by the Senate. The board shall be composed of 15 members consisting of the following:

(a) One architect registered to practice in Florida;

(b) One structural engineer registered to practice in Florida;

(c) One mechanical contractor certified to do business in Florida;

(d) One electrical contractor certified to do business in Florida;

(e) One member from fire protection engineering or technology;

(f) One general contractor certified to do business in Florida;

(g) One plumbing contractor licensed to do business in Florida;

(h) One roofing, sheet metal, or air conditioning contractor certified to do business in Florida;

(i) One residential contractor licensed to do business in Florida;

(j) Three members who are city or district codes enforcement officials;

(k) One member who represents a state agency, other than the Department of Community Affairs, empowered by law to enforce building codes;

(l) One member who is a county codes enforcement official; and

(m) A member of the Florida Council of Handicapped Organizations, Inc.

(2) Of the members initially appointed by the Governor, seven shall serve for terms of 2 years each, and eight shall serve for terms of 4 years each. Thereafter, all appointments shall be for terms of 4 years. Neither the architect nor any of the above-named engineers shall be engaged in the manufacture, promotion, or sale of any building materials, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the board.

(3) Members of the board shall serve without compensation, but shall be entitled to reimbursement for per diem and travel expenses as provided by s. 112.061.

History.—s. 5, ch. 74-167; s. 2, ch. 77-365; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]553.75 Organization of board; rules and regulations; meetings; staff; fiscal affairs.—

(1) Within 30 days after its appointment, the board shall meet on call of the secretary. The board shall at this time, and thereafter annually, elect from its appointive members a chairman and such officers as it may choose.

(2) The board shall meet regularly at least 4 times annually at places and dates to be determined by the board. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of five or more members of the board. The members shall be notified in writing of the time and place of regular and special meetings at least 7 days in advance of such a meeting. A majority of members of the board shall constitute a quorum.

(3) The department shall be responsible for the provision of administrative and staff-support services relating to the functions of the board. With respect to matters within the jurisdiction of the board, the department shall be responsible for the implementation and faithful discharge of all decisions of the board made pursuant to its authority under the provisions of this part.

History.—s. 6, ch. 74-167; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]553.76 General powers of the board.—The board is authorized to:

(1) Promulgate, in cooperation with the department, rules and regulations for the administration of this part, pursuant to chapter 120.

(2) Provide rules of procedure for its internal management and control.

(3) Enter into contracts and do such things as may be necessary and incidental to the discharge of its responsibilities under this part.

History.—s. 7, ch. 74-167; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]553.77 Specific powers of the board.—

(1) The board shall:

(a) Adopt rules and regulations or amendments thereto in accordance with the procedures prescribed in chapter 120.

(b) Make a continual study of the operation of the State Minimum Building Codes and other laws relating to the construction of buildings, including manufactured buildings, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions.

(c) Upon written application by a private party or a local enforcement agency, issue advisory opinions relating to new technologies, techniques, and materials which have been tested where necessary and found to meet the objectives of the State Minimum Building Codes and the Florida Manufactured Building Act of 1979.

(d) Upon written application by a private party or a local enforcement agency, issue advisory opinions relating to the interpretation, enforcement, administration, or modification by local governments of the State Minimum Building Codes and the Florida Manufactured Building Act of 1979.

(2) Upon written application by a private party or a local enforcement agency, the board may also:

(a) Provide for the testing of materials, devices, and method of construction.

(b) Appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relating to the State Minimum Building Codes.

History.—s. 8, ch. 74-167; s. 4, ch. 75-85; s. 4, ch. 75-111; s. 3, ch. 77-365; s. 4, ch. 78-323; ss. 5, 8, ch. 79-152.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Section 8, ch. 79-152, provides that, in accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, s. 553.77, as amended by ch. 78-323, Laws of Florida, shall be repealed on October 1, 1981, and the State Board of Building Codes and Standards shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

553.79 Application.—

(1) After the effective date of the State Minimum Building Codes adopted as herein provided, it shall be unlawful for any person, firm, or corporation to construct, erect, alter, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency or from such persons as may, by appropriate resolution or regulation of the enforcing agency, be delegated authority to issue said permits, upon the payment of such reasonable fees adopted by the enforcing agency. The enforcing agency shall be empowered to revoke any such permit upon a determination by the agency that the construction, erection, alteration, repair, or demolition of the building for which the permit was issued is in violation of, or not in conformity with, the provisions of the State Minimum Building Codes.

(2) After the effective date of the State Minimum Building Codes adopted as herein provided, no enforcing agency shall issue any permit for construction, erection, alteration, repair, or demolition unless it is determined to be in compliance with the State Minimum Building Codes.

(3) The State Minimum Building Codes, after the effective date of their adoption pursuant to the provisions of this part, shall supersede all other building construction codes or ordinances in the state, whether at the local or state level, and whether adopted by administrative regulation or by legislative enactment, unless such building construction codes or ordinances are more stringent than the State Minimum Building Codes and the conditions of subsection 553.73(3) are met. However, this subsection shall not apply to mobile homes as defined by chapter 320. Nothing contained in this subsection shall be construed as nullifying or divesting appropriate state or local agencies of authority to make inspections or to enforce the codes within their respective areas of jurisdiction.

(4) The State Minimum Building Codes, after the effective date of their adoption pursuant to the provisions of this part, may be modified by local governments to require more stringent standards than those specified in the State Minimum Building Codes, provided the conditions of s. 553.73(3) are met.

History.—s. 10, ch. 74-167; s. 4, ch. 77-365.

553.80 Enforcement.—

(1) It shall be the responsibility of each local government, each legally constituted enforcement district, and each state agency with statutory authority to regulate building construction to enforce the building code adopted by such body in accordance with s. 553.73. The governing bodies of local governments may provide a schedule of fees for the enforcement of the provisions of this part. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on the effective date of this act. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

(2) Except for charter counties, any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of chapter 163, governing interlocal agreements, form an enforcement district for the purpose of adopting, enforcing, and administering the provisions of the State Minimum Building Codes. Each district so formed shall be registered with the department on forms to be provided for that purpose.

(3) Each enforcement district shall be governed by a board, the composition of which shall be determined by the affected localities. At its own option each enforcement district or local enforcement agency may promulgate rules granting to the owner of a single-family residence one or more exemptions from the State Minimum Building Codes relating to:

(a) Addition, alteration, or repairs performed by the property owner upon his own property, provided any addition or alteration shall not exceed 1,000 square feet or the square footage of the primary structure, whichever is less.

(b) Addition, alteration, or repairs by a nonowner within a specific cost limitation set by rule, provided the total cost shall not exceed $5,000 within any 12-month period.

(c) Building and inspection fees.

Each code exemption, as defined in paragraphs (a), (b), and (c), shall be certified to the local board 10 days prior to implementation and shall only be effective in the territorial jurisdiction of the enforcement district or local enforcement agency implementing it.

(4) When an enforcement district has been formed as provided herein, upon its registration with the department, it shall have the same authority with respect to building codes as provided by this part for local governing bodies.

History.—s. 11, ch. 74-167; s. 3, ch. 75-111; s. 5, ch. 77-365.

553.83 Injunctive relief.—Any code enforcing agency may seek injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy, erection, alteration, or installation of any building covered by this part, upon an affidavit of the code enforcing agency specifying the manner in which the building does not conform to the requirements of the portion of the State Minimum Building Codes adopted in that jurisdiction.

Noncompliance with a building code promulgated under this part shall be considered prima facie evidence of irreparable damage in any cause of action brought under authority of this part.

History.—s. 14, ch. 74-167; s. 5, ch. 77-365.

553.84 Statutory civil action.—Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the State Minimum Building Codes, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation.

History.—s. 15, ch. 74-167.

553.85 Liquefied petroleum gases.—The provisions of the State Minimum Building Codes and the rules and regulations adopted thereunder for the design, construction, location, installation, services, and operation of equipment for storing, handling, transporting, and utilization of liquefied petroleum gases shall not be in conflict with chapter 527.

History.—s. 16, ch. 74-167.

553.851 Protection of underground gas pipelines.—

(1) DEFINITIONS.—As used in this section:

(a) "Person" means any individual, firm, joint venture, partnership, corporation, association, authority, municipality, governmental unit, joint stock association, or business trust, whether or not incorporated, and includes any trustee, receiver, assignee, or personal representative thereof.

(b) "Gas pipeline" means an underground facility and related facilities, including pipes, valves, regulators, vaults, and attachments, by which hydrocarbons in liquid or gaseous form are transmitted or furnished. This definition shall not include gas pipelines transporting liquefied petroleum gas when those pipelines are not regulated pursuant to s. 527.06(4), and the regulation of liquefied petroleum gas pipelines, including the provisions of this law, shall continue to be under the jurisdiction of the Department of Insurance.

(c) "Excavation" means an operation in which any structure, earth, rock, or other mass of material in or on the ground is moved, removed, or otherwise displaced by means of any tool, equipment, or explosive and includes, without limitation, wrecking, razing, grading, trenching, digging, ditching, drilling, augering, tunnelling, scraping, cable or pipe plowing, and pile driving, except maintenance activities to restore road rights-of-way to original template.

(d) "Excavator" means any person performing an excavation.

(e) "Owner" means any person operating a gas pipeline.

(f) "Damage" means any contact with a gas pipeline during excavation which necessitates the owner to repair the gas pipeline or the excavator, pursuant to authorization by the owner, to repair the gas pipeline, subject to supervision and inspection by the owner.

(g) "Mark" means to indicate the horizontal location of a gas pipeline within 12 inches on either side of the gas pipeline by stakes, paint, or other suitable means generally accepted within the gas pipeline and construction industry. Upon request by the excavator for depth locations in specific areas, depth within 18 inches vertically on either side of the gas pipeline shall be indicated.

(2) NOTICE AND MARKING REQUIREMENTS FOR EXCAVATION.—

(a) No excavator shall commence or perform any excavation in any public or private street, alley, right-of-way dedicated to the public use, or gas utility easement without first obtaining information concerning the possible location of gas pipelines in the area of the proposed excavation from any person having the right to bury gas pipelines within the public or private street, alley, right-of-way, or gas utility easement. Such information may be requested by telephone, letter, telegraph, or messenger or in person, at the pre-work conference for the job requiring the proposed excavation, or by calling a utility notification center operating in the area.

(b) Any owner having the right to bury gas pipelines shall file with the clerk of the circuit court and have recorded, in each county wherein the owner's gas pipelines are buried, the name, address, and telephone number of the owner from whom the necessary location information may be obtained. The clerk shall keep such records in a separate and readily available gas pipeline file.

(c) The excavator shall notify the owner in the manner prescribed in subsection (1) so that the owner receives notification at least 48 hours, excluding Saturdays, Sundays and legal holidays, prior to starting excavation.

(d) Upon receipt of a request for the location of gas pipelines, the owner shall assign such request a serial number, inform the requester of such number, and maintain a register showing the name, address, and telephone number of the requester, the site to which the request pertains, the time and date of the request, and the serial number assigned to the request, and the owner shall, within 48 hours, either mark the gas pipelines or notify the excavator that no gas pipeline exists in the area to which the request for information pertains.

(e) No political subdivision of this state shall issue a permit for excavation until the applicant for such permit certifies that he has complied with the provisions of paragraphs (a) and (c).

(f) Should any permit for excavation as described in paragraph (e) be held for more than 30 days prior to excavation, the excavator shall be required to again notify the owner not less than 48 hours or more than 5 days prior to commencing excavation.

(3) EXCAVATION; LIABILITY FOR NEGLIGENCE; NOTICE OF DAMAGE OR DISLOCATION; EMERGENCIES.—

(a) Obtaining information from the owner as required by subsection (2) does not excuse any excavator from performing an excavation in a careful and prudent manner, nor does it excuse such excavator from liability for any damage or injury resulting from any negligence of the excavator, provided the gas pipeline is correctly located.

(b) In the event of any damage to, or dislocation of, any gas pipelines in connection with an excavation, the excavator shall immediately notify the

owner of such damage or dislocation.

(c) The provisions of subsection (2) are not applicable to any excavator performing an excavation in an emergency involving the public health, safety, or welfare.

History.—ss. 1-3, ch. 77-153; s. 1, ch. 78-82.

553.87 Single-family residences; solar water heating requirement.—Notwithstanding the provisions of ss. 553.12 and 553.13, no single-family residence shall be constructed within the state unless the plumbing therein is designed to facilitate the future installation of solar water-heating equipment. The words "facilitate the future installation" as used in this section shall mean the provision of readily accessible piping to allow for pipe fittings that will allow easy future connection into the system of solar water-heating equipment. It is the intent of the Legislature to minimize cost of rearranging plumbing should solar water heaters be added to buildings.

History.—s. 1, ch. 74-361.

553.89 Florida Lighting Efficiency Code.—

(1)(a) This section shall be known and may be cited as the "Florida Lighting Efficiency Code."

(b) The purpose of the lighting code is to provide a uniform minimum standard for energy efficiency in lighting design and utilization to meet energy conservation goals and to best provide for public safety, health, and general welfare for public buildings.

(2) As used in this section:

(a) "Public building" means any building which is open to the public during normal business hours, except exempted public buildings. Each of the following is a public building within the meaning of this section, unless it is an exempted public building or a building of less than 1,500 square feet:

1. Any building which provides facilities or shelter for public assembly or which is used for educational, office, or institutional purposes;

2. Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise;

3. Any portion of an industrial plant building used primarily as office space; and

4. Any building owned by the state or a political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas, and university buildings.

(b) "Exempted public building" means:

1. Any public building or portion thereof whose peak design rated energy usage for all purposes is less than 1 watt (3.4 British Thermal Units per hour) per square foot of floor area for all purposes.

2. Any public building which is neither heated nor cooled.

3. Any mobile home.

4. Any building or portion thereof subject to standards established by the United States.

5. Any public building for which a building permit is obtained on or before March 15, 1979.

6. Any state building that must conform to the more stringent "Florida Energy Conservation in Buildings Act of 1974" and amendments thereto.

(c) "Local enforcement agency" means the agency of local government with authority to make inspections of buildings and to enforce a code or codes which establish standards for construction, renovation, or occupancy of buildings. It includes any agency within the definition of subsection 553.71(3).

(d) "ASHRAE Standard 90-75" means the American Society of Heating, Refrigeration, and Air Conditioning Engineers Standard 90-75 concerning energy conservation in new building design.

(3) This section shall apply to all new public buildings in the state for which a building permit is obtained after March 15, 1979. This section shall not apply to exempted public buildings.

(4) Any public building constructed after March 15, 1979, shall provide a design for energy utilization in such a manner as to provide that the design for energy use for illumination be no less stringent than a standard consistent with the provisions of s. 9 of ASHRAE Standard 90-75.

(5) During or after construction of any new public building, each local enforcement agency shall inspect the building for compliance with the provisions of this section.

(6) The provisions of s. 9, ASHRAE Standard 90-75 shall be in addition to any minimum in any building code adopted by a county under authority of s. 125.56 or by any municipality.

History.—s. 1, ch. 77-283; s. 1, ch. 78-626; s. 226, ch. 79-400.

PART VII

THERMAL EFFICIENCY STANDARDS

553.900 Short title.—This part shall be known and may be cited as the "Florida Thermal Efficiency Code."

History.—s. 1, ch. 77-128.

553.901 Purpose.—The purpose of this thermal efficiency code is to provide for a uniform minimum standard for energy efficiency in the thermal design and operation of all buildings statewide, consistent with energy conservation goals, and to best provide for public safety, health, and general welfare.

History.—s. 1, ch. 77-128.

553.902 Definitions.—For the purposes of this part:

(1) "Exempted building" means:

(a) Any building or portion thereof whose peak design rate of energy usage for all purposes is less than 1 watt (3.4 Btu's per hour) per square foot of floor area for all purposes.

(b) Any building which is neither heated nor cooled.

(c) Any mobile home.

(d) Any building or portion thereof subject to standards established by the United States.

(e) Any historical building as described in s. 267.021(6).

(f) Any building with a heated or cooled area of less than 1500 square feet.

(g) Any state building that must conform to the more stringent "Florida Energy Conservation Act of 1974" and amendments thereto.

(2) "HVAC" means a system of heating, ventilating, and air conditioning.

(3) "Renovated building" means a nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, provided the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.

(4) "Local enforcement agency" means the agency of local government which has the authority to make inspections of buildings and to enforce a code or codes which establish standards for construction, renovation, or occupancy of buildings. It includes any agency within the definition of s. 553.71(3).

(5) "Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.

(6) "ASHRAE Standard 90-75" means the American Society of Heating, Refrigeration, and Air Conditioning Engineers Standard 90-75 concerning energy conservation in new building design.

(7) "HUD Minimum Property Standards" means the single set of technical and environmental standards developed by the Department of Housing and Urban Development, specifying the minimum acceptable levels of design and construction for federally insured or mortgaged housing. These standards are described at 24 C.F.R. s. 200.95 et seq.

(8) "Standard Building Code" means the Standard Building Code, 1976 edition with 1977 amendments, as adopted by the Southern Building Code Congress International, Inc., (SBCC) with amendments.

History.—s. 1, ch. 77-128.

553.903 Applicability.—This part shall apply to all new and renovated buildings in the state, except exempted buildings, for which building permits are obtained after March 15, 1979. The provisions of this part shall be in addition to any minimum standard in any building code adopted by a county under authority of s. 125.56 or by any municipality.

History.—s. 1, ch. 77-128; s. 1, ch. 78-625.

553.904 Thermal efficiency standards for new nonresidential buildings.—Thermal design and operations for new nonresidential buildings for which building permits are obtained after March 15, 1979, shall take into account exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance, and service water heating design and equipment performance and shall meet standards no less stringent than the provisions of chapters 4-9 of ASHRAE Standard 90-75 or, in the alternative, either appendix (j) of the Standard Building Code or the Florida Model Energy Efficiency Code for Building Construction.

History.—s. 1, ch. 77-128; s. 1, ch. 78-625; s. 1, ch. 79-267.

553.905 Thermal efficiency standards for new residential buildings.—Thermal design and operations for new residential buildings for which building permits are obtained after March 15, 1979, shall take into account exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance, and service water heating design and equipment selection and shall meet standards no less stringent than the provisions of the HUD Minimum Property Standards or, in the alternative, either appendix (j) of the Standard Building Code or the Florida Model Energy Efficiency Code for Building Construction.

History.—s. 1, ch. 77-128; s. 1, ch. 78-625; s. 2, ch. 79-267.

553.906 Thermal efficiency standards for renovated buildings.—Thermal designs and operations for renovated buildings for which building permits are obtained after March 15, 1979, shall take into account insulation, windows, HVAC systems and performance, and service water heating designs and equipment selection and shall meet standards no less stringent than the provisions of chapters 4-9 of ASHRAE Standard 90-75 or, in the alternative, either appendix (j) of the Standard Building Code or the Florida Model Energy Efficiency Code for Building Construction. These standards shall apply only to the portions of the structure which are actually renovated.

History.—s. 1, ch. 77-128; s. 1, ch. 78-625; s. 3, ch. 79-267.

553.907 Compliance.—Owners of all buildings required to comply with this part must certify compliance to the designated local enforcement agency prior to receiving the permit to begin construction or renovation.

History.—s. 1, ch. 77-128.

553.908 Inspection.—Before construction or renovation is completed, the local enforcement agency shall inspect buildings for compliance with the standards of this part.

History.—s. 1, ch. 77-128.

CHAPTER 555

OUTDOOR THEATERS

555.01 Purpose.—The purpose of this chapter is to promote and insure safe ingress and egress to and from public roads of vehicular traffic by preventing the creation of hazardous conditions and locations in the construction of outdoor theaters.

History.—s. 1, ch. 28085, 1953; s. 1, ch. 77-260; s. 227, ch. 79-400.

555.02 Definition and scope.—For the purpose of this chapter, an outdoor theater is a place of outdoor assembly used for the showing of plays, operas, motion pictures, and similar forms of entertainment in which the audience views the performance from self-propelled vehicles parked within the theater enclosure. The requirements of this chapter shall not apply to existing outdoor theaters, but shall apply only to outdoor theaters which may be constructed after June 2, 1953.

History.—s. 2, ch. 28085, 1953.

555.03 Entrances and exits.—All entrances and exits for outdoor theaters shall comply with the rules of the Department of Transportation for driveways from property abutting state highways and the following additional requirements:

(1) Not more than one entrance shall be provided for each access road, but each such entrance may be divided into two roadways and channelized to properly provide for vehicles turning right or left from the highway.

(2) That portion of an entrance or exit lying within a public road right-of-way shall comply with the regulations of the authority in charge of the maintenance of the roadway or, as a minimum, it shall comply with rules prescribed by the Department of Transportation.

(3) Not more than two exits shall be provided for each access highway, but such exits may be suitably channelized to provide for right and left turns to the highway, and not more than one traffic lane shall be permitted for each traffic lane on the highway available to vehicles leaving the theater.

(4) No entrance or exit on a state road of the primary state-maintained system located outside an incorporated city or town of this state shall be located within 500 feet of its intersection with another state road on the primary state-maintained system.

(5) Enclosures surrounding the theater portion of the property shall begin not less than 200 feet from the centerline of the nearest state road.

History.—s. 3, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 2, ch. 77-260.

555.04 Vehicle storage.—Sufficient area shall be provided between the highway and the ramp area to provide storage space for vehicles equal to not less than 15 percent of the theater capacity, and of that storage space so provided not less than 5 percent of the theater capacity shall be provided between the highway and the ticket booth. In all cases, sufficient storage space shall be provided so that vehicles will not back on the traveled way of the highway. Storage area shall be calculated on the basis of 162 square feet per vehicle.

History.—s. 4, ch. 28085, 1953.

555.05 Location of tower.—The screen shall be so oriented that the picture is not visible from any existing major road. This requirement does not apply to towers already erected. For the purpose of defining a "major road," it shall be any road functionally classified as an arterial or collector road as designated by the Department of Transportation.

History.—s. 5, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 2, ch. 73-326; s. 3, ch. 77-260.

555.07 Lighting.—All entrance and exit driveways shall be adequately lighted and properly marked to avoid congestion and confusion and shall remain lighted throughout the performance and until the audience has left the area.

History.—s. 7, ch. 28085, 1953.

555.08 Qualifying certificate.—From and after October 1, 1977, it shall be unlawful for the tax collectors of the several counties of the state to issue state and county occupational licenses to any persons applying for the required license to operate an outdoor theater when the theater was completed after October 1, 1977, unless and until proof of compliance with the applicable provisions of this chapter and the regulations of the agency maintaining the access road is furnished by tendering and exhibiting to such tax collector at the time of making such application a qualifying certificate duly issued by the maintaining agency proving such compliance with such regulations, which shall as a minimum be those prescribed by the Department of Transportation for state-maintained roads. A new qualifying certificate for an outdoor facility shall be issued only when changes have been made relating to the above provisions. As the issuing authority deems necessary, additional inspections of an outdoor theater to determine whether such theater is continuing to meet the requirements of this law shall be made. The issuing authority shall have the authority to revoke a qualifying certificate for noncompliance.

History.—s. 8, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 4, ch. 77-260; s. 228, ch. 79-400.

CHAPTER 556

BEDDING INSPECTION

556.011 Designation; purpose.—This chapter shall be designated the "Bedding Inspection Law" and shall be deemed an exercise of police powers of the state for the health and welfare of the people of the state.

History.—s. 1, ch. 65-347.

556.021 Definitions.—As used in this chapter:

(1) "Person" includes all persons, masculine as well as feminine, corporations, partnerships, limited partnerships, societies, individual proprietorships, brokers, auctioneers, trusts, voluntary associations, agents, and employees of any of them and it shall import the plural and singular as the case demands.

(2) "Sale," "sell" or "sold" includes offering or exposing for sale or give away, exchange, lease, barter, rent, consigning or delivering in consignment for sale, exchange, lease, or holding in possession with like intent. The possession of any article of bedding or filling material as herein defined by any maker or dealer, or his agent or servant in course of business, shall be presumptive evidence of intent to sell.

(3) "Bedding" or "article of bedding" includes any mattress, pillow, cushion, quilt, quilted pad, hammock pad, mattress pad or topper, quilted bedspread, comforter, upholstered spring bed, box spring, davenport, day bed, couch, sleeping bag, auto bed, beach pad, chaise lounge pad, bolster, quilted or padded headboard, or any other item containing filling material in whole or part used or intended for use for sleeping purposes.

(4) "Filling material" means any natural fibers of vegetable, animal, or fowl origin including cotton, cotton linters, cotton and spinning mill products, waste or byproducts, wool, feathers and down, hair, kapok, sisal, jute, excelsior, shredded or garnetted clippings, synthetic foam in any form, natural or synthetic rubber in any form, synthetic fibers, or any other material, or any combination thereof, processed or unprocessed, loose, felted or in batting, pads, or any other prefabricated form, concealed or not concealed, to be used or that could be used in the manufacture or renovating of and for filling articles of bedding.

(5) "New" refers to and means any article of bedding or filling material which has not been previously used for any purpose; provided however, that manufacturing process shall not be considered a previous use.

(6) "Used" refers to and means any article of bedding, filling material, or portion thereof of which a previous use, other than subjecting same to manufacturing processing, has been made.

(7) "Manufacture," "making," "make" or "made" includes altering, repairing, finishing, or preparing articles of bedding or filling material for sale, including remaking or renovating when done by any person except the owner.

(8) "Department" means the Department of Health and Rehabilitative Services.

(9) "Manufacturer" means a person who, either by himself or through employees or agents, makes any article of bedding, in whole or in part, or who does the upholstering or covering of any unit thereof using any material.

(10) "Supply dealer" means any person who manufactures, makes or prepares for sale any filling materials, in pieces, slabs, loose, or in bags, bales, or containers, concealed or not concealed, to be used or that could be used in articles of bedding.

(11) "Wholesaler," "distributor" or "jobber" means a person who, either by himself or through an agent, sells any article of bedding or filling material to another for the purpose of resale.

(12) "Renovator" or "reupholsterer" means any person who repairs, renovates, makes over, recovers, restores, or renews any article of bedding for the owner only and not for sale.

(13) "Retailer" means any person who sells, offers, or exposes for sale, or has in his possession with intent to sell to a consumer or user an article of bedding.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 209, ch. 71-377; s. 453, ch. 77-147.

556.031 Administration.—

(1) The Department of Health and Rehabilitative Services is charged with the administration and enforcement of this chapter. It shall be the duty of the department to employ necessary personnel and inspectors who shall be qualified by experience or training and who shall not be interested in either the manufacturing, renovating, or sale of bedding or filling material to supervise inspection of all bedding and filling material subject to the provisions of this chapter and enforce the provisions thereof.

(2) All fees collected under the provisions of this chapter shall be paid to the State Treasurer and deposited in the General Revenue Fund. The expenses of the department incurred in the discharge of its duties under this chapter including salaries and expenses incurred under this chapter shall be paid from moneys appropriated for that purpose. The department shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

(3) The department is authorized to make such regulations as may be necessary for the administration of this chapter and to amend or appeal such regulations; provided, however, such regulations

shall not enlarge the scope of this chapter and shall pertain only to the formal procedure.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 454, ch. 77-147.

556.041 Sale and manufacture of bedding; prohibited acts.—

(1) No person shall sell as new any article of bedding or filling material unless it is made from all new material and is tagged as provided herein.

(2) No person shall sell, representing it to be new material, any old or secondhand filling material used for filling articles of bedding.

(3) No person shall sell any article of bedding made from old, used, or secondhand material unless it shall be tagged as provided herein.

(4) No person shall sell any article of bedding that has been used or is secondhand unless it shall be tagged as provided herein.

(5) No person shall knowingly sell any article of bedding or any material used in the making thereof, which has been used by or about any person having an infectious or contagious disease.

(6) No person shall use in the manufacture of any article of bedding or filling material for sale any material that comes from an animal or fowl unless such material has been sterilized by process approved by the division.

(7) No person shall sell or hold in his possession for sale any article of bedding or filling material that is in the opinion of the division filthy, dirty, soiled, unsanitary, water damaged, or contains bugs or vermin.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106.

556.051 Department functions, powers, and inspection.—

(1) The Department of Health and Rehabilitative Services shall have the power to take possession of any article of bedding or filling material made or offered for sale for inspection and may open the item of bedding at the seams to examine the contents therein and obtain a sample without recourse or compensation. Filling material packed in boxes or bags may be opened for inspection and a sample taken. The outside cover of filling material packed in bales may be cut for inspection and a sample taken. Pillows, comforters, quilts, pads, cushions, or any other small item may be taken for laboratory analysis without recourse or compensation. The department may inspect the purchase records of the owner of such articles in order to determine compliance with any section of this chapter. Such records shall be kept available to inspection for a period of 1 year.

(2) The department may suspend, revoke, or deny, in accord with the Administrative Procedure Act (chapter 120), the registration number issued under the provisions of this chapter of any person violating any provisions of this chapter and rules and regulations adopted therefrom or convicted of a violation of this chapter and rules and regulations thereunder by a court of the state. Such person shall not thereafter engage in the manufacture, renovation, delivery for sale, or the sale in this state of articles of bedding or filling material as covered by this chapter until the department has determined that such person is capable of complying with the provisions of this chapter, whereupon the department may reinstate or reissue the registration number of such person.

(3) If any article of bedding or filling material does not meet the requirements of this chapter the department shall prohibit the sale and shall affix thereto a red label, designed and prescribed by the department, and shall, within 15 days after seizure or labeling, furnish the owner with written reason or reasons for such action. The red label shall not be removed except by an agent of the department. Any person adversely affected may within 15 days, file a written appeal to the department for a hearing. The department or its agent shall not be held responsible for compensation for any articles found to be in violation.

(4) All places where articles of bedding or filling material covered by this chapter are made, remade, renovated, stored, or offered for sale or are processed with intent to sell or where sterilization is performed shall be subject to inspection by the department during usual business hours. For purpose of administering or enforcing this chapter it is unlawful for any person to interfere with any employee of the department as provided in s. 381.411(2).

(5) This chapter shall not apply to any licensed public lodging establishment.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 206, ch. 71-377; s. 455, ch. 77-147.

556.061 Labels; tagging.—

(1) Every article of bedding or filling material manufactured, renovated, sold, or offered for sale shall have attached thereto a label as provided for in this chapter and in rules and regulations adopted therefrom by the Department of Health and Rehabilitative Services.

(2) Labels for articles of bedding shall be securely attached to outside cover thereof and be plainly visible.

(3) Labels for filling material shall be securely attached to each piece, package, bundle, roll, bale, or container thereof as sold or prepared for sale and be plainly visible.

(4) Labels shall be of substantial cloth or cloth-backed material which will not flake when abraded, at least 2 by 3 inches in size, upon which shall be indelibly stamped, typed, or printed with ink, in English, the following:

(a) Name or description of the material or materials used to fill such articles of bedding and where two or more different materials are included, they shall be described in the order of their predominance stating percentage by weight of each.

(b) Registration number of the manufacturer and name and address of the manufacturer, jobber, distributor, or vendor of the article of bedding or filling material.

(c) The words "all new material" if such article of bedding or filling material contains no used material; or the words "made of used material" if such article of bedding or filling material is made of any used materials.

(d) The color of the labels for "all new material" shall be white; the color of the labels for "made of used material" shall be yellow.

(e) Any label attached to such articles containing filling materials or to filling materials required by

this chapter to be sterilized shall also carry the word "sterilized" with the permit number of the sterilizer.

(5) Nomenclatures or descriptive terms, size of type, and facsimile of labels are to be in compliance with rules and regulations as adopted by the department.

(6) The label on any article of bedding containing artificially colored filling material or any filling material containing artificial color shall state the word "colored" immediately preceding the description of such materials.

(7) Any person who renovates or reprocesses any article of bedding for any owner shall comply with the following:

(a) Any filling material added to the owner's material shall be new unless otherwise specifically agreed to by the owner in writing.

(b) Each item renovated shall be labeled upon receipt with a label securely sewed to the outside cover thereof; the color of the label shall be green; statements on the label shall be printed or typed in indelible ink as follows:

1. "Do not remove this label under penalty of law."
2. "This article not for sale."
3. "Owner's material."
4. "Added material consisting of:"
5. "Certification is made that this article contains the same material it did when received from the owner and the added material is according to law."

(c) The label shall then clearly state the following: Name and address of owner and name of the repairers or renovators thereon who did repair or renovate the bedding or upholstered furniture, and the label shall be not less than 3 by 5 inches and both the printed and imprinted portions shall be of such size to be easily and clearly read.

(8) Any used or secondhand article of bedding sold or offered for sale shall have a label securely attached thereto by the vendor as follows:

(a) Color of label shall be yellow with statement thereon printed or typed in indelible ink and in capital letters of such size as to be easily and clearly read as follows:

1. "Used material."
2. "Contents unknown."
3. Name, address and registration number of the vendor.

(b) Label shall not be less than 3 by 5 inches.

(9) It is unlawful to use any false or misleading statement, term, or designation on the label or to remove, deface, or alter, or to attempt to remove, deface, or alter the label or statements made thereon.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 456, ch. 77-147.

556.071 Registration fees.—

(1) The Department of Health and Rehabilitative Services shall register all applicants and assign to every person a registration number which thereafter shall constitute his identification record and the identification shall not be used by any other person.

(2) No person shall manufacture, renovate, sell, or offer for sale any article of bedding or filling material as defined herein unless the manufacturer, renovator, retailer or seller, or supply dealer of the item of bedding or filling material shall pay to the department for registration and annually thereafter the following fee:

Manufacturer or supply dealer	$60
Distributor, jobber or wholesaler	60
Renovator	25
Retailer	10

Date of registration shall constitute birthdate of registration and same shall be renewed on or before expiration date.

(a) Every bedding renovator, unless he holds a manufacturer's registration, shall annually obtain a renovator's registration.

(b) Every bedding distributor, jobber, or wholesaler, unless he holds a manufacturer's registration, shall annually obtain a distributor, jobber, or wholesaler's registration.

(c) Every supply dealer of filling material, unless he holds a manufacturer's registration, shall annually obtain a supply dealer's registration.

(d) Every bedding or filling material manufacturer shall annually obtain a manufacturer's registration.

(e) Every bedding retailer, unless he holds a manufacturer's registration or a wholesale dealer's registration, shall annually obtain a retail dealer's registration.

(f) Each person in each classification shall obtain a separate registration for each branch, factory, store, or retail outlet.

(3) Except as otherwise provided, any person who advertises, solicits, or contracts to manufacture, renovate, or sell bedding, or filling material and who either does the work himself or has others do it for him shall obtain the registration required by this section for the particular type of work which he solicits or advertises he will do, regardless of whether he has a shop or factory.

(4) Each person doing business at the same address under more than one firm name shall be subject to the registration provisions of this section for each firm name.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 457, ch. 77-147.

556.081 Scope.—

(1) This chapter shall apply to all bedding and filling materials including but not limited to any mattress, box spring, pillow, cushion, quilt, quilted pad, packing pad, hammock pad, mattress pad and topper, quilted bedspread, comforter, upholstered spring bed, box spring davenport, sleeping bag, auto bed, beach pad, chaise lounge pad, bolster, quilted or padded headboard, daybed or couch, or any other article of bedding used or intended for use in sleeping, whether manufactured, renovated, or remade within the state or brought into the state for sale; also any filling material processed or unprocessed whether manufactured or sold within the state or brought into the state for sale; provided however, that this chapter shall not apply to articles of bedding sold by the owner from his home direct to a purchaser, unless such article has been exposed to an infectious or contagious disease.

(2) Any article of bedding or filling material purchased by or for use by any state, county, or city institution may be inspected by the Department of

Health and Rehabilitative Services for compliance with all provisions of this chapter.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 458, ch. 77-147.

556.091 Bedding and filling material for export only excluded.—This chapter shall not apply to bedding or filling material manufactured, processed, or held within the state solely for export outside the state, provided such bedding or filling material is at all times clearly labeled "For Export."

History.—s. 1, ch. 65-347.

556.10 Violations; penalties.—Any person who fails to comply with, or who violates, any provision of this chapter or the rules and regulations of the division made pursuant hereto is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-347; ss. 19, 35, ch. 69-106; s. 551, ch. 71-136.

CHAPTER 559

REGULATION OF TRADE, COMMERCE AND INVESTMENTS, GENERALLY

PART I TRADING STAMPS (ss. 559.01-559.06)

PART II BUDGET PLANNING (ss. 559.10-559.13)

PART III FIRE AND GOING-OUT-OF-BUSINESS SALES AND AUCTIONS (ss. 559.20-559.27)

PART IV CEMETERIES (ss. 559.30-559.525)

PART V CONSUMER COLLECTION PRACTICES (ss. 559.55-559.78)

PART VI LICENSING BY DEPARTMENT OF BUSINESS REGULATION (ss. 559.79, 559.791)

PART VII SALE OR LEASE OF BUSINESS OPPORTUNITIES (ss. 559.80-559.815)

PART I

TRADING STAMPS

559.01 Definitions; trading stamps.—As used in part I of this chapter:

(1) The term "trading stamp" means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service, or cash. This term, however, shall not mean any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication.

(2) The term "trading stamp company" means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers, in any way or under any guise.

(3) The term "person" means any individual, partnership, corporation, association, or other organization.

History.—s. 1, ch. 59-311.

559.02 Fraud; false representation and lotteries prohibited.—No trading stamp company shall commit any fraud or shall make any false representation or shall resort to any lottery, in distributing or redeeming trading stamps in this state.

History.—s. 2, ch. 59-311.

559.03 Declared face value; redemption.—No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein unless each stamp has legibly printed upon its face in cents or any fraction thereof a cash value determined by the company, and the rightful holders may, at their option, redeem the stamps in cash when duly presented to the company for redemption in a number having an aggregate cash value of not less than 25 cents.

History.—s. 3, ch. 59-311.

559.04 Trading stamp companies, requisites for distribution of stamps.—No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein until it has filed with the Department of Banking and Finance:

(1) STATEMENT OF REGISTRATION.—A statement of registration accompanied by representative samples of its stamps, stamp collection books, stamp redemption catalogues, and stamp distribution and redemption agreement forms currently used in this state. Each such statement shall provide the following information:

(a) The name and principal address of the company;

(b) The state of its incorporation or origin;

(c) The names and addresses of its principal officers, partners, or proprietors;

(d) The address of its principal office in this state;

(e) The name and address of its principal officer, employee, or agent therein;

(f) The addresses of the places where its stamps are redeemable therein;

(g) A short form of its balance sheet, as at the end of its last fiscal year prior to such filing, certified by an independent public accountant; and

(h) Unless the principal sum of the bond hereinafter required to be filed by the company is the maximum amount hereinafter required, a statement of its gross income from its business in this state as a trading stamp company during such last fiscal year, certified by an independent public accountant; and,

simultaneously therewith.

(2) BOND.—

(a) A bond payable to the Department of Banking and Finance and duly executed by the company and a corporate surety qualified to do business in this state, which is conditioned upon the performance by the company of its obligation to redeem trading stamps issued by retailers in this state, when they are duly presented for redemption by the rightful holders.

(b) The principal sum of the bond shall be as follows: If the company has not previously done business as a trading stamp company in this state, or if the company's gross income from such business in this state during its last fiscal year was not in excess of $100,000, $10,000; for each additional $100,000 of gross income from such business in this state or fraction thereof, an additional $10,000; but such bond shall not exceed $100,000.

(c) On the effective date of each such new bond any and all liability on all bonds previously filed hereunder shall terminate, and all rightful holders of trading stamps who shall prosecute their claims hereunder shall prosecute such claims solely against the new bond and only by filing proofs of claim with the department in the manner hereinbefore provided.

(d) The statement of registration and the bond shall be filed with the department on or before July 1, 1959, and annually thereafter on or before July 1 of each year. The trading stamp company shall pay a registration fee equal to 1 percent of the face amount of the bond to the department at the time of filing each such registration statement. Fees collected pursuant to this paragraph shall be deposited in the state treasury in the regulatory trust fund under the Division of Finance of the department.

(e) In the event the company defaults in performing such obligations, all rightful holders of trading stamps of such company shall be entitled to make claim against said bond. Retailers in possession of trading stamps for issuance to their customers shall also be deemed rightful holders entitled to make such claim. In the event the company defaults in the performance of its obligation to redeem trading stamps, any rightful holder may file within 3 months after such default a complaint with the department. Upon the filing of any such complaint the department shall forthwith make a determination whether there has been a default. In any such proceedings before the department, the burden of proof shall be on the issuing company to show that the claimant is not the rightful holder of trading stamps in connection with such claim. If the department shall determine that there has been such a default, it shall give notice of such determination to the company, and if such default is not corrected within 10 days it shall publish notice of such default in three consecutive publications of one or more newspapers having general circulation throughout this state and therein require that proof of all claims for redemption of the trading stamps of the company shall be filed with it, together with the trading stamps upon which the claim is based, within 3 months after date of the first such publication. The department, promptly after the expiration of such period, shall determine the validity of all claims so filed. Thereupon, the department shall be paid by the surety such amount as shall be necessary to satisfy all valid claims so filed, together with reasonable administrative costs incident to the determination and payment of said claims, not exceeding, in the aggregate, the principal sum of the bond. The department shall promptly thereafter make an equitable distribution of the proceeds of the bond to such claimants and shall destroy the trading stamps so surrendered.

History.—s. 4, ch. 59-311; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 1, ch. 73-221; s. 1, ch. 73-275; s. 3, ch. 73-326.

559.05 Notice of intention to suspend or cease redemption of stamps.—No trading stamp company shall cease or suspend the redemption of trading stamps in this state without filing with the Department of Banking and Finance at least 90 days' prior written notice of its intention to do so and concurrently mailing a copy of such notice to each retailer within this state which has at any time theretofore within 1 year issued trading stamps which the company is obligated to redeem.

History.—s. 5, ch. 59-311; ss. 12, 35, ch. 69-106.

559.06 Penalties for violations.—Any person violating any provision of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, and the circuit court shall have jurisdiction in equity on the complaint of any interested person to restrain and enjoin the violation of any of said provisions.

History.—s. 6, ch. 59-311; s. 552, ch. 71-136.

PART II

BUDGET PLANNING

559.10 Definition; "budget planning."—The term "budget planning" as used in part II of this chapter shall mean the act of entering into a contract by any person, firm, corporation, or association with a particular debtor by the terms of which contract the debtor agrees to deposit periodically with such person, firm, corporation, or association a specified sum of money and said person, firm, corporation, or association agrees to distribute said sum of money among specified creditors of the debtor in accordance with an agreed plan for which service the debtor agrees to pay a valuable consideration.

History.—s. 1, ch. 59-345.

559.11 Budget planning prohibited.—No person, firm, corporation, or association, shall after June 17, 1959, engage in the business of budget planning as defined in s. 559.10; provided, the provisions of this part shall not affect any contract theretofore made.

History.—s. 2, ch. 59-345.

559.12 Exceptions.—

(1) "Person" as used in this part shall not include a person actively practicing law in Florida and who is also admitted to The Florida Bar, and any person who is currently a member of The Florida Bar.

(2) "Firm" as used in this part shall not include a partnership, all the members of which are admitted to practice law in this state, and who are current members of The Florida Bar.

History.—s. 3, ch. 59-345.

559.13 Penalty.—Whoever either individually or as an officer, director or employee of a person, firm, corporation or association, violates the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 59-345; s. 553, ch. 71-136.

PART III

FIRE AND GOING-OUT-OF-BUSINESS SALES AND AUCTIONS

559.20 Definitions; "fire" and "going-out-of-business" sales.—In construing part III of this chapter, and each and every word, phrase or part thereof, where the context will permit, the definitions contained in s. 1.01, shall be applicable, and:

(1) "Fire and other altered goods sale" is a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water, or other means.

(2) "Going-out-of-business sale" is a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: Adjusters, adjustment, alteration, assignees, bankrupt, benefit of administrators, benefit of creditors, benefit of trustees, building coming down, closing, creditor's committee, creditors, end, executors, final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, mortgage sale, receiver's, trustees, quitting business, removal. Any sale using any of the foregoing words or words of similar import, at the conclusion of which sale the business will not cease and be discontinued, and not publishing that fact or the qualified nature of said sale with equal prominence with each advertisement of such sale, shall be deemed to be a going-out-of-business sale.

(3) "Goods" is meant to include any goods, wares, merchandise, or other property capable of being the object of a sale regulated hereunder.

(4) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

(5) The words "publish," "publishing," "advertising" and "advertisement" shall include any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertisement, by magazine advertisement, by handbill, by written notice, by printed display, by billboard display, by poster, by radio announcement, and any and all means including oral, written, or printed.

(6) The word "shall" is always mandatory and not merely directory.

History.—s. 1, ch. 59-292.

559.21 Regulation of sales.—

(1) No person shall hereafter publish or conduct any sale of the type herein defined without a permit therefor. Such permit shall be issued by the sheriff, upon written application, in a form approved by the Department of Banking and Finance, and verified by the person who, or by an officer of the corporation which intends to conduct such sale. Such application shall contain a description of the place where such sale is to be held, the nature of the occupancy, whether by lease or sublease and the effective date of termination of such occupancy, the means to be employed in publishing such sale. Such application shall further contain, as part thereof, an itemized list of the goods, wares, and merchandise to be offered for sale.

(2) Upon receipt of such application and payment of the fee hereinafter prescribed, the sheriff shall examine the same, and may make such investigation as he may deem proper. If after such investigation he is satisfied as to the truth of the statement contained in such application, he may issue a license permitting the publication and conduct of such sale on the following terms:

(a) The permit shall authorize the sale described in the application for a period of not more than 30 consecutive days, counting Sundays and legal holidays following the issuance thereof. The sheriff may renew a permit for one period of time only, such period to be in addition to the 30 days permitted in the original permit and not to exceed 30 consecutive days, counting Sundays and legal holidays, when he finds:

1. That facts exist justifying the permit renewal;
2. That the permittee has filed an application for renewal;
3. That the permittee has submitted a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.

For the purposes of this subsection, any application for a permit under the provisions of this part covering any goods previously inventoried as required hereunder, shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.

(b) The permit shall authorize only the one type of sale described in the application at the location named therein.

(c) The permit shall authorize only the sale of goods described in the inventory attached to the application.

(d) Upon being issued a permit hereunder for a going-out-of-business sale, the permittee shall surrender to the sheriff all other business licenses he may hold at that time applicable to the location and goods covered by the application for a permit under this part, which license or licenses shall be transmitted by the sheriff to the licensing authority for cancellation.

(e) Any permit herein provided for shall not be assignable or transferable.

History.—s. 2, ch. 59-292; ss. 12, 35, ch. 69-106; s. 198, ch. 77-104.

559.22 Duties of permittee.—A permittee hereunder shall:

(1) Make no additions whatsoever, during the period of authorized sale, to the stock of goods set forth in the inventory attached to the application for permit.

(2) Refrain from employing any untrue, deceptive or misleading advertising.

(3) Conduct the authorized sale in strict conformity with any advertising or holding out incident thereto.

History.—s. 2, ch. 59-292.

559.23 Fees.—Upon filing an original application or renewal application for a permit to advertise and conduct a sale, or special sale, as hereinbefore defined, the applicant shall pay to the sheriff a fee in the sum of $25 which shall be deemed income of his office. If any application or renewal application be disapproved, said payment shall be retained as and for the cost of investigating the statements contained in such application or renewal application, and of the applicant.

History.—s. 3, ch. 59-292.

559.24 Enforcement.—

(1) Upon commencement of any sale, as hereinbefore defined, the permit issued shall be prominently displayed near the entrance to the premises. A duplicate original of the application and stock list pursuant to which such license was issued, shall at all times be available to the sheriff, who may examine all merchandise in the premises for comparison with such stock list. All advertisements or advertising and the language contained therein shall be in accordance with the purpose of the sale as stated in the application pursuant to which a permit was issued and the wording of such advertisements shall not vary from the wording as indicated in the application. Such advertising should contain a statement in these words and no others:

Sale held pursuant to ..... County, ... sale No. ..... granted the ..... day of ....., (in such blank spaces shall be indicated the type of sale, the permit number and the requisite dates.)

(2) Suitable books and records as prescribed by the Department of Banking and Finance shall be kept by the permittee and shall during business hours be available to the sheriff. At the close of business each day the stock list attached to the application shall be revised and those items disposed of during such day shall be so marked thereon.

History.—s. 4, ch. 59-292; ss. 12, 35, ch. 69-106.

559.25 Exemptions.—The provisions of this part shall not apply to or affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officers such as sheriffs and marshals, and similar public officers.

(3) Duly licensed auctioneers, selling at auction.

(4) Persons holding licenses or permits duly issued to conduct such sales by municipalities having municipal ordinances similar to this part.

History.—s. 5, ch. 59-292.

559.26 Violations.—Any person who shall violate, neglect or refuse to comply with any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 59-292; s. 554, ch. 71-136.

559.27 Tag required reflecting value of item offered for sale at auction.—

(1) At all auctions of goods at public outcry, the auctioneer or his agent shall place or cause to be placed upon each item to be offered at auction a tag showing the value attributed to the item at the time it is offered. Such tag shall remain affixed to the item and shall be delivered to the buyer along with the item at the time of sale.

(2) The provisions of this section shall not apply:

(a) To agricultural commodities, livestock, agricultural equipment, automobiles, or other items of goods which are most commonly marketed at auction;

(b) When a value is not expressed by the auctioneer as a guide to the bidder; or

(c) To auctions held as a result of court action.

(3) Violation of this section shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 70-151; s. 555, ch. 71-136.

PART IV

CEMETERIES

[1]559.30 Short title.—This part IV may be cited as "Florida Cemetery Act."

History.—s. 1, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.31 Scope.—

(1) The provisions of this part and all rules promulgated pursuant to this part shall apply to all cemeteries except for:

(a) Church cemeteries of less than 5 acres which provide only single level ground burial.

(b) County and municipal cemeteries.

(c) Community and nonprofit association cemeteries which provide only single level ground burial and do not sell burial spaces or cemetery merchandise.

(d) Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.

No county or municipal cemetery shall be deemed to be required to establish any trust fund pursuant to this part.

(2) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent, for at least 50 years prior to the effective date of this part shall be exempt from the provision of part IV of this chapter.

History.—s. 2, ch. 59-363; s. 1, ch. 65-570; s. 3, ch. 76-168; s. 1, ch. 76-251; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.32 Definitions; "Florida Cemetery Act." —As used in this part:

(1) "Persons" means an individual, corporation, partnership, joint venture, or association.

(2) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.

(3) "Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; or a columbarium or other structure or place used or intended to be used for the interment of cremated remains or any combination of one or more of such structures or places.

(4) "Mausoleum" means a structure or building substantially exposed aboveground intended to be used for the entombment of remains of a deceased person.

(5) "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the inurnment of the cremated remains of a deceased person.

(6) "Cemetery company" means any legal entity that owns or controls cemetery lands or property. The term shall include all cemeteries owned and operated by governmental agencies, churches, and fraternal organizations, or their corporate agents, which enter into sales and management contracts with cemetery sales organizations or cemetery management organizations for cemetery purposes or with any other legal entity other than direct employees of said governmental agency, church, or fraternal organization.

(7) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.

(8) "Department" means the Department of Banking and Finance.

(9) "Cemetery sales organization" means any legal entity contracting as an independent contractor with a cemetery company to conduct sales of cemetery products; it does not mean individual salesmen or sales managers employed by, and contracting directly with, cemetery companies operating under this act, nor does it mean funeral establishments or funeral directors operating under licenses authorized by chapter 470 when dealing directly with a cemetery company, with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being, or with an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under chapter 639. Cemetery sales organizations shall operate under the Florida Cemetery Act, except that the provisions of ss. 559.33 and 559.481 shall not apply.

(10) "Cemetery management organization" means any legal entity contracting as an independent contractor with a cemetery company to manage a cemetery, but does not mean individual managers employed by or contracting directly with cemetery companies operating under this act. Cemetery management organizations shall operate under the Florida Cemetery Act, except that the provisions of ss. 559.33 and 559.481 shall not apply thereto.

(11) "Cemetery broker" means a legal entity engaged in the business of arranging sales of cemetery products between legal entities, which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating

under chapter 470 when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being or an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under chapter 639. Cemetery brokers shall operate under the Florida Cemetery Act, except that provisions of ss. 559.33 and 559.481 shall not apply, and the Florida Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year.

(12) "Belowground crypts" consists of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as lawn crypts, westminsters, or turf-top crypts.

(13) "Bank of belowground crypts" means any construction unit of belowground crypts acceptable to the director of cemeteries which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.

(14) "Mausoleum section" means any construction unit of a mausoleum acceptable to the director of cemeteries which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.

History.—s. 3, ch. 59-363; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 210, ch. 71-377; ss. 1, 2, ch. 72-78; s. 3, ch. 76-168; s. 2, ch. 76-251; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.33 Cemetery companies; license; application; fee.—

(1) No legal entity shall operate a cemetery except as authorized by this part or without first obtaining a license from the department.

(2) Any legal entity wishing to establish a cemetery shall file a written application for authority with the department on forms provided by the department. This application shall be accompanied by an initial filing fee of $500.

(3) Upon receipt of the application and filing fee, the department shall cause an investigation to be made to establish the following criteria for approval of such application:

(a) Creation of a legal entity.

(b) Capitalization of not less than $15,000 in counties of not more than 25,000 population and not less than $25,000 in counties of more than 25,000 population.

(c) Unencumbered fee simple title to not less than 30 acres of land in the legal entity making application.

(d) The principal owners, principal stockholders, and all directors and officers or persons occupying similar status or performing similar functions must have the ability, experience, financial stability, and integrity to operate the cemetery as stated in the application.

(e) Designation by the legal entity wishing to establish a cemetery of a general manager designate who shall be a person of good moral character having not less than 1 year's experience in cemeteries in the state.

(f) Development plans sufficient to insure the community that the cemetery will provide adequate cemetery services.

(g) Development plans that have been approved by the appropriate local government entity regulating zoning in the area of the proposed cemetery.

(4) The department, after receipt of the investigation report, shall grant or refuse to grant the authority to organize a cemetery.

(5) If the department intends to grant the authority, it shall give written notice to the applicant that the authority to organize a cemetery has been granted and that a license to operate will be issued upon receipt by the department of proof of the following:

(a) Establishment of the care and maintenance trust fund and receipt by the department of a certificate from the trust company certifying receipt of the initial deposit required under this part.

(b) Full development, ready for burial, of not less than 2 acres, including a completed paved road from a public roadway to said developed section, certified by inspection of the department or its representative.

(c) In addition to the notice required by s. 559.481(1), completion of land purchase and certification that unencumbered fee simple title to 30 acres is in the legal entity to which authority to organize is granted and to which the license to operate is to be issued. This certification shall be made by an attorney licensed to practice in Florida or a title company licensed to operate in Florida.

History.—s. 4, ch. 59-363; s. 1, ch. 63-324; s. 2, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 72-78; s. 141, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 76-251; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 1, ch. 78-369; s. 1, ch. 78-407.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.331 Cemetery sales organizations, management organizations, and brokers; license; application; fee.—

(1) No legal entity shall engage in the business of a cemetery sales organization, a cemetery management organization, or a cemetery broker except as authorized by this part and without first obtaining a license from the department.

(2) Any legal entity wishing to establish and operate the business of a cemetery sales organization, a cemetery management organization, or a cemetery broker shall file a written application for authority with the department on forms provided by the department which must contain such of the following documents and information as may be required by the department:

(a) An irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceedings arising under this part against the applicant, its principal owners, principal stockholders, directors, or general manager or their personal representatives.

(b) The states or other jurisdictions in which the applicant presently is conducting the business activity applied for or other similar businesses and any adverse order, judgment, or decree entered against the applicant in each jurisdiction or by any court.

(c) The applicant's name and address and the form, date, and jurisdiction of the organization and the address of each of its offices within or without this state.

(d) The name, address, and principal occupation

for the past 5 years of every director and officer of the applicant or person occupying a similar status or performing similar functions and the name, address, and principal occupation for the past 5 years of every principal owner and principal stockholder; and for this purpose, any person whose interest in the applicant exceeds 10 percent shall be considered a principal owner or stockholder.

(e) Copies of the articles of incorporation, article of partnership, joint venture agreement, or other instrument establishing the legal entity of the applicant.

(f) A narrative description of the promotional plan for the sale of cemetery property and services, together with copies of all contracts, agreements, reservations, or other statements used in the promotional plan, together with copies of all advertising material prepared for public distribution by whatever means, either public or private.

(g) Copies of the current financial statement. A financial statement must be filed annually with the department if the license to operate is issued.

(3) The application shall be accompanied by an initial filing fee of $400 for cemetery sales organization and cemetery management organization and an initial filing fee of $200 for a cemetery broker. If 90 percent or more of the applicant is owned by an existing cemetery company operating under the Florida Cemetery Act, then the initial filing fee shall be one-half of the sums set out herein.

(4) Upon receipt of the application and filing fee, the department shall cause an investigation to be made to establish the following criteria for approval of such application:

(a) Creation of the legal entity to conduct the business applied for or the qualification of said legal entity in Florida.

(b) The principal owners, principal stockholders, and all directors and officers or persons occupying similar status or performing similar functions, must have the ability, experience, financial stability, and integrity to conduct the business stated in the application.

(5) The department, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organization applied for.

(6) If the department intends to grant the authority, a license to operate will be issued upon presentment to the department of a duly executed contract between the applicant and the cemetery or cemeteries to be serviced thereby, which contract must specifically provide for the responsibility for payments to the care and maintenance trust fund and to the merchandise trust fund as established in this part and disclose that the cemetery company is a company authorized to conduct a cemetery business under this part and that the care and maintenance trust fund and merchandise trust fund of said cemetery company complies with all provisions of this part. This requirement shall not apply to a cemetery broker, but said cemetery broker must submit a statement certifying that he has no contractual relationships with any cemetery and will only transact sales of cemetery property between individuals on cemetery property already covered by payments to an existing care and maintenance trust fund or merchandise trust fund.

(7) Any person, cemetery sales organization, cemetery management organization, or cemetery broker violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and shall be subject to revocation of the license to operate.

History.—s. 4, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**559.34 Application for change of control; filing fee.**—In any case where a person, a group of persons, or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall first make application to the department for a certificate of approval of such proposed change of control of said cemetery company and said application shall contain the name and address of the proposed new owners and the said department shall issue said certificate of approval only after it has become satisfied that the proposed new owners are qualified by character, experience and financial responsibility to control and operate the said cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. Such application for a purchase or change of control must be accompanied by an initial filing or investigation fee of $500. Fees collected pursuant to this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

History.—s. 5, ch. 59-363; s. 2, ch. 63-324; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-369.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**559.35 Existing companies, effect of this part IV.**—Existing cemetery companies at the time of the adoption of part IV of this chapter shall continue in full force and effect but shall hereafter be operated in accordance with the provisions of part IV of this chapter.

History.—s. 6, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**559.37 Department; powers.**—In addition to other powers conferred by this act, the department shall have power to:

(1) Formulate and promulgate reasonable rules and regulations governing the operation of cemeteries in this state, which shall have the force and effect of law and it shall have the power to enforce same.

(2) Employ, or assign employees necessary to operate the department and fix their compensation.

(3) Restrict or prohibit the sale or rental of space where the department finds it necessary in the public interest.

(4) At such time as the department finds it necessary or desirable to examine the affairs of any ceme-

tery company under this part, the licensee shall pay an examination fee not exceeding $150 per day for each examiner engaged in the examination.

(5) Prior to the change of control of any cemetery company as defined in this part, an examination of the licensee's records may be required. The fees provided in subsection (4) hereof will apply thereto.

(6)(a) Investigate, upon its own initiative, or upon a verified complaint in writing, the actions of any person acting in the capacity of a licensee under this part, within this state. The license of a licensee may be revoked or suspended for a period not exceeding 2 years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of facts showing that the licensee has either failed to:

1. Pay the fees required herein,
2. Make any reports so required by this act,
3. Remit to the care and maintenance fund or the merchandise fund the required amounts, or
4. Abide by any other regulations promulgated by the department.

(b) Any order suspending or revoking such license shall recite the grounds upon which the same is based.

(c) Any person aggrieved by an order issued by the department suspending or revoking his license may apply for a review thereof by filing a petition for certiorari in the circuit court of the county in which said person is licensed within the time and in the manner provided by the Florida Appellate Rules.

(7) At such time as the department finds it necessary it may:

(a) Bring an action in the name of the state in the circuit court of the county in which the licensed place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided that before any such action is brought the department shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation.

(b) In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the circuit court shall have the power and jurisdiction to impound and to appoint a receiver or administrator for the property and operation of any cemetery, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this chapter through or by means of the use of said property or operation.

(c) The department may institute proceedings against the cemetery or its officers, where after an examination, pursuant to this part, a shortage in the care and maintenance trust fund is discovered, to recover said shortage.

(d) If the court appoints an administrator, such administrator shall be empowered to take any action, including the establishment of record-keeping requirements, to implement the provisions of the court's order, to ensure the performance of such order, and to remedy any breach thereof.

History.—s. 8, ch. 59-363; ss. 1, 3, ch. 65-288; ss. 12, 35, ch. 69-106; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 4, ch. 76-251; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 3, ch. 78-369; s. 2, ch. 78-407.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

559.371 Cease and desist orders.—

(1) The department may issue and serve upon a cemetery company a complaint whenever the department has reason to believe that the cemetery company is violating or has violated any law, department rule, department order, or any written agreement entered into with the department.

(2) The complaint shall contain a statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are true, the department may enter an order directing the cemetery company to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) If the cemetery company fails to respond to the complaint within the time allowed in s. 120.57, such failure shall constitute a default and shall authorize issuance of a cease and desist order.

(5) A cease and desist order issued pursuant to the provisions of subsection (3) or subsection (4) is effective when reduced to writing and served upon the cemetery company. A consent order is effective as agreed between the parties thereto.

(6) The department may issue an emergency cease and desist order pursuant to s. 120.59.

History.—s. 3, ch. 78-407.

559.373 Civil penalty.—The department may seek an injunction and assessment of a civil penalty not to exceed $1,000 for each violation, in a court of competent jurisdiction, against any person who violates a cease and desist order of the department which is final and in effect. Any party subject to the injunction and penalty assessment shall be given notice and opportunity to attend and present evidence in a hearing before the judicial officer. All penalties collected under this section shall be paid to the Regulatory Trust Fund under the Division of Finance. If a licensee fails to pay such penalty within 30 days after being notified of the final order imposing the civil penalty, the department may suspend the licensee's license for such period of time as the penalty remains unpaid, in addition to other judicial remedies prescribed by law. Proceedings for suspension under this section shall be in accordance with the provisions of chapter 120.

History.—s. 6, ch. 78-407.

[1]**559.38 Records.**—A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial, name of the person buried, together with lot, plot, and space in which such burial was made therein. All sales, trust fund, accounting records, and all other accounting records of the licensee shall be available at the licensee's principal place of business in this state and shall be read-

ily available at all reasonable times for examination by an authorized representative of the department.

History.—s. 9, ch. 59-363; s. 4, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.39 Investigation of applications.—Upon receipt of application for authority under ss. 559.33 and 559.34, the department shall investigate the following:

(1) Character, reputation, financial standing, business qualifications, and motives of the proponents.

(2) The need for a cemetery in the community to be located, giving consideration to the adequacy of existing facilities and the need for further facilities in the area to be served, which need may be presumed upon the following criteria being met:

(a) The population; rate of population growth; death rate; ratio of burials to deaths; adequacy of existing facilities; and the solvency of the care and maintenance trust fund of the existing facilities.

(b) In order to promote competition, the department may waive the criteria promulgated in paragraph (a) in order that each county should have at least two cemeteries operated by different licensees.

(3) The proposed financial structure.

(4) Zoning approval, where applicable, and if zoning is not in effect, the approval and acceptance of a majority of adjacent property owners.

(5) Suitability of property for cemetery use.

History.—s. 10, ch. 59-363; ss. 1, 5, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 5, ch. 76-251; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.40 Issuance of certificate of authorization.—If the department finds that the proposed cemetery company has in good faith complied with all lawful requirements, it shall issue a certificate of authorization to transact a cemetery business. This authorization shall be valid for a period of 6 months and, if said cemetery company has not begun operations within that time, shall become null and void. Provisions for an additional period of not to exceed 6 months may be obtained upon written application to the department, showing good cause for extension. The 6 months' authorization or additional period shall begin as of the date the department issues the certificate of authorization or the extension of this authorization.

History.—s. 11, ch. 59-363; s. 6, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

559.405 Cemetery companies; authorized functions.—Each licensed cemetery company is authorized to perform within the boundaries of the cemetery lands it controls the following functions:

(1) The exclusive care and maintenance of the cemetery.

(2) The exclusive interment, entombment, or inurnment of the human dead, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials.

(3) The exclusive initial pre-need and at-need sale of interment or burial rights in earth interment, mausoleum or crypt interment, and niche or columbarium interment; provided nothing herein shall limit the right of a person owning interment or burial rights to sell such rights to third parties subject to the transfer of title by the cemetery company.

(4) The authority to promulgate bylaws regulating the activities conducted within its boundaries, provided that no funeral director licensed under chapter 470 shall be denied access to any cemetery to conduct a funeral for or supervise a disinterment of human remains. All bylaws provided for herein shall be subject to the approval of the department under the provisions of chapter 120 prior to final agency action by the department upon any proposed bylaws or amendments to bylaws.

(5) The nonexclusive pre-need and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

(6) The nonexclusive cremation of human remains, subject to provisions of s. 470.10(9).

History.—s. 8, ch. 78-407.

[1]559.41 Required trust fund for care and maintenance; remedy of department for noncompliance.—No cemetery company shall be permitted to establish, or operate if already established, a cemetery without providing for the future care and maintenance of such cemetery, for which a trust fund shall be established, to be known as "the care and maintenance trust fund of ....." Such trust fund shall be established with any state or national bank or savings and loan association licensed in Florida; provided, that such funds deposited in a savings and loan association or savings account in a state or national bank shall be limited to an amount insured by an agency of the Federal Government. The provisions of chapter 660 shall not apply to such savings accounts. When the amount of such trust account exceeds the amount that is insured by an agency of the Federal Government, it shall establish the fund with a trust company operating under the provisions of chapter 660 or with a state or national bank holding trust powers. The cemetery company may appoint an individual or committee of two or more individuals to act in an advisory capacity with the trustee in the investment of the trust fund, and provided further, that a cemetery company, with the consent of the department, may change the trustee of the trust fund. If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this part, the department, after reasonable notice, shall proceed to enforce compliance under the powers vested in it under this act; provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed $750,000, shall not be required to designate a corporate trustee. The trust fund agreement shall contain and include the following: Name, location, and address of both the licensee and the trustee showing the date of agreement together with the percentages required deposited as stated in s. 559.43. No person shall withdraw or transfer any portion of the corpus of the care and

maintenance trust fund, except where such portion reaches $200 or more per space, for each space whether sold or unsold, without first obtaining written consent from the department.

History.—s. 12, ch. 59-363; s. 7, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 6, ch. 76-251; s. 1, ch. 77-457; s. 9, ch. 78-407.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.42 Individual contracts for care and maintenance.—At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund.

History.—s. 13, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.43 Trust fund, percentage of payments for burial rights to be deposited.—

(1) There shall be set aside and deposited in the care and maintenance trust fund by the cemetery company, the following percentages or amounts for all burial rights, which percentages or amounts shall apply to:

(a) All such payments received until such time as the amount of the corpus of such trust fund equals the sum of $15,000, and thereafter.

(b) All such sums received from completed sales only exclusive of such sums on which deposits had previously been made under paragraph (a):

1. For graves, 10 percent of all payments received; provided, that after December 31, 1959, for sales made after such date, no such deposit shall be less than $10 per grave. For each burial right, grave, or space which is not sold, but is provided without charge, the deposit to the fund shall be $10.

2. For mausoleum or columbarium, 10 percent of payments received.

3. For general endowments care and maintenance of the cemetery, the full amount of sums received.

4. For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the state; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment, the full amount thereof shall be deposited into the care and maintenance trust fund as required of general endowments.

(2) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands not later than 5 days following the close of the calendar month in which payments were received as provided in subsection (1); however, the entire amount required to be deposited into the fund shall be paid within 4 years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. The care and maintenance trust fund shall be invested and reinvested by the trustee under the provisions of chapter 518 as the same may be from time to time amended. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

(3) Twenty-five percent of any payments made to the care and maintenance trust fund on contracts which are canceled shall be credited against future obligations to the care and maintenance trust fund, and 75 percent of any payments made shall be refunded to the purchaser.

(4) When a municipal, church-owned, or fraternal cemetery converts to a private cemetery as defined in s. 559.32, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section. The initial deposit for establishment of this trust fund shall be an amount equal to $10 per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or $25,000, whichever sum is greater.

(5) Each cemetery hereinafter established shall create a care and maintenance trust fund, depositing therein an initial deposit of not less than $25,000 and submit proof thereof to the department prior to offering for sale any burial rights in grave spaces, niches, or crypts. Payments required under subsection (1) shall be credited against this initial deposit until the sum of $25,000 is reached.

(6) In each sales contract, reservation, or agreement wherein burial rights are priced separately, the purchase price of said burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservation, or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of said burial rights can be determined from the accounting records of the cemetery company.

(7) If an installment contract or promissory note for the purchase of a pre-need burial space or pre-need burial merchandise is sold or discounted to a third party, the entire amount due the care and maintenance trust fund or the merchandise trust fund shall be payable no later than 5 days following the close of the calendar month in which the contract was sold or discounted, unless reserves held by the purchaser of the installment contract or promissory note are equal to or greater than the amount due to the care and maintenance or merchandise trust fund.

History.—s. 14, ch. 59-363; s. 8, ch. 65-288; s. 5, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 10, ch. 78-407.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.44 Trust fund; financial reports.—Within 105 days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care

fund on forms provided by the department. However, the department may require the trustee to make such additional financial reports as it may deem advisable.

History.—s. 15, ch. 59-363; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

559.4405 Personal liability.—The cemetery owners, or officers or directors of a cemetery company, may be held personally liable for any income from the care and maintenance trust fund not used directly for the care and maintenance of a cemetery. The department and the receiver or administrator appointed under s. 559.37 may bring suit in circuit court to recover such funds.

History.—s. 5, ch. 78-407.

[1]559.441 Receipts from sale of personal property or services, trust fund; penalties.—

(1) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls, or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, when payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them, or for whom they are so purchased, unless such person or legal entity holds, controls, or manages said funds subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities licensed under this part that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a certificate under chapter 470 or chapter 639 when selling items described in said chapters, and shall also exclude persons or legal entities in direct written contract relationship with cemetery companies licensed and operating under the Florida Cemetery Act.

(2) Except as hereinafter provided, no cemetery company or other entity shall directly or indirectly enter into a contract for the sale of personal property or services, excluding burial or interment rights, which may be used in a cemetery in connection with disposing of, or commemorating the memory of, a deceased human being, if delivery of such personal property or performance of such service is to be made more than 120 days after receipt of final payment under such contract of sale except as provided in subsection (3)(a); however, the entire amount required to be deposited into the fund shall be paid within 7 years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. This shall include, but not be limited to, the sale for future delivery of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries and interment fees but excluding burial or interment rights.

(3)(a) Any cemetery company or other entity entering into a contract for the sale of personal property or services referred to in subsection (2) shall deposit into a trust fund established for that purpose 100 percent of the cost of the personal property or services so sold for future use or delivery; said cost (wholesale purchase price plus 10 percent) shall be determined at time of deposit to the merchandise trust fund based upon cost determined by the director of cemeteries in accordance with subsection (4). The trust fund shall be administered by a corporate trustee in accordance with a written trust instrument.

(b) The deposit herein required shall be made into the trust fund so established within 30 days after the calendar month in which final payment is received by the cemetery company or other entity.

(c) Each deposit into any such trust fund shall be identified by the cemetery company or other entity by furnishing the trustee and the purchaser with the name of the purchaser, the amount of the retail sales price, and the amount of money required to be deposited, together with a statement of or a copy of the contract for the personal property and services to be furnished by the cemetery company thereunder. Nothing herein contained shall prohibit the trustee from commingling the deposits in any such trust fund for purposes of the management thereof and the investment of funds therein.

(d) The trust shall be operated in conformity with s. 559.41 with respect to the nature and character of the trustee. Alternatively, the trust funds provided for in this section shall be deposited in a savings account in the name of the cemetery company, as trustee, with a bank, trust company, or savings and loan association incorporated under and authorized by the laws of this state or of the United States, provided that such accounts shall be fully insured by the United States or an agency or instrumentality thereof. The provisions of chapter 660 shall not apply to such savings accounts. If a cemetery company or other entity elects to maintain a savings account in its own name, as trustee, as provided herein, it shall promptly notify the department in writing of such fact and furnish the department any relevant information that the department may require in connection therewith. In addition to such notice, the cemetery company or other entity shall also execute and deliver to the bank, trust company, or savings and loan association in which the trust account is maintained a power of attorney and any other indemnification agreements that may be required by such bank, trust company, or savings and loan association for the purpose of authorizing payments or withdrawals from such trust account as a result of nondelivery or nonperformance to a purchaser or his heirs, assigns, or duly authorized representative as provided in paragraph (5)(b). The cemetery or other entity shall also furnish satisfactory evidence to the department that it has executed and delivered such instruments to such bank, trust company, or savings and loan association.

(4) Each year, the director of cemeteries shall publish a list of the cost of the personal property or services affected hereby, which shall be computed by the department based upon its independent investi-

gation and which shall include the actual wholesale purchase price plus 10 percent, and all deposits required hereunder must be determined based upon this annual cost determination.

(5)(a) The funds shall be held in trust, both as to principal and income earned thereon, and shall remain intact, except that the cost of the operation of the trust or the trust account authorized by paragraph (3)(d) may be deducted from the income earned thereon, until delivery of the merchandise is made or the services are performed by the cemetery company or other entity. Upon delivery of the merchandise or performance of the services, the cemetery company or other entity shall certify same to the trustee, or to the department if the funds are deposited in a trust account with the cemetery company or other entity as trustee. Upon such certification, the amount of money on deposit to the credit of that particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery company or other entity, or the cemetery company or other entity may withdraw such amount from the trust account maintained by it as trustee. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.

(b) If for any reason a cemetery company or other entity which has entered into a contract for the sale of personal property or services and has made the deposit to the trust fund or trust account herein required to be made cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall have the right to provide such personal property or services and, having so provided the property or services, such purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the deposit to the credit of that particular contract. Written instruction to the trustee, or to the bank, trust company, or savings and loan association in which the account is maintained, by the cemetery company or other entity directing the trustee or the bank, trust company, or savings and loan association to refund the amount of money on deposit, or an affidavit by either the purchaser or one of his heirs or assigns or duly authorized representative, stating that he has fully performed the contract, but the personal property or services were not provided because the cemetery company or other entity cannot perform, or refuses to perform, as provided in the contract, shall be sufficient authority for the trustee, bank, trust company, or savings and loan association to make refund of the deposit moneys to the person submitting the affidavit. The trustee, bank, trust company, or savings and loan association shall not be held responsible for any such refunds made on account of the cemetery company's or other entity's written direction or an affidavit submitted in accord with this section. However, nothing herein contained shall relieve the cemetery company or other entity from any liability for nonperformance of the contract terms.

(c) In the event the cemetery company or other entity cannot deliver the personal property sold because of a national emergency, the provisions of paragraph (b) shall not apply.

(6) If after final payment a purchaser moves his domicile to a point that makes delivery of the merchandise or services impossible or impractical, the said trustee shall refund the principal amount of money on deposit to the credit of that particular contract and the income earned thereon, less a pro rata share of expenses of trust.

(7) Every year after the effective date of this act, the trustee shall, within 75 days after the end of its fiscal year file a financial report of the merchandise trust fund with the department, setting forth the principal thereof, the investments and payments made, and the income earned and disbursed. The department may require the trustee to make such additional financial reports as it may deem advisable. If the account is held by the cemetery company or other entity as trustee, the department may require the bank, trust company, or savings and loan association in which the account is maintained to furnish written verification of the financial report required to be submitted by the cemetery company or other entity.

(8) The department shall have the power, and is required from time to time as it may deem necessary, to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. Such examination shall be made at the expense of the person examined, and shall be made by the department or its designated representative. The written report of such examination shall be filed in the office of the department. Any persons or entities being examined shall produce all records of the company, including those records of the company held by the bank, trust company, or savings and loan association in which the account is maintained.

(9) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(10) Nothing in this section shall apply to persons or legal entities holding licenses or certificates under chapters 470 and 639 when performing services or selling items authorized by said chapters.

History.—s. 6, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 11, ch. 78-407.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.45 Financial report of company affairs.—The department shall require each cemetery company to submit a report of its condition, on forms provided by the department, as of such date as it may fix, at least once each calendar or fiscal year, or as often as it may order, and such report shall be submitted within 105 days after the end of the calendar or fiscal year or other reporting period as the case may be. Should the report not be received within the stipulated time, the department shall collect a penalty of $5 per day for each day of delinquency; provided, that upon application to the department prior to the expiration of the 105 days, and for good cause

shown, the department may grant a reasonable extension of the 105-day period.

History.—s. 16, ch. 59-363; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.46 License fee.—The department shall collect from every cemetery company, cemetery sales organization, management organization, or cemetery broker operating under the provisions of this chapter, an annual license fee of $250. Applications for such license must be submitted on or before December 31 each and every year in the case of an existing cemetery company and before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in s. 559.34. Should the application for such license not be received by December 31, the department shall collect a penalty in the amount of $25 per month or fraction of a month for each month delinquent.

History.—s. 17, ch. 59-363; s. 3, ch. 63-324; s. 1, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-369.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.47 License not assignable or transferable.—No license issued under s. 559.46 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this part under any name or at any location other than that contained in the application for such license.

History.—s. 18, ch. 59-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.481 Minimum acreage; sale or disposition of cemetery lands.—

(1) Each licensee shall set aside a minimum of 30 acres of land for use by said licensee as a cemetery and shall not sell, mortgage, lease, or encumber the same without prior written approval of the department. Prior to issuance of a license by the department pursuant to s. 559.33, the applicant shall furnish to the department satisfactory evidence that the applicant has recorded, in the public records of the county in which the land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Banking and Finance, as provided in the Florida Cemetery Act.

Such notice shall be clearly printed in boldface type of not less than 10 points, and such notice may be included on the face of the deed of conveyance to the licensee, or may be contained in a separate instrument which contains a description of the property if such instrument is recorded as provided herein.

(2) The fee simple title, or lesser estate, in any lands owned by licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 acres described in subsection (1), may be sold, conveyed, or disposed of, or any part thereof, by the licensee, for use by the new owner for other purposes than as a cemetery; provided that all of the bodies which have been previously interred therein have been removed from the lands so proposed to be sold, conveyed, or disposed of; and provided further, that any and all titles, interests, or burial rights, which may have been sold or contracted to be sold in such lands which are the subject of such sale, shall be conveyed to and revested in the licensee prior to consummation of any such sale, conveyance, or disposition.

(3) Any licensee may convey and transfer to a municipality or county its real and personal property, together with moneys deposited with the trustee; provided said municipality or county will accept responsibility for maintenance thereof, and prior written approval of the department is first obtained.

(4) The provisions of subsections (1) and (2) relating to a requirement for minimum acreage shall not apply to those cemeteries licensed by the department on or before July 1, 1965, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands without the prior written consent of the department.

History.—s. 9, ch. 65-288; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 78-407.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]559.482 Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirement.—

(1) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sales, reservations for sales, or agreements for sales are being made, within 48 months after the date of the first such sale. The construction of such mausoleum section or bank of belowground crypts shall be completed within 5 years after the date of the first sale made. However, extensions for completion, not to exceed 1 year, may be granted by the department for good reasons shown if a section of a mausoleum or a bank of belowground crypts shall contain more than 500 crypts.

(2) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust fund by written instrument and administered by a corporate trustee and operated in conformity with s. 559.41. This preconstruction fund shall be exclusive of the merchandise trust fund provided for in s. 559.441 of this chapter or such other trust funds that may be required by law.

(3) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made, the funds (110 percent of construction cost) to be deposited to the preconstruction trust fund shall be computed as to said section or bank of crypts, and such fund payments must be made within 30 days of receipt by the cemetery company or its agent of each payment. The fund portion of each such payment shall be computed by dividing

the cost of the project plus 10 percent of said cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

$$\frac{\text{Cost plus 10 percent}}{\text{Number of crypts}} = \text{Cost per unit}$$

$$\frac{\text{Cost per unit}}{\text{Contract sales price}} = \text{Percentage}$$

$$\text{Percentage} \times \text{payment received} = \text{Deposit required to preconstruction fund.}$$

(4) Upon completion of the mausoleum section or bank of underground crypts, the cemetery company shall certify same to the trustee and shall be entitled to withdraw all funds deposited to the account thereof.

(5) If said mausoleum section or bank of underground crypts is not completed within the time limits set out in this section, the trustee shall contract for and cause said project to be completed and pay therefor from the trust funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(6) In lieu of the payments outlined hereunder to the preconstruction fund the cemetery company may deliver to the department a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the department.

History.—s. 7, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

559.505 Attorney's fees.—

(1) In any civil litigation resulting from a transaction involving a violation of this act, except as provided in s. 559.37, the court may award to the prevailing party, after judgment in the trial court and exhaustion of any appeal, reasonable attorney's fees and costs from the nonprevailing party in an amount to be determined by the trial court.

(2) Any award of attorney's fees or costs shall become a part of the judgment and shall be subject to execution as the law allows.

(3) Subsections (1) and (2) shall not apply to any action initiated by the department.

History.—s. 4, ch. 78-407.

[1]**559.51 Penalties.**—The officers, directors, or persons occupying similar status or performing similar functions, of any cemetery company, cemetery sales organization, cemetery management organization, or cemetery broker, as defined in this part, failing to make required contributions to the care and maintenance trust fund or any other trust fund, escrow account, or trust account as provided herein, and any director, officer, agent, or employee of a cemetery company, sales organization, management organization, or broker who makes any unlawful withdrawal of funds from any such account, or who knowingly discloses to the department or an employee thereof any report made pursuant to s. 559.45 which is false, or any person who willfully violates any of the provisions of this act is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 12, ch. 65-288; s. 556, ch. 71-136; s. 8, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-407.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**559.52 Burial without regard to race or color.—**

(1) It shall be the public policy of the state that all cemetery companies or other legal entities conducting or maintaining public or private cemeteries shall sell to all applicants and bury all deceased human beings on equal terms without regard to race or color. Anything contrary hereto is void and of no legal effect. Bylaws, rules and regulations, contracts, deeds, etc., may permit designation of parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Any program offering free burial rights to veterans shall not be conditioned by any requirement to purchase additional burial rights or merchandise and shall comply with s. 817.415.

(2) Any cemetery company or other legal entity violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section shall constitute a separate offense.

History.—s. 9, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

559.525 Abandoned cemeteries.—

(1) Notwithstanding any provision of law to the contrary, any political subdivision of the state, or any county or municipality, which has within its jurisdiction an abandoned cemetery may, after undertaking a diligent search to locate the owner of the cemetery, maintain the cemetery until the owner is located and, upon the production of receipts verifying the services performed, require the owner to reimburse the political subdivision, county, or municipality for such services.

(2) If a political subdivision, county, or municipality has maintained a cemetery pursuant to the provisions of subsection (1) for a period of 12 consecutive months or more, such political subdivision, county, or municipality is authorized to maintain an action at law to recover an amount equal to the value of services rendered.

History.—s. 7, ch. 78-407.

PART V

CONSUMER COLLECTION PRACTICES

[1]**559.55 Definitions.**—The following terms shall, unless the context otherwise indicates, have the following meanings for the purpose of this part:

(1) "Claim" or "consumer claim" means any obligation for the payment of money or its equivalent arising out of a transaction wherein credit has been offered or extended to a natural person, and the money, property, or service which was the subject of the transaction was primarily for personal, family, or household purposes. The term includes an obligation of a natural person who is a comaker, endorser, guarantor, or surety as well as the natural person to whom such credit was originally extended.

(2) "Debtor" or "consumer" means any natural person who owes, or who is alleged to owe, a consumer claim.

(3) "Creditor" means any person to whom a consumer claim is owed, due, or alleged to be owed or due.

(4)(a) "Collection agency" means any person who, by himself or through others, directly or indirectly, in whole or in part:

1. Attempts to collect or collects consumer claims owed or alleged to be owed to another person;

2. Solicits consumer claims for collection; or

3. Furnishes collection systems carrying a name which simulates or tends to simulate a collection agency or furnishes letters, notices, procedures, or any other forms or methods designed to enforce the collection of a consumer claim for any other person, by creating or tending to create the impression that such notice, procedure, or other form or method was sent or initiated by a person other than the creditor. The term includes any creditor or assignee for value who attempts to collect or collects consumer claims under a fictitious name.

(b) "Collection agency" does not include:

1. Attorneys at law so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' consumer claims in the usual course of the practice of their profession and while using their professional name;

2. A person employed for compensation in the capacity of collecting consumer claims for his employer, or in a similar capacity, unless acting as an independent contractor;

3. Banks, including trust departments thereof, fiduciaries, savings and loan associations, building and loan associations, institutions operating under chapters 516 and 519, and other financing and lending institutions;

4. Bank holding companies registered under the Bank Holding Company Act of 1956, 12 U.S. Code 1841-1849, as amended, and their subsidiaries, provided that they perform collection services only for their subsidiaries or their parent holding company and its subsidiaries;

5. Title insurers and abstract companies while in the usual course of an escrow business;

6. Licensed real estate brokers and licensed real estate salesmen while acting in the usual course of their profession;

7. Employees of a collection agency which is licensed under this part;

8. Common carriers regulated by the Florida Public Service Commission, acting in the usual course of their business;

9. Public officers acting in their official capacities and persons acting pursuant to court order;

10. Mortgage bankers operating under chapter 494 and Federal Housing Administration or Veterans' Administration approved mortgagees collecting their own accounts or the accounts of other such lenders; and

11. Mortgage brokers regulated under chapter 494 acting in the usual course of their business.

(5) "Division" means the Division of General Regulation of the Department of Business Regulation.

(6) "Department" means the Department of Business Regulation.

(7) "License" means a collection agency license or a branch office license.

(8)(a) "Doing business within this state" means entering the State of Florida physically to perform any activity included in the definition of a collection agency in subsection (4), or doing the same from within or without the state by telephone, telegram, mail, or any other form of communication.

(b) "Doing business within this state" does not include the placing of consumer claims for collection with collection agencies licensed under this part.

(9) "Certificate holder" means any natural person who has been issued a certificate of qualification by the division.

(10) "Supervisor" means any natural person who is directly in charge of, and who directs, the daily operation of a collection agency or branch office thereof.

History.—s. 1, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]559.56 Powers and duties of the division.—The division is vested with the authority and power to issue or deny licenses to operate collection agencies and to issue or deny certificates of qualification, in accordance with the provisions of this part. The division is also vested with the authority and power to perform any other function or duty specifically provided in this part.

History.—s. 2, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.57 License fees and bonding.—

(1) Each person, prior to doing business within this state as a collection agency, shall file with the division a written application for a collection agency license, accompanied by the license fee. Each license shall be valid for a period of 1 year beginning with the initial licensing date. If the division declines to issue a license, the license fee shall be returned. Once a license is issued, if it is subsequently revoked, the license fee shall not be returned to the licensee. All collection agency branch offices doing business within this state shall obtain licenses.

(2) The initial license fee is $100. The fee for subsequent renewals is $100 for each renewal. The annual fee for branch office is $50 for each branch office doing business within this state.

(3) Each collection agency shall post a surety bond executed by the agency and two or more sureties that have been approved by the division, or by a surety company authorized to do business in this state, payable to the Governor of this state in the sum of $5,000. Such bond shall be conditioned that the collection agency shall faithfully and truly perform all agreements entered into with the collection agency's clients or customers and that the collection agency shall account to and pay to its customer the net proceeds of all collections made as required by, and within the time limits set forth by, s. 559.74(1). If the collection agency fails to account and pay as set forth in the bond to any client or customer, such person may maintain an action in his own name upon the bond of said collection agency, in any court having jurisdiction of the amount claimed. In no event shall the aggregate liability of the surety or sureties to all such clients or customers exceed the sum of such bond. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist. The bond posted under this part shall be in full force and effect during all periods and in all places and areas in which the licensee is doing business within this state as a collection agency.

History.—s. 3, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.58 Application for collection agency license and certificates of qualification.—

(1) Prior to operating a collection agency located in this state or doing business within this state, or a branch office thereof doing business within this state, the owner, partner, or, in the case of corporations, the president or other officer who actively directs the business of the corporation shall request, in writing, from the division an application for a collection agency license and certificates of qualification. Such written request shall include:

(a) The name or names under which the collection agency intends to operate;

(b) The address of the principal place of business from which the collection agency is to be operated;

(c) The names and addresses of all branch or subsidiary offices of the collection agency doing business within this state, even though each such branch or subsidiary office must file separate requests under this section;

(d) The names and addresses of all owners, partners, or, in the case of corporations, the president or other officer who actively directs the business of the corporation; and

(e) The name and address of the supervisor of the prospective collection agency.

(2) Upon receipt of the written request in subsection (1), the division shall send to the supervisor of the prospective collection agency an application for collection agency license and applications for certificates of qualification for all owners, partners, officers, and supervisors listed in the request. All such applicants shall be required to complete and file with the division individual applications for certificates of qualification, accompanied by a filing fee of $20 for each application.

(3) The application for collection agency license shall be in a form designed by the division and shall require the supervisor to furnish:

(a) The name or names under which the collection agency intends to operate;

(b) The address of the principal place of business from which the collection agency is to be operated;

(c) The names and addresses of the owners, partners, or, in the case of corporations, the president or other officer who directs the business of the corporation;

(d) The name and address of the supervisor of the collection agency; and

(e) The signature of the supervisor.

(4) Applications for certificates of qualification shall be in a form designed by the division and shall require the applicant to furnish:

(a) Full name of the applicant and title of position held by the applicant with the collection agency. If no position is held by the applicant with the prospective collection agency, the relationship between the applicant and the prospective collection agency shall be shown;

(b) Age, date, and place of birth;

(c) The present residence address and the residence addresses within the 5 years immediately preceding the submission of the application;

(d) Occupations held presently and within the 5 years immediately preceding the submission of the application;

(e) The names or name under which the collection agency is to be operated;

(f) A statement of any and all arrests, in this or any other state, of the applicant, including final disposition;

(g) A statement of any and all adjudications, in this or any other state, relating to the mental compe-

tency of the applicant, including final dispositions;

(h) A statement of any and all convictions of the applicant for violations of any of the provisions of s. 559.72; and

(i) A notarized affidavit by the applicant that all of the information included in the application is true to the best of his knowledge.

History.—s. 4, ch. 72-81; s. 142, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.59 Issuance of certificates of qualification.—

(1) Upon receipt of a completed application for certificate of qualification, accompanied by the annual filing fee of $20, the division shall issue the certificate of qualification unless the division declines to issue the certificate.

(2) Grounds for denial of a certificate of qualification shall be:

(a) An adjudication of guilt for the commission of a felony, in this or any other state, when the felony is of such a nature as to demonstrate the applicant's unfitness to direct the business activity of a collection agency;

(b) Failure to answer completely such questions and make such statements as are required in the application for certificate of qualification;

(c) A currently existing adjudication, in this or any other state, of mental incompetency;

(d) Previous convictions of violations of any of the provisions of s. 559.72; or

(e) Falsifying the application for a certificate of qualification.

History.—s. 5, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

[1]559.60 Issuance of license.—

(1) When the division shall have issued certificates of qualification for a prospective collection agency license to all parties required by s. 559.58 to have such certificates and upon the posting of the licensee's bond as provided for in s. 559.57(3), the division shall then issue a license to the collection agency.

(2) Grounds for denial of a license shall be the denial of any one of the related applications for certificates of qualification.

(3) Denial of a license under this section shall not prohibit the subsequent issuance of such license if the applicant that was denied a certificate of qualification is removed from or replaced in his connection with the prospective collection agency.

History.—s. 6, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.61 License requirements.—

(1) Every collection agency doing business in this state must have the capacity to make valid contracts and to sue and be sued in this state and shall be subject to and meet the provisions of chapter 48, entitled "Process and Service of Process."

(2) All owners, partners, or, in the case of corporations, the president or other officer who directs the business of the corporation, who operate a collection agency licensed under this part, and the supervisor of each such collection agency, shall be required to be a certificate holder.

(3) The name or names under which the collection agency will operate shall not be so similar to that of a public officer or agency, or to that used by another licensee, that the public may be confused or misled thereby. Collection agencies operating under fictitious names shall comply with the provisions of s. 865.09.

History.—s. 7, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.62 License and certificate of qualification; contents; posting.—

(1) The license issued pursuant to this part shall be for a period of 1 year and shall be in such form as may be determined by the division, and shall specify the following:

(a) The name or names under which the collection agency is to operate;

(b) The address of the principal place of business of the collection agency;

(c) The date on which the license will expire;

(d) The full name and title of all certificate holders connected with the collection agency; and

(e) The number assigned to the license by the division.

(2) Certificates of qualification issued pursuant to this part shall be for a period of 1 year and shall be in such form as may be determined by the division, and shall specify the following:

(a) The name of the collection agency with which the certificate holder is connected;

(b) The address of the principal place of business of such collection agency;

(c) The name of the certificate holder;

(d) The address of the certificate holder;

(e) The position within the collection agency held by the certificate holder;

(f) The date on which the certificate will expire; and

(g) The number assigned by the division to the certificate.

(3) The license and the corresponding certificates of qualification shall at all times be posted together in a conspicuous place in the principal place of business of the collection agency.

(4) Certificate holders shall not operate a collection agency under any name or names other than those specified in the collection agency license. A license issued under this part shall not be assignable or transferable, nor shall a certificate of qualification be assignable or transferable. No collection agency shall be permitted to conduct business under more than one name except as licensed. A certificate holder desiring to change the name or names under which the collection agency he is operating and doing business shall notify the division of such intent. Upon receipt of such notification, the division shall forward to the certificate holder an application form for collection agency name change. Such form shall be designed by the division, and the purpose of the form shall be to provide the division with the appro-

priate information about the name change, and shall include proof of filing of an affidavit of doing business under a fictitious name under s. 865.09, when applicable. Upon completion of such form, the certificate holder shall return it to the division, together with the proof of filing the affidavit of doing business under a fictitious name, a nonrefundable fee of $10, and a certificate from his surety or sureties on the bond mentioned in s. 559.57(3) to the effect that said bond covers the collection agency business under the new name or names. If the division is satisfied that such new name or names are not so similar to that of a public officer or agency or that used by another licensee that the public may be confused or misled thereby, the division shall send to the certificate holder a certificate of registration of the new name. Such form shall be in a form designed by the division, specifying both the old and new names of the collection agency and the license number and address to which the certificate applies. The certificate shall be posted, together with the collection agency license as provided in subsection (3).

History.—s. 8, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.63 Supervision of collection agencies.—Each collection agency licensed under this part and each branch office doing business within this state must be under the direct supervision of a holder of a valid certificate of qualification.

History.—s. 9, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.64 Notification to division of new owner, partner, or corporate officer, and of new supervisor.—After filing the application provided for in s. 559.58, unless the division declines to issue the license, all collection agencies shall notify the division, within 30 days, of the removal, replacement, or addition of any and all owners, partners, or corporate officers, as the case may be, and of the removal, replacement, or addition of any and all supervisors, if not included in the above. Upon notification, the division shall send to the collection agency forms for application for certificates of qualification. Such applications shall be completed by each of the new owners, partners, corporate officers, or supervisors. Upon receipt of the required applications for certificates of qualification, the division shall, unless the division declines to issue such certificates, forward such certificates to the appropriate certificate holders. The new certificate holders shall post their certificates together with the collection agency license as provided in s. 559.62(3). Grounds for denial of a certificate of qualification under this section shall be the same as provided for in s. 559.59.

History.—s. 10, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.65 Claim collectors employed by collection agencies.—No collection agency shall knowingly employ or retain in its employ, as a collector of consumer claims, any person who has:

(1) Been adjudged mentally incompetent, in this or any other state, unless a court has subsequently issued an order restoring the mental competency of such person;

(2) Been adjudged guilty of the commission of a felony, in this or any other state, of such a nature as to demonstrate the person's unfitness to collect consumer claims; or

(3) Been convicted of a violation of any of the provisions of s. 559.72 of this part.

History.—s. 11, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.66 Renewal of collection agency license and certificates of qualification.—

(1) Sixty days prior to the expiration of a license, granted under this part and at such time still in full force and effect, the division shall send to such collection agency licensee forms for the renewal of such collection agency license or branch office license and forms for the renewal of the related certificates of qualification.

(2) Applications for the renewal of the collection agency license shall be in a form designed by the division and shall require the supervisor to furnish:

(a) The name or names under which the collection agency conducts its business;

(b) The address of the principal place of business from which the collection agency conducts its business;

(c) The names and addresses of the current owners, partners, or, in the case of corporations, the president or other officer who directs the business of the corporation;

(d) The name and address of the supervisor of the licensed collection agency; and

(e) The signature of the supervisor.

(3) Applications for the renewal of the certificates of qualification shall be in a form designed by the division and shall require the applicant to furnish:

(a) Full name of the applicant and title of position held by the applicant with the licensed collection agency. If no position is held by the applicant with the licensed collection agency, the relationship between the applicant and the collection agency shall be shown;

(b) Age, date, and place of birth;

(c) The present residence address;

(d) The present occupation;

(e) The name or names under which the collection agency licensee conducts its business;

(f) A statement of any and all arrests, in this state or any other state, since the applicant's most recent sworn statement to the division;

(g) A statement of any and all adjudications, in this or any other state, relating to the mental competency of the applicant, including any final disposition, since the applicant's most recent sworn statement to the division;

(h) A statement of any and all convictions of the applicant for violations of any of the provisions of s. 559.72, since the applicant's most recent sworn statement to the division; and

(i) A notarized affidavit by the applicant that all of the information included in the application is true to the best of his knowledge.

(4) Upon receipt of the completed application for collection agency license renewal, all of the completed required applications for renewal of certificates of qualification, the collection agency license renewal fee, the certificate of qualification renewal fee for each certificate, and a certificate from the collection agency licensee's surety or sureties on the bond mentioned in s. 559.57(3), to the effect that said bond covers the licensee's business as presently constituted for the period covered by the license renewal, the division shall issue the new license to the licensee, and the new certificates of qualification to the applicants. Such license renewal and renewal of certificates of qualification shall be subject to all the rights, restrictions, regulations, and limitations, including the division's right to deny, as apply to the issuance of original collection agency licenses and certificates of qualification.

(5) No person, firm, company, partnership, or corporation shall carry on any collection agency business subject to this part during any period which may exist between the date of expiration of a collection agency license and the renewal thereof, with the exception of a 30-day grace period.

History.—s. 12, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.67 Change of location.**—In the event the licensee desires to change the location of the collection agency, he shall notify the division in writing within 30 days of the change in location and pay a fee of $10 to the division to cover administrative costs, together with a certificate from his surety or sureties on the bond mentioned in s. 559.57(3), to the effect that said bond covers the licensee's business at the changed location. Upon payment of the fee and receipt of the certificate relating to the bond, the division shall send to the licensee a certificate of registration of new location. Said certificate shall be in a form designed by the division, and it shall specify the name or names under which the collection agency operates, the license number, and both the old and new addresses of the collection agency. The certificate shall be posted together with the original license as provided for in s. 559.62(3).

History.—s. 13, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.68 Cancellation of license.**—In the event the licensee desires to cancel the license, the licensee shall notify the division and return to the division along with such notification the license, applicable certificates of qualification, and all other attachments. Upon receipt of the notification and related documents, the division shall advise each of the affected certificate holders of the cancellation. No license fee shall be refunded upon cancellation of any license.

History.—s. 14, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.69 Advisory council.**—The division shall designate an advisory council to be composed of five certificate holders. Selection of the members of the advisory council shall, insofar as possible, be geographically distributed and representative of the various segments of the industry. The council shall organize and elect a chairman and thereafter meet upon call of the chairman with the concurrence of the division. The council shall counsel and advise with the division and make recommendations relative to the operation and regulation of the industry. Such advisory council may investigate complaints received by the division relating to the industry, and any reports as to the findings shall be referred to the division for proper disposition. Such advisory council members are appointed by the division and shall serve without pay; however, state per diem and travel allowances may be claimed for attendance at officially called meetings of the council as provided by s. 112.061.

History.—s. 15, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.70 Enforcement.**—The division shall transmit such complaints and information made available to it when it deems it advisable to the office of the appropriate state attorney for prosecution if warranted.

History.—s. 16, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.71 Applicability of this part.**—

(1) Any collection agency in the business prior to October 1, 1972, shall receive a license from the division automatically upon filing with the division a proper application for license and certificates of qualification, making payment of fees, and producing the approved bond within 4 months after October 1, 1972. Any such agency may retain employees collecting claims prior to October 1, 1972 without regard to the provisions of s. 559.65.

(2) Tax collectors in the various counties of the state shall notify persons obtaining occupational licenses to operate collection agencies of the license requirements of this part and shall notify the division of all persons obtaining occupational licenses to operate collection agencies.

History.—s. 17, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**559.72 Prohibited practices generally.**—In collecting consumer claims, whether or not licensed by the division, no person shall:

(1) Simulate in any manner a law enforcement officer or a representative of any governmental agency;

(2) Use or threaten force or violence;

(3) Tell a debtor who disputes a consumer claim that he or any person employing him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for

credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6);

(4) Communicate or threaten to communicate with a debtor's employer prior to obtaining final judgment against the debtor, unless the debtor gives his permission in writing to contact his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection, but this shall not prohibit a person from telling the debtor that his employer will be contacted if a final judgment is obtained;

(5) Disclose to a person other than the debtor or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false;

(6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made prior to such reasonable dispute having been asserted and written notice is received from the debtor that any part of the claim is disputed and if such dispute is reasonable, the person who made the original disclosure shall reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days;

(7) Willfully communicate with the debtor or any member of his family with such frequency as can reasonably be expected to harass the debtor or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of his family;

(8) Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of his family;

(9) Claim, attempt, or threaten to enforce a consumer claim when such person knows that the claim is not legitimate or some other legal right when such person knows that the right does not exist;

(10) Use a communication which simulates in any manner legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney-at-law, when it is not;

(11) Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments which only attorneys are authorized to prepare;

(12) Orally communicate with a debtor in such a manner as to give the false impression or appearance that such person is or is associated with an attorney;

(13) Advertise or threaten to advertise for sale any claim as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor;

(14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of consumers, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer claims;

(15) Refuse to provide adequate identification of himself, if not employed by a collection agency, or, if employed by a collection agency, of himself and the collection agency that he represents when requested to do so by a debtor from whom he is collecting or attempting to collect a consumer claim; or

(16) Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to "Deadbeat, John Doe."

History.—s. 18, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.73 Prohibited practices; collection agencies, licensees and their employees.—

(1) No collection agency or licensee shall purchase from a creditor any obligation of a debtor.

(2) No collection agency, licensee, or employee shall falsify, alter, or counterfeit any license.

(3) No collection agency, licensee, or employee shall engage in any material misrepresentations in soliciting claims from creditors or in collecting consumer claims from debtors.

History.—s. 19, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.74 Collection agencies; requirements.—

(1) A collection agency shall pay over to any creditor all proceeds collected by it for the creditor, less charges for collection in accordance with the agreement between them, within 30 days after the close of the month during which such proceeds were received, unless the creditor authorizes otherwise in writing.

(2) Upon request, a collection agency shall give an accounting to any debtor of all moneys received from such debtor within the past year, or for a longer period when appropriate records are still available.

(3) A collection agency shall return all valuable papers given to it by any creditor within a reasonable time after the termination of the collection agency's employment by such creditor.

(4) A collection agency shall maintain a separate account or trust account in a bank or other financial institution and shall deposit in that account, within 10 days after its receipt, all funds received for and owing to creditors. The balance in that trust account shall be sufficient to cover all funds due to creditors at any time.

(5) It is the duty of each collection agency to take reasonable steps to ascertain whether employees collecting consumer claims meet the requirements of s. 559.65. When in doubt, the collection agency shall apply to the division for a determination of the employee's or prospective employee's fitness to collect consumer claims. No collection agency shall knowingly employ a person to collect consumer claims who does not meet these requirements.

(6) When a collection agency has filed a notice of delinquent account with any credit bureau and the account is subsequently paid in full, the collection agency shall, within 72 hours of receipt of such full payment, Saturdays, Sundays, and holidays exclud-

ed, serve written notice to all credit bureaus who have received notice of the delinquent account setting forth the fact that such full payment has been received.

History.—s. 20, ch. 72-81; s. 143, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.75 Payment to collection agencies; payment to creditor.—

(1) Any payment made by a debtor to a collection agency shall be deemed to be made to the creditor, and such payment shall be applied in the following order:

(a) Court costs and attorney's fees;

(b) Principal amount of the consumer claim and accrued interest; and

(c) Other legally chargeable fees.

(2) Any creditor who receives any payment from a debtor after the consumer claim has been given to a collection agency for collection shall immediately notify the collection agency and such amount shall be entered in the records and applied in accordance with subsection (1).

(3) A creditor shall engage only one collection agency at any one time with respect to a given consumer claim and shall notify in writing within 5 days any collection agency so engaged of the following information:

(a) Intention to bring a legal suit with respect to such consumer claim;

(b) Intention to terminate the engagement of the collection agency;

(c) Satisfaction of such consumer claim.

(4) No creditor shall place a consumer claim owed by a debtor residing in this state with a collection agency for collection in this state unless the collection agency is licensed under this part, nor shall such creditor use any of the other services included in the definition of a collection agency in s. 559.55(4) in an attempt to enforce collection of a consumer claim owed by a debtor residing in this state, unless the collection agency providing the services is licensed under this part.

(5) Any collection agency fee or fees for a collection service rendered shall be paid by the creditor and shall not be charged to the debtor unless the evidence of indebtedness provides to the contrary.

(6) No collection agency licensee, certificate holder, or employee or creditor's employee shall accept or give any gratuities, gifts, or favors that might compromise the actions or judgments of a creditor or his employee, impair or compromise the judgment or quality of service offered by the collection agency, or offer any unethical or illegal favor, service, or thing of value to obtain a special advantage.

History.—s. 21, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.76 Counsel for the division; enforcement.—Counsel and legal staff of the department shall act as attorney for the division in the enforcement of the provisions of this part.

History.—s. 22, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.77 Civil remedies.—

(1) A debtor may bring a civil action against a person violating the provisions of this part in the circuit court of the county in which the alleged violator resides or has his principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or $500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part. If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.

(2) A creditor may bring either or both a civil action for actual damages or an action to enjoin a collection agency or employee thereof or collector of debts from willfully violating the provisions of this part. Upon adverse adjudication the defendant shall, in addition to any liability for such actual damages shown, be liable for court costs and reasonable attorney's fees incurred by the plaintiff. If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.

(3) A collection agency may bring a civil action for damages against creditors willfully violating the provisions of s. 559.75(2) and (3). Upon adverse adjudication the defendant shall be liable for actual damages incurred by the plaintiff together with court costs and reasonable attorney's fees. If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.

History.—s. 23, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]559.78 Judicial enforcement.—In addition to other penalties provided in this part, the division, state attorneys and their assistants are authorized to apply to the circuit court within their respective jurisdictions, upon the sworn affidavit of any person alleging a violation of any of the provisions of this part, and such court shall have jurisdiction, upon hearing and for cause shown:

(1) To grant a temporary or permanent injunction restraining any person from violating any provision of this part;

(2) In the case of collection agency licensees, to suspend or revoke such collection agency's license issued under this part; or

(3) In the case of a certificate holder, to suspend or revoke such certificate of qualification issued un-

der this part,

whether or not there exists an adequate remedy at law, and such injunction, suspension, or revocation shall issue without bond.

History.—s. 24, ch. 72-81; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

PART VI

LICENSING BY DEPARTMENT OF BUSINESS REGULATION

559.79 Applications for license or renewal.—(1) Each application for a license issued by the Department of Business Regulation shall include a statement showing the name and address of each person who owns 10 percent or more of the outstanding stock or equity interest in the licensed activity and the name and address of each officer, director, chief executive, or other person who, in accordance with the rules of the issuing agency, is determined to be able directly or indirectly to control the operation of the business of the licensed entity, and each application for renewal of such a license shall set out any changes in the required names and addresses which have occurred since the license was issued or last renewed.

(2) Each application for a license or renewal of a license issued by the Department of Business Regulation shall be signed under oath or affirmation by the applicant, or owner or chief executive of the applicant, without the need for witnesses unless otherwise required by law.

History.—ss. 1, 2, ch. 78-51.

559.791 False swearing on application; penalties.—Any license issued by the Department of Business Regulation which is issued or renewed in response to an application upon which the person signing under oath or affirmation has falsely sworn to a material statement, including, but not limited to, the names and addresses of the owners or managers of the licensee or applicant, shall be subject to denial of the application or suspension or revocation of the license, and the person falsely swearing shall be subject to any other penalties provided by law.

History.—s. 3, ch. 78-51.

PART VII

SALE OR LEASE OF BUSINESS OPPORTUNITIES

559.80 Short title.—Sections 559.80-559.815 may be cited as the "Sale of Business Opportunities Act."

History.—s. 1, ch. 79-374.

559.801 Definitions.—For the purpose of ss. 559.80-559.815:

(1) "Business opportunity" means the sale or lease of any products, equipment, supplies, or services which are sold to a purchaser to enable the purchaser to start a business, and in which the seller represents:

(a) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;

(b) That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;

(c) That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity or that the seller will refund all or part of the price paid for the business opportunity or repurchase any of the products, equipment, supplies, or chattels supplied by the seller if the purchaser is unsatisfied with the business opportunity; or

(d) That, upon payment by the purchaser of a fee or sum of money which exceeds $50 to the seller, the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity, except that this paragraph shall not apply to the sale of a marketing program made in conjunction with the licensing of a registered trademark or service mark.

"Business opportunity" does not include the sale of ongoing businesses when the owner of those businesses sells and intends to sell only those business opportunities so long as those business opportunities to be sold are no more than five in number; nor does it include the not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of $500.

(2) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

History.—s. 1, ch. 79-374.

559.803 Disclosure statement.—At least 72 hours prior to the time the purchaser signs a business opportunity contract, or at least 72 hours prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled in at least 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY FLORIDA LAW." Under this title shall appear the following statement in at least 10-point type: "The State of Florida has not reviewed and does not approve, recommend, endorse, or sponsor any busi-

ness opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

(1) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller.

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, and principal executives and of any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities.

(3) The length of time the seller has:

(a) Sold business opportunities; or

(b) Sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser.

(4) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.

(5) A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect material changes in the seller's financial condition.

(6) If training is promised by the seller, a complete description of the training, the length of the training, and the cost or incidental expenses of that training, which cost or expense the purchaser will be required to incur.

(7) If the seller promises services to be performed in connection with the placement of the equipment, product, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed.

(8) If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to s. 559.807, either of the following statements:

(a) "As required by Florida law, the seller has secured a bond issued by ....., a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(b) "As required by Florida law, the seller has established a trust account or guaranteed letter of credit (number of account) with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account or guaranteed letter of credit."

(9) The following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract."

(10) If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:

(a) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who have actually achieved sales of or received earnings in the amount or range specified within 3 years prior to the date of the disclosure statement.

(b) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within 3 years prior to the date of the disclosure statement.

(11) A statement disclosing who, if any, of the persons listed in subsections (1) and (2):

(a) Has, at any time during the previous 7 fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

(b) Has, at any time during the previous 7 fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade or any civil action which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship. However, only material individual civil actions need be so listed pursuant to this paragraph, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material.

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(12) A statement disclosing who, if any, of the persons listed in subsections (1) and (2) at any time during the previous 7 fiscal years has:

(a) Filed in bankruptcy.

(b) Been adjudged bankrupt.
(c) Been reorganized due to insolvency.
(d) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within 1 year after the period that such person held such position in relation to such other person. If so, the name and location of the person having so filed or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto shall be set forth.

(13) A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

Should any seller of business opportunities prepare a disclosure statement pursuant to 16 C.F.R. s. 436.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, the seller may file that disclosure statement in lieu of the document required pursuant to this section. Should the seller be required pursuant to 16 C.F.R. to prepare any other documents to be presented to the prospective purchaser, those documents shall also be filed with the division.

History.—s. 1, ch. 79-374.

559.805 Filing with the division.—

(1) The seller of every business opportunity shall file with the division a copy of the disclosure statement required by s. 559.803 prior to placing an advertisement or making any other representations designed to offer, sell, or solicit an offer to buy a business opportunity to prospective purchasers in this state and shall update this filing as any material change in the required information occurs, but not less frequently than annually. An advertisement is not placed in the state merely because the publisher circulates, or there is circulated on his behalf in the state, any bona fide newspaper or other publication of general, regular, and paid circulation which had more than two-thirds of its circulation during the past 12 months outside the state or because a radio or television program originating outside the state is received in the state. If the seller is required by s. 559.807 to provide a bond or establish a trust account or guaranteed letter of credit, he shall contemporaneously file with the division a copy of the bond, a copy of the formal notification by the depository that the trust account is established, or a copy of the guaranteed letter of credit.

(2) Upon the filing of the disclosure statement and the posting of a bond or the establishment of a trust account or a guaranteed letter of credit, if any is required, the division shall issue to the business opportunity seller an advertisement identification number.

(3) The seller shall disclose, to each person with whom he places advertising, the advertisement identification number, which may be recorded by the person receiving the advertising so that the advertising media may verify the authenticity of the registration.

(4) The division shall collect a $10 filing fee from a seller required to comply with this section. Such fee shall be deposited in the General Inspection Trust Fund of the Department of Agriculture and Consumer Services.

History.—s. 1, ch. 79-374.

559.807 Bond or trust account required.—If the business opportunity seller makes any representations set forth in s. 559.801(1)(c), the seller must either have obtained a surety bond issued by a surety company authorized to do business in this state or have established a trust account or a guaranteed letter of credit with a licensed and insured bank or savings institution located in the state. The amount of the bond, trust account, or guaranteed letter of credit shall be an amount not less than $50,000. The bond or trust account shall be in the favor of the division. Any person who is damaged by any violation of ss. 559.80-559.815, or by the seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom, may bring an action against the bond, trust account, or guaranteed letter of credit to recover damages suffered; however, the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond, trust account, or guaranteed letter of credit.

History.—s. 1, ch. 79-374.

559.809 Prohibited acts.—Business opportunity sellers shall not:

(1) Misrepresent the prospects or chances for success of a proposed or existing business opportunity.

(2) Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

(3) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

(4) Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

(5) Misrepresent the training and management assistance available to the business opportunity purchaser.

(6) Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity.

(7) Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.

(8) Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

(9) Assign a so-called "exclusive territory" encompassing the same area to more than one business opportunity purchaser.

(10) Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

(11) Provide machines or displays of a brand or kind substantially different from and inferior to those promised by the business opportunity seller.

(12) Fail to provide the purchaser a written contract as provided in s. 559.811.

History.—s. 1, ch. 79-374.

559.811 Contracts to be in writing; form; provisions.—

(1) Every business opportunity contract shall be in writing, and a copy shall be given to the purchaser at least 72 hours prior to the time he signs the contract.

(2) Every contract for a business opportunity shall include the following:

(a) The terms and conditions of payment, including the total financial obligation of the purchaser to the seller.

(b) A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser.

(c) The seller's principal business address and the name and address of its agent in the state authorized to receive service of process.

(d) The approximate delivery date of products, equipment, or supplies which the business opportunity seller is to deliver to the purchaser.

History.—s. 1, ch. 79-374.

559.813 Remedies.—

(1) If a business opportunity seller uses untrue or misleading statements in the sale of a business opportunity, fails to give the proper disclosures in the manner required by this part, or fails to deliver the equipment, supplies, or products necessary to begin substantial operation of the business within 45 days of the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of this part, the purchaser may, within 1 year of the date of execution of the contract and upon written notice to the seller, rescind the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address, or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

(2) Any purchaser injured by a violation of this part, or by the business opportunity seller's breach of a contract subject to this part or any obligation arising therefrom, may bring an action for recovery of damages, including reasonable attorney's fees.

(3) Upon complaint of any person that a business opportunity seller has violated the provisions of this part, the circuit court shall have jurisdiction to enjoin the defendant from further such violations.

(4) The Department of Legal Affairs or the state attorney, if a violation of this part occurs in his judicial circuit, may bring an action for injunction or other appropriate civil relief for violations of this part.

(5) The remedies provided herein shall be in addition to any other remedies provided by law or in equity.

History.—s. 1, ch. 79-374.

559.815 Penalties.—Any person who fails to file with the division as required by s. 559.805 or who commits an act described in s. 559.809 is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 79-374.

CHAPTER 560

SALE OF MONEY ORDERS

[1]560.01 Short title.—This act may be cited as the "Sale of Money Orders Act."

History.—s. 1, ch. 65-174; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.02 Definitions.—For the purposes of this act:

(1) "Person" means any individual, partnership, unincorporated association, joint stock association, trust, or corporation, however organized, but does not include the United States Government or the government of this state or any department or agency of either thereof.

(2) "Licensee" means a person duly licensed by the Department of Banking and Finance pursuant to this act.

(3) "Money order" means any check, travelers check, draft, money order, personal money order, or other instrument for the transmission or payment of money whether or not it is a negotiable instrument under the laws of this state.

(4) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission, or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person.

(5) "Sell" means to sell, to issue, or to deliver a money order.

(6) "Deliver" means to deliver a money order to the purchaser who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the money order.

(7) "Department" means the Department of Banking and Finance.

History.—s. 2, ch. 65-174; ss. 12, 35, ch. 69-106; s. 212, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.03 License required to engage in business of selling or issuing money orders.—

(1) No person shall engage in the business of selling or issuing money orders as a service or for a fee or other consideration without having first obtained a license hereunder. Any person engaged in said business on July 1, 1965, and who files a license application hereunder with the department within 30 days from July 1, 1965, may continue to engage in such business without a license until the department has acted upon his application for a license. The provisions of this subsection shall apply to any nonresident who engages in this state in the business of selling or issuing money orders through a branch, subsidiary, affiliate, or agent in this state.

(2) Nothing in this act shall apply to banks or to incorporated telegraph companies insofar as such incorporated telegraph companies receive money at any of their respective offices or agencies for immediate transmission by telegraph.

History.—s. 3, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.04 Qualifications of applicant for license.—To qualify for a license hereunder an applicant shall meet and demonstrate to the department that he meets the following requirements:

(1) The applicant's net worth plus long term debt shall be at least $1 million computed according to generally accepted accounting principles, provided that applicant's net worth shall be at least $500,000. The applicant shall file with a new or renewal application for license a balance sheet, certified as of the date of the end of the applicant's fiscal year next preceding the date of filing, which shall be audited by an independent certified public accountant or independent public accountants.

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as reasonably to warrant the belief that the applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the department, the department may investigate, require a showing of and consider the qualifications of officers, directors, and trustees of an applicant in determining whether the qualifications mentioned in this section are met.

(3) The applicant shall tender to the department the bond or alternative securities and the statements and fees prescribed by this act.

History.—s. 4, ch. 65-174; ss. 12, 35, ch. 69-106; s. 1, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effe

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.05 Application for license; contents.—Each application for a license shall be made to the department in writing and under oath in such form as the department may prescribe, and shall truthfully and accurately make such statements and certifications and set forth such information as the department may reasonably require, including the following:

(1) The full name, residence and business address of:

(a) The proprietor, if the applicant is an individual.

(b) Every partner or member, if the applicant is a partnership or other unincorporated organization however organized having less than 50 partners or members, together with the business name and business address of the partnership or other organization.

(c) The principal partners or members, if the applicant is a partnership or an unincorporated organization however organized having 50 or more partners or members, together with the business name and business address of the partnership or other organization.

If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu and instead of the full name and business address of its principal members.

(d) The corporation and each officer and director thereof, if the applicant is a corporation.

(e) Every trustee and officer if the applicant is a trust.

(2) Such other reasonable data, financial statements and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, branches, subsidiaries, and affiliates.

History.—s. 5, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.06 Application, investigation fee, bond, deposit of securities in lieu of bond.—Each application for a license shall be accompanied by:

(1) An investigation fee of $250, which shall be paid by each applicant which is an issuing company and which shall not be subject to refund, but which, if the license be granted, shall constitute the license fee for the first license year or part thereof, and also a fee for each location, as provided in s. 560.10.

(2) A surety bond, issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of $450,000 and in an additional principal sum of $5,000 for each location in excess of one at or through which the applicant proposes to sell or issue money orders in this state. In no event shall the bond be required to be in excess of $500,000. The application shall also be accompanied by a list which designates and sets forth the name and address of each branch, subsidiary, agent, or other location at or through which the applicant proposes to issue or sell money orders. Each company shall also file annually, at the time of application for license, a supplemental or amended list which shall set forth each location which was in operation at any time from and after July 1, 1973, up to date of filing such list; and thereafter, beginning on April 30, 1974, such amended list shall show all such locations which were in operation at any time during the preceding year. The bond shall be in a form satisfactory to the department and shall run to the state for the benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of money orders. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Such claimants against the applicant or his agents may themselves bring suit directly on the bond, or the Department of Legal Affairs may bring suit thereon in behalf of such claimants, either in one action or in successive actions.

(3) In lieu of such corporate surety bond or bonds, or of any portion of the principal thereof as required by this section, the applicant may deposit with the State Treasurer securities approved by and acceptable to the department in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities eligible for deposit hereunder shall meet the same requirements as are provided by law for securities eligible to be deposited by banks to secure deposits of state funds. The securities shall be deposited with the Treasurer as aforesaid and held to secure the same obligations as would the corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the department, to substitute other securities for those deposited, and shall be required so to do on written order of the department made for good cause shown.

(4) Financial statements reasonably satisfactory to the department.

History.—s. 6, ch. 65-174; ss. 11, 12, 35, ch. 69-106; s. 2, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.07 Investigation of applicant by department.—Upon the filing of an application in due form, accompanied by the fee, bond and other documents required by this act, the department shall investigate to ascertain whether the qualifications prescribed by this act have been met. If it finds that such qualifications have been met, and if it approves said bond and other documents, it shall issue to the applicant a license to engage in the business of selling and issuing money orders in this state. Any license issued pursuant to this act shall remain in force and effect through April 30 next following its date of issuance unless earlier surrendered, suspended or revoked.

History.—s. 7, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

[1]560.08 Maintenance of qualification of licensee required; renewal of bond; notice of cancellation.—

(1) After a license has been granted, the licensee shall at all times have and maintain the qualifications required by this act for the granting of an original license pursuant to this act, and shall maintain said bond or securities in the amount prescribed by this act.

(2) Each licensee who does not have on file or deposit a bond or securities in the undiminished principal sum of $500,000 shall file quarter-annual reports with the department setting forth the locations, including the full names and addresses of such locations at or through which he sells or issues money orders in this state as of January 1, April 1, July 1, and October 1 in each year, the report for each such date being due on or before the fifteenth day thereafter. Within 10 days following the filing of such a report, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations, and may be decreased to reflect any decrease in the number of locations.

(3) If the department shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or in part, it may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this act, such order to be complied with within 30 days following service thereof upon the licensee.

(4) A bond filed with the department for purposes of compliance with this act may not be canceled either by the licensee or the corporate surety except upon notice to the department by registered or certified mail with return receipt requested, the cancellation to be effective not less than 30 days after receipt by the department of such notice.

(5) The corporate surety, shall within 10 days after it pays any claim to any claimant, give notice to the department by registered or certified mail of such payment with details sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond or securities is reduced by one or more recoveries or payments, the licensee shall furnish a new or additional bond or new or additional securities so that the total or aggregate principal sum of such bond or securities shall equal the sum required under s. 560.06(2), or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

History.—s. 8, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.09 Renewal of license or certificate; annual license fee.—A license and the certificates of agents or subagents may be renewed for the 12-month period or the remainder of any such period without proration following the date of its expiration, upon the filing with the department of an application and other statements and documents as may reasonably be required of licensees by the department, showing that the licensee remains qualified for such license under the provisions of this act. Such renewal application and registration of agents shall be filed on or after January 1 of the year in which the existing license and certificates expire and prior to the expiration date of the existing license and certificates. If the application is filed prior to the expiration date of an existing license, no investigation fee shall be payable in connection with such renewal application, but an annual license fee of $250 plus the fees due under s. 560.10 shall be paid with each renewal application which shall not be refunded or prorated if the renewal application is approved and the renewal license thereunder goes into effect. If a renewal application and request for agent certificates is filed with the department before April 1 of any year, the license and certificates sought to be renewed shall continue in force until the issuance by the department of the renewal applied for or until 20 days after the department shall have refused to issue such renewal.

History.—s. 9, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.10 Conduct of business at more than one location; appointment of agents; fees.—

(1) A licensee may conduct his business at one or more locations within this state through or by means of such agents and subagents as the licensee may from time to time designate or appoint.

(2) For the privilege of conducting, engaging in, and carrying on the business of the sale of money orders as defined in this act, each issuing company shall register and pay, for each location operating within this state for the conduct of such business, a registration fee in the sum of $5 for each such location or, at the option of the company, a total annual fee of $2,500, which shall be considered as registration for each and every location operating within this state. The payment of this $2,500 total annual fee shall be accompanied by a written designation of all agents, subagents, branches, affiliates, or locations which were not set forth in the original application. Upon payment and such registration, the department shall issue a certificate which shall authorize the company to conduct business at such locations.

History.—s. 10, ch. 65-174; s. 4, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.11 Financial liability of licensee.—Each licensee shall be liable for the payment of all money orders which he sells or issues, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state and regardless of whether or not such instrument is a negotiable instrument under the laws of this state; and a licensee who sells or issues a money order, whether directly or through an agent, upon which he is not designated as maker or drawer shall nevertheless have the same liabili

ties with respect thereto as if he had signed the same as the drawer thereof.

History.—s. 11, ch. 65-174; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.12 Money orders to bear name of licensee.—Every money order sold or issued by a licensee, directly or through an agent or subagent, shall bear the name of the licensee clearly imprinted thereon.

History.—s. 12, ch. 65-174; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.13 Revocation of license; examination of books and records.—

(1) The department may revoke a license on any ground on which it may refuse to grant a license or for violation of, or failure to comply with, any provision of this act or any rule or regulation issued by the department under this act or for failure of the licensee to pay a judgment recovered in any court in this state by a claimant or creditor in an action arising out of the licensee's business in this state of selling or issuing money orders, within 30 days after the judgment becomes final.

(2) If the department has reasonable cause to believe that grounds for revocation exist, it may examine the books, records, accounts, and files of the licensee. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to such examination or investigation. The expenses of the department incurred in each such examination of a licensee under this act shall be paid by such licensee or issuing company so examined within 30 days after demand therefor by the department, and shall not exceed $50 per day or fraction thereof for each examiner. For examinations conducted outside the state, the licensee or issuing company shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. Expense thus recovered shall be deposited in the state treasury as provided in s. 560.151 as a reimbursement to the annual appropriation for expenses incurred in enforcing this act.

History.—s. 13, ch. 65-174; ss. 12, 35, ch. 69-106; s. 5, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.15 Rules and regulations.—The department may make and promulgate reasonable rules and regulations, not inconsistent with law, necessary or appropriate to the implementation of this act or for the enforcement of this act, which rules and regulations shall have the force and effect of law.

History.—s. 15, ch. 65-174; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.151 Deposit of fees; use of funds by department.—All fees collected under this act shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the Division of Finance of the department and are hereby appropriated to the department to be used in the administration of this act.

History.—s. 6, ch. 73-277; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.16 Sale by agent of unlicensed principal seller or issuer prohibited.—No person shall sell or issue money orders as an agent of a principal seller or issuer when such principal seller or issuer is subject to licensing under this act but has not obtained a license hereunder, and any person who does so shall be deemed to be the principal seller thereof, and not merely an agent, and shall be liable to the holder or remitter as the principal seller.

History.—s. 16, ch. 65-174; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]560.17 Violations, penalties.—Any person who directly or through another violates or attempts to violate any provision of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each transaction in violation of this act and each day that a violation continues shall be a separate offense.

History.—s. 17, ch. 65-174; s. 557, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.